

October 3, 2008  
**Family Law with Skills – Fall 2008**  
**Professors Schepard and DiFonzo**

**Syllabus and Course Requirements**

**Overview**

Family Law with Skills is a new course, offered for the first time in fall of 2008. It will be jointly taught by Professors Andrew Schepard and J. Herbie DiFonzo, along with a great deal of help from other esteemed members of the faculty at Hofstra Law School.

Family Law with Skills is an introductory family law course, integrating substantive law instruction with skills development. There are no prerequisites for taking it. Our overall aim is to give you an introduction to the world of family law as it is practiced at the beginning of the 21<sup>st</sup> Century. We will cover the core material of the traditional three credit family law course—marriage and divorce. We also cover marriage, alternatives to marriage, parenting, an introduction to parent-child relationships, domestic violence, child abuse and neglect, foster care, termination of parental rights, alternative reproduction, and adoption. Finally, we will also cover the ethical responsibilities of family lawyers, and emphasize alternative dispute resolution (including mediation) in family law.

The Course will feature regular skills training sessions, designed to afford the students an introduction to the skills lawyers need for modern family practice. Skills to be introduced in the family law context include interviewing, counseling, negotiation, trial skills and review of draft agreements. While the lawyering skills to which we will introduce you are set in the family law context, they are vital to the work of a lawyer in any field. All students will be required to make a field visit to family court and report back on what they observed.

Family Law with Skills is based on nation-wide studies which recommended major changes in the development of the law school curriculum. Two recent reports on legal education, one specific to family law and the other on the training of future lawyers in general, have documented the need for the law school curriculum to integrate legal analysis, judgment and perspective and lawyer skill development.

The Law School's Center for Children, Families and the Law and the Association of Family and Conciliation Courts sponsors the Family Law Education Reform Project. Professor DiFonzo served as co reporter for the *FLER Report*. FLER examined all aspects of family law education, including surveying course texts and materials and the opinions of stakeholders in the family law system such as judges, lawyers, mediators, social workers and psychologists. The *FLER Report* documented a significant gap between the content of the basic family law course and the way that family law is practiced. It concluded: "Today's family lawyers need a thorough understanding of many issues and practices that traditional family law courses rarely touch upon. These include the appropriate—and inappropriate—uses of dispute resolution processes, new case management techniques in the family courts, the key roles played by professionals from

other disciplines in the court system, and current research on such issues as the effects of conflict and loss of parental contact on children. Yet the materials from which most family law professors teach contain nary a word on most of these topics or on the skills necessary for effective family law practice.” Mary E. O’Connell & J. Herbie DiFonzo, *The Family Law Education Reform Project Final Report*, 44 FAM. CT. REV. 525, 528 (2006). The full FLER Report is included on the Course TWEN website (see below).

Assessing the general law school curriculum, the Carnegie Foundation for the Advancement of Teaching called for law schools to match “the first year’s ... emphasis on well-honed skills of legal analysis ... by similarly strong skill in serving clients and a solid ethical grounding.” WILLIAM M. SULLIVAN ET. AL. EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 4 (2007). It recommended that law schools “offer an integrated curriculum” that joins lawyering, professionalism and legal analysis from the start.

You should understand that this course is an introduction to the substantive law and skills required to be a family law practitioner. You will not be competent to practice family law merely by taking this course. What we hope to do is give you a platform for future learning -- an overview of substantive law and skills from which you can take advantage of the additional courses in our very rich family law curriculum.

### **Course Schedule and Assignments**

A tentative course schedule with assignments is attached. Please be sure to regularly check TWEN for any modifications or updates to the syllabus, course schedule, and assignments.

#### **Three important notes:**

- (1) *While the course is scheduled during the 12-2 block on Tuesday, Thursday, and Friday, we will not be meeting every Friday. Some Tuesday and Thursday classes will be meeting from 12-1:30 p.m. instead of 12-2. Please check the schedule carefully. Updated schedules will be posted on TWEN.*
- (2) *We will be holding an all day skills session at Hunter College School of Social Work on Saturday, October 18, 2008, from 8:45AM—4:45PM. This all-day session will be held in conjunction with students from Hunter’s Social Work School. You will be working jointly with them on planning and conducting a direct and cross examination of a social worker expert witness in a child protection case. This is a mandatory session, and particularly important in the cross-disciplinary experience vital to contemporary family law practice. For those students who have been excused from attending this session due to an emergency or other legitimate reason, a make-up assignment must be completed and submitted upon deadline.*
- (3) *Make-up assignment for the skills session at Hunter College. For those students who have been previously excused from attending the Hunter College School of Social Work on Saturday, October 18, 2008, you will have to make-*

up the work for this mandatory session. In order to make-up this session, you must shadow a previously selected law guardian, subject to Professor's Schepard and/or DiFonzo's recommendation and final approval. You must spend an entire work day "shadowing" the law guardian, observing his or her role, court proceedings, and litigants. Following your day, you must write and submit a 5-7 page paper of what you observed and learned. You must complete and submit your paper on or before **October 21, 2008**.

### **Credit Awarded**

For successfully completing the course, you will receive four academic credits, in addition to the one skills credit. The four academic credits will be graded on the Law School curve system. Your satisfactory participation in the Course will satisfy the law school's skills requirement, but not writing requirement I or II.

### **Class Attendance**

You are required to attend class pursuant to the Law School's attendance policies. You are required to participate in all skills exercises

You must attend at least 80% of all class hours during the semester in order to be eligible to take the final examination. Skills classes are treated the same as more traditional classes in this calculation. If you miss more than three classes, we may lower the final grade appropriately or ask you to withdraw from the course.

If you must miss a class or skills exercise due to illness, emergency, or extraordinarily important personal circumstances, please contact Betty Black Leonardo (contact information below) to notify us of the situation. If you are not prepared for a class, please send her an e-mail before class begins.

### **Make-up Assignments**

Please be advised that if you miss a certain class, session (such as the Hunter College Session), or a skills exercise that make-up work may be assigned to you as deemed appropriate by your Professors Schepard and DiFonzo, or the faculty member who is teaching that particular class or skills exercise. In such instances, you should speak with that professor directly to obtain your make-up work assignment, except as otherwise stated herein (e.g., Hunter College).

### **Course Grading and Requirements**

We will grade Family Law with Skills according to the Law School's "curved" grading policies. Your grade will be based on:

- a final examination;
- participation in class;

- journal and paper submissions; and
- a final assessment of your overall performance in the skills exercises.

*Final exam:* The take home, open book final examination will account for 75% of your grade. It will require knowledge of all the material we study during the semester. The examination will be set in a practice and policy oriented context that reflects the orientation of the Course.

*Class participation:* Learning in this Course is an interactive and collaborative enterprise. We emphasize active class preparation, participation, self-evaluation, and regular attendance. We reserve the right to call upon you in class even if you do not volunteer. Following a skills exercise, each of you will be required to complete a self-evaluation form. Also, during your skills exercise, your supervising faculty member will be evaluating your performance. If you attend each class and are fully prepared to engage, and contribute meaningfully (a judgment that is within our discretion) to class discussion, we reserve the right to advance your final grade to the next level.

*Skills exercises:* The quality of your participation in the course's skills exercises will count for 25% of your final grade.

You are required to keep a journal of your participation in the skills exercises (the paper on your observations as a result of your visit to a family court is included in this category). The skills exercises will require you to write varying kinds of documents, often in the form of self evaluation. These documents should be compiled into your journal and submitted to us at the end of the semester. The quality of your written work and journal entries will be factored into your final grade.

## **Course Materials**

*Required:*

ROBERT E. OLIPHANT & NANCY VER STEEGH, *WORK OF THE FAMILY LAWYER* (2d ed. 2008)

D. KELLY WEISBERG, *FAMILY LAW CODE: SELECTED STATES AND ALI PRINCIPLES WITH COMMENTARY* (2007-2008)

ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (2<sup>nd</sup> edition—paperback)

Supplementary Materials will be posted on the Course Materials Page of the Course's TWEN site or distributed in class. **You are responsible for checking the TWEN site prior to any class or skills exercise in order to obtain and review all supplementary materials.**

## **TWEN Site**

The Course will have a TWEN site on which announcements and course materials will be posted

and discussion will be invited.

### **Communication with us**

We welcome and will be happy to answer any questions, comments or concerns that you may have. There is no such thing as a stupid question.

#### *From Professor Shepard:*

My office is in Room 209A. My telephone extension is 3- 5890. I will be at the Law School on Tuesdays, Thursdays, and some Fridays. I bring my appointment book to class. If you want to see me without an appointment, stick your head in my office. I will try to see you, but may have to ask you to come back some other time if I am busy. If you have a question but for some reason are unable to see me, please send me an e-mail to [lawazs@hofstra.edu](mailto:lawazs@hofstra.edu).

#### *From Professor DiFonzo:*

My office is in Room 207. My e-mail (which I prefer to the telephone) is [lawjhd@hofstra.edu](mailto:lawjhd@hofstra.edu). I will be at the Law School on Tuesdays, Thursdays, and some Fridays. I bring my appointment book to class. If you want to see me without an appointment, you're free to just stop by, and I'll be glad to see you then unless I'm tied up with another project. I'll also answer questions by e-mail.

### **Secretary**

Our secretary, Betty Black Leonardo, is in Room 216. Her telephone is 463-5928. Her e-mail is [lawbbl@hofstra.edu](mailto:lawbbl@hofstra.edu).

### **Course Administrator**

Our Course Administrator is Tena Vitkovich. You can reach her at 631-617-1860 or via e-mail at [TVitkovich@msn.com](mailto:TVitkovich@msn.com) with any question, comments or concerns that you may have and she will be more than happy to help you.

## Course Schedule and Assignments

### Class Meetings:

Classes meet Tuesdays, Thursdays, & Fridays from 12:00 noon—2:00 PM unless otherwise specified. **NOTE: The above schedule sometimes changes, so be sure to check the schedule prior to each week's classes.**

### Abbreviations:

OV = ROBERT E. OLIPHANT & NANCY VER STEEGH, WORK OF THE FAMILY LAWYER (2d ed. 2008)

W = D. KELLY WEISBERG, FAMILY LAW CODE: SELECTED STATES AND ALI PRINCIPLES WITH COMMENTARY (2008)

GETTING TO YES = ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (2<sup>nd</sup> edition--paperback)

TWEN = Materials found on Course TWEN website

<u>Date</u>	<u>Topic</u>	<u>Assignment and Notes to Students</u>
Tuesday August 19 – Profs. Schepard & DiFonzo	The World of Family Law	OV 3-22 [Ch. 1]  J. Herbie DiFonzo, Ruth Stern, <i>The Winding Road from Form to Function: A Brief History of Contemporary Marriage</i> , 21 JAMAML 1 (2008)

<p>Thursday August 21 -- Prof. Schepard</p>	<p>The Family Court: History and Development</p>	<p>Read all articles appearing in the New York Law Journal, as listed below as well as the ABA UFC Hypothetical and ABA UFC Proposed Court Rules posted on TWEN:</p> <p>New York Law Journal Tuesday, May 15, 2007, <i>LAW AND CHILDREN If Not Now, When? A Family Division Revisited</i>, Andrew Schepard 5/15/2007 NYLJ 3, (col. 1) 5/15/2007 NYLJ 3, (col. 1)</p> <p>New York Law Journal Thursday, January 11, 2001, <i>Law And Children FLORIDA'S FAMILY COURT INITIATIVE: A MODEL FOR NEW YORK?</i>, Andrew Schepard 1/11/2001 NYLJ 3, (col. 1) 1/11/2001 NYLJ 3, (col. 1)</p> <p>New York Law Journal Wednesday, June 10, 1998, Letters To The Editor: <i>COURT MERGER BACKED BY MATRIMONIAL BAR</i>, Alton L. Abramowitz 6/10/98 NYLJ 2, (col. 6) 6/10/98 NYLJ 2, (col. 6)</p> <p>New York Law Journal Thursday, June 4, 1998, Perspective: <i>TIME FOR A 21ST CENTURY FAMILY COURT</i>, Andrew Schepard 6/4/98 NYLJ 2, (col. 3) 6/4/98 NYLJ 2, (col. 3)</p> <p>New York Law Journal Wednesday, April 16, 1997, <i>Law and Children INTRODUCTION TO THE UNIFIED FAMILY COURTS</i>, Andrew Schepard 4/16/97 NYLJ 3, (col. 1) 4/16/97 NYLJ 3, (col. 1)</p>
<p>Friday August 22 – Prof. Schepard</p>	<p>The Family Lawyer and Ethics in Family Law Practice</p>	<p>Mary E. O'Connell &amp; J. Herbie DiFonzo, <i>The Family Law Education Reform Project Final Report</i>, 44 Fam. Ct. Rev . 524, 534 (2006)</p> <p>OV 747-774 [Ch. 26: Professional Responsibility]</p> <p>W-72-73 [N.Y. matrimonial retainer agreement requirements]</p>

Tuesday August 26 – Prof. DiFonzo	The Constitution and the Family: An Overview	OV 81-114 [Ch. 5: Constitutionalizing Marital Relationships] W 601-603 [ALI Principles, Chap. 6. Domestic Partners]
Thursday August 28 – Prof. DiFonzo & Hon. Elaine Jackson Stack	Divorce: History and Grounds	OV 61-79 [Ch. 4: Grounds for Divorce] W 59-63; 75-77 [NY statutes of legal separation and divorce grounds and relationship of civil to religious divorce]
Friday August 29	No Class	
Tuesday September 2 – Prof. Schepard	Parenting After Divorce: Custody & Parenting Plans I	OV 157-204 [Ch. 7: Child Custody and Parenting Plans] W 202-214 [California statutes]
Thursday September 4 – Prof. Schepard	Parenting After Divorce: Custody & Parenting Plans II <u>Skills Prep</u> : Introduction to client interviewing	OV 205-228 [Ch. 8: Parenting Time and Visitation] W 214-229 [California statutes] Readings on interviewing- TWEN
Friday September 5- Prof. Liebmann <b>SKILLS SESSION</b>	<u>SKILLS EXERCISE</u> : Interviewing a client in a family law dispute; establishing a lawyer-client relationship	[ <b>TBA</b> : Materials for this skills session will be updated at a later date and posted on TWEN.] <b>NOTE</b> : Don't forget to journal.
Tuesday September 9 – Prof. Schepard	Parenting After Divorce: Custody & Parenting Plans III	OV 229-263 [Ch. 9: Modification of Child Custody] W 229-230 [California statutes]
Thursday September 11 – Prof. DiFonzo	Parenting After Divorce: Child Support I	OV 289-326 [Ch. 11: Establishing Child Support] W 145-163 [Texas statutes]

Friday September 12 – Prof. DiFonzo	Parenting After Divorce: Child Support II	OV 327-348 [Ch. 12: Modification and Enforcement of Child Support] W 163-179 [Texas statutes] W 455 [federal Child Support Recovery Act]
Tuesday September 16 – Prof. Schepard	Divorce: Property Distribution I	OV 407-435 [Ch. 15: Division of Property at Divorce]
Thursday September 18 – Profs. Schepard / DiFonzo	Divorce: Property Distribution II <hr/> Establishing Maintenance I (a/k/a Alimony)	OV 435-444 [Ch. 15, cont.] W 124-140 [NY property division statute] <hr/> OV 349-382 [Ch. 13: Alimony] W 86-101 [NY maintenance statutes] W 594-601 [ALI Principles: Compensatory Spousal Payments]
Friday September 19	No class	
Tuesday September 23 – Prof. DiFonzo	Establishing Maintenance II (a/k/a Alimony)	[same reading as for September 18]
Thursday September 25 – Profs. DiFonzo / Schepard	Modifying Maintenance (a/k/a Alimony) <hr/> ADR in Family Law	OV 383-404 [Ch. 14: Modification of Alimony] <hr/> OV 723-746 [Ch. 25: Mediation, Collaborative Law, Parenting Coordination, and Arbitration] W 244-249 [California statutes]
Friday September 26	No Class	
Tuesday September 30	<b>Holiday</b> No Class: Rosh Hashanah	
Thursday October 2 – Prof. Schepard	ADR in Family Law <hr/> <u>Skills Prep:</u> Introduction to client counseling I	OV 723-746 [Ch. 25: Mediation, Collaborative Law, Parenting Coordination, and Arbitration] W 244-249 [California statutes]

Friday October 3	No Class	
Tuesday October 7 – Profs. DiFonzo / Schepard	Domestic Violence (1 hr.)  <u>Skills Prep:</u> Law firm meetings in preparation for client counseling	OV 503-536 [Ch. 18: Domestic Violence] W 45-54 [Massachusetts statutes] Readings on counseling –TWEN
Thursday October 9	<b>Holiday</b> No Class: Yom Kippur	
Friday October 10 – Prof. Schepard  <b>SKILLS SESSION</b>	<u>SKILLS EXERCISE:</u> Counseling a client about divorce options	<b>NOTE:</b> Don't forget to journal.
Tuesday October 14 – Prof. Liebmann	Child Abuse and Neglect	OV 537-572 [Ch. 19: Child Abuse] W 329-358 [Texas Statutes] <b>NOTE:</b> This is the day before the Presidential debate at Hofstra. There is some possibility that classes will be cancelled for this date, but we do not know yet.
Thursday October 16 – Profs. Schepard & Liebmann	Foster Care & Termination of Parental Rights (Prof. Liebmann)  <u>Skills Prep:</u> Direct and Cross examination of an expert witness in a child protection proceeding. (Prof. Schepard)	OV 573-588 [Ch. 20: Termination of Parental Rights] W 364-406 [Texas statutes]  Readings on direct and cross examination-TWEN

Friday October 17	No Class*	<p><b>*Note to students:</b> hold this date in case the October 14<sup>th</sup> class is cancelled for the Presidential Debate. If it is, we will hold the October 14<sup>th</sup> class on Thursday, October 16<sup>th</sup> and the Thursday, October 16<sup>th</sup> class today.</p> <p>If not, it is <b><u>important</u></b> that you use this day to <b>prepare for and read the entire case file for the Skills Exercise tomorrow at Hunter College.</b></p>
Saturday October 18 <b>SKILLS SESSION</b> – Prof. Liebmann	<p><b><u>SKILLS EXERCISE:</u></b> Enhancing Outcomes in Dependency Cases Through Effective Courtroom Advocacy and Collaborative Skill Building</p>	<p><b>In MANHATTAN at Hunter College School of Social Work, 129 East 79<sup>th</sup> Street, N.Y., N.Y. 10075, from 8:45AM—4:45PM.</b></p> <p><b>NOTE:</b> Those students who are unable to attend and have been previously excused from attending this session will have to complete a mandatory make-up assignment as noted in your Syllabus.</p> <p>(Don't forget to journal.)</p>
Tuesday October 21 – Prof. DiFonzo	Adoption: New Family Formation	<p>OV 661-686 [Ch. 23: Adoption] W: 250-71, 280, 284, 295, 297-298, 301 [California statutes]</p>
Thursday October 23 – Prof. DiFonzo	<p>Marriage and Its Alternatives I</p> <p><b><u>DUE DATE</u></b> for all Family Court Observation Reports.</p>	<p>OV 23-46 [Ch. 2: Marriage Requirements]; 445-470 [Ch. 16: Premarital Contracts] W 3-4 [Premarital Agreements]; 560-563 [Uniform Premarital Agreement Act] <i>Google</i> at least 3 different sites for “prenuptial agreements” (it’s what your clients will be doing).</p>
Friday October 24	No class	
Tuesday October 28 – Profs. DiFonzo & Martinez	<p>Marriage and Its Alternatives II</p> <p><b><u>Skills Prep:</u></b> Drafting surrogacy contract</p>	<p>OV 471-500 [Ch. 17: Cohabitation Outside of Marriage] W 141-144 [Nontraditional Families]</p> <p><b>NOTE:</b> Surrogacy agreement assignment will be distributed on this day. Your group should meet to discuss and prepare the assignment, which is due on Nov. 14.</p>

Thursday October 30— Prof. Schepard	The Parent-Child Relationship	Wisconsin v. Yoder, 406 U.S. 205 (1972) Parham v. J.R., 442 U.S. 584, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979). W-407-14,424-28, 432-435
Friday October 31	No class	
Tuesday November 4	<u>Panels Discussion on Family Court Observations</u>	
Thursday November 6 – Prof. DiFonzo	Alternative Reproduction	OV 687-720 [Ch. 24: Alternative Reproduction] W 324-328 [Texas statutes] Drafting review readings- TWEN
Friday November 7	No class	<b>NOTE:</b> You have this time available to meet in your assigned groups to review the draft surrogacy agreement. Your group is free to schedule a different meeting time.
Tuesday November 11 – Profs. DiFonzo & Martinez	Parentage	OV 625-660 [Ch. 22: Parentage] W 442-45 [California statutes]
Thursday November 13	No Class	<b>NOTE:</b> You should be using this time to meet in your assigned groups to work on your memo to the client. The memo should focus on the most important areas of change to the surrogacy agreement. You must provide your rationale for each change/deletion/insertion. The memo should be no more than 5 pages.
Friday November 14	No Class	<b>DUE DATE</b> for the client memos commenting on your group’s review of the draft surrogacy agreements. Please send the memo via email to Professors Schepard, DiFonzo, Martinez and Tena Vitkovich. The e-mail addresses are <a href="mailto:lawazs@hofstra.edu">lawazs@hofstra.edu</a> , <a href="mailto:lawjhd@hofstra.edu">lawjhd@hofstra.edu</a> , <a href="mailto:lawsam@hofstra.edu">lawsam@hofstra.edu</a> , and <a href="mailto:tvitkovich@msn.com">tvitkovich@msn.com</a> . The memo must be in word processing file format so that it can be shown on screen in class next week.

Tuesday November 18—Profs. Martinez & DiFonzo  <b>SKILLS SESSION</b>	<b><u>SKILLS EXERCISE:</u></b> Review of draft surrogacy agreements	<b>NOTE:</b> Don't forget to journal.
Thursday November 20 —Profs. Hershman & DiFonzo	Skills Prep: Negotiation Theory and Introduction to Mediation Advocacy	<b>GETTING TO YES</b> Alex J. Hurder, Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration, 44 Buff. L. Rev. 71 (1996)  Consult TWEN for readings on negotiation and mediation advocacy.
Friday November 21 — Profs. Hershman & DiFonzo  <b>SKILLS SESSION</b>	<b><u>SKILLS EXERCISE:</u></b> Negotiating a divorce settlement and representing a client in mediation of a divorce settlement.	<b>NOTE:</b> Don't forget to journal. Your journals should be complete by this date. They must be submitted on Dec. 1.
Tuesday November 25 — Prof. Schepard	Jurisdiction in Divorce	OV 115-154, 265-286 [Ch. 6: Jurisdiction & Chapter 10: Uniform Child Custody Jurisdiction and Enforcement Act]  W 64-72 [NY statutes]
Thursday November 27	<b>Holiday</b> No Class: Thanksgiving	
Friday November 28	No Class	
Monday December 1  [Hofstra Thursday]	Review session for exam and overflow  <b><u>DUE DATE</u></b> for Skills Journals.	Last day of Hofstra classes