

**Welcome to the
Paternity and Custody
Community Legal
Education Class**

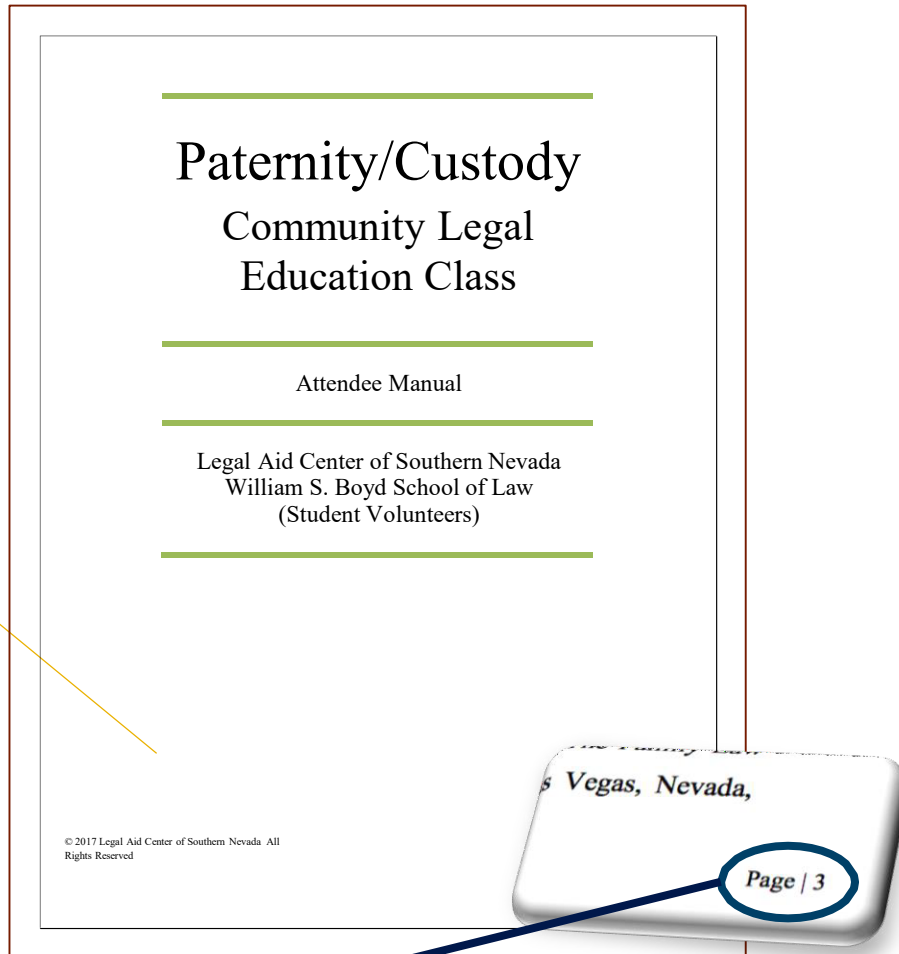
Since 1958
LEGAL AID CENTER
of Southern Nevada

BEFORE WE BEGIN



- Please Mute your Microphone and Turn off Your Video
- And Please Hold your Questions until the end of the Presentation

Attendee Manual & Following Along



- Your guide to Paternity and Custody
- Download the manual from this website: <https://www.lacsn.org/what-we-do/free-classes/custody>
- The manual also includes sample forms
- Each slide includes a footer telling you where we are in the manual

Today's Agenda

Legal Resources

Know the Law

- Jurisdiction
- Paternity
- Custody and Visitation
- Child Support

Navigating the Legal System

- Prepare the necessary documents
- Serve and file Proof of Service
- Answers and Counterclaims
- Kinds of Motions
- Going to Court



Our Role



We aren't attorneys, yet!

Don't worry, a licensed attorney is present.
But this class doesn't take the place of hiring a lawyer.



It's against the law for any of us to provide you with legal advice!



We are here to provide legal information on:

Nevada law
Court procedures and rules

Your Role



Learn about court procedures and rules



Record questions to ask at the end of class.



Don't disclose any personal, confidential information.



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

Legal Resources

Private Attorney

Legal Aid Center of Southern Nevada

Family Self-Help Center

Lawyer Referral Service

Clark County District Attorney's Office

Document Preparation Services



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.

Attorney Assistance

Ask-A-Lawyer Program

- Sign up for Family Law Ask-A-Lawyer program online or call number in your book
- Meet with a lawyer for 15 minutes on a Thursday afternoon by appointment

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
- Complete in-person interview and await notification indicating that a lawyer will be assigned to your case

Lawyer Referral Services

- Call number in your book or visit www.NVBar.org to get name of attorney who will provide a 30-minute consultation for \$45 and reduced rate representation after that



District Attorney's Office

FamilySupport Division

- (702) 671-9200
- Monday – Friday, 8 am – 4 pm
- Assistance with establishing paternity and child support
- 1900 East Flamingo Rd., Suite 100, Las Vegas, NV



Documentation Preparation Services

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 or go online www.nvsos.gov

Overview

Part One: Know the Law

- **Jurisdiction**
- **Paternity**
 - Presumptions of Paternity
 - Establishing Paternity
- **Custody and Visitation**
 - Legal Custody vs. Physical Custody
- **Child Support**
 - Obtaining child support
 - Child support calculation
 - Length and Enforcement



Jurisdiction



The Plaintiff or the Defendant must have lived in State of Nevada for **at least 6 weeks** prior to the filing of the complaint.

Nevada must be the **home state** of the minor child(ren).

- The child(ren) must have lived in Nevada for **at least 6 months** before the filing of the complaint.
 - If younger than 6 months, then since birth.

5 Presumptions of Paternity

1)The father and the child's natural mother are or have been married to each other and the child is born **during the marriage**, or within **285 days after the marriage is terminated**.

2)The man and the child's mother lived together for **at least 6 months prior** to the child being conceived and continued to **cohabitate** through the period of conception.

3)**Before** the child's birth, the man and child's natural mother have **attempted to marry** each other by a marriage solemnized in compliance with the law and the marriage was **invalid** or could be declared invalid.

4)While the child is still a **minor**, the man **received the child into his home** and **holds the child out to be his own**.

5)DNA testing



Establishing Paternity

1. Voluntary acknowledgment of paternity
 - Both parties agree that the man is the father
 - The father signs an “Affidavit of Paternity”
2. District Attorney’s Office, Child Support Division
 - The mother or presumed father ask the District Attorney to collect child support
 - No cost
3. File a “Complaint to Establish or Confirm Paternity, Custody and UCCJEA Declaration” in Family Court

Legal Custody

LEGAL CUSTODY

- The ability of a parent to participate in material life decisions that affect child(ren), such as health care, religion and education, and to receive documents regarding the child(ren)

JOINT LEGAL CUSTODY

- The law presumes that both parents should have this ability if they agree to it, or one parent tried to have a relationship with the child but could not because the other parent frustrated it

SOLE LEGAL CUSTODY

- One parent has the only legal authority to make major decisions on behalf of the child(ren)
 - High burden of proof

Physical Custody

PHYSICAL CUSTODY

- Refers to where the minor child(ren) resides

JOINT PHYSICAL CUSTODY

- Each parent has at least 40% (146 days) time share with the minor child(ren)

PRIMARY PHYSICAL CUSTODY

- One parent has more than a 60% (219 days) with the minor child(ren)

SOLE PHYSICAL CUSTODY

- One parent has the minor child(ren) exclusively

Seeking Physical Custody

Physical custody is based on what is in the best interest of the child

- There is a preference for joint physical custody if...
 - The parents agree to joint physical custody, or
 - One parent tried to have a meaningful relationship with the child, but the other parent frustrated it



When is Joint Physical Custody not in the child's best interest?

Evidence that one parent cannot adequately care for the minor for at least 146 days of the year

Child is born out of wedlock; the mother has not married the father and paternity has not been established.

Child is born out of wedlock; the child resides with the father and has been under the father's control and the mother has abandoned the child

Rebuttable Presumption

Created against a parent

Who has committed
domestic violence against

- Other parent,
- Child, or
- Any other person residing with the child

Visitation

Non-Custodial parent's time with the minor child(ren)

A visitation schedule should be clear and specific.

- Example: "The plaintiff will have visitation the 2nd and 4th weekends of the month, commencing Friday at 6:00 PM and concluding Sunday at 10:00 AM."

There is NO CORRELATION between visitation and child support.

- A custodial parent should not withhold visitation due to nonpayment of child support.



Child Support

How does a custodial parent obtain it?

Ordered/agreed in a Divorce.

Ordered (temporarily) by a Domestic Violence Commissioner as part of an Extended Protection Order if paternity has been established.

Ordered through an enforcement or establishment action brought by the Clark County District Attorney Family Support Unit. Call at (702) 671-9200.

Ordered or agreed to in a Paternity or Custody action.



Child Support – Sole Physical Custody

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

| | ONE CHILD | TWO CHILDREN | THREE CHILDREN | FOUR CHILDREN | ADD'L CHILDREN |
|--|-----------|--------------|----------------|---------------|-------------------|
| First \$6,000 of non-custodial parent GMI | 16% | 22% | 26% | 28% | 2% for each add'l |
| Second \$6,000 of non-custodial parent GMI | 8% | 11% | 13% | 14% | 1% |

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 \$4000)

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

Can an order for Child Support be changed?

- 1) **The Court can review every 3 years upon request.**
 - Reviews are only performed at the request of a parent via motion; the Court will not initiate a review on its own.
- 2) **The Court may review child support at anytime if there has been a substantial change in circumstances.**
 - An example of change in circumstances is a change in gross monthly income of at least 20%.
- 3) **Upon agreement of the parties.**

The Court can reject the agreement.





How long does Child Support last?

- Generally, until the child reaches 18 years of age.
- If the child is still in high school, child support continues until the child graduates or reaches 19 years of age.

Enforcement of Child Support Order

- The custodial parent may file a “**Motion for an Order to Show Cause**”
 - Requires the non-custodial parent to explain in Court why he/she failed to pay
 - The Court needs to see a log (**Schedule of Arrears**) of all child support payments paid and missed
- The custodial parent may ask the Court to issue a **wage attachment to the order** for child support
 - If the non-custodial parent becomes **more than 30 days overdue** on payments, the Court will issue an order to that parent’s employer to garnish his/her wages
 - **DA is a great source for getting child support**

Where are we?

Legal Resources

Part One: Know the Law

- **Jurisdiction**
- **Paternity**
 - Presumptions of Paternity
 - Establishing Paternity
- **Custody and Visitation**
 - Legal Custody vs. Physical Custody
- **Child Support**
 - Obtaining child support
 - Child support calculation

Part Two: Navigating the Legal System

- Relocating out of state with children



Prepare all necessary pleadings to be filed with the Court



Filing Fee

\$259 or file a fee
waiver



Family Law Cover sheet

Mandatory
Information sheet



Complaint

Contains Basic
information
regarding actions
Plaintiff's wish list



Summons

Notifies other
party that you
sued them
Notifies them
that they have 20
days to file and
Answer



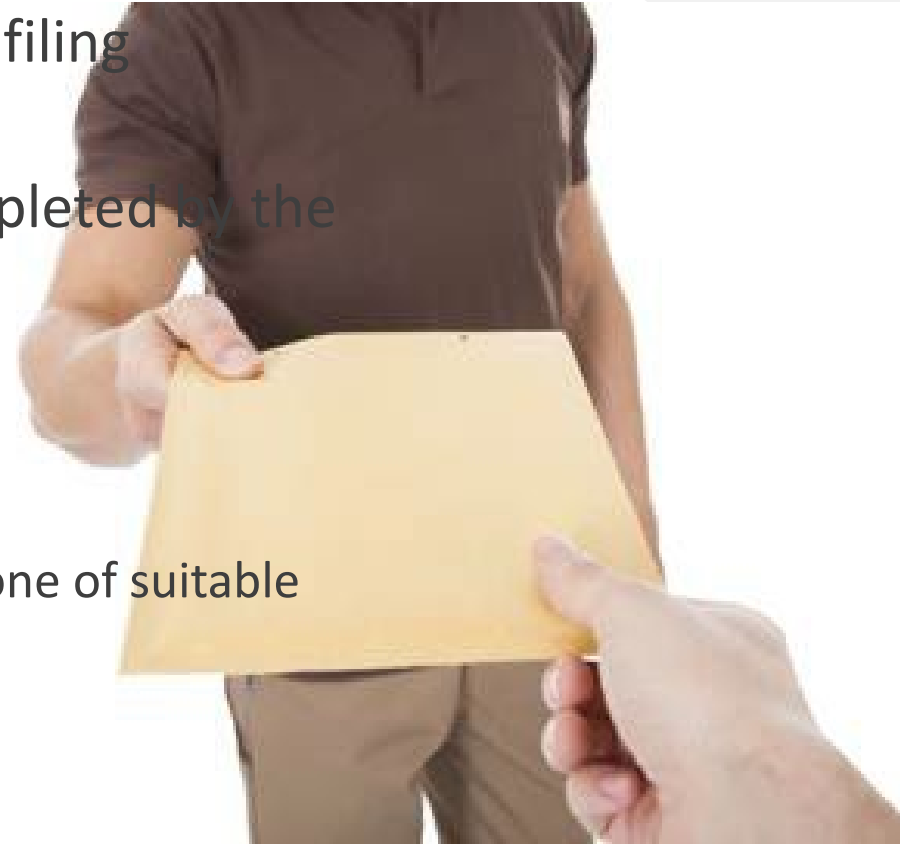
Joint Preliminary Injunction

Prohibits either
party from
removing the
child from the
State to defeat
jurisdiction

Service

Complaint, Summons, and Joint Preliminary Injunction

- Other party must be served with in 120 days of filing complaint
- Personal service is required and cannot be completed by the Plaintiff
- Personal service is completed by:
 - Delivering pleadings to Defendant personally, or
 - Leaving pleadings at Defendant's home with someone of suitable age living therein, or
 - Delivering to Defendant's authorized agent – such as attorney



Persons or Agencies that can Serve Papers

- Constable
- Sheriff
- Private Investigator
- Licensed private process server



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:

- A citation naming all relatives to be served by publication
- The order to serve by publication

Publish

Publish citation 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

Alternate Means of Service

Via mail, e-mail, social media, or text message

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



Defendant's options after being served



Answer Admitting

File Answer admitting allegation and agreeing to terms set forth in Complaint

- Filing fee is \$212 or file a fee waiver



Answer Denying

File Answer denying allegations or disagreeing to some or all of the terms in the Complaint

File a Counterclaim setting forth different terms

- Plaintiff will have an opportunity to reply later



Failure to Answer

Failure to Answer within 21 days

- Plaintiff may then request a default judgement and will likely receive everything set forth in the complaint

Seminar for Separating Parents

COPE Class

- Parents are required to attend this class, do not need to attend together
- Only responsible for own attendance
- Cost is \$45
- Online at nevada.onlineparentingprograms.com
- Once completed, Certification of Completion must be filed with the Court

Hold Defendant in Default

If the defendant does not file an answer within 21 days, the plaintiff can enter the defendant's default

| Submit | Request | Prepare | Bring |
|--|----------------------------|---|---|
| Submit Request for Default to the Clerk of the Court | Request a Prove-Up Hearing | Prepare a Proposed Order that mirrors your Complaint, bring it to the hearing | Bring a Resident Witness or submit an affidavit |

If Defendant files an Answer or Counterclaim



Financial
Disclosure
Form



Mandatory
Disclosures



Mediation



Early Case
Evaluation
Hearing



Discovery



Motions

Financial Disclosure Form



Itemizes a party's income and expenses



Must be filed no later than 30 days after the Answer is filed



A copy should be mailed to the other party



Must be filed by each party

Mandatory Disclosures

Must be served within 30 days of the Answer

Copies of the last two years of tax returns Proof of all income for the past six months

Copies of all policy statement and evidence of costs of premiums of the child(ren)'s health insurance

Names, addresses, and phone numbers of all witnesses. Must be filed by each party

Mediation

Parties participate in mediation, attorney's can be present as well

Can use private mediator or Family Mediation Center at Family Court

In cases of Domestic Violence, a party can request domestic violence protocol and not have to be in the same room as the other party

Parties must participate in good faith

If successful, a Parenting Agreement or Partial Parenting Agreement will be drafted

If unsuccessful, an Evidentiary Hearing will be set

Early Case Evaluation Hearing



Set by the Court within 90 days of the Answer being filed



Parties must attempt to resolve remaining issues before trial and arrange for disclosures



Court may enter temporary orders or send the parties to mediation

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
- Deposition: 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

Motions

Requesting the Court for immediate relief

A copy of the Motion must be mailed to the other party

Both parties will have an opportunity to make oral arguments on the issues

Reasons on might file a motion:

- As for Paternity tests
- Establish temporary custody, visitation, and child support orders
- Request permission to relocate
- Modify custody, visitation, or child support

Motion Process

Motion

- Generally filed after serving the Complaint

Opposition

- After Motion is filed
- Other party may (and should) file an Opposition to the Motion that contests false information contained in the Motion and mentions favorable information not mentioned in the Motion
- You have 14 days to file and opposition to a motion

Reply

- After Opposition is filed
- Moving Party should file a Reply

Motion to Modify Custody, Visitation, or Support

- Once there has been a final order on custody, visitation and/or child support, a party may request a modification if there is a legal basis.
- Consult with a lawyer



Motion for Relocation

Court looks whether request is in “good faith” and if there is an advantage to relocating parent and child

Factors considered are:

Extent the move is likely to improve the quality of life for parent and child

Whether the custodial parent’s motives are honorable

Whether, if permission is granted, the custodial parent will comply with substitute visitation

Whether the non-custodial parent’s motives for opposing the move are honorable

Likelihood the non-custodial parent will have visitation

Final Preparations for Court

Evidentiary Hearing/Trial

The parties can still work to resolve the issues up until the date of the evidentiary hearing

Each party will have the opportunity to present witnesses and evidence

The Court will apply the “best interest of the child” standard in determining custody

The Judge’s decision is final and binding on all parties

Tips for your hearing

Prepare as much as possible

Dress appropriately

Be on time (arrive 30 minutes early)

Check in with the Marshal Order of
speaking Protocol

Conclude

Obey ALL Court Orders

Litigation and Trial Preparation Class

For litigants representing themselves through the discovery and trial phases of cases

Taught by a former family court judge

Last Wednesday every month 10 am – noon

725 E. Charleston Blvd., Las Vegas, NV

Call to see how it is conducted during Coronavirus Pandemic restrictions

Since 1958
LEGAL AID CENTER
of Southern Nevada

Videos available from District 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/>

Questions and Answers



Pre- Q and A:

The Pro-Bono Project

- 1-person household < \$27,390 per year
- 2-person household < \$31,350 per year
- 3-person household < \$35,255 per year
- 4-person household < \$39,160 per year
- must have less than \$5,000 in assets (excluding car & work equipment)



During Q and A:

We cannot give legal advice, i.e., tell you what you should do

Please do not discuss confidential information



Remember, this class cannot take the place of consulting with an attorney!

Feedback



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

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



Pro Bono Project & “Ask a Lawyer” Program 702-386-1070

www.lacsn.org or email to info@lacsn.org



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



Family Self-Help Centers, www.FamilyLawSelfHelpCenter.org



Lawyer Referral Service 702-382-0504

Contact Information for all LACSN Services

| | |
|--|--|
| <p>Legal Aid Center of Southern Nevada (702) 386-1070</p> <p>info@lacsnsn.org</p> <p>www.lacsnsn.org</p> | <p>Vegas Strong Resiliency Center (702) 455-2433</p> <p>vegasstrongresiliencycenter@clarkcountynv.gov</p> <p>www.vegasstrongrc.org</p> |
| <p>Family Law Self Help Center (702) 455-1500</p> <p>flshcinfo@lacsnsn.org www.familylawselfhelpcenter.org</p> | <p>TPO Office (702) 455-1500</p> <p>tpoinfo@lacsnsn.org www.familylawselfhelpcenter.org</p> |
| <p>Civil Law Self Help Center (702) 671-3976</p> <p>clshcinfo@lacsnsn.org</p> <p>www.civillawselfhelpcenter.org</p> | |

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.**