

MEMORANDUM

TO: UFC

FROM: Ira Feldman
Kathy Baker

RE: Proposed LL.M. in Family Law

I. INTRODUCTION

In the past 30 years, due in part to rapidly changing social norms and in part to significant technological advances, the field of family law has grown exponentially. This growth can be measured both in the number of people practicing in the area and in the complexity of the field as it is practiced.

Among the kinds of changes we have seen in the last 30 years are: blossoming forms of inchoate property (stock options, intellectual property rights, partnership arrangements) that need to be divided at divorce; increased labor force participation from women necessitating an alteration of a needs-based compensation system at divorce; social acceptance of non-marital cohabitation leading to increased reliance (for both straight and gay people) on contract and quasi-contract theories of property distribution at dissolution; increased acceptance of both pre-and post marital contracting; gay marriage and civil unions; people marrying at an older age and bringing extensive monetary histories into the union; increased acceptance of gay parenting relationships leading to a plethora of legal questions regarding the original and nature of parental rights and responsibilities; technological advances that allow us to distill genetics from gestation and intent to parent and

which, in turn, beg questions of the role of investment, intent and property in the determination of parental rights and responsibilities; burgeoning psychological theory and practice, particularly in the area of childhood psychology, much of which is now routinely introduced in any litigation involving children, and the relevance of which is highly contingent on antecedent questions regarding parental rights and responsibilities; and, finally, technological advances that allow us to determine genetic connection with a certainty that demand judgment about the legal importance of genetic connection.

In the last five years alone, the American Academy of Matrimonial Lawyers has reported a 25% increase in overall membership. Of the largest (over 200 lawyers) law firms in Chicago, none of which are “family law firms,” 11 list family law as a specialty. LAMBDA’s Chicago office reports that ½ to 2/3 of its caseload are family law cases. In the last year, the Illinois Supreme Court decided 17 family law cases. The Illinois appellate courts decided 102 family law cases.

The LLM in Family Law is designed to meet the increased demand for family law expertise that the growth in this area has generated. The program, as currently designed, offers a mixture of cutting edge practice and theory. The internship (detailed below) and some of the coursework (Forensic Accounting, Forensic Psychology, Advanced Litigation Techniques, ADR) focuses on the practical implications of the technological and normative changes outlined above. One of the things that makes Family Law unique is that it is still, in large part, a general practice area. Many practitioners must know something about tax, real estate, partnership law, child psychology, contract, as well, of course as basic family law. As each of these sub-areas has ballooned, so has the information that a family law practitioner must incorporate into his or her practice. Effective incorporation of that material requires being educated in technique and substance.

The LLM also requires immersion in emerging theory. Many of the practical courses necessarily include a substantive component, of course, because it is impossible to create and use sophisticated financial or psychological documents without understanding what they are and where they come from. The other courses (Advanced Issues in Family Law, Children and the Law, and the Independent Research Requirement) will dive into topical issues of the day. In particular, the Independent Research Requirement (which will be worth more credits than any other class course) will demand that students develop a thesis in an emerging area of family law, research and expand on that thesis and produce a paper of publishable quality. Although students will be free to choose any faculty member as their advisor, Professor Baker expects to act as the faculty advisor for the majority of these papers.

In what follows, this memorandum lays out what will make Chicago-Kent's LLM program distinct, why we think there will be a market for it, how it will be funded, and, finally, what the curriculum will be.

II. EXISTING PROGRAMS IN FAMILY LAW

Presently, there are two specialized programs in the area of Family Law in the Chicago area; one is a certificate program as part of the J.D. curriculum at DePaul, and is a master's of Child and Family Law at Loyola.

DePaul houses the Schiller DuCanto and Fleck Family Law Center which provides for a Family Law Certificate, as part of the J.D. program. The requirements of this certificate program include five family law courses, one of which is practice-based. The course work offerings encompass a wide variety of topics, such as adolescent health, disability law, elder law, feminist jurisprudence,

housing and urban development, legal issues of AIDS, and sexual orientation and the law. Two courses must include significant research papers. The Field Placement Program places students in public interest jobs.

The only family law oriented LL.M. program in the country is the Child and Family Law LL.M. program at Loyola. The Loyola program, which usually enrolls five to seven LL.M. students each year, emphasizes “promoting justice for children through the new legal specialty of pediatric law.” The LL.M. degree there requires twenty-four credit hours, twenty-one in course work and three for a thesis. Four courses are required with the rest of the course work being completed in electives. Students may choose to represent child clients through the Child Law Center at Loyola and/or assist in editing the Children’s Legal Rights Journal.

III. The Chicago-Kent Program

The Chicago Kent LL.M. program in Family Law will provide a significantly different product than either of the two other Chicago area programs. The coursework will be significantly more advanced. Because it will be geared to students who already have JDs, the extent and depth of the coverage in most of the courses will exceed what DePaul can offer. Because the program will focus on much more than just children, the program will offer precisely the kind of general practice experience that anyone serious about practicing in this area must acquire (but which Loyola does not provide). Neither of the other schools offers anything like the practice-oriented courses that we will. By the same token, including the independent research requirement as a cornerstone of the program requires that any graduate emerge with solid grounding in substance and theory.

Moreover, and importantly, we will offer a part-time alternative. In doing so, we hope to capitalize on what we believe will be a part-time market for an LLM or partial LLM. As is detailed below, we envision this program enrolling some full time students and some part-time students. Part-time students would not be required to take the internship and instead would fill out their curriculum with three other courses from the JD curriculum. There are numerous advantages to offering this program to part-time students. First, it allows people to keep their jobs and still enroll in the program. This will make the program more attractive to both individuals and firms who may be willing to pay. Second, it allows some students who are not sure that they want to invest in a full LLM, but are still eager to take some courses, to do so. Our experience with the Tax LLM suggests that some of the best students never finish all of the requirements, but nonetheless emerge from the partial program with a much more complete education in tax and an appreciation for the expertise that Chicago-Kent has given them. Third, it will fill out some of the LLM classes, thus creating more diverse classroom participation. Fourth, it will give us more flexibility in filling the full-time program. If not enough qualified applicants apply for the full-time program, we will not have to take them.

It is very difficult to gauge exactly what demand for what such a program will be. The adjuncts that we have contacted about teaching courses for the program, all of whom are experienced practitioners or judges, are also enthusiastic about the program (though they thought it inappropriate to write in support). The firms that have expressed an interest in “adopting” an intern, have also indicated that they would be likely to rely on such a program, not just for internship help, but as a way of ensuring that entry-level hires were as experienced as they needed to be. It is also well worth noting that student interest in the Family Law JD clinic is much higher than originally anticipated. Although we were

optimistic that such a program would work when we adopted it three years ago, we never anticipated that student demand would be as high as it is. Not only do students enroll, they are enthusiastic participants and often leave eager to practice in the area.

IV. FUNDING AND ACCREDITATION

We anticipate that initial outside funding should be able to cover most if not all of the initial costs for the program. Usually, there are three categories of start-up costs: marketing, administrative help and accreditation. We have already secured a \$25,000 commitment from one donor and we are hopeful that, with enough lead time, we can secure enough donations (probably around \$35,000) to fund the start-up. Once it is running, the program should be able to break even with just 5-7 full-time students per year. Obviously, the more part-time students we have, the fewer full time students we need to make the program profitable. Tuition for this program will parallel the tuition scheme for our LLM in Tax. Full-time matriculants will pay \$750 per credit hour. Each LLM course, with the exception of the independent research and the internship, will be worth 2 credits. The independent research project will be worth 3 credits and the internship (requiring 27 hours of work per week) will be worth 9. This will mean, approximately \$18,000 a year for full-time tuition. Non-full time students will pay a slightly higher amount (\$840) per credit hour.

Given the program's significant reliance on adjunct faculty, we do not anticipate any major impact on faculty resources.

V. PROPOSED CURRICULUM

Presently, we envision the curriculum to include the following courses. As indicated, full-time students would take all of the courses listed below. Part-time students would take all of these courses except the internship. They would make up the 9 credits of internship with three other courses from the current JD curriculum.

Forensic Accounting (2 credits): This class will explore divorce taxation, valuation of business entities, valuation of deferred income plans, and sophisticated financial documents, such as complex tax returns, financial statements, and various corporate reports. This class will be taught by Bruce Richmond and Jeffrey Brend, both experienced in preparing and offering valuation testimony at trial.

Forensic Psychology (2 credits): With the ever increasing number of cases in matters of Paternity, Adoption and Divorce, issues of psychology become ever more important in resolving the custodial placement of a child. This course will instruct the students in the use and value of the various psychological tests used by the court today. The students will learn how to prepare a case strategy using expert witnesses to their maximum potential as well as to learn effective cross examination skills. This course will be taught by Leslie Star, Ph.D., a clinical and forensic psychologist, who has been appointed by the court hundreds of times to provide custodial evaluations and who testifies regularly on these matters before various tribunals.

Advanced Litigation Techniques (2 credits): This class will expose the student to the effective use of stipulations, the ability to narrow issues using special motions, insight as to how to prepare exhibits for maximum impact, strategic use of effective opening statements and closing arguments and the development of a trial notebook. This class will be team

taught by the Honorable Nancy J. Katz and the Honorable Edward R. Jordan; both judges of the Domestic Relations Division in the Circuit Court of Cook County.

Alternative Dispute Resolutions (2 credits): The title of this course bespeaks its contents. Family law courts increasingly rely on various alternative dispute resolution programs. A contemporary practitioner must be well –versed and well-prepared for these alternative to litigation.

Advanced Issues of Family Law (2 credits): This course will concentrate on emerging areas in family law. Topics include parental rights and responsibilities in reproductive technology cases, pre and post nuptial agreements, courts of concurrent jurisdiction, strategies to avoid discharges in Bankruptcy, special laws unique to Native Americans, and cohabitation agreements. This course will be team taught by Judge William Boyd and Ira Feldman.

Children and the Law (2 credits): This course is designed to train the practitioner to become child’s representatives, attorneys for the child and guardian ad lita. Issues will include rights of children, parents and the state, decisions about medical care, juvenile courts, child abuse and neglect, and education and the law. This course will also help students develop interview techniques to solicit requisite information necessary to effectively represent the child before the court. The course will be jointly taught by Joel Levin and Ralla Klepak, both qualified attorneys on the child’s representative list of the Circuit Court of Cook County.

Independent Research (3 credits): Each student will be required to choose a contemporary topic in family law and

write a publishable quality research paper. Students will work in close contact with their advisors and should expect to go through at least 2 editing cycles (3 drafts) for each paper.

Internship (9 credits): Up to 7 full-time students a year will be placed in a law office or clinic that practices family law. In either case, students will be expected to do perform the work of a lawyer, albeit one with limited experience in the area. Professor Feldman will supervise these internship extensively. Technically, he will act as co-counsel on any case the students work on. He will meet with each student no less than two times per week and review all case assignments to ensure that the student receives exposure to the various concepts being taught in the rest of the program. Professor Feldman will also meet regularly with the student's off-site supervisor to discuss both the school's expectations in the placement and the student's performance of those expectations. Several firms have already expressed an interest in taking such students, as has the Chicago office of LAMBDA. It is expected that each student will spend 27 hours per week on the internship. This works out to a 3:1 ratio of hours to credits. Although this ratio is slightly lower than that for our JD clinical students, it is appropriate in light of the fact that the students will already have JDs (they will bill out at a higher rate).

JD Courses (for part-time students) (9 credits): Because it will be impossible for working students to participate in the internship and because some students may prefer not to, the program will also offer an alternative to the internship experience. Students who want to can take three JD courses that they did not take as JD students but which they think will be particularly helpful to a family law practice. Many people end up specializing, or partially specializing, in a field that they never contemplated while they were students. Most

lawyers probably find out, once in practice, that there were several courses they wish they had taken, but did not. Part-time students can use this program to fill the gaps in their education. We anticipate that most students will fill those gaps in the following areas: bankruptcy, immigration law, taxation, corporations, trusts and estates, and sexuality and the law, but we are open to other suggestions. Any proposed course of study will need to be approved by Professors Feldman and Baker