

Family Law Dispute Resolution
University of Missouri School of Law
Spring 2015

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Course Goals and Objectives

Family law practice is distinctive because it involves specialized procedures and requires knowledge of family dynamics and family court systems. Ongoing relationships between parties are an inherent part of family law cases, so court decisions do not provide finality in the same way as in other types of cases such as torts and contracts. Family law cases involve a wide range of professional services, so that family courts function more as case managers than adjudicators in many cases. In family law, “alternative” dispute resolution often is an integral part of litigation. Family lawyers spend much of their time negotiating, often in contexts not thought of as negotiation. There is no single right way to practice family law for all lawyers, parties, or cases. So good lawyers consider what approach would best achieve their clients’ goals (and lawyers’ own goals) in particular situations. This course will help you learn to make these judgments.

This course will help you: (1) increase your understanding of different family law procedures and services, (2) become a more careful observer of family law procedures, goals, tactics, and effects, (3) enhance your family law practice skills, and (4) learn to learn about family law practice. Learning to learn is an especially important goal because students cannot possibly learn everything they need to know from a law school course; lawyers continue to learn throughout their experience in practice.

Requirements and Grading

Grades will be based on the following criteria:

25% - Course Participation
75% - Papers Assessing Simulations

Course Participation

You must participate actively in class and complete required activities outside of class to get the full benefit from this course. Asking insightful questions is a very good form of participation. Quality of participation is more important than quantity.

Much of the work involves participation in simulations; you are required to perform your roles as realistically as possible. In some classes, students will do simulations in front of the class and every student will be required to do some simulations in this manner.

Students will be required to give each other feedback, which should be helpful, tactful, and candid.

There will be brief unannounced quizzes in some classes. The quizzes are intended to help identify what you learned from the readings, prepare you to discuss issues in class, and motivate you to do the readings. In general, your performance on the quizzes will not affect your grade, though grades may be adjusted to reflect repeated unusually good answers or inability to answer appropriately.

You will be required to submit some material that is not specifically graded, though grades may be adjusted to reflect unusually good or poor submissions. You will sometimes receive feedback about students' performance as a group. I will be happy to provide individual feedback on your work on request.

Assessing Simulations

You will be required to submit three papers assessing simulations that you participate in. You should use these assessments as opportunities to develop specific insights from the particular interactions and, more importantly, develop the skill of professional self-reflection. Instructions for the papers are in the "syllabus" section on TWEN.

To help you practice learning from your experience, you will be given assessment forms to complete after most simulations. These assessments are for your own use and you will not submit them to me. The more effort you invest in your assessments, the more you will benefit.

Attendance and Punctuality

Attendance in this course is very important because much of the learning occurs in class. In addition, American Bar Association rules require "regular and punctual class attendance" of students. No distinction will be made between excused or unexcused absences. Students may miss three classes without penalty. **Upon the fourth absence, students will be penalized three points. Upon the fifth absence, students will be dropped from the class. Repeated tardiness or departures during class may result in grade reduction.**

Greg Scott's Philosophy of Law School

I share Greg Scott's philosophy: If you aren't having fun, you're not doing it right. (Of course, just because you have fun doesn't necessarily mean that you are doing it right.)

Policies

Course Website and Email

This course will use the TWEN website, which is the repository for the syllabus and other required course materials. You will receive simulation instructions and other notices through the email accounts registered through your TWEN account. You are

required to check these email accounts regularly for such emails (generally at least once every business day or so, i.e., excluding weekends, holidays).

Laptops and Other Electronic Devices May Not Be Used in Class

You may not use laptop computers in class. [After many years of allowing students to use laptops in class, I decided to prohibit them because they distract students too much.](#) You may not use smartphones or other electronic devices in class except if you may have to deal with an urgent matter (such as a medical situation of a relative). If you anticipate needing to deal with an urgent matter, please let me know at the beginning of class.

Intellectual Pluralism

The Law School community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities (<http://osrr.missouri.edu>). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

Academic Integrity

Academic integrity is fundamental to the activities and principles of the Law School. All members of the Law School community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of its Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

Disabilities

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share, or if you need to make arrangements in case the building must be evacuated, please let Associate Dean Christina Wells or Registrar Denise Boessen know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (disabilitycenter.missouri.edu), S5 Memorial Union, 882-4696, and then notify Dean Wells or Registrar Boessen of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

Requirement of Consent for Redistribution of Recordings of Classes

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. In addition, a violation may affect a student's grade.

LinkedIn

I am on the LinkedIn network and occasionally receive requests from students to connect with them on that network. I have adopted a practice of declining all such invitations from students who are currently enrolled in the Law School. After a student graduates or otherwise leaves the Law School, I am happy to consider LinkedIn requests.

Readings

The required text is John Lande, *Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money* (2011) ("Lande"). Under University rules, instructors must donate royalties from their books they assign in their courses. Royalties from sales of books for this course are donated to the Greg Scott Equal Justice Fellowship. Additional required readings are posted in the "readings" page in TWEN.

Class Schedule and Assignments - subject to change.

As you do the readings, consider what makes sense to you and what does not. Do not assume that everything in the readings is the only or necessarily correct perspective. For most issues in this course, there are multiple valid perspectives. (This does not mean, however, that all perspectives are equally valid. Some statements are problematic or incorrect.) Consider what generalizations you can develop that you can use to be most effective in practice. Also consider what factors may prompt you to use particular approaches instead of others.

Discussion in class will inevitably cover some but not all of the material in the readings. If you have questions about the readings, please ask them, preferably in class (or with me privately). Feel free to email me to ask questions.

All assignments must be Word documents uploaded to the assignment dropbox on the TWEN website.

Date	Topic	Readings	Assignment
1/21	Introduction, Goals, What Family Lawyers Need to Know	Mary E. O'Connell & J. Herbie Difonzo, The Family Law Education Reform Project Final Report, 44 Fam. Ct. Rev. 524 (2006). <u>Read pp. 524-45.</u> Timothy Hedeem & Peter Salem, What Should Family Lawyers Know? Results of a Survey of Practitioners and Students, 44 Fam. Ct. Rev. 601 (2006).	
1/26	Family Law Practice <u>Guest speakers:</u> Betty Wilson and Rachael Kennedy	John Lande, The Revolution in Family Law Dispute Resolution , 24 J. Am. Acad. Matrim. Law (2011). Lynn Mather, Craig A. McEwen & Richard J. Maiman, Divorce Lawyers at Work: Varieties of Professionalism in Practice (2001). <u>Read pp. 16-40, 48-51.</u>	
1/28	Lawyering and Negotiation	John Lande, A Framework for Advancing Negotiation Theory: Implications from a Study of How Lawyers Reach Agreement in Pretrial Litigation, 16 Cardozo J. Conflict Resol. (2014). <u>Read Parts I-III.</u> Lande, ch. 1, pp. vii-xvi, 31-33.	
2/2	Family Dynamics. <u>Guest speakers:</u> Prof. Lawrence Ganong and Prof. Megan Carney	Constance R. Ahrons, Commentary on "Reconsidering the 'Good Divorce,'" 60 Fam. Relations 528 (2011). Jacqueline Singer, Clear-Eyed Coping to Help Your Child, 30 Fam. Advoc. 4 (Summer, 2007). <u>Recommended:</u> Linda Cavallero & Susan E. Hanks, Guidelines for Brief Focused Assessment: AFCC Task Force on Brief Focused Assessments, 50 Fam. Ct. Rev. 558 (2012). <u>Recommended:</u> Philip M. Stahl & Lorraine Martin, An Historical Look at Child Custody Evaluations and the Influence of AFCC, 51 Fam. Ct. Rev. 42 (2013). <u>Recommended:</u> Jay Haley, Uncommon Therapy: The Psychiatric Techniques of Milton H. Erickson, M.D. 41-64 (1986). <u>Recommended:</u> Joan B. Kelly & Mary Kay Kisthardt, Helping Parents Tell Their Children about Separation and Divorce: Social Science Frameworks and the Lawyer's Counseling Responsibility, 22 J. Am. Acad. Matrim. Law. 315 (2009).	
2/4	Debrief Prior Classes		
2/9	Interview Child Custody Evaluator	Alan M. Jaffe & Diana Mandeleew, Essentials of a Forensic Child Custody Evaluation, 30 Fam. Advoc. 16 (Spring, 2008). Jean E. Lacrosse, Blueprint for a Custody Evaluation: Getting You and Your Client Through a Custody Evaluation – Thoughts from a Custody Evaluator, 26 Fam. Advoc. 36 (Winter, 2004). Barbara Jo Fidler & Nicholas Bala, Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums, 48 Fam. Ct. Rev. 10 (2010). <u>Read pp. 10-20.</u> <u>Recommended:</u> American Psychological Association, Materials on Parental Alienation Syndrome and Child Custody (2008).	

Date	Topic	Readings	Assignment
		<p><u>Recommended:</u> Ralla Klepak, What to Tell Your Client About Mediation, the Custody Evaluator, or a Custody Evaluation, 30 Fam. Advoc. 8 (Spring, 2008).</p>	
2/11	Domestic Violence	<p>Nancy Ver Steegh, The Uniform Collaborative Law Act and Intimate Partner Violence: A Roadmap for Collaborative (And Non-Collaborative) Lawyers, 38 Hofstra L. Rev. 699 (2009). <u>Read pp. 709-30.</u></p> <p>Amy Holtzworth-Munroe et al., The Mediator's Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain, 48 Fam. Ct. Rev. 646 (2010).</p> <p><u>Recommended:</u> Nancy Ver Steegh & Clare Dalton, Report from the Wingspread Conference on Domestic Violence and Family Courts, 46 Fam. Ct. Rev. 454 (2008).</p>	
2/16	Parenting Coordination	<p>Joan B. Kelly, Parent Conflict After Separation: Taking a Closer Look, Florida AFCC Newsletter: Enews, 2013.</p> <p>Christine A. Coates, Parenting Plan Coordinator: When You Need Professional Help to Make Joint Decisions, 33 Fam. Advoc. 20 (Summer, 2010).</p> <p>Sherrill W. Hayes, "More of a Street Cop than a Detective": An Analysis of the Roles and Functions of Parenting Coordinators in North Carolina, 48 Fam. Ct. Rev. 698 (2010).</p> <p><u>Recommended:</u> Allan E. Barsky, Parenting Coordination: The Risks of a Hybrid Conflict Resolution Process, 27 Neg. J. 7 (2011).</p> <p><u>Recommended:</u> Robin O. Belcher-Timme, et al., Exploring Best Practices in Parenting Coordination: A National Survey of Current Practices and Practitioners, 51 Family Court Review 651 (2013).</p>	
2/18	Child Protection	<p>Stephanie Jill Gendell, In Search of Permanency: A Reflection on the First 3 Years of the Adoption and Safe Families Act Implementation, 39 Fam. & Conciliation Courts Rev. 25 (2001). <u>Read pp. 25-31. The rest is recommended.</u></p> <p>Richard Cozzola & Andrya Soprych, Representing Parents in Civil Child Protection Cases, 31 Fam. Advoc. 22 (Winter, 2009).</p> <p>John Lande, Child Protection Mediation (2001).</p> <p><u>Recommended:</u> Janet G. Sherwood, Representing the Child in Abuse & Neglect Cases, 31 Fam. Advoc. 28 (Winter, 2009).</p>	
2/23	Ethics and Law of Negotiation	<p>Lande, ch. 10.</p> <p>Russell Korobkin, Michael Moffitt & Nancy Welsh, The Law of Bargaining, 87 Marq. L. Rev. 839 (2004).</p>	Assessment due 2/23
2/25	Financial Issues:: <u>Guest Speakers:</u> Troy Norton and Mark Gingrich	<p>Jerry L. Love, Achieving Long-Term Fiscal Fitness Through the Divorce Settlement, 31 Fam. Advoc. 42 (Spring 2009).</p> <p>John C. Lenderman, What Judges Want in Financial Matters: The Lawyer as Storyteller, 31 Fam. Advoc. 18 (Fall, 2008).</p> <p>Lawyer's Checklist, 26 Fam. Advoc. 36 (Fall 2003).</p> <p>Williams Keepers, Divorce Client Checklist.</p>	

Date	Topic	Readings	Assignment
3/2	Theories of Negotiation	John Lande, A Framework for Advancing Negotiation Theory: Implications from a Study of How Lawyers Reach Agreement in Pretrial Litigation, 16 Cardozo J. Conflict Resol. (2014). (See reading for 1/28.) Read Parts IV-V. Clark Freshman & Chris Guthrie, Managing the Goal-Setting Paradox: How to Get Better Results from High Goals and Be Happy, 25 Neg. J. 217 (2009).	
3/4	Negotiate Prenuptial Agreement	Mark A. Chinn & Charles Greer, Prenuptial Prerequisites: The 4 Essential Elements of an Inviolable Agreement, 24 Fam. Advoc. 11 (Winter, 2002). <u>Recommended:</u> Paul S. Leinoff & Natalie S. Lemos, The Perils of a Prenup: First Do No Harm—to Your Client or Yourself, 33 Fam. Advoc. 8 (Winter, 2011). <u>Recommended:</u> Neil S. Cohen & Stephen W. Schlissel, Thinking Through the Tax Ramifications of a Prenup, 33 Fam. Advoc. 43 (Winter, 2011). <u>Recommended:</u> Arnold H. Rutkin, When Prenuptial Contracts Are Challenged in Court, 6 Fam. Advoc. 18 (Winter, 1984).	
First Extended Simulation			
3/9	Initial Client Interview	Lande, ch. 2, apps. A, B, K. Vernon's Annotated Missouri Statutes 452.375 Michele Kane Cummings, How to Turn Your Case into the Divorce from Hell, 34 Fam. Advoc. 22 (Summer, 2011). Educating the Client about Custody, 30 Fam. Advoc. 20 (Winter, 2008). Ron W. Little, Getting a Custody Case Rolling: Managing Your Client and the Case, 26 Fam. Advoc. 28 (Winter, 2004). <u>Recommended:</u> Focus on Kids program handouts.	
3/11	Developing Relationship with Counterpart	John Lande, Getting Good Results for Clients by Building Good Working Relationships with "Opposing Counsel," 33 U. La Verne L. Rev. 107 (2011).	Lawyers: upload information requests by 3/11
3/16	Court Argument re Psychological Assessment	Vernon's Annotated Missouri Statutes 452.390, 452.400	
3/18	Prepare Client for Negotiation	Lande, ch. 8, app. N. ABA Section of Dispute Resolution, Family Mediation Guide (2012).	
3/30	Lawyers Meet w Counterparts	Lande, ch. 6, apps O, Q.	
4/1	Negotiate	Lande, ch. 7.	
4/6	Debrief Neg.		

Date	Topic	Readings	Assignment
Second Extended Simulation			
4/8	Initial Client Interview	John Lande & Gregg Herman, Fitting the Forum to the Family Fuss: Choosing Mediation, Collaborative Law, or Cooperative Law for Negotiating Divorce Cases , 42 Fam. Ct. Rev. 280 (2004). Lande, Appendixes P & Q	All: Assessment due 4/8 Lawyers: upload information requests by 4/10
4/13	Negotiate Retainer Agreement	Lande, ch. 3 Attorney's Fees Agreement, 35 Fam. Advoc. 8 (Spring 2013).	
4/15	Prepare Client		
4/20	Lawyers Meet with Counterparts	21 Mo. Prac., Family Law § 8:7 (3d ed.), 21 MOPRAC § 8:7, Division of Property – Statutory Factors Form 14 Child Support Amount Calculation Worksheet . Refer to as needed: Comments for Use & Examples for Completion of Form 14 & Assumptions .	
4/22	Negotiate		
4/27	Debrief Negotiation		
4/29	Looking Back & Forward	Lande, ch. 9. Andrea Kupfer Schneider et al., Cooking Up a Deal: Negotiation Recipes for Success	Your recipe for success due 4/29 Assessment due 5/1