

Hinkle, Fingles & Prior Can Help

Divorce should not result in the unnecessary loss or disruption of the services available to a child with a disability. That result can be avoided with careful planning based on a realistic assessment of the child's needs and the availability of services now and in the future.

Attorneys at Hinkle, Fingles & Prior have significant experience in helping people with disabilities and their families maximize public services and plan for the future and are available to consult with family law attorneys.

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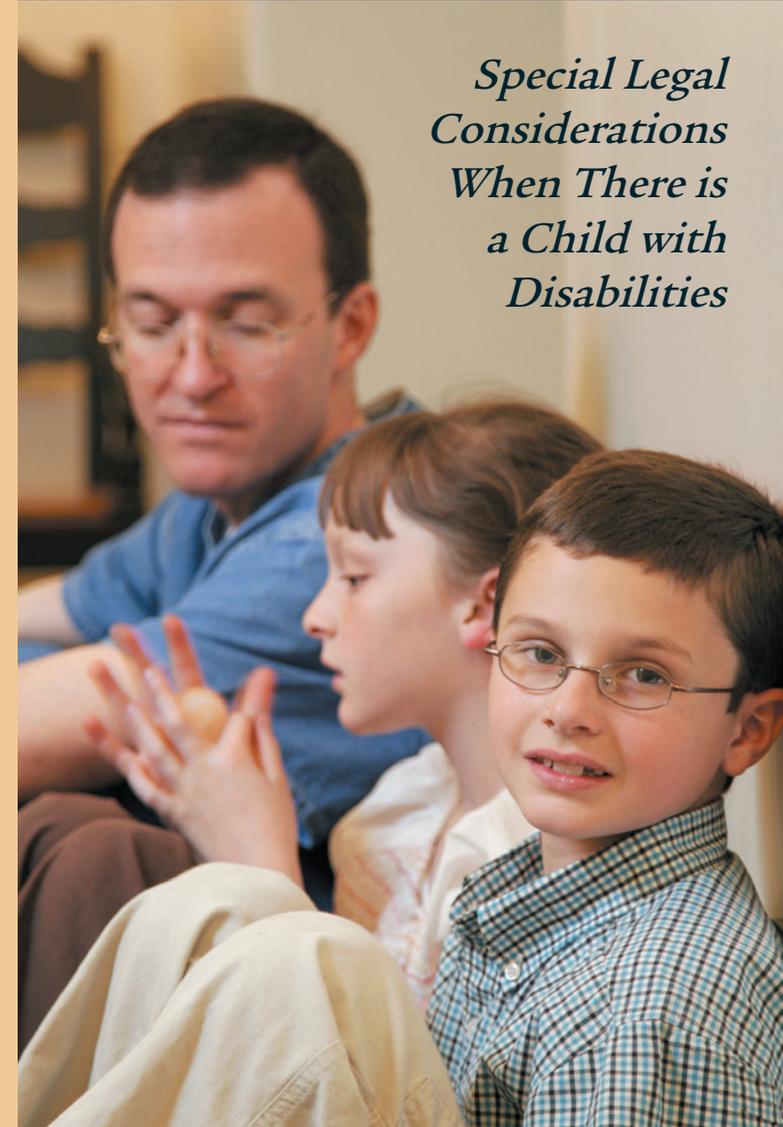
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are barrier-free

DIVORCE & LEGAL SEPARATION

*Special Legal
Considerations
When There is
a Child with
Disabilities*



HINKLE, FINGLES & PRIOR

ATTORNEYS AT LAW

*Representing people with disabilities
and their families since 1974*

Divorce agreements can unintentionally make a disabled child ineligible for services and benefits. Therefore, special consideration is necessary to protect the interests of a disabled child. Some important issues to consider are listed below. Although our firm does not handle matrimonial matters, we serve as consultants to family law attorneys and parents.

Child Support

A disabled child frequently will be eligible for Supplemental Security Income and Medicaid at age 18, and sometimes even earlier. Child support payments, however, can make a child ineligible for those benefits. To avoid that problem, consideration should be given to having child support paid to a special needs trust for the benefit of the disabled child. Specialized legal guidance is needed to ensure that the trust is properly drafted.

Custody & Residency

A disabled child's legal residence or domicile can be effected by the custody arrangement. A change in residence or domicile can result in a disruption or loss of services and benefits for the disabled child. For example, a change in domicile can effect school district responsibility for special education services.

Life Insurance

Naming a disabled child as a beneficiary of any such policy is an accident waiting to happen. Life insurance proceeds paid to a child, particularly an adult child, can cause benefits to terminate and trigger claims for reimbursement by the agencies providing services. A special needs trust can help avoid this problem.

Health Care Insurance

Although generally beneficial, private health insurance might duplicate public benefits available at age 18. As such, consideration should be given to whether the money used for such coverage might be better spent elsewhere.



Decision-making and Guardianship

It is necessary to obtain guardianship for an incapacitated child at age 18. Thus, consideration must be given to who will be the guardian, whether one or both parents will serve and what custody arrangements should apply.

Estate Planning and Special Needs Trusts

Well-meaning parents and other family members often plan to leave money directly to a disabled child, perhaps holding it in trust until the child reaches adulthood. That plan, however, can have devastating consequences because receipt of the funds likely will make the disabled child ineligible for benefits and can trigger claims for reimbursement by agencies providing services. Therefore, it is advisable that each party agree that any bequests (including by way of a beneficiary designation) for a child with disabilities go to a special needs trust. Ideally, there should be one trust to be used by both parents and extended family.