

Family Law Litigation

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VETERANS LEGAL ASSISTANCE CLINIC
THOMAS JEFFERSON SCHOOL OF LAW

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*To Bob, Marion and Donna Berenson—
for making my experience of family life so fulfilling.*

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Preface

Family law litigation is ubiquitous. Over the four decades in which I have practiced law, entire areas of legal practice have appeared and disappeared, along with changes in technology, the economy, social practices, and legal doctrine. One constant, however, has been family law. Throughout this period, approximately half of all marriages entered into in the United States have ended in divorce. And at present, as well as for the foreseeable future, the only way to dissolve a marriage in America is through litigation. Further, when you add in all of the associated issues that go along with marriage dissolution—child custody and support, spousal support, and property division, there is a lot of litigation to go around.

Perhaps this fact should comfort current law students, so many of whom struggle to find employment upon graduating from law school. Now, whether family law representation can be provided in a way that is cost effective for both litigants of modest means and for their lawyers is a different question and one that will be addressed at least to some degree over the course of this book. However, there is little doubt that there will be a great deal of work to be done in the area of family law in the foreseeable future. Thus, for those students who wish to pursue a career in this area, it is intended that by using these materials in a family law litigation course, along with taking a basic family law doctrinal course, followed up by a field placement in family law firm and/or work in a law school family law clinic, perhaps with a course in law practice management added, a graduating law student should be prepared either to open up a law office focused on family law, or to join an existing such practice and be able to “hit the ground running.”

Moreover, even for those who do not wish to focus their practices exclusively or even primarily upon family law, it is likely that at some point your legal careers you will benefit from having a working knowledge of how to litigate a family law case. After graduating from law school, a good friend of mine decided he wanted to go into practice focusing on bankruptcy law. Well, what do many people also experience at times when they are going through financial distress? Family distress. After a period of referring his bankruptcy clients to other lawyers to handle their divorces, my friend decided that he would rather keep these clients “in house” than referring them out, and learned how to litigate a divorce case. I am certain however, that he would have been happier having learned how to litigate a divorce case while in law school, than having to learn it on his own.

Practicalities aside, family dissolution presents some of the most difficult and emotionally wrenching issues a person is likely to encounter in their lifetime. Family law practice is one of the few remaining areas of legal practice where lawyers work directly with individual (as opposed entity or corporate) clients, and have an opportunity to provide them with priceless assistance as they go through some of the most difficult times of their lives. This opportunity to serve others in this way is one of the primary reasons why many of us went to law school in the first place. Having the tools to do so in an effective manner is one of the reasons why taking a course such as this is worthwhile.

This text will basically walk students through a family law (dissolution of marriage) case from start to finish. All of the stages of family law litigation, from drafting pleadings, to financial disclosures, discovery, motion practice, mediation, and settlement will be covered. A hypothetical case file will be provided to instructors to support a semester long simulated case exercise. Students will engage in all of the lawyering tasks necessary successfully to litigate a family law case from start to finish, including interviewing and counseling clients, arguing in court, and negotiating and drafting settlements. All aspects of divorce practice will be covered including child custody and support, spousal support and property division. Materials in the book will introduce each of the lawyering skills engaged in by students, particularly in the context of family law disputes. This course will fit well within the movement in legal education toward more experiential learning, will help to satisfy ABA and State Bar experiential learning requirements, and will help students to be better prepared to practice law upon graduation.

Steve Berenson

About the Series

Carolina Academic Press, in cooperation with Northeastern University School of Law, is pleased to offer a new series of teaching materials, the Lawyering Series. Professor Roger Abrams, Richardson Professor of Law at Northeastern School of Law, will serve as Series Editor.

Carolina Academic Press, an independent publisher, has a strong reputation for publishing innovative print and digital teaching materials for the law school community. Northeastern University School of Law has long been known as an innovator in legal education, with a national reputation for its Cooperative Legal Education (Co-op) Program and its rich clinical, internship, and externship offerings.

Over the last decade, the American Bar Association has urged American law schools to better prepare their students for the practice of law. Most recently, the ABA has enacted new Standards that require all law students to complete six credit hours of “experiential” courses. This requirement will commence for students beginning law school in fall 2016.

It is our sincere hope that the Lawyering Series will support law schools and law professors—both full-time and adjunct—as they search for more innovative and more practical teaching materials.

We welcome your comments and suggestions. Please contact Carolina Academic Press at manuscript@caplaw.com or Series Editor Roger Abrams at r.abrams@neu.edu.

