

GARDEN STATE CLE LESSON PLAN

A 1.5 CLE CREDIT COURSE

FREE DOWNLOAD
LESSON PLAN AND EVALUATION

BRIDGING THE GAP: FAMILY LAW

WITH

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AND FEATURING

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Program Description

This “Bridging the gap” cle program will provide basic and practical information needed to successfully appear in the Family Court. The course is also helpful for those who only appear in Family Court on rare occasions.

I. INTRODUCTION

II. LEGAL FEES AND THE MATRIMONIAL CLIENT

- a. Factors include the type of case, incomes, children, assets etc.
- b. Setting the Retainer Amount
- c. Enhanced fees are justified when the case involves minor children, custody, amount and type of property to be divided, length of marriage, weighing the intangibles of emotion and the charge it gives to both sides (to fight over a chair for example)
- d. Visitation rights, even those for pets
- e. Discuss with the client the emotional vs. the financial and the cost of legal representation
- f. The Uncontested Divorce Cause of Action

III. RETAINER AGREEMENT

- a. Scope of Agreement including items EXCLUDED by the Agreement
- b. Flat fee or hourly, billable against a retainer, DETAILS including when a replenishment of the retainer is expected
- c. Judge the proper size of a retainer and make provision to be removed from the case before 90 days in advance of trial or Early Settlement Panel (ESP)
- d. Minefield: Attorneys can wind up staying in a case without money, get enough and have a reliable fee agreement

IV. HOW QUICKLY FOR A DIVORCE?

- a. Certain time requirements apply to certain causes of action: separation over 18 months, adultery, addiction, extreme cruelty
- b. As a rule, it takes awhile. But in a rare case, divorce can occur in a very short period of time, even as little as 30 days
- c. Affairs, cheating, and other bad conduct should not result in any financial punishment during the divorce
- d. NJ' s "No Fault" divorce cause of action (irreconcilable differences) is N.J.S.A. 2A:34- 2A(d).

- e. Establish a relationship and set the tone by calling your adversary immediately. Some attorneys can be worked with on settlement.

V. **ALIMONY**

- a. Factors relative to the award of alimony include length of marriage, incomes, number of children, assets for division, lifestyles of the parties, whether the non working spouse can return to the workforce, health, employability
- b. No bright line rules for permanent alimony. The ten (10) year presumption is rebuttable
- c. Rehabilitative alimony is easier to pitch to the Court and your adversary, it is an easier sell. It beats permanent alimony any day of the week for the paying spouse.
- d. Alimony has a tax ramification that is favorable to the payor and unfavorable to the payee. Have your client get a CPA opinion.

VI. **CHILD SUPPORT**

- a. Factors relating to the amount of child support are, first and foremost, the incomes of the parties and the application of the child support guidelines. After that, look to the special needs of the children, special expenses of the children, parental agreement, visitation schedule, parent of primary residence, etc. It is primarily a mechanical formula.

b. Child support has no tax ramification.

VII. VISITATION/PARENTING TIME

- a. Schedule is set best by agreement. The parties know the children and their needs best. A Judge making the call is not preferred.
- b. There is no right to deny parenting time absent an allegation of child abuse.

VIII. SALE OF THE HOUSE

- a. Keeping the children' s home is usually in their best interest.
- b. Is it affordable? Run the numbers.
- c. Calculate a value for the children and the spouse remaining at home that figures into the alimony or child support determination or equitable distribution amount.

IX. FILING SUIT FOR DIVORCE

- a. Prepare the Complaint, Affidavit of Insurance, Case Information Statement and Confidential Litigation Statement

for filing with the Family Court, a part of the Chancery Division

- b. Case Information Statement is an overly inclusive form with a lot of work to be done by client and attorney, both parties file it

X. DISCOVERY

- a. Depositions
- b. Interrogatories
- c. Document demands
- d. Motions to enforce discovery rights

XI. MOTIONS

- a. Example: Enforce Litigant's Rights pay bills, pay support or alimony, seek garnishment

- b. Visitation example: compel Wife to allow visitation and not to poison children against the other spouse.

- c. Experts can be hired/used in litigation for psychological analysis of the family and to help the Court in determining “best interests of the children” and painting an in depth picture to the Court

- d. Orders to Show Cause are available for some applications. Ex Parte applications can be made on short or no notice. Ask the Court and its Clerk before filing re proper procedure

XII. UNMARRIED PERSONS

- a. Palimony causes of action are available in New Jersey
Kozłowski, 80 N.J. 378 (1979).

XIII. CLIENT COMMUNICATIONS, CONTROL
AND CLIENT EMERGENCIES

- a. Let the client know: they are billed for each call and each hour
- b. Remind the client of what is (and is not) an emergency

XIV. ADVICE FOR YOUNG ATTORNEYS

- a. Good things can come of this type of representation
- b. Thank you notes actually do arrive
- c. There is satisfaction in a job well done
- d. Make a motion to be relieved if you need to do so

- e. Counsel must prepare the client for court appearances and make sure that they understand the process, especially if attending for a custody motion
- f. Put all of your arguments in your papers, don't waste the Court's time, it is a precious resource in our justice system
- g. Adversary counsel is not your enemy, be civil
- h. Keep up with current caselaw
- i. Don't have your client empty bank accounts or dump assets
- j. Have a good and reliable mentor to go to for guidance
- k. Be diligent

XV. SPEAKING WITH CHILDREN

- a. DO SPEAK TO THEM when the circumstances warrant

The age that Court's tend to listen to children about custody is about 13, depending on the maturity of the child

XVI. DIVORCE TRIALS

- a. They still occur

- b. Trials are about the money, division of assets, alimony and custody

- c. Trials are anti climactic in many cases, certainly in a “put through” of a settlement where often only ONE party appears

XVII. THE PROPERTY SETTLEMENT AGREEMENT

- a. Elements of a PSA are:
 - i. All agreements between the parties
 - ii. Child support and custody/visitation
 - iii. Alimony
 - iv. Equitable Distribution
 - v. Insurance
 - vi. Autos
 - vii. Pensions
 - viii. All property, even the family dog
 - ix. Miscellaneous provisions

XVIII. EQUITABLE DISTRIBUTION

- a. Acquisition date of property, before or after marriage

- b. How much was paid for the property DURING the marriage and appreciation amounts

XIX. PRENUPTIAL AGREEMENTS

- a. Independent counsel
- b. Fair wording of the agreement, to make it enforceable
- c. Reasonably far enough in advance of the wedding
- d. Age matters, and amount of assets in hand too
- e. Inheritances are NOT subject to equitable distribution