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# Pro Bono Primer: Family Law

Beatrice Leong, Esq. • 09.23.2017

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# Domestic Relations Law

Pro bono clinics often attract clients who are going through domestic strife.

Many of the people seeking Divorce/ Family Law advice have common, uncomplicated issues

Sometimes, they just want someone to hear their story

How can you help them? Basic Domestic Relations Law

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# Overview

Matrimonial Law Actions

Versus

Family Law Related Petitions

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# What is the Difference?

## Matrimonial Law

- Parties must be married
- Divorces are heard in **Supreme Court**
- Relief sought:
  - Dissolution of Marriage/Annulments
  - Custody of Children
  - Orders of Protection
  - Child/ Spousal Support
  - Equitable Distribution
- **One Judge**

## Family Law

- Parties could be married or unmarried, or just related
  - Cases in heard in **Family Courts**
  - Relief Sought:
    - Custody/ Visitation of Children
    - Child/Spousal Support
    - Orders of Protection
    - ACS/ Neglect Cases
  - **Multiple Judges**
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# Basic Divorce Law

Spousal Support and Equitable  
Distribution

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# Marriage

## 1. Are you married?

- a. There are extra legal rights and protections provided to a married person, versus a person having a child out of wedlock, or domestic partners such as boyfriends and girlfriends.\*
    - i. Rights of Health Insurance
    - ii. Rights to gain access to Marital assets such as houses
    - iii. Rights to gain access to Premarital assets
    - iv. Rights to Retirement Accounts
    - v. Right to Remain in the Residence
    - vi. Right to Spousal Support
    - vii. Rights of Inheritance
  
  - a. Was it civil or religious? There is an extra step for religious marriages.
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# Maintenance aka Spousal Support

2. How many years have you been married?\* It is important to determine the length of marriage. (In NY, there are guidelines for spousal support aka alimony or maintenance.)
2. Monied Spouse"- who earns a higher income?
2. Temporary Maintenance v. Post- Divorce Maintenance (ASK FOR SUPPORT IMMEDIATELY, DON'T WAIT- File a Support Petition in Family Court if Necessary)

LENGTH OF MARRIAGE	PERCENT OF THE LENGTH OF MARRIAGE FOR WHICH MAINTENANCE WILL BE PAYABLE
0-15 years (Short Marriage)	15-30%
More than 15-20 Years	30%-40%
More than 20 Years	35%-50%

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# Spousal Support Cont'd

- Spousal Support not always guaranteed
  - 14 Factors that determine whether someone gets maintenance. Common Factors:
    - Age/ Health of Spouse
    - Do they have education?
    - How many years have they been out of the work force?
    - Separate or Joint financial situation?
    - How many years separated?C
    - Standard of Living?
  - In pro bono cases- many of the times both spouses work, and are of lower income, so while there may be a maintenance award, many times spouses will waive it
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# Equitable Distribution

- 5. Do you own any property or businesses?
    - Real Property- Houses
    - Businesses Together
    - Savings Accounts
    - Retirement Accounts
    - Personal Items- Cars, Jewelry, Boats, Art
  - 6. Where the assets marital or premarital?
    - Separate Property (Inheritance, gifts to one spouse, any retirements or property gained before marriage)
    - Marital Property ( starts at Date of Marriage)
    - Commingled or Transmuted Property (Was separate and became marital)
    - Businesses- Who Contributed To the Business?
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# Miscellaneous

7. **Does Fault Matter?** No- the Courts do not care about why the couple is divorcing. Since 2010, NY is No- Fault State.
    - a. Infidelity- Only matters if you're spending money on the mistress and not the kids/ family
    - b. Abuse- Judges will put some weight on domestic violence for visitation/ safety issues, but does not affect financial issues unless it is "excessive"
  
  8. **Who stays at marital home?**
    - a. Both parties are allowed to remain until the divorce is over.
    - b. If there are a physical danger, parties can apply for Order or Protection ("Exclusive Use & Occupancy")
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# Custody and Visitation

Parental Rights to Children

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# How does Custody get Decided?

## 1. Factors that Determine “Custody”

- a. Not so much about the law but about “Best Interest of Children” Standard.
  - b. Factors include: totality of circumstances, primary caretaker, stability of residence, job, finances, quality of home environment, siblings, other relatives/support. Is one parent Alienating the other? (Ability to foster positive relationship)
  - c. Case Law: (Friederwitzer, Eschbach)
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# How does Custody get Decided?

2. Most times, the parents settle custody

**a. Joint Legal Custody/ Joint Physical (Residential) Custody.**

- i. Parents will share and consult each other on Decision Making on Healthcare, Education and Religion.
- ii. Children can live a majority of time with one parents, and visit with the other, or share time 50/50 at two homes.

**b. Sole Legal Custody**

- i. One parent makes major decisions if the parties hate each other & can't communicate
  - ii. Still have vacation and access to children
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# How does Custody get Decided?

## 3. What happens if Parents CANNOT AGREE?

- a. The Judge will Depend on Third Parties
  - b. Attorney for the Child(ren) are assigned
  - c. Forensics (need for, costs, reliability, who to choose, psych v MSW)
  - d. Custody Trial if Necessary
    - i. Witnesses (Grandparents, Teachers, Doctors)
    - ii. Attorney for Child Will get to question
    - iii. Forensic Professionals will be called as Experts
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# Basic Child Support Law

CSSA Guidelines

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# Child Support

2. **Do you have children together?**
- a) The guidelines for child support fall under CHILD SUPPORT STANDARDS ACT, "CSSA" and "Cassano" caselaw.
  - b) Combined parental income One Child- **17%**, Two Children- **25%**, Three Children- **29%**, Four Children- **31%**, Five Children- **35%** or more.
  - c) Add-ons (some are discretionary- extracurricular, luxuries like private school. Others are mandatory- child care, out of pocket medical).

**EXAMPLE:** Single Income Family, Dad is Doctor, Mom is Stay at Home Mom. Two kids. Dad earns \$150,000 = Adjusted Gross Income \$135,000  
 $x \quad 25\% = \$33,750/\text{yr} / 12 = \mathbf{\$2,800/\text{mo}}$  (bi-wkly \$1,300) child support (if he is not paying maintenance to mom.\*)



# Child Support Cont'd

- a) Child Support Cap- \$143,000. For people earning combined income over \$143k, the child support amount above are discretionary, and will likely be granted.
- b) Shared custody rule “[Bast v. Rossoff](#)” Does the amount of time spent with children change your support obligation amount? **NO**. (Example- dad is monied spouse. Children spend almost half the parenting time with him, spending overnights with him. Does he pay less? NO. He may get credits but his support should still be based on his income.)
- c) No child support until dad moves out!
- d) Credit for mortgage, utilities. (food, clothing, shelter)\
- e) Graby – Mom receiving \$1,000/mo SSI, not credited to H’s obligation. (resources of the children)

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# Child Support Cont'd

- 3. How old is/ are your child(ren)?
    - NYS requires child support until 21, 22 if child is enrolled in college
    - Child Support ends
      - If Child marries
      - If child joins the military
      - If child does not go to school and gets full time job
      - If child moves away from the Custodial Parent
      - Death
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# Pro Bono Clinic

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# Common Pro Bono Topics

## Matrimonial Law

- Reviewing a Settlement Agreement
- My spouse is misbehaving. What are my options?
- I've been served with divorce papers  
Where will I live after the divorce?

## Family Law

- Baby's mom won't let me see the kids
  - My spouse/ child/ grandchild has threatened me physically
  - I'm not getting child support
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# How to Identify the Issues

Intake/Pendente lite issues – Identification of Children & Money

*What should client bring to intake interview/ consultation?*

- Any petitions, agreements or documents from Court.
  - Any financial documents (leases, deeds, taxes, 401k statements, bank statements, order of the Court)
  - Take Information upfront (good intake questionnaire, notes for the consult)
  - Most issues boil down to: CHILDREN AND MONEY in Family Law.
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## After the Intake and Identifying Issues

1. Determine if this is a Family Law issue (sometimes people will need not need Family Lawyers, but criminal, Wills & Estates, Guardianship, Real Estate) Refer out
  2. Many times, people want their Settlement Agreements reviewed. There is certain language that is required by Domestic Relations Law or else it is invalid
  3. Sometimes people just want someone to hear their sob story
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# Who Can Help the Client

Resources and Attorneys

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# Attorneys & Advocates

- 18B Lawyers:
    - They are assigned to lower income peoples who are litigating custody, or facing jail time for failing to pay child support. Cannot negotiation equitable distribution, child or spousal support
  - Non- Profit Organizations\*
    - Legal Services NY
    - Her Justice
    - New York Legal Assistance Group
    - Pro Bono Programs at Big Law
    - Bar Associations
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## Beatrice Leong, Esq ■

Beatrice Leong received her law degree from the University of Connecticut School of Law, and her bachelors from SUNY Binghamton- where she doubled majored in English Literature & Rhetoric and Asian & Asian American Studies. At UConn Law, she was a volunteer at the local Family Court, helping low income persons obtain pro se divorces, requests for child support and other family matters. She was also elected as President of two student clubs, the UConn Law chapter of Asian Pacific American Law Student Association and the Arts, Entertainment and Sports Law Society. She is an associate attorney at Plaine & Katz LLP, a firm that specializes in Matrimonial and Family Law.

Beatrice is an active member in the Queens County Bar Association and AABANY. She serves as a Co-Chair of the Government Service and Public Interest committee of AABANY.

**718-268-0279**

**[beatrice.leong@aabany.org](mailto:beatrice.leong@aabany.org)**

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