

MAURICE A DEANE SCHOOL OF LAW AT  
HOFSTRA UNIVERSITY

# FAMILY LAW WITH SKILLS

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## Course Overview, Policies, and Schedule of Due Dates

Professor Andrew Schepard

and

Professor J. Herbie DiFonzo

Fall 2016

Course Coordinator: Allie Faver ([afaver1@pride.hofstra.edu](mailto:afaver1@pride.hofstra.edu))

## OVERVIEW

Family Law with Skills is an introductory family law course, which integrates substantive law instruction with the development of critical skills required to effectively represent clients with family law problems. It is jointly taught by Professor Andrew Schepard and Professor J. Herbie DiFonzo, along with a great deal of help from other members of the faculty at Hofstra Law School and from practicing family lawyers. There are no prerequisites for this course.

Our overall aim is to give you an introduction to the world of family law as it is practiced in this second decade of the 21<sup>st</sup> Century. We will cover the core material of the traditional three-credit family law course, which includes marriage, divorce and the legal consequences thereof. We will also cover the organization of the Family Court, alternatives to marriage, parenting after divorce and separation, constitutional dimensions of parent-child relationships, intimate partner abuse, child abuse and neglect, foster care, termination of parental rights, alternative reproduction, and adoption. Finally, we will cover the ethical responsibilities of family lawyers and emphasize the use of alternative dispute resolution methods in family law.

All students will be required to make a field visit to a Family Court or to a Supreme Court-Matrimonial Division and report back on what they observed.

The course features regular skills training exercises designed to afford you an introduction to the skills lawyers need for modern family practice. Skills to be introduced in the family law context include interviewing, counseling, negotiation, representation in mediation, trial skills, and review of draft agreements. While the lawyering skills you will be introduced to will be set in the family law context, they are vital to the work of a lawyer in any field. The more deeply that you incorporate skills training into your law school education, the better you will learn the substantive law, and the closer to practice-ready you will be upon graduation.

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 and professional growth—an overview of substantive law, the world of the practicing family lawyer and skills from which you can take advantage of in our very rich family law curriculum.

Family Law with Skills is based on nation-wide studies that 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" sponsor the "Family Law Education Reform Project" (FLER). 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, about the skills needed for effective family practice. The *FLER Report* documented a significant gap between the content of the basic family law course and the way 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—techniques in the family courts, the key roles played by professionals from other disciplines in the court system, and the 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 Report 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. *EDUCATION LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 4* (2007). It recommended that law schools “offer and integrated curriculum” that joins lawyering, professionalism and legal analysis from the start.

Family Law with Skills has been selected as a model course by Education Tomorrow’s Lawyer’s (ETL), an initiative of the Institute for the Advancement of the Legal System at Denver University School of Law. ETL, a consortium of law schools, which utilizes the Carnegie Report Model to support the work of law schools and professors committed to legal education reform in order to align legal education with the needs of the evolving legal profession. The Family Law with Skills Course Portfolio on the ETL website can be accessed at <http://educationtomorrowlawyers.du.edu/course-portfolios/detail/family-law-with-skills>. We will be adding to that Course Portfolio during the course of the Semester.

## **LEARNING OBJECTIVES**

Family Law with Skills has multiple learning objectives, all of which are aimed at promoting the professional development of law students with an interest in family law practice.

By reference to the *Learning Outcomes for Graduating Law Students* (approved by the law school faculty on March 10, 2014), the objectives for this course include those listed in Category 1 (knowledge of substantive rules of law and policies), Category 2 (preparation for the bar examination—family law is a recurring subject on the Uniform Bar Examination which is required in New York and on other bars), and Category 3 (sources of law and the process of law creation and evolution).

In addition, Family Law with Skills also introduces students to the professional skills necessary to effectively practice family law. It includes introductory instruction in a number of skills-development areas in Category 6 (entry level capabilities), including the following:

- (a) strategic planning: developing a plan to accomplish a goal;
- (b) problem solving in light of a client’s objectives: anticipating consequences and assessing risks;
- (c) recognizing the most common ethical and professional liability dilemmas and resolving them with high professional standards;

- (d) negotiating in both dispute and transactional contexts;
- (e) counseling clients;
- (f) interviewing;...
- (j) performing basic trial tasks (including using the rules of evidence)...
- (g) working collaboratively; [and]
- (k) learning from experience through self-critique;

Finally, the Course addresses several of the Learning Outcomes in Category 7 (professional identity and perspectives) by providing an introduction to how family lawyers:

- (b) conduct [themselves] in accordance with standards of professional conduct;
- (c) fulfill a lawyer's commitment to competence, integrity, accountability, and social responsibility; and
- (d) apply the principles and policies reflected in the law governing lawyers, including a lawyer's duty of loyalty to clients, fiduciary duties, and obligation of zealous representation.

### **TWEN SITE**

You must register for the TWEN site titled "Family Law with Skills" as soon as possible and before our first class, so that we can send you e-mails and update materials and assignments conveniently.

### **COURSE SCHEDULE WITH READING AND WRITING ASSIGNMENTS**

A tentative course schedule with reading and writing assignments is contained in a separate document posted on TWEN. Please be sure to regularly check TWEN for any modifications or updates to the course schedule and any assignments or other updates.

We have tried to time our teaching of substantive subjects so that we can give you an overview of the governing legal doctrine and policy before you perform a skill requiring you to use that knowledge. We will also include a brief introduction to each skill before you perform it.

### **Important Notes:**

1. Please review the course schedule carefully and be sure that you do not schedule conflicting engagements for any of the dates listed.
2. Submit all written work to our Course Coordinator, Allie Faver, at [afaver1@pride.hofstra.edu](mailto:afaver1@pride.hofstra.edu)

**3. Due Dates for Written Work:**

| <b>Topic of In-Class Exercise/Prep</b>                                     | <b>Date of In-Class Exercise/Prep</b>   | <b>Written Assignment</b>  | <b>Due Date</b>             |
|--|---|--|-----------------------------|
| Meet the Mentors/<br>Professional Responsibility*                          | Tuesday 8/30/16 @ 6PM in Faculty Lounge | Draft two questions for the attorneys related to professional responsibility/ethics. | Monday 8/29/16 by 1:00PM    |
| Family Court Observation Panel Discussion*                                 | Tuesday 10/25/16                        | Family Court Observation Memo (5 pages, double-spaced)                               | Thursday 10/13/16 by 5:00PM |
| Drafting a Surrogacy Contact Memo  | Tuesday 10/18/16                        | Surrogacy Agreement  | Tuesday 11/1/16 by 5:00PM   |
| Client Counseling, Negotiation, and Introduction to Mediation Advocacy     | Thursday 11/3/16 (class)                | Counseling plan<br>Negotiation plan  | Thursday 11/10/16 by 5:00PM |
|  | Saturday 11/12/16 (simulation exercise) | Self-Evaluation Memo (3 pages, double-spaced)  | Monday 11/14/16 by 5:00 pm  |
| Advocacy and Trial Skills: Opening and Closing, Direct & Cross Examination | Tuesday 11/8/16 (class)                 | Outline of direct or cross examination; and Outline of opening or closing            | Thursday 11/10/16 by 5:00PM |
|  | Friday, 11/11/16 (simulation exercise)  | Self-Evaluation Memo (3 pages, double-spaced)  | Monday 11/14/16 by 5:00 pm  |

\* Please note that these assignments have due dates BEFORE the in-class activity

**4. Schedule for Skills Exercises (Mandatory Attendance):**

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| <p><b>Tuesday 8/30/16</b><br/>6:00-8:00pm<br/>Faculty Lounge<br/>3<sup>rd</sup> Floor</p> | <p><b><u>MEET THE MENTORS</u></b><br/>Introduction to professional responsibility and establishing a lawyer-client relationship.<br/><br/>Panel Discussion: Today's Family Law Practitioner</p> | <p>Assignments:<br/>OV 905-939 [Ch. 22]<br/><br/>Draft two questions related to today's reading about professional responsibility for the attorneys. Please submit to Allie Faver by Monday 8/29/16 at 1PM<br/><br/>-John Lande &amp; Forrest S. Mosten, "Family Lawyering: Past, Present, and Future" [on TWEN]</p> |
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| <p><b>Friday<br/>11/11/16</b></p> <p>12:00Noon<br/>-3:00PM</p> | <p>FLWS Client Trial Prep &amp; Trials</p>   | <p><u>Tentative schedule:</u><br/>12:00-1:00 Trial prep of client in small group (with feedback)</p> <p>1:00-1:15 Break</p> <p>1:15-3:00 Trial (Opening, Direct, Cross, Summation) (with feedback)</p>   |
| <p><b>Saturday<br/>11/12/16</b></p> <p>10:30AM-<br/>3:30PM</p> | <p>FLWS Client Counseling, Mediation Advocacy, Negotiation, and Parent Education</p> | <p><u>Tentative schedule:</u><br/>10:30-11:30 Client counseling for mediation &amp; negotiation in small group (with feedback)</p> <p>11:30-12:15 Working lunch (on your own)</p> <p>12:15-1:15 One-half of the small groups mediate; the other half negotiates (both with feedback)</p> <p>1:15-1:30 Break</p> <p>1:30-2:30 Mediation &amp; Negotiation teams switch</p> <p>2:30-3:30 Parent Education and Skills Wrap-Up</p> |

**CLASS ATTENDANCE AND WORKLOAD**

Attendance in this class is very important as much of the learning occurs in class. You are also required to attend class pursuant to the Law School’s attendance policies. **You are required to attend and participate in all scheduled skills exercises—there will be no exceptions to this requirement.**

You must attend at least 80% of all class hours during the semester in order to be eligible to take the final examination. Skills exercises are treated as part of the 80% requirement, although as noted above **none of the skills exercises may be missed**. If you miss more than three non-skills classes, we may lower your final grade appropriately or ask you to withdraw from the course.

The American Bar Association requires that you spend at least eight hours per week, on average, outside of class studying for a 4-credit course. This requirement is in addition to the four hours a week we spend in class. (The ABA has set out a formula for determining the obligation. In other courses, the required number of out-of-class hours may be different.).

Please understand that the above is an estimate of average hours you will spend working on the course over the course of the entire semester. The ratio of four hours in class to eight hours out of class is for weeks when we focus on traditional law school material such as cases and statutes. You will spend more time in class during the classes that we work on skills development such as

interviewing, counseling, negotiation, and drafting. You will also spend more time working on this class during your courtroom observation.

If you miss a class or exercise due to illness, emergency or extraordinary personal circumstances, please contact Betty Black Leonardo ([lawbbl@hofstra.edu](mailto:lawbbl@hofstra.edu)) and Alexandra (Allie) Faver ([afaver1@pride.hofstra.edu](mailto:afaver1@pride.hofstra.edu)) to notify us of the situation. If you are not prepared for class, please send Betty an email before class begins.

### **CREDIT AWARDED**

For successfully completing the course, you will receive four academic credits, in addition to two skills credits. The four academic credits will be graded on the Law School curve. Your satisfactory performance in the Course will satisfy the Law School's skills requirements, but not your Writing I or II requirement.

### **COURSE GRADING**

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

- A take-home final examination
- Participation in class
- An assessment of your overall performance in the skills exercises
- Your written work in the course

*Final Examination:* The take-home, open-book final examination is worth 100% of your base grade. However, once that has been calculated, we reserve the right to raise or lower your final grade for exemplary or poor performance in the skills exercises, class participation, and written assignments. The final exam 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. Past exams will be posted on TWEN during the semester. We will discuss the due dates and format of the exam in class on our Final Q&A day.

*Class Participation:* Learning in the 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. If you attend each class and are fully prepared to engage, and contribute meaningfully to class discussion (a judgment that is within our discretion), we reserve the right to advance your final grade to the next level.

*Your performance in skills exercises:* There are several important notes about your performance in skills exercises:

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1. *Following Direction*- Separate memos of instructions will be distributed for each piece of work that you are required to complete. Please follow them carefully.
2. *Assignment to a Law Firm*- For some of the exercises, you will be assigned to a law firm to plan and execute the required skill (e.g., write a letter to your client identifying key problems in a draft surrogacy agreement). Sometimes the law firm assignment will be for planning purposes only and you will exercise the skill individually (e.g., the direct and cross examination of a witness). You will be assigned to the same law firm for the semester, and the firm will be assigned a “senior partner” with whom the firm should consult.
3. *Evaluation of Performance*- 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.
4. *Effect on Grading*- if you participate meaningfully in each skills exercise, and contribute meaningfully to the work of your law firm discussion (a judgment that is within our discretion), you will receive credit for participation. We reserve the right to raise or lower your grade a level for either outstanding performance in the skills exercise or failure to participate meaningfully.

### **SUBMITTING ASSIGNMENTS**

You must email all assignments to Allie Faver ([afaver1@pride.hofstra.edu](mailto:afaver1@pride.hofstra.edu)) by the date & time they are due. **In the subject field please title all submissions as “FLWS Assignment Title First Name Last Name.”** For example, “FLWS Family Court Observation Memo Emily Lovejoy” would be how Emily Lovejoy would submit her Family Court Observation. This is to ensure that no assignments are accidentally overlooked.

### **COURSE MATERIALS**

You will find a list of required materials for the course on the Course Schedule document. Please note that some of these materials will be posted on the TWEN site. The textbook for this course is Oliphant & Ver Steegh, *Work of the Family Lawyer* (4<sup>th</sup> ed. 2016). It will be denoted on the assignment sheet as “OV.”

### **COMMUNICATION WITH US**

We welcome you all and will be happy to answer any questions, comments or concerns that you may have.

*Professor DiFonzo:* Professor DiFonzo's office is in Room 207. His email, which he prefers to voice mail, is [J.Herbie.DiFonzo@hofstra.edu](mailto:J.Herbie.DiFonzo@hofstra.edu). He is at the law school most days and is always glad to see his students. You may make an appointment to see him or you may stop by his office. If he is tied up with work, e-mailing to get an appointment is the best option.

*Professor Schepard:* Professor Schepard's office is located in the Deans Office Suite. He is serving as Senior Associate Dean for Academic Affairs and his time is often not his own, filled with administrative duties. But please come try to see him. His telephone extension is 3-5890. The most reliable way to reach him is via e-mail at [Andrew.I.Schepard@hofstra.edu](mailto:Andrew.I.Schepard@hofstra.edu). You can arrange for an appointment through his assistant, Maria Filotti, whose e-mail is [Maria.A.Fillotti@hofstra.edu](mailto:Maria.A.Fillotti@hofstra.edu).

### **FACULTY ASSISTANT**

Our faculty assistant, Betty Black Leonardo, is in Room 216. Her telephone is 516-463-5928. Her email is [Betty.J.Black@hofstra.edu](mailto:Betty.J.Black@hofstra.edu).

### **COURSE COORDINATOR**

Allie Faver is a 2L student who is the administrative coordinator for the course this year. Allie will assign you all to law firms, post notices on the organization of skills exercises, etc. She can be reached at [afaver1@pride.hofstra.edu](mailto:afaver1@pride.hofstra.edu). This is the e-mail address you should use to submit all assignments. She is willing to answer any questions or address any comments or concerns you may have.