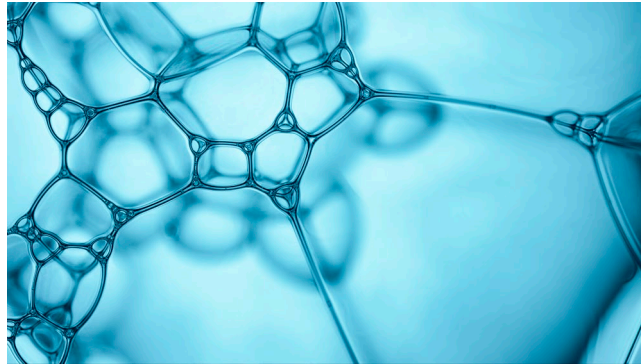


Divorce 101

Legal Issues and Resources



LEGAL AID CENTER Since 1958
of Southern Nevada

UNLV

WILLIAM S. BOYD
SCHOOL OF
LAW

Please mute your
microphone and turn
off your video

Please hold your
questions until the end
of the Presentation



Attendee Manual

Divorce Community Legal Education Class

Attendee Manual

Legal Aid Center of Southern Nevada
William S. Boyd School of Law
(Student Volunteers)

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*The Family Law
s Vegas, Nevada,*

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You may download the
manual from here

<https://www.lacsn.org/what-we-do/free-classes/divorce>

Includes sample forms

Follow along with the
manual

Reference Page 3

COMMUNITY SERVICE CLASS
PROVIDES:

- LEGAL INFORMATION
- COURT PROCEDURES & RULES
- NEVADA LAW



TAUGHT BY LAW STUDENTS
NOT LICENSED ATTORNEYS

A LICENSED ATTORNEY IS
PRESENT

DOES NOT TAKE THE PLACE OF
HIRING A LAWYER

Legal Information

Not Advice



Learn about

Learn about court procedures and rules



Record

Record questions to ask at the end of class.



Don't disclose

Don't disclose any personal, confidential information.



Complete

Complete the on-line Attendee Feedback Form at the end of class to help us improve! Link will be in the chat box.

What's your role?

Today's Agenda

Legal Services Available to You

Legal Terminology

Issues of Divorce

Procedures and Required Forms

Question-and-Answer Session



Legal Resources

This Class Cannot Take the Place of an Attorney

Private Attorney

Legal Aid Center of Southern Nevada

Family Self-Help Center

Lawyer Referral Service



Takes cases for in-house attorney representation

The program's main priority is High Risk Domestic Violence Survivors who are vulnerable and whose cases meet legal standards for the relief they seek

Through Legal Aid, local private attorneys (*Pro Bono* attorneys) take some non-domestic violence cases of vulnerable applicants such as

- Elderly
- Disabled
- Child abduction cases
- Exploitation victims

Any case accepted by *Pro Bono* goes to a waitlist which can take 30 to 90 days

725 E. Charleston Ave. Las Vegas, NV 89104 (702) 386-1070

Pro-Bono Project

- Apply in person if you're seeking custody and you meet the financial requirements
- One person household < \$27,390 a year
- Two persons household < \$31,350 a year
- Three persons household < \$35,255 a year
- 4 persons Household < \$39,160/year; \$3,263 monthly
- Also < \$5,000 in net assets excluding a motor vehicle or other work-related equipment.
- Complete in-person interview and await notification indicating that a lawyer will be assigned to your case

Attorney Assistance

Ask-A-Lawyer Program

- Meet with a lawyer for 15 minutes on a Thursday afternoon by appointment
- Sign up by using this link: <http://www/lacsn.org>
- Call (702)386-1070, ext. 1731

Lawyer Referral Services

- Call (702) 382-0504 or go to www.NVBar.org Click on "For the Public" then "Find a Lawyer"
- Will get name of attorney who will provide a 30-minute consultation for \$45 and reduced rate representation after that.
- Ask about "Unbundled Legal Services"

Family Law Self-Help Center

Home Self-Help Divorce		About the Self-Help Center	
Getting Started		Divorce	
<h2>Divorce</h2>		Overview	
Overview	How to File for Divorce Together	Filing for Divorce Together	
How to File for Divorce On Your Own	How to Respond to a Divorce Complaint	Filing for Divorce on Your Own	
Important Requirements for Parents: COPE Class & Mediation	Going to Court (for initial hearings or trial)	Responding to a Divorce	
How to Get the Final Divorce Decree	After the Divorce: How to Change or Appeal an Order	Requirements for Parents	
How to Enforce the Order	References, Resources, & Links	Going to Court	
		Getting the Final Decree	
		After the Divorce: Changing or Appealing an Order	
		Enforcing The Order	
		References, Resources, & Links	
		Divorce Forms	

NRS 240A.040

- Evidence that they're registered with the State of NV (use www.nvsos.gov)
- Posted Certificate of Registration, business licenses, and disclosures
- Disclosures, e.g., not an attorney, prior to payment
- A written contract (English or language used in course of dealings)
- Explanation of fees and receipt
- Complaint process and right of action
- Restitution and damages

Complaints: call (800) 450-8594, opt 6 or go online

Document Preparation Services

Terminating the Marriage

Division of Property

Alimony/Spousal Support

Child Custody/Support

Issues in Divorce

No Fault Divorce State

- You can get a divorce for any reason
- Spouse cannot prevent you from getting a divorce

Grounds

- Incompatibility
- Separation over 1 year
- Insanity (existing for 2 years prior to the commencement of the action)

Residency Requirements

- Spouses: at least 1 spouse must be Nevada resident for at least 6 weeks prior to filing
- Child(ren): any child(ren) must be Nevada resident for at least the last 6 months prior to filing

Terminating Marriage in Nevada

Includes	Excludes
<input checked="" type="checkbox"/> Income during marriage	<input type="checkbox"/> Gifts
<input checked="" type="checkbox"/> Assets acquired during marriage	<input type="checkbox"/> Inheritances
<input checked="" type="checkbox"/> Debts acquired during marriage	<input type="checkbox"/> Personal Injury Settlements
<input checked="" type="checkbox"/> Possessions	<input type="checkbox"/> Pre-marital property
<input checked="" type="checkbox"/> Retirement plans	
<input checked="" type="checkbox"/> Financial accounts	

Division of Property - Community Property is Divided Equally



A rule of time not a rule of title



Community property consists of all property
and debt acquired during the marriage

Community Property

Premarital Property

Property owned by one spouse
BEFORE marriage

BEWARE – separate property may
become community property

- Placed personal funds in joint accounts
- Refinanced house in both names
- Bought gift for the community with separate funds

Dividing Property

Talk

Talk with your spouse if it is safe and practical

- Determine what property you CAN agree to divide
- Determine what property you CANNOT agree to divide
- Make a list of property that is and is not in dispute (include the values)

Consult

Consult with an attorney before dividing property

Must file Financial Disclosure Form

Awarded on Case-by-Case basis (no formula)

Factors Include:

- Financial condition of each spouse, the present and future earning difference
- Duration of marriage (the marriage must be a minimum of 7-10 yrs)
- The value of the respective property of each spouse
- The income, earning capacity, age and health of each spouse
- The standard of living during the marriage
- The contribution of either spouse as a homemaker
- The award of property granted by the court
- Physical and mental health of each spouse

Alimony

Alimony Amount and Duration

- TERMINATES upon
 - Remarriage (automatically)
 - Death (automatically)
 - Time (per court order)
 - By Court Order

A young child with light-colored hair, wearing a blue and white striped t-shirt and a light pink skirt, is sitting on a wooden staircase. The child is looking down at a tablet device held in their hands. The staircase has wooden treads and blue-painted risers. The background is a plain white wall.

Children

- Three Main Issues
 - Custody - Where do they live? Who has a say in decisions for children?
 - Visitation - How often does “noncustodial” parent get to see them?
 - Child Support - How much child support must be paid?

Legal Custody

Parent has a say in important decisions and may obtain records for child (Example: medical, educational, and religious)

Joint: both parents have legal custody rights

Sole: one parent has legal custody rights

(Must prove why other parent shouldn't have legal custody rights)

There is a presumption of joint legal custody

Physical Custody

Where child lives

PRIMARY: one parent has child most of the time

JOINT / SHARED: both parents have equal time with child.
(A split of 60/40 is considered joint custody)

SOLE: only one parent has the child, and the other parent may have limited, supervised or no visitation

Physical Custody

Under some circumstances, there is a preference for joint physical custody. (If there is an agreement to joint physical custody or withholding)

If neither of the preferences apply, the court will make physical custody decision based on the best interest of the child

It's not uncommon for one parent to have primary physical custody and the parties have joint legal custody

The nature of the relationship of the child with each parent.	Any nomination by a parent or a guardian for the child.
Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.	Whether person seeking custody has committed any act of abduction against the child or any other child.
The level of conflict between the parents.	The mental and physical health of the parents.
The physical, developmental and emotional needs of the child.	Child's wishes – depending on child's age.
The ability of the child to maintain a relationship with any sibling.	Any history of parental abuse or neglect of the child or a sibling of the child.
Whether person seeking custody has engaged in an act of domestic violence.	The ability of the parents to cooperate to meet the needs of the child.

Custody Factors – what is best for the child

Visitation

Creating a Schedule

Be specific!

Start with weekly visitation days, times, locations, etc.

Consider travel time, work schedules, school schedules, extracurricular activities



Examples

Bad: "Parent 1 gets to see kids every other weekend."

Good: "Parent 1 gets to see kids every weekend from Friday at 5pm to Sunday at 8pm, and Parent 2 has the children from Sunday at 8 pm to Friday at 5 pm."

Child Support



Generally, child support is paid by “non-custodial parent” to “custodial parent”

Based on non-custodial parent’s gross monthly income (before taxes)

Statutory Formula: based on number of children with limits set by legislature

	One Child	Two Children	Three Children	Four Children	Add'l Children
First \$6,000 of non-custodial parent's GMI	16%	22%	26%	28%	2% for each add'l child
Second \$6,000 of non-custodial parent's GMI	8%	11%	13%	14%	1%

Child Support – Statutory Guideline

If you make less than \$1,561 a month, see the chart in the Manual

Child Support – Joint Physical Custody

Parent 1 GMI is
\$4,000/month, Parent
2 GMI is \$3,000/
month, they have one
child

Parent 1 Child
Support \$640
(16% of \$4,000)

Parent 2 Child
Support \$480
(16% of \$3,000)

Parent 1 pays
Parent 2 the
difference \$160
per month

Child Support Deviations

Can result in child support going either up or down

- Cost of child's health insurance
- Cost of childcare
- Cost of child with special needs
- Child's age
- Transportation expenses for visitation (if custodial parent has moved)
- Relative income of the parties
- Parents' legal responsibility to support others
- Services contributed by parents to child
- Public assistance paid to child
- Pregnancy expenses
- Time child spends with each parent

Child Support: Enforcement

Must Pay Until Child

- Reaches the age of 18, or
- Graduates high school (until 19 years of age)
- If disabled, until is self-sufficient

Enforce Child Support

- Wage Assignment Notification (after 30-day delinquency)
- Motion for an Order to Show Cause
- Garnish Wages (District Attorney's office can garnish wages)
- Lien against real property and tax refunds

Child Support Changes

Support Can Be Changed By

- Requesting review hearing every 3 years (either parent can make request)
- Making request (at anytime) if there's a sufficient change in income of at least 20%

Party who requests change has the burden of proof

Relocation

When a parent wants to move out of state or an area within the state that may substantially impair the other parent's time with the child

Must have written permission from other parent to relocate or a court order to do so

Motions to relocate must include a review of legal factors such as good faith, sensible reasons for the move and an actual advantage to the parent and child

If a parent leaves the state with his child(ren) without written consent of the other parent or court approval, that parent is guilty of a Class D felony pursuant to NRS 193.190 and may lose joint or even primary physical custody

Divorce Types

Uncontested	Contested
No disagreements on anything	Parties disagree on at least one issue
Lower Cost	Costs More
Quicker	Slower
File a Joint Petition	One party files a Complaint
	Go to court

Uncontested Divorce: Conditions

Both spouses must agree on EVERYTHING

- Both want Decree of Divorce
- Child Issues (custody, visitation, child support)
- Spousal Support (agree to amount or waive)
- Distribution of Property
- All other info required in Decree of Divorce

Seminar for Separating Parents (“COPE” class)

- May be required if spouses have children in common
- It can be done online
nevada.onlineparentingprograms.com



File a joint petition

After the Joint Petition is prepared, you must

- File Family Court Cover Sheet
- Pay the Filing Fee \$299
- or apply for a fee waiver (*In Forma Pauperis*)
- But both parties must qualify for the *In Forma Pauperis*, and
- File Joint Petition

Contested Divorce

The Complaint

- Begins Contested Divorce process

1 Person files a Complaint

- "Plaintiff": Spouse who files the complaint
- "Defendant": The other spouse

Other party does NOT have to agree to terms of complaint

Complaint

- Required Contents
 - Reason for Divorce
 - Proposed Provisions for Property
 - Proposed Provisions for Children
 - Proposed Provisions for Alimony
- FULLY Complete Complaint Form – Where not applicable, write “N/A”
- Complaint contents must be complete
- Must sign Complaint before a NOTARY
- Must SERVE the other party

Required Documents

Must File: File at Family Court Clerk's Office

- Complaint
- Family Court Cover Sheet
- Summons
- Joint Preliminary Injunction (Optional See page 16)
- Filing Fee (\$299) or apply for *In Forma Pauperis*
 - Only you must qualify

Complaint contents must be complete

Used to prohibit either party from

- Transferring, concealing, selling, or disposing of property
- Harassing or stalking
- Removing a child from the State of Nevada with intent to deprive court of jurisdiction
(This does not include vacations)

Joint
Preliminary
Injunction

Must serve within 120 days of the filing of the Complaint

Must be served by

- Person over the age of 18
- Person not a party to the divorce
(You cannot do it)
 - Best to have process server serve for small fee
 - Constable, Private Investigator, or Private Process Server (The fee is \$35 - \$75)

Service of
Summons and
Complaint

Service: Alternate Means

If defendant can be contacted, but address cannot be located, plaintiff may request permission from judge to serve by alternate means

This could mean sending the documents by mail, e-mail, social media or by text message

The judge must approve this form of service and all methods ordered by the judge must be followed

Service: Defendant Missing

If Defendant can't be located

- Third party must perform a “due diligence” search to find Defendant
- If Defendant is located: serve him/her normally
- If the Defendant is not located: file request for “Service by Publication”

Service by Publication:

If Defendant cannot be
found after due diligence,
with Court permission



Contact

Contact a local paper

- Nevada Legal News or
Las Vegas Review Journal



Provide

Provide the paper with a
copy of:

- Summons and Complaint
and
- The order to serve by
publication



Publish

Publish Summons and
Complaint for four (4)
weeks in a row



File

File the Affidavit of
Publication

- The paper usually files
this for you
- You're ultimately
responsible though, so
be sure to ask

If no response, seek Default Judgment

After Service

Defendant has 21 days
to file an
Answer / Counterclaim

Defendant has Four (4) Options

1. Contest Jurisdiction – Consult with Attorney before filing
2. File Answer agreeing to everything in Complaint
3. File an Answer/Counterclaim denying some or all the allegations in the Complaint
4. Do Nothing - Plaintiff will get everything in the Complaint by Default



Default Judgment



Plaintiff may request Default if Defendant fails to answer Complaint

If default is entered, Court usually awards relief requested in the Complaint

Even after a default is entered, Defendant can ask Court to set it aside if they can show they were never served with Complaint

Plaintiff Must

- Submit Default form (it usually takes a few days to get it back from the Clerk.)

- Submit all documents by summary disposition or schedule a Prove-Up Hearing

Summary Disposition: No Hearing

Must provide Judge with all documents previously filed in the case, as well as the following documents with file stamps

- Request for Summary Disposition
- Affidavit in Support of Summary Disposition
- Resident Witness Affidavit
- Seminar for Separating Parents Class (“COPE”) Certificate (if applicable)
- Welfare Party form (for each parent)
- Proposed Divorce Decree (without file stamp)

Prove-up Hearing

To get a date for this hearing, you must submit a setting slip to the Court to get a court date

- Must Bring To Hearing
 - Resident Witness or an Affidavit of Resident Witness
 - The Proposed Divorce Decree
 - Seminar for Separating Parents Certificate (if applicable)

If You Are The Defendant

And have been served with a
Complaint for Divorce...

Answer / Counterclaim



**Defendant has 21 DAYS to file after
service**



Defendant Must:

File the Answer/Counterclaim within
21 days

Mail copy to Plaintiff via *1st Class Mail*

File *Certificate of Mailing* with Court

Filing Fee \$217 or apply for
In Forma Pauperis



Answer / Counterclaim


Answer

Either agree or disagree with all or parts of Complaint

Counterclaim

Tell Court what you want (your “wish list”)

Plaintiff has 20 days to file a Reply after receiving Answer / Counterclaim



If you / your spouse files a Complaint or Answer in a Divorce action the Court will not issue a final order until many steps take place

- Financial disclosure form
- Mediation
- Mandatory disclosures
- Discovery
- Case management conference
- Motions

How to Get Your
Case Through
Court

Financial Disclosure Form

The Financial Disclosure Form must be filed by each party within 30 days after the Complaint is served

It lets the court know about the assets and debts and financial circumstances of the parties

Mediation



The parties are required to attend mediation (with some exceptions) to resolve disputes about child custody, access, or visitation before trial or hearing



Either party can request it, or it can be ordered by the court and each party must pay his/her own costs





PARTIES WILL HAVE AN EVIDENTIARY
HEARING (TRIAL) BEFORE THE COURT
AND THE COURT WILL DECIDE
PHYSICAL AND LEGAL CUSTODY



PARTIES MUST BRING COMPETENT
EVIDENCE TO COURT.



THIS INCLUDES WITNESSES WITH
PERSONAL KNOWLEDGE AND
PROPERLY AUTHENTICATED
DOCUMENTS. (CONSULT A LAWYER)

If Mediation is Not Successful

Asset & Debt Mediation

Free service provided by
trained law student mediators
and experienced faculty
mentors through the *UNLV
Mediation Clinic*

Either spouse can request
mediation

Ask the judge for a referral or
contact the Thomas and Mack
Legal Clinic at (702)895-2080

Meet with mediators who help
work through issues such as

- Distribution of assets and debts
- And, if necessary, issues such as spousal support, parenting plans, custody, and/or child support

Mandatory Prejudgment Disclosures

NRCP 16.2 – In Matters of
Domestic Relations

Required Disclosures

- Financial Disclosure Form
 - Within 30 days of service of Summons & Complaint
 - To include all assets, liabilities, income, and expenses
- Name, address, and phone # of each individual likely to have discoverable information
- Must turn over all documents, data, and tangible things that are in the possession, custody, or control of each party
- Must file a Joint Case Conference Report

Duty to Supplement

- Financial disclosure forms must be corrected within 10 days of learning that in some material respect, the disclosure is incomplete or incorrect.

Discovery

Method of obtaining necessary information from opposing party

If you are served with these requests or want to make these requests, these are the most common forms of discovery

Scope of Discovery

- Any matter, not privileged, which is relevant to the subject matter involved in the pending action

Manner of Discovery

- Interrogatories: Written questions answered under oath
- Depositions: Question witnesses or opposing party before a court reporter and under oath
- Requests for Production: Compel other side to turn over documents relevant to the divorce

Case Management Conference

Schedule

Court will schedule after Answer / Counterclaim is filed

Notice

Parties will receive "Notice of Case Management Conference"

Attend

You MUST attend!

Parties (and attorneys) meet / discuss resolution of case and to obtain dates from court for

- Discovery
- exchange lists of witnesses
- relevant documents

The court will

- Set a trial date
- Order the parties to mediation (for child issues or property/debt)
- Set discovery deadlines

Case
Management
Conference

Motions

Request Court grant
immediate relief

Common Divorce Motions

- Motion for Temporary Custody and Child Support
- Motion for Temporary Alimony and Attorney's Fees
- Motion for Exclusive Possession of the Marital Home

File Motion (generally done after the Complaint has been served)



After filing Motion, other party may file an "Opposition" to the Motion



After "Opposition" is filed, party seeking the Motion may file a "Reply to Opposition"



Motion → Opposition → Reply

Motion Process

Trial

Judge will hear the case if parties cannot settle

You must bring evidence to prove your case

- Witnesses
- relevant documents
- etc.

Judge then decides all issues relevant to

- Community Property
- Child Issues
- Alimony

Prevailing party usually prepares the Divorce Decree

Legal Separation

Can ask for this instead of divorce

Decree of Separate Maintenance

- Handles issues discussed here like a divorce except parties do not actually get “Divorced”

Common reasons

- Religious reasons (your faith frowns upon divorce)
- Not ready to go through with divorce yet
- To keep medical benefits after “separation”
 - Check the applicable insurance policy

Domestic Partnerships

Similar, but not the same as a marriage

Must “have chosen to share one another’s life in an intimate, committed relationship of mutual caring”

Must register it with the Secretary of State

If less than 5 years (with a few other conditions), then file a Termination of Domestic Partnership

If more than 5 years, then file Complaint to Dissolve Domestic Partnership

Final Tips



Litigation and Trial Preparation Class

- For litigants representing themselves through discovery and trial phases of their cases
 - Taught by a former family court judge
- Last Wednesday of every month from 10:00 a.m. to 12 noon
 - 725 E. Charleston Blvd, Las Vegas, Nevada.
 - Call LACSN to find out how the class is offered during the office closure because of the coronavirus pandemic



Final Preparations For Court

Videos available to view and to see various aspects of being in court

- Introduction to Family Court
- Introduction to Court Rules
- Children in Court Proceedings
- Family Mediation Center
- Motions and Filed Papers
- Arguing Your Case
- What happens after your Court Case
- Importance of Final Order

<http://www.clarkcountycourts.us/departments/judicial/family-division/>

Legal Resources

Family Self-Help Centers

- www.FamilyLawSelfHelpCenter.org

•“Ask a Lawyer” Program

- (702) 386-1070, ext. 1731
- Monday @ 9:00 AM
- www.lacsn.org

Legal Aid Center of Southern Nevada

- 725 E Charleston Blvd.

Lawyer Referral Service

- (702) 382-0504
- <http://nvbar.org>

For assistance on setting up a hearing, please call 702/455-4472

Unbundled Legal Services – State Bar of Nevada

Feedback



Thank you for attending this class.

Please complete an on-line feedback form at (link is in the chat box)

<https://law.unlv.edu/content/attendee-feedback-form>



If you want to apply for legal help,

call (702) 386-1070 or email to info@lacsnsn.org



For assistance on setting up a hearing,
please call (702) 455-4472

Contact Information for all LACSN Services

Legal Aid Center of Southern
Nevada
(702) 386-1070

info@lacsnsn.org
www.lacsnsn.org

Vegas Strong Resiliency Center
(702) 455-2433

vegasstrongresiliencycenter@clarkcountynv.gov
www.vegasstrongrc.org

Family Law Self Help Center
(702) 455-1500

flshcinfo@lacsnsn.org
www.familylawselfhelpcenter.org

TPO Office
(702) 455-1500

tpoinfo@lacsnsn.org
www.familylawselfhelpcenter.org

Civil Law Self Help Center
(702) 671-3976

clshcinfo@lacsnsn.org
www.civillawselfhelpcenter.org

Questions & Answers

Reminder

We cannot give Legal Advice

Do not discuss confidential or personal information

This Class does not take the place of a Private Attorney

Thank you!

Facing
foreclosure?

Been
sued?

Trouble
paying your
bills?

Credit
report
problems?

Problems
with your
student loan?

Think you've
been
defrauded?

Problem with
a payday or
title loan?

Considering
bankruptcy?

Trouble with
a car purchase,
lease, or repair?

Unhappy with
a home repair
or warranty?

Debt
collectors
harassing
you?

We may be able to help! Come in for a *free* case evaluation, Monday to Thursday, 9 a.m. to 4 p.m.