

# Family Law Education Reform Project

## Problem Six – Collaborative Custody

### OVERVIEW

This exercise expands upon the facts of Exercise One, and is aimed at introducing students to the field of collaborative law. This exercise expands upon the original facts of exercise one, and forces students to work under the standard of collaborative law to produce a child custody agreement.

### EXPLANATION AND COMMENTS

Working with a partner, students should develop a collaborative child custody arrangement for parents and negotiate with the same teams you worked with for Problem One. Students should focus solely on the child custody/visitation issues, and bring a proposal to a negotiation with the lawyers representing the other party.

### ABOUT THE AUTHOR

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## Problem Six

**Patty and Les, continued. You have the same client as in Problem One.** (If you need to remind yourself of the first part, go back to the scenario in Problem One and the confidential information about your client.)

**With your partner, develop a collaborative child custody arrangement for Patty and Les and negotiate with the same teams you worked with for Problem One, in class November 21.** Focus solely on the child custody/visitation issues, and bring a proposal to a negotiation with the lawyers representing the other party.

The negotiation will take place on November 21; discussion of the negotiation will be on November 25. Everyone must come to Rm. 355C to sign in and then immediately begin the negotiation. You may meet in the classroom or you may meet in another location in the law school that you have previously agreed upon with opposing counsel. **After 50 minutes, STOP.** Be sure to write a brief summary of the agreement and/or draft paragraphs.

The following are additional facts to those presented in Problem One. There also is a statement of a psychologist that the parties jointly agreed upon for an evaluation of the children, Dr. Leslie Green. Finally, a financial statement is attached for your information to the extent it is relevant to your thinking on the childcare issues, but you are solely to negotiate issues regarding the children in this negotiation.

### **Statement of Facts**

Patty and Les decided drawing up a pre-nup was just too much of a hassle. So they got married without one. And not a moment too soon, because Patty discovered that she is pregnant.....with twins! Les' mother offered to help them take care of the twins, and a temporary arrangement turned into a permanent one.

Five years after the twins were born, they decide to divorce. There is no single reason that seems to have brought them to the divorce, but rather a host of reasons. First, Patty would say her mother-in-law is a factor. For the first two years all went well, although they had a few stresses and strains from having her mother-in-law living with them, although in a separate wing of the house. Ruth is close to her son, and used to running her own household, and likes to cook. At first that all sounded great, but Patty increasingly feels like a guest in her own home because her mother-in-law has taken over.

They also suffered through some financial stresses, since Les made less income from consulting than he had at his prior job. Luckily, Patty continued to do well and her bonuses tided them over until the consulting business became more lucrative and consistent. Nevertheless, Les is not making the same income that he did in Chicago. While Patty always viewed herself as a liberated woman, she is not entirely happy that Les is not as successful a breadwinner as in the past. She also feels like he is not being aggressive enough in his consulting business because he spends more and more time practicing and playing with his band, which admittedly has gotten more

successful. Patty loves her job, but now feels pressured to stay in that job, since she is now the primary breadwinner. When he recently confessed to Patty that he really wanted to pursue his life dream of being a professional musician full-time, however, that was the final straw.

Les sees the main issue that has arisen between them is Patty's over-commitment to work and stress from her teenage daughter, as well as her inability to get along with his mother. Patty's daughter Lisa was distressed by her parents' divorce, and then upset by her move away from her relatives, including her dad, who had been very involved in her life. She hated Chicago, and did not get along very well with Les' much older daughter Yvonne, although Yvonne was rarely at home. After the move to Bliss, things were somewhat better, but again it was another move, plus her mom often did not get home until after 8. She did like her new grandmother, though, who pampered her and showered her with everything that she wanted. The only thing that she fights with her grandmother about is speaking Spanish. Her grandmother is a retired English teacher, and thinks bilingualism undermines her English capability. So she does not speak Spanish with her, and since Lisa does not speak Spanish at school, she feels like she is losing her capability to speak Spanish. She fights with her mother all the time, about typical teenager issues.

Patty and Les seemed to disagree totally about how to parent teenagers. Patty feared that Les would turn Lisa into a spoiled brat like his daughter, while Les thought Lisa needed all the supportive, positive strokes that she could get. He viewed her wildness as a good thing, asserting her independence. He especially connected with her musical talent on the keyboard. He also thought his mother was a great presence in her life, especially because Patty was working so hard.

Les would do anything for his daughter Yvonne, and Patty sometimes feels she is number one in his life, rather than her. She is concerned that Les and his mother are following the same pattern with her daughter, and will do the same to the twins. She is constantly irritated that her mother-in-law will not speak Spanish with Lisa, and that Les gives in to her on that.

Patty wants to move back to New Jersey with the kids. She feels guilty about moving Lisa twice, and feels that has had a negative impact on her. If she moves back to New Jersey, she would be surrounded by relatives, and also Lisa would be able to spend more time with her father. In addition, Patty would be able to scale back from the ambitious position that she took when she moved to Bliss, without hurting her long term position in the company. The company's headquarters are in the New York metro area, so the options for her, within the company, are maximized in that location.

Les, on the other hand, thinks the children would be better off with him in Bliss, or at least thinks the twins should stay there. He thinks Patty really wants to continue working in her current job and is only moving to get away from his mother. He would be willing to have a rotating arrangement where the kids would stay in the house and the parents cycle in and out, and his mother would be the ongoing caretaking stable person in their lives. He also is willing to move to another house, one that is less expensive. He sees his budding musical career as a plus, since it gives him more flexibility, although it will reduce his income. But Patty's income would more than be sufficient. His mother is very attached to all of the children, and he is concerned about maintaining the relationship of the children with their grandmother.

Patty also wants to resolve the bilingual issue. If they are going to separate, she does not want the children to be bilingual when they are with her, but only allowed to speak English when they are with Les. It is a matter of both language and culture to her, and of great concern. Les is very proud of the culture of his family as well, and wants to insure that it be given its due.

Patty would like to scale back in her job and have Les take on more of the financial burden. She is also concerned that there be planning for the twins' college education. Lisa's father already has agreed to split the costs of college for her. Patty does not feel that Les should be obligated to help her with those costs, but wants to insure that the twins' future is taken care of. Since he is so interested in his musical career, she is concerned that his resources will dwindle. Les has continued to support his daughter in New York after graduation, as she is trying to break into acting. He pays her rent and gives her money for some expenses. Patty has always objected to that as over-indulgence, and a drain on family resources.

Finally, Patty would also like to recoup some of the resources that she placed in their residences before she got married. She and Les have been together for almost 10 years, although they married only after moving to Bliss 6 years ago. Even though they did not marry until they moved to Bliss, she certainly felt like they were married the entire time, and Les promised that he would always be fair no matter what happened. They simply had not discussed specifics or written anything down at the time. Les tends to view their time before they were married as simply that each of them was financially independent, although they were emotionally committed to each other. He wants to be fair, but does not feel like they were "married" during that period.

#### Psychological evaluation of the children

Both Patty and Les want the divorce to be as easy as is possible on the children. They jointly chose a psychologist, Dr. Leslie Green, to evaluate each child independently and in the context of the entire family, to help them sort through the issues connected with their divorce. Dr. Green met with the family as a whole and with each of the children, including Les' 25 year old daughter, Yvonne, and Patty's 15 year old daughter, Lisa, and the twins, Jorge and Carolina. With the twins, she did "play therapy" with them, talking about what was happening in the family. After sufficient sessions with all the children she gave Patty and Les some general considerations to keep in mind.

Dr. Green found, that despite the stresses that brought Les and Patty to file for divorce, they are determined to work this through in the best manner possible. They are committed to working things through for the best interests of the children, and she is not concerned about animosity between the two adults rendering any future relationship difficult or tense. She noted in particular that each has been devoted to being a positive stepparent for Lisa and Yvonne, although it has been more difficult with respect to Yvonne since she only lived with them for one year before leaving for college.

Dr. Green also met with Ruth Williams, the grandmother, who has been such a strong presence in the family since she moved from New Jersey nearly six years ago. She is a strong, loving, intelligent, caring person, who cares deeply about the children, and is distressed about the

divorce. She has deep bonds with all the children, and would like to continue to be present in their lives as a caregiver or otherwise.

Dr. Green found that Yvonne has distanced herself from the family, diving into her life in New York once she left home. She never had enough time to connect well with her younger stepsister, and both were jarred by their parents' relationship, and never quite got comfortable with each other before she left for college. This has settled down over time and they now actually enjoy time together when Yvonne is visiting or when Lisa goes to visit her father, but they are still not close. Lisa's recent interest in music and Yvonne's longstanding interest in acting actually have brought them closer together. Yvonne is fond of the twins, with whom she feels more family connection. She has a cordial relationship with her stepmother, and recognizes what a positive impact she has had on her father's life, but simply has not spent enough time with her to develop a deeper relationship. She is wary on that score because she has had such a troubled relationship with her mother. Despite her mother's attempts to mend fences, she continues to be estranged from her, and blames her for her parents' divorce. She has a very close bond with her father, and also is very close to both her grandmothers, but especially her father's mother. While Yvonne is an adult and not part of any formal custody structure, Dr. Green urges that her needs and place in the family be kept in mind. Yvonne sees the divorce as increasing her opportunity to spend time with her father.

Dr. Green is most concerned about Lisa. She is experiencing classic teenage rebellion, experimenting with drugs (thus far only marijuana) and refusing to do her work at school, while diving deep into her music. Her adolescent rebellion has been exacerbated by two moves, her distance from her relatives and especially her father, and her mother's increased workload, along with her sense of competition with the twins and her stepdad for her mother's attention and care. Like Yvonne's relationship with her dad, Lisa has a very close and intense relationship with her mother, although she also remains very close to her father as well. She is extremely bright and creative, but seems to be doing everything she can to not use those talents. She does a lot of acting out to get attention. She really likes her stepdad and her stepgrandmother, and sometimes just wishes her mother would be the one to leave, and she could stay with them. But she deeply loves her mother and knows that her mom has always been there for her. Her issues with her mother in many respects reflect the strength of their relationship. She has a group of very close friends that she has hung out with since middle school, and does not want to move in the midst of high school. At the same time, she misses her dad and family in the Northeast, and particularly the sense of belonging she has when she can freely speak Spanish, which her grandmother does not allow her to do when her mother is not around. The challenge for Les and Patty with respect to Lisa, according to Dr. Green, is to facilitate a resolution that leaves her feeling supported, wanted, and valued, rather than the kid who is getting dragged along through another change. She would very much benefit from a closer connection with her mother's extended family and with her father. At the same time, she has close ties with her stepfamily and at this particular stage, it is well to keep in mind her developmental stage, that she is in the process of coming into her own. She is connected to all the caring adults in her life, although she does not always express that positively.

The twins adore both of their older sisters. They are happy and well adjusted and eager to start school. They would benefit most from an arrangement that supports all of the sibling relationships in their lives, as well as an ongoing relationship with their grandmother, who has been such a critical caregiver in their lives, as well as both their parents. They have less of a close

relationship with their mother's extended family, because they have spent less time with them; they have spent more time with their father's extended family. They also have less attachment to speaking Spanish because they have spent more time with their grandmother than any other caregiver, and she does not speak Spanish with them; only their mother and occasionally their big sister does. They will be starting kindergarten in the fall and are very excited about that, and thought they would be walking to their neighborhood school. If they are to move, this would be a good time for them to move, since they would begin school and create close friendships at school. Since they have been cared for by their grandmother and not attended preschool, they have neighborhood friends but not a school community that they are attached to.

While there are differences in style among the three adult caretakers, Dr. Green found that for the most part, they work cooperatively, although she also notes that Patty is more strict in certain respects than either Les or the grandmother.

Finally, Dr. Green recommends that the issue of bilingualism be resolved between Patty and Les, and that they jointly resolve this matter with Les' mother. She notes that data indicates that learning a second language is easiest for children prior to age 13, and therefore this issue is particularly important for the twins, but also for Lisa, in being supported in her bilingual capabilities particularly as part of her extended family relationships and her own identity and culture. Dr. Green found that all the children have an appreciation of the ethnic heritage of their parents, and the richness of the culture in their strong family units.

Financial Information: **The following financial information has been prepared by both parties.**

Patty's New Jersey house: Patty received the marital home in her first divorce in settlement of the property issues. She paid the mortgage from the point of divorce, but the proceeds from the sale were solely hers. Her net proceeds from the sale were \$200,000, plus her husband had paid a lump sum of \$100,000 in lieu of any claim on his pension. Her husband also pays child support for Lisa in the amount of \$1200/month.

Chicago house: Les and Patty purchased the house for \$700,000. Patty made the down payment of \$300,000. The monthly payments on the remaining mortgaged amount plus taxes were \$4000/month. Patty made payments for one year until Les sold his house. After Les sold his house, Patty and Les made equal payments.

Les made little profit from the sale of his Chicago house, since he had borrowed against his equity in the house to settle his divorce. At the sale, his net proceeds were \$50,000, which he put into an investment account. He paid no child support since he was the sole custodial parent of his daughter. His ex-wife remarried and is a homemaker, and paid no child support.

At the end of three years, the house Patty and Les bought together sold for \$850,000. The net proceeds were \$450,000.

The purchase price of the Florida house was \$1 million. The owner needed a quick sale and they got the house for \$950,000. They put down \$450,000 from the prior house proceeds, plus \$50,000 from Patty's cashed in stock options. Les needed the cash flow when they moved to

support his consulting practice, and invested the lump sum in stock which was doing poorly when they bought the house, while Patty's stock options were very valuable. Their mortgage payments plus taxes (much lower in Bliss than in Chicago) are \$4000/month, which they have split equally. The current value of the house, from an appraiser hired by Patty and Les, is \$1.5 million.

When they began living together, they operated almost exclusively as if they were financially independent, simply trading off who paid for expenses in a roughly equal fashion, although sometimes Les would pay a bit more. They each contributed equal amounts to household expenses, to a joint account. Cars were individually purchased; vacations were joint expenses. They otherwise have kept separate accounts, and each has purchased items that they want without input from the other. Occasionally one of them thinks the other spends too much money, but neither one is a big spender.

Les' mother, Ruth, does not contribute to the expenses of the household. Since she moved in with them, she has done most of the cooking and provided all necessary childcare when Les and Patty are not available. The value of her contribution in providing childcare far exceeds the additional expense of having her live with them. Les and Patty purchased a minivan for her to use to transport the children when needed, and include that cost in their household expenses. She has kept her house in New Jersey so far, renting it to a long-term tenant. She can help Les pay his portion of the mortgage if his income from the band is not sufficient to cover that obligation. She does not have the resources to replace Patty's contribution, even if she sold her New Jersey house. She takes care of her expenses other than housing. The value of her childcare contribution is substantial; afterschool care for the twins, once they start school, will cost approximately \$100/week per child, and the cost of having someone to take Lisa to her afterschool classes and help her with homework would also be approximately \$100/week, although some savings occur if the same person can do afterschool for all three children. While Les can often work from home, his schedule is erratic, and when he plays with the band, he sometimes is gone for a weekend, so that would require weekend care. In her current job, Patty would require overnight care at least twice a month to cover business trips; if she moves back to New Jersey, relatives would be available for that care.

### **Other Assets:**

#### **Les Williams**

Stock Portfolio \$250,000  
Retirement Plan \$50,000  
1996 Volvo \$10,000  
Savings Account \$5000  
Instruments, and sound system for band \$25,000

Les' salary when they met was \$225,000 plus bonuses of \$5-10,000 annually; when he took early retirement, the incentive bonus was one year of salary plus a lump sum of \$25,000 which he invested in stock. His one year of salary allowed him to start up the consulting business and do comfortably the first year. Since the first year, his income from the consulting business has ranged from \$150,000-\$180,000.

Patty does not contribute to Les' expenses with respect to his daughter. Les was not obligated to pay her college tuition after divorcing his first wife, but did so because he wanted to. He paid full tuition costs for four years, beginning in the third year when Patty and Les were together in Chicago and continuing through the first three years they were in Florida. His daughter attended NYU, with tuition of \$30,000 per year plus living expenses. Because of those expenses, he does not have much in the way of savings, and also took money from his pension plan, which is now quite low. He has held on to some of his stock investments that he had at the time he and Patty first met. He also continues to subsidize Yvonne, so that she can pursue her acting career, at the rate of \$1000 per month.

If Les does less consulting and were to tour with the band, his income may drop by a third and it is unclear whether the band would be successful enough to replace that lost income.

Les turns 51 in a few months.

### **Patty**

Stock Portfolio \$50,000  
Retirement Plan \$250,000  
[company car]  
Savings Account \$80,000  
College Savings for Daughter \$60,000

Patty's salary when they met was \$125,000, increased to \$145,000 when she moved to Chicago. When they moved to Bliss, her salary jumped to \$180,000 with bonuses of \$10-20,000 annually. Currently she is provided with a company car; if she transfers back to New Jersey, she will no longer have that perk, and will have to buy a car. Her daughter is about to get her driver's permit, and in another year, she would like to purchase a car for her.

Patty is 41.