

**Family Law with Skills, Course Portfolio
Spring Semester 2011**

May 6, 2011



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March 10, 2011
Family Court Observation

I visited the Bronx Family Court on February 24, and sat in on a Child Abuse and Neglect Part. I had worked at Bronx Family Court over the summer, and decided to go back for my court observation there. After spending this semester working in federal court at the U.S. Attorney's Office, I was once again shocked by how chaotic Bronx Family Court was during my observation. The line of people waiting for Family Court was around the block when I arrived at 8:30 am. The Bronx Family Court is perpendicular to the Criminal Courthouse, so the line for the Criminal Courthouse was overlapping with the Family Court line outside, and the atmosphere was hectic before I even entered the building itself.

The people at Bronx Family Court were predominantly minorities. In fact, the only Caucasian people I saw were attorneys. Every single client was dressed in rather casual clothing, and I felt that many people in the waiting area showed up to court dressed inappropriately. I was happy to see that all the attorneys were dressed professionally in suits. Thus, there was an obvious distinction between the attorneys dressed in suits and their clients.

The stark waiting areas outside the courtrooms were loud since they were filled with a countless number of people. There were numerous children in the waiting area, most of who seemed under the age of twelve. Bronx Family Court also has a children's waiting room that is located in a room off of the main waiting area. The children's waiting area looks like a preschool classroom filled with bright colors, various toys, games, and books. On the contrary, the regular waiting area in Bronx Family Court has an aura of chaos that one can physically see from all the people running around frantically, as well as all the emotions you can hear in peoples' voices and see on their faces. Again, it certainly was shocking to be back there after



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being in federal court where at times I feel like I could hear a pin drop as a result of the silence in the hallways.

The courtroom I did my observation in was on the smaller side. There were chairs lining the back wall of the room, and one of the sidewalls. The opposite wall was lined with filing cabinets, and the judge and her clerk sat up front on the bench. In the middle of the room there was a long table where the parties and their attorneys sat during the court proceedings. The court officer had a desk against the back wall, and would go out to the waiting area to alert attorneys when their cases were going to be called. I think that the courtroom environment worked well though because it certainly was more informal and relaxed than other courts, but not so informal that the parties did not recognize the seriousness of the matters they were facing.

The first case I observed was a PINS dispositional hearing. The mother had previously made a PINS petition to the court claiming her that daughter was breaking curfew, hanging out with the wrong crowd, and was suspicious of her acting as a prostitute. The fourteen years old minor child was present with her Legal Aid attorney, and the girl's mother was there without an attorney. The judge had found that the child was a "person in need of supervision." The hearing I attended was to decide whether the child would remain in her mother's care and receive various services, or whether she would be placed in a social service facility. At the hearing, the mother spoke directly to the judge in explaining that her daughter's behavior had not changed since their previous court appearance. She got really emotional, and asked the judge to place her child in a social service facility because she had no control over her daughter's behavior, and was scared for her safety. The daughter seemed to get irritated at some of her mother's statements about her alleged behavior. The mother had stated that her daughter refused to go to therapy with her, yet the daughter told the judge she was more than willing to go to therapy.

The child's attorney briefing consulted with her client, and restated the child's position. The attorney asked the judge to allow the child to stay at home so long as she was compliant with the therapy and services recommended. The judge then asked the mother if she would be comfortable with the presented situation, and the mother agreed. After sometime, the judge ordered this arrangement, explaining to the mother that she should return to court if her daughter violated any part of the ordered.

I understand that PINS proceedings can be extremely helpful in helping parents cope with unruly children before the children get into serious trouble. However, in a situation such as the one I saw, it seemed like mediation would have been a better forum for this dispute. The judge basically acted as a mediator for the mother and her child, and they came to a mutual decision fairly quickly. I think that if this PINS case had been mediated, the mother and her child could have discussed the underlying issues between them in more detail, and made an agreement based upon a mutual understanding. Clearly one of the biggest issues was simply a lack of communication between a mother and her teenage daughter, and I am not sure whether court was the best place to resolve such issues.

The next proceeding I observed was a fact finding hearing on the issue of whether a two year old child who was in foster care needed to be immunized. The parents, both of whom shared a private attorney, were of the Morish religion. An attorney for the child and an attorney representing the foster care agency were also present. The parents claimed that their religion did not allow for immunizations, and would not consent to any immunizations. The parents were currently engaged in supervised visitation at the foster care agency. The foster care agency was claiming that the child needed to be immunized because during those visits held at the agency, the child was putting other children at risk for various diseases and visa versa.

I observed the testimony of a caseworker who was trying to explain the environment that the weekly visits were taking place in. The questions the foster care agency was asking did not seem to be following any specific reasoning, and seemed to make little sense. I got the impression that the attorney was inexperienced and nervous. Likewise, the caseworker clearly did not know the background of the Morish religion, and was not familiar with whether the religion did, or did not, give the parents the right to choose not to immunize their child. The foster care agency may need to present more evidence from the Morish religion in order to prove that even under the Morish religion doctrines, the child should be immunized.

The caseworker's testimony was cut short since the parents had arrived extremely late. Upon arrival, the court officer asked the attorneys to state their names, and titles, and spell out their last names. However, the parents only had to say their names and relationship to the child. The father began to spell out his and his child's first and last names in an interesting fashion. In order to preserve confidentiality, I will use the name "Jim Jones" as an example. The father stated "Capital J, lower case i, lower case m, space, capital J, lower case o...and so on, for his entire name (which consisted of four names) and his child's name. It took up at least five minutes in a court that seemed extremely busy. I was really surprised by how patient the judge was by not just cutting him off or correcting him.

The observation was a reminder of how hectic Family Court is. The waiting room was jammed pack, yet the court was somewhat quiet because the parties and attorneys were all running late; setting everyone else's schedules behind. I think that the chaos does not always bring justice and order to families, and in many times can exacerbate people's emotions. However, the judge I observed was so patient and understanding of the parties, and I could see a high level of compassion and interest on her part. Thus, I believe that although the Bronx

Family Court is chaotic, the judge's bring a sense of calmness to alleviate the panic that many parties face simply by showing the parties that the judge does care about their outcome. All in all, I had a positive experience as all the attorneys and judges were more than willing to speak with me about their cases and Family Court in general.



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Memorandum

To: F.H.E.
Fr:
Da: MARCH 8, 2011
Re: Journal Assignment No. 1-Allen Client Counseling

On Friday March 4, 2011, I had a counseling session with Dr. David Allen about his possible divorce from his wife, Lynne. Our senior partner, _____ played Dr. Allen since none of the attorneys had experience working with clients seeking a divorce, and Ms.

_____ thought it might be helpful for us to see how Dr. Allen might handle himself in a counseling session with his attorney. I found this helpful because not only did _____ do an excellent job playing Dr. Allen, but it also allowed her to give us feedback on the various issues that we counseled her about and discussed with her. I counseled Dr. Allen about child custody issues, possible parenting plans, and the procedures that are available to him in order to achieve a parenting plan that is in the best interests of his children.

I was most surprised by how comfortable I felt interviewing the client. I was not sure what to expect because I have only worked for a judge and the government, so I have not had too much experience with having to deal directly with a client. However, I was expecting myself to be more nervous than I was. I believe that preparing ahead of time, and knowing what I wanted to talk about, helped me relax throughout my counseling session. Dr. Allen did not ask too many questions, but was rather patient in listening to all the information provided by my colleagues and me. I made sure to ask him multiple times if he had any questions or if he understood what I was explaining to him. I wanted to make sure that he was listening and understanding all the information that we were providing to him.



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In order to prepare for this counseling session, I re-read the facts quite thoroughly. At this point I was not sure whether I would be playing the client or not, so I thought it would be wise to know the facts regardless of whether I would be playing the attorney or the client. Since I was going to be discussing the custody of Dr. Allen's children with him and the various options that would be available to him and his wife; I went through my class notes and the New York statute. I also researched what factors a court (or evaluator) might take into consideration in deciding the custody of Dr. Allen's children, and focused on the strengths and weaknesses of his case. I then laid out the various procedures available to Dr. Allen (i.e. alternatives to litigation like mediation and negotiation, as well as possible litigation) and the benefits and risks of each in order to achieve whatever interests he wanted for his children. By doing so, I felt I was prepared to counsel Dr. Allen once he disclosed what his interests were for the children.

I found it most difficult to react to statements made by the client that I was not expecting. For example, the client was open to the idea of me talking to Lynne's attorney in order to see what Lynne was thinking about custody of the children. However, the client then stated, "As long as I have a final say on everything about the children this should be fine. I am much smarter than Lynne, especially when it comes to the children and what is best for them, so I should be making all the decisions." I thought it was difficult to react to such a statement without offending or isolating my client. I could not respond by simply telling the client he was not smarter. I now can see where it may be difficult in the beginning of a client-attorney relationship to give the client as much realistic information as possible, but still wanting the client to continue to allow them to represent them, and trust you. I think that clients getting divorced will often be sensitive to the topic of their children, and handling all the emotions on such a topic can certainly be challenging.

I found it least difficult to explain the various procedures (and the risks and benefits to each procedure) that should be explored, including negotiations, mediation, and litigation of the child custody issue. I think that this had a lot to do with the fact that I was able to prepare and have an idea of what I was planning to discuss with the client. Dr. Allen was quite willing to listen to all of the options and did not cut me off. He asked thoughtful questions that showed his concern for the best interests of the child. By the end of the session, the client seemed to be open to the idea of joint custody so long as he had plenty of time to spend with his children.

I found the counseling exercise really beneficial. It was really helpful to be able to apply the information we have learned in class to a “real life” situation. I liked having the supervising attorney play the client because she knew how best a client might typically react to various comments or explanations provided by an attorney. It also allowed the supervising attorney to see our body language and how we connected with the client more closely. Our supervising attorney gave everyone in my group positive feedback. I would have liked to hear more critical feedback since this was a learning exercise, and the more feedback the better! Overall, I think it was a great experience and I learned a lot.

Client Counseling Evaluation Sheet

TO BE COMPLETED BY STUDENT ATTORNEYS:

Supervisor/
Professor: _____

Student Attorney: _____

Client: David Allen _____

PORTRAYAL OF CLIENT

Appeared to be well prepared as client

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
unsatisfactory	satisfactory		excellent

Acted appropriately & effectively

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
unsatisfactory	satisfactory		excellent

Where applicable to your assigned portion of the interview, please rate yourself in the relevant categories by using a scale from one to five points for each category:

- 5 = outstanding;
- 4 = very good;
- 3 = good;
- 2 = fair;
- 1 = needs work; or
- n/a = not applicable

NOTE: Please provide further explanation to your answers on the comment space.

CLIENT COUNSELING SESSION

Opening and Updating:

- 5_ Greeted client appropriately
- 4_ Confirmed facts from last meeting
- 4_ Requested any new information

Comments:

Assessing the Client's Legal Position:

- 5__ Clearly identified the legal issues
- 4__ Clearly prioritized the client's interests and needs
- 4_ Concise review and update/summary of client facts
- 5__ Provided an objective and well reasoned summary
- 5__ Appropriately recognized and responded to the non-legal facets of client's case

At times I had to re-focus client on children instead of his anger/hostility towards his wife

I tried to work on listening to my client's concerns, but then also making sure to keep him on track of discussing child custody and visitation__

Discussing Options:

- 5__ Provided sufficient information to enable client to make decisions effectively
- 5__ Explained all the different legal process choices (e.g., negotiation, mediation, litigation, etc.)
- 5__ Used language the client could understand
- 4__ Drew connections between the client's goals and preferences and the applicable legal process choices

I tried to listen to and address the client's concerns without simply dismissing what he was saying and sticking to the information that I had prepared to discuss with my client

- 5__ Informed client of the risks and benefits and the applicable legal process choices
- 4__ Listened to, received and properly answered all of the client's questions

Making Predictions:

- 4__ Took account of various factors
- 4__ Made a complete statement of legal assessment
- 4__ Sound description and evaluation of most probable options
- 3__ Sound statement of prediction as to the likelihood of success as to each option

I thought it was premature to give the client solid predictions without gathering more information first; so I can work on this in the future. However, I did make sure to stress the various parenting plans so that the client never got the sense that "the winner takes all" for the child custody issue.

- 5__ Accurately described what success means
- 4__ Alerted client to reasons for vague predictions
- 5__ Provided reasonably definite information, e.g., ranked options
- 4__ Explained factors underlying predictions

Assisting the Client in Making Decisions:

- 5__ Respected the client's decision making authority
- 4__ Matched goals and options
- 5__ Advised client appropriately
- N/A__ Explained where no legal basis for a claim existed and if a certain option could not be exercised
- 5__ Summarized the client's legal options in order of the client's priority
- 4__ Reframed the risks and benefits of the client's choices, where necessary
- 4__ Combined options, if appropriate

Note: Group broke down each issue

Briefly discussed the relationship between primary residence and possible increases/decreases in child support payments



Effective Handling of the Client's Challenge:

4__ Recognized and understood this challenge

Tried my best to be considerate of the client's struggles and do my best to understand the complexity of the issues he was probably facing on many different levels

5__ Acted ethically and effectively

Closing the Session:

5__ Explained what lawyer will do next

5__ Stated when lawyer will next contact client

4__ Stated what client will do next, as appropriate

5__ Provided appropriate reassurance

Professionalism:

5__ Confident

5__ Respectful

4__ Articulate

5__ Organized

5__ Knowledgeable

5__ Proper attire

COMMENTS: Please describe what worked for you and what did not work for you during this exercise. Also, describe the feedback that you received during this exercise and discuss whether or not you agree or disagree, including in your answer a detailed explanation as to why.

I liked that my supervising attorney, _____ acted as the client. She believed this was the best way to proceed since no one else in the group had any experience counseling a client through a divorce, and it would be beneficial for us to see how a client may react during a counseling session. I think that this kept the session more realistic and on track, and I enjoyed this very much.

I would have liked to receive even more critical feedback from _____ She was very positive and helpful, and would explain the various obstacles that she typically faces with each particular issue we discussed with the client. However, she did not necessarily give us all that much personal criticism into what we did particularly good or bad. Her general explanations about what issues may arise were really interesting, but I think that it made the counseling session a little choppy at times. However, my group had not met with our supervising attorney until the counseling session, so it was helpful to hear her personal insight from her practice on the issues we were discussing, and the various approaches that are suitable. Thus, our counseling session was more of a combination between the pre-counseling session, and the counseling session.

The feedback that I received was "that I did a really great job in counseling the client about child custody." _____ told me that discussing child custody issues often are the most difficult especially since a lot of the time parents' emotions are so high and they lose sight of what is good or bad for their children. She also believed I stayed calm and on track even when she tried to push me a little with some comments. I agree that for my first counseling session I think that it went well. I tried to allow the client to voice "his" opinion about each procedure that I went through in order to get a better feel for what he wanted. By the end of the time allotted to me, we had decided that the first thing to do was to speak with the wife's attorney and try to negotiate a parenting plan that both parents may agree to. I think that having the client stay relaxed and open minded with realistic goals made for a productive counseling session.

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Reflections on The Hunter College Skills Exercise Day (Mar. 26)**1. What was the most significant learning experience you had that day?**

It was extremely helpful to see how a caseworker/social worker looks at the facts of a case, and how their outlook often differs from that of a lawyer. When the social workers looked at the case, they evaluated everything going on with the family in its entirety. Although the attorneys looked at all the facts as well, we were breaking the facts down to those that were "good" or "bad" for the case. This idea seemed foreign to the social workers. Also, when the lawyers referred to "the case," we typically meant that of which we would be presenting to the court. However, the social workers idea of "the case" was all of the issues that the Pena family was facing. Thus, the most significant learning experience I had was to see the major differences between the social workers' and attorneys' outlook of the same facts, and molding both of these differing outlooks into one theory of the case.

2. What did you like least about the program?

I found it difficult to prepare the social workers as witnesses since we had all of the exact same facts, and ultimately only had to fit the shared facts into our theory. Therefore, the social worker and I worked together in trying to figure out what might work best in terms of what order the facts should go in, and what we definitely needed to highlight. However, it made the simulation less realistic than if the attorneys had known only the broad story, and needed our witnesses to fill in gaps to further describe what they might know to add to their testimony. This would have forced the law students and social work students to use greater collaboration to construct an effective examination of the witnesses.

3. Please make one specific suggestion for improving the program.

I suggest that the social work students be given a fact pattern that includes more specific facts than the fact pattern given to the law students. This way the attorneys (law students) can practice eliciting as much information as possible during their witness preparation. Thus, it would be interesting to see what information the attorney obtained from his or her witness. This would also allow both the law students and social work students to better gauge the level of collaboration they used during their preparation, through whether certain facts were ever disclosed and then later highlighted during the trial. Plus all of the students could see the variations in which the level of collaboration could be achieved through the other groups' efforts.

MEMORANDUM

To: Partner
Fr:

Da: March 30, 2011
RE: Mary and Peter Yarrow – Surrogacy Agreement

I. THREE MAIN AREAS OF CONCERN

A. A Judicial Validation Clause Must be Added

The major problem with the Surrogacy Agreement (the “Agreement”) between Mary and Peter Yarrow (the “Clients”) and the gestational donor (the “Surrogate”) and her husband (collectively, the “Surrogate Couple”), is that it does not meet or require the fulfillment of all the various steps that would lead to judicial validation of the Agreement under Texas Family Code (“TFC”) §§ 160.756 & 160.760. This is a very serious problem that must be corrected, as TFC § 160.762 explicitly states that “[a] gestational agreement that is not validated as provided by this subchapter is unenforceable”

Section 160.756(b) provides that a court may validate a gestational agreement only if the requirements (1) through (6) have been satisfied. There are two considerable mandates that the current Agreement currently does not satisfy, namely, those contained in subparagraphs (3) & (6). Subparagraph (3) requires that an agency “has conducted a home study of the intended parents and has determined that the intended parents meet the standards of fitness applicable to adoptive parents.” While the TFC provides that the court may waive this study, it would be easier and less risky for the Yarrows to ensure that their home environment is up to par with the applicable “standards of fitness,” and then have a home study completed in preparation for judicial validation. Subparagraph (6) pertains to medical expenses associated with the pregnancy, and requires that the parties to the Agreement have provided for who shall be

responsible for them, including in the case of termination of the Agreement. While the Yarrows assume responsibility for some medical expenses in Paragraph 13(a) & (b) of the Draft Agreement, the language therein is not extensive enough to satisfy the scope of the § 160.756(b)(6) and should therefore be amended.

After the Agreement has been validated pursuant to TFC § 160.756(c), the parent-child relationship will legally exist between the Yarrows and the child resulting from their transferred embryo under § 160.753, essentially terminating the Surrogate Couple's legal parental claims to the child growing in the Surrogate's womb. In order to ensure this allocation of rights becomes final upon birth, the Agreement must also provide that the provisions in TFC §160.760 will be followed. Specifically, that section requires that notice of the child's birth be given to the court that validated the Agreement, so that an order may be issued confirming the Clients' parental rights, requiring surrender of the child by the Surrogate couple (if necessary) and ordering issuance of a birth certificate listing the Clients' as the parents.

B. A Termination Clause Must be Added

The contract does not contain a termination clause and we should add one in order to protect the clients from liability if their circumstances change. Specifically, we should add a termination provision that allows the clients to end the contract in the event that 1) they are no longer willing or able to incur the cost of raising a child or 2) the court does not validate the agreement. Therefore, if an event occurred such as the death of one of our clients, the surviving client could terminate the contract and escape the obligations of the contract.

The TFC actually mandates a certain termination procedure for surrogacy contracts. *See* TFC §160.759. The statute gives each party to the contract the discretionary authority to terminate the agreement before the gestational carrier becomes pregnant by way of an assisted

reproduction procedure. *See id.* While this mandated provision decreases some risks to the client, it increases others, as it allows the Surrogate *or her husband* to terminate the Agreement.

In the termination clause, we should also insert a provision stating that the contract terminates if a court denies a request by the parties to validate the Agreement. The TFC provides that gestational agreements that are not validated are not enforceable. *See* TFC §160.762. If the Agreement is not legally-enforceable, but still executed, then the Surrogate could potentially keep the baby *and* the clients' payments and the Yarrows would be left with no rights under the contract. A well-drafted termination clause would protect the clients from this significant risk, and should therefore be extensive. Namely, we should seek to anticipate everything that could go wrong with the Agreement and set forth the rights and obligations of all the parties if any combination of unfavorable events occurred. *See* TINA L. STARK, DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO 159 (2007).

C. Additional Statutory Requirements that Must be Included

Finally, the TFC requires that certain additional provisions be included in the contract. They should be carefully included to ensure that the Clients will not encounter issues when seeking to have the Agreement validated. For example, Section 160.754(a)(4) requires that the Surrogate and the Clients agree to exchange throughout the period covered by the Agreement, all relevant information regarding the health of all the parties. Therefore, such a provision should be included in the final draft of the agreement.)

Section 160.754(d)(1)-(5) requires that the Agreement state that the physician who will perform the assisted reproduction procedure has provided certain specific information to the parties about the procedure, including 1) the rate of success of assisted reproduction procedures, 2) the general risks associated with the procedure, including multiple birth 3) the expenses

related to the procedure, 4) the health risks associated with the procedure, and 5) psychological effects resulting from the procedure. We could satisfy this mandate by inserting representations and warranties by all parties stating that a doctor has met with them and provided them with all of the statutorily required information.

Section 160.754(g) requires that a gestational agreement not limit the right of the Surrogate to “make decisions to safeguard her health or the health of an embryo.” While there is nothing currently in the contract that would purport to limit such rights in the Surrogate, in order to ensure there are no deficiencies in the Agreement prior to seeking its validation, adding a clause that directly imports the language from the statute would be wise.

Finally, additional warranties should be included to satisfy the last remaining statutory requirements. Specifically, pursuant to TFC § 160.754(e) the parties should warrant that no embryo transfer will be attempted until fourteen (14) days have elapsed since all parties have executed the Agreement. As § 160.755 requires that at least one party reside in Texas for 90 days, the parties should warrant that they have resided in the state of Texas for at least ninety (90) days in order to ensure that the minimum residential requirement for commencing a proceeding to validate a gestational agreement in the state is fulfilled.

II. ADDITIONAL INFORMATION WE SHOULD SOLICIT FROM THE CLIENTS

In order to draft a contract that reduces risks to the clients, we should identify what relationship they want with the Surrogate Couple during and after the pregnancy. For example, we should determine how the clients intend to monitor the pregnancy and how often the clients intend to communicate with the Surrogate during the pregnancy. Also, we should determine whether the clients want the Surrogate to perform obligations during the pregnancy, like following a certain diet or avoiding certain products (like household cleansers) or activities (like

emptying a cat litter box). If so, we should insert covenants into the Agreement that allow the clients to memorialize such understandings with the Surrogate. For example, one thing that jumped off of the page at us was that the Clients wish to be present in the birthing room of the hospital. The Agreement should therefore state that the Surrogate Couple will take the explicit steps required by the designated birthing hospital to “clear” the Clients for access to the delivery room.

Also, we should determine whether all of the parties have visited the doctor for the statute-mandated information session required by TFC §160.754(d). If all parties have not gone to the doctor to receive that information, we must advise the clients to do so, since the statute requires that the Agreement provide for such a meeting.

Finally, we should find out from the clients whether they have spoken with the Surrogate’s husband about the Agreement, because he has the power to terminate the Agreement before the Surrogate becomes pregnant. *See* TFC §160.759(a). We want him to be a party to the Agreement because we want to ensure that he relinquishes his parental rights therein.

III. RECOMMENDATION CONCERNING THE CIRCUMSTANCES UNDER WHICH THE YARROWS SHOULD SIGN THE AGREEMENT

We should advise Mary and Peter Yarrows that they should do the following before signing the Surrogacy Agreement:

- Include all statutorily required provisions in the Agreement, as well as all the other changes discussed above.
- Talk with the Surrogate and her husband so that the clients can clearly define the relationship between and the numerous responsibilities of the families during and after the Surrogate’s pregnancy.
- Ensure the Agreement is witnessed and notarized when signed by the parties, which provides extra assurance that all parties accept its terms voluntarily, of sound mind, and with full informed consent.

MEMORANDUM

To: FILE
Fr: i
Da: APRIL 3, 2011
Re: Journal Assignment No. 3-Allen Mediation

On Friday, April 1, 2011, I attended a mediation session for my client, David Allen. Lynne Allen, her attorney, and the mediator were present, along with my client and myself. The focus of the mediation session was on the custody of the Allen children, Joey and Jane.

I found it most surprising how much communication the clients were able to have with each other during the mediation session; the clients were really the focal points of the mediation. It was surprising to hear the clients get so emotional and angry with each other, and then hear either the mediator or one of the attorneys eloquently sum up what one client was trying to say, and actually have the other client agree! It made me realize that oftentimes divorcing couples are probably so used to fighting with one another, that they stop really listening to what the other has to say. By using a mediator and attorneys, it allows the couple to say what he or she is thinking, but then also listen to what the other is actually saying. It is a simple idea that probably happens too rarely when a divorcing couple is trying to finalize their divorce.

I was informed before the mediation session that attorneys oftentimes struggle with their role in mediation. I found that it was sometimes difficult to calculate the right time to interject the parties, and speak on behalf of my client. I did not want to interrupt them solely because either one or both of them became angry, but also felt like the mediation would not be effective if they got too emotional, and checked out. Also, the mediator would sum up what the parties were saying so it was hard to judge when it was more appropriate for the attorneys to speak, and when it was better for the mediator to speak up. Thus, I tried to step in anytime the parties continued to say the same thing in various ways more than once, or I found that the parties were

in agreement on an issue. For example, my client kept saying that he “did not want to lose his children,” and “did not want to be a weekend dad.” Therefore, I expressed to Lynne and opposing counsel that clearly David wanted to stay just as involved in his children’s lives, and Lynne agreed that she wanted both David and herself to be involved parents. Thus, the parties found a common ground to agree on and work from.

After reaching this common ground, my client and I stepped out to meet with the mediator privately. My client and I agreed that there should be a parenting plan in place prior to him moving out of the marital residence. Thus, during the private meeting, we discussed a possible schedule for parenting time. We came up with a proposal involving David and Lynne rotating alternate weekends with the children, and two nights after school with David when he had weekends; and three weeknights when he did not have the children on the weekends; thus splitting the parenting time in half. I found this private meeting to be the easiest part of the session mainly because it felt the most familiar because I was in a more “traditional attorney” role by counseling my client and creating possible solution to the primary residency dispute.

Mediation is an excellent starting point for divorce matters, and possibly a complete alternative to litigation if an agreement of the entire case can be reached prior to a trial. During mediation, a party can explore the concerns and positions of the opposing party on specific issues such as child custody, child support, maintenance, and equitable distribution of property. In the alternative to litigation, mediation may also be a good forum for settling specific issues within the divorce case even if other issues in the divorce are being litigated. Mediation is generally a good option for deciding issues regarding the children (i.e. custody and visitation). Mediation allows the parents to retain decision-making regarding the best interest’s of the children, rather than leaving it up to a third party judge who knows nothing about the family. Since the parties

will always be the children's parents together, mediation also allows the parents to learn how to parent separately, but still work together for future disputes and decision making for their children. Mediation provides a private forum for families to hash out intimate, private disagreements. Although the majority of issues in divorces are appropriate for mediation, it is not necessarily the best forum for every situation arising from divorcing couples.

Divorce cases involving domestic violence may not be best suited for mediation. The power imbalance between the parties may lead to unfair outcomes regardless of what issue is being decided. Thus, divorce cases involving domestic violence should either be negotiated between the parties and their attorneys, or litigated in court rather than using mediation. Since the Allen's case does not involve domestic violence, it was proper to use mediation in an attempt to work towards settlement of the custody issue. Some cases involving high asset divorces may be settled more effectively by using arbitration, where an expert in the field can figure out how to split up the couple's assets. These cases may also be better suited for a courtroom as well in order to call expert witnesses to testify.

I really liked having students from the Mediation clinic join in the exercise because it structured the exercise more realistically by having a student with mediation experience act as the mediator. I also found it helpful to watch how the mediation students responded to emotional clients since I believe in the usefulness of learning from my peers. I would have liked to have gotten more feedback from the supervising attorney about how I personally did during my role as an attorney for David. I was slightly unsure of exactly what the attorneys should be doing, and my supervising attorney kept giving more generalized feedback and direction about the mediation process, as opposed to specific, personal feedback for each of us. In sum, I thought the exercise was excellent, and I learned a lot about the dynamics of the mediation process.