

Family Law Education Reform Project

Hofstra FLS Husband's Confidential Facts (Divorce)

OVERVIEW

This document contains the confidential pre-initial interview information and background for David Allen (the husband) for use during the client interview and client counseling exercises.

EXPLANATION AND COMMENTS

This memorandum should be given to student in the role of the husband in this skills exercise. Professors should emphasize the need to keep this memorandum to one's self, as the divulgence of information could harm the ability of students to fully experience the exercise.

ABOUT THE AUTHOR

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Professor Schepard is the Chair of the Family Law Education Reform Project co-sponsored by Hofstra Law School and the Association of Family and Conciliation Courts. He is an attorney member of the Judicial Conference of the State of New York. Professor Schepard is also Program Director for the National Institute of Trial Advocacy's course in Modern Divorce Advocacy and has served as Program Director for NITA's Child Advocacy, Deposition and Trial Advocacy courses.

Professor DiFonzo has had a wide-ranging two decades of law practice before becoming a full-time professor, including stints as a federal prosecutor and as a litigator in the areas of family law, criminal defense, negligence, and professional malpractice. In all, he conducted over 30 jury trials and several dozen appeals. He has taught at Hofstra since 1995. From 1995-2003, he served as Director of the Criminal Justice Clinic. From 2005-2008, he served as Director of the LL.M. Program in Family Law.

DO NOT SHOW TO ATTORNEYS REPRESENTING LYNNE ALLEN OR TO LYNNE ALLEN

Confidential Memorandum for David Allen

Family Law with Skills

Fall 2008

Confidential Background Facts

Several days ago, you called Nicholas Grant, a solo practitioner who represents the medical corporation of which you are a member on business matters. You asked him for a referral for a consultation on your divorce. Grant was in a hurry when he talked to you, but gave you the name of a family law specialist attorney he met through bar association activities. Grant said he would call the attorney and tell him to expect your call. Grant's secretary later called you and told you that the contact had been made, and that you should call the attorney for an appointment. The secretary told you that Grant had not had a lot of time to give the attorney background information about the state of your marital issues and that you should be prepared to start from the beginning.

You called the lawyer's secretary and arranged an appointment. The lawyer was in court at the time you called and you did not speak with him personally. Fees were not discussed when the appointment was scheduled. Nor did the secretary ask you for any background information obtained about Dr. Allen.

Attached are confidential facts that you should reveal to the lawyer during the interview if you feel that the lawyer has asked an appropriate question and developed an appropriate relationship of trust and confidence with you.

Note that you want a clear explanation of the lawyer's fees should you decide to seek a divorce from Lynne.

Note: The interview with counsel takes place in Fall 2004.

Your Relationship with Norma

You feel somewhat guilty about your affair with Norma but also angry at Lynne. You still have some affection for Lynne, but believe that the marriage is over. You do not feel that marriage counseling with Lynne is a viable option. You feel that Lynne has changed drastically over the years, that she abandoned you for her career, and that she is becoming neglectful of the children as her job demands increase. You are anxious to get a divorce so that you can marry Norma, who, you feel needs you, supports you totally, and will give you the kind of family life you desires.

Norma has agreed to give up her job as soon as the two of you can marry. You think Norma will be a terrific mother for the children, where Lynne currently is not. You also think Jane and Joey will get along well with Norma's children.

You plan to marry Norma as soon as your divorce is final. You plan to have additional children, but not necessarily right away. You and Norma have decided that Norma should devote a great deal of time and effort to establishing a strong relationship with Jane and Joey. When you and Norma marry, you want to buy a house in Huntington -- hopefully one in which Jane and Joey will also live. You are, however, fearful that you won't have enough money to continue to meet Lynne's and the children's expenses, and also provide for Norma and her children, as well as any children you might have with her. You think that you all may have to move from Huntington to a less affluent neighborhood.

Your Views on Parenting and Residence of the Children

You are unwilling to move out of the marital residence until the divorce and parenting issues are settled. You fear that if you move out, you will not get back in. You are not happy about the tension that results from living in the same home with Lynne, but you see no alternative that will not potentially damage your relationship with Jane and Joey.

You want sole legal decision making for both children. You feel that Lynne is too involved in her emerging career and has insufficient time and energy for the children. You are upset about Lynne's reaction to the children's present difficulties and feel this does not bode well for the future. You are very troubled by the "barriers" Lynne is erecting to Norma's relationship with the children. You are particularly concerned about Lynne's influence on Jane. You feel that Jane idolizes the person Lynne has become, which you feel fosters a very negative self-image. You are adamantly opposed to any restrictions on the children's relationship with Norma.

Your Concerns Regarding the Well-Being of the Children

You have serious concerns about the emotional well-being of the children -- especially Jane. Based on your own observations, the letter from the school psychologist, and the follow-up meeting with school personnel, you feel that continuing therapy for both children is advisable. You have a colleague at NITA Medical Center you would like the kids to see who is a well-qualified child psychologist. The colleague will not charge you market rates for the services, and your health insurance plan does not cover mental health therapy for the children. You raised the issue with Lynne, and are angry that Lynne has been reluctant to permit this.

You would participate in family therapy (with Lynne, Jane and Joey) to facilitate the divorce, and your (and Norma's) relationship with the children if the aim of the therapy is divorce adjustment- not reconciliation with Lynne.

In general, you have been upset and angry at Lynne and your own parents' reaction to your marital difficulties. You feel that both Lynne and your own parents are blaming you for destroying the marriage by your affair. You feel, however, that your involvement with Norma is a symptom of the earlier death of your marriage. You are angry at Lynne for putting her own need for a career above those of your marriage and family.

Your Concerns About Lynne

You believe Lynne is seeing another man. She has come home very late some evenings, and never explained where she was. She called you and asked you to take care of the children on several occasions because she had to "work late" at the station. You are suspicious of her late nights. You have never confronted her about it, nor seen her out on a date with anyone else, but you believe that an affair is the only explanation for Lynne's behavior.

Your Position on the NITA Radiological Association Job Offer

You want to accept the NITA Radiological Association post. You recognize, however, that doing so may require financial sacrifice from you and from the children. You do not think Lynne will accept the financial sacrifice and will oppose you taking this job. You believe that you can take the job, commute to NITA City for work as you have been doing for some time, and still maintain approximately the same schedule as you do now. You do not believe that taking the NRA post will significantly reduce the time you spend with the children.