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Barbara Babb

Say you want an evolution

Family-law educators opt for less adversarial, more holistic approach

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By its very nature, the field of family law deals with families in crisis, but the crisis is not always evident. Interwoven into the cause and effect of a divorce or custody case can be issues like substance abuse, mental illness, truancy, poverty and homelessness.

That's why legal educators are pointing to a holistic approach — one that takes into consideration everything impacting a family's situation — as crucial for the success of the next generation of family law attorneys.

By moving away from the traditional adversarial approach to one that emphasizes the circumstances facing each family, the educators hope to give students a range of skills apart from litigation with which to address their clients' needs.

"We're trying to teach lawyering in context — in the context of the families' lives," said Margaret Johnson, who directs the University of Baltimore School of Law's Family Law Clinic.

Mediation and collaboration

Through clinical education, law students are able to experience what it's like to represent a client from start to finish. But in clinics dealing with family law, some of the most important experiences for law students take place outside the courtroom, Johnson said.

Many family law cases, for instance, can be resolved through mediation. Over the past few decades, "there has been a significant shift in family law toward a more collaborative, problem-solving approach in cases," said Jane Murphy, one of the instructors at

UB Law's Mediation for Families Clinic.

The mediation clinic is one of just a few of its kind at law schools across the country, Murphy said. While its students occasionally work on cases with students in UB Law's Family Law Clinic, the Mediation for Families Clinic allows students to learn both representation and mediation hands-on.

In one innovative example, the MFC has begun partnering with prisoner re-entry programs in Baltimore.

"Part of that transition is rebuilding relationships with families, and sometimes the best way that can be handled is through a mediator," Murphy said.

Collaborative practice, in which parties agree not to litigate and to resolve disputes with the help of their attorneys, is another option at the clinic.

Because each side must have an attorney, collaborative law has been criticized as too expensive for many people, Murphy said. But groups like the Collaborative Project of Maryland have offered training to lawyers who agree to provide pro bono services, making the approach available to more low-income families.

Although it's a relatively new area of family law, it's been developing quickly in Maryland, she said.

"I'm hoping for growth, and I think that the push is to train lawyers who are more problem-solvers than litigators," Murphy said.

Jana B. Singer, a professor at the University of Maryland Francis King Carey School of Law who teaches several courses related to family law, said UM Carey also offers students opportunities for experience in alternative dispute

resolution, as well as courses that improve their interdisciplinary knowledge.

For example, Singer said, UM Carey's Children and Divorce course incorporates child development into family law curricula.

Issues like divorce and child custody are not just legal issues, Singer said. "They really are social and emotional processes. Lawyers are not social workers, but they need to understand the nonlegal aspects."

On the cutting edge

Along with the chance to help families solve problems, a big draw to the family law field today is often the opportunity to handle cutting-edge issues, said Singer, who has long been a leading voice advancing the rights of same-sex couples in Maryland and nationally.

While the state has now recognized the right of same-sex couples to marry, that did not resolve every issue.

In Maryland, the partner who is not the biological parent has to meet a high standard to win child custody or even visitation rights when same-sex partners split up. The Court of Appeals held in 2008, in *Janice M. v. Margaret K.*, that "de facto parenthood" is not a recognized status in the state. As a result, the partner must prove that the biological, or legal, parent is unfit, or that there are exceptional circumstances that warrant custody or visitation for the other partner. Otherwise, the request is treated the same as if a sibling or grandparent were trying to gain custody.

At UB Law's Family Law Clinic, Johnson said, students have recently seen a number of cases deal-



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Associate Law Professor Barbara Babb is the director of the Meyerhoff Center for Families, Children and the Courts, which seeks to reform the family justice system nationwide.

ing with third-party child custody in the case of same-sex unmarried couples.

"That's something that really animates our students," Johnson said. "They're very animated around marriage equality and LGBTQ rights."

In addition to representing clients, students in the Family Law Clinic also complete a social justice project of some sort, Johnson said. These have ranged from advocating for legislation that would protect domestic violence victims to participating in community education programs in middle and high schools.

"What we teach at the clinic is really that it's the client's life, and they're the expert on their life," she

said. "We really want students to understand that lawyers have a lot of tools in their toolbox."

Systemic advocacy

Other family law programs highlight aspects of that "toolbox," such as the Sayra and Neil Meyerhoff Center for Families, Children and the Courts at UB Law.

The center's overarching mission is to reform the family justice system nationwide to focus on the relationship between parents, children and the judiciary.

In Baltimore, one of CFCC's key projects has been the Truancy Court Program.

Now almost a decade old, truancy court aims to help students

who are habitually missing school get back on track and improve their attendance. It takes a non-punitive approach, attempting to get at the root causes of students' truancy and then offering them rewards for improved attendance.

Many law students in the center's student fellows course, taught by CFCC Director and professor Barbara Babb, choose to participate in Truancy Court to fulfill their project requirements. The law students serve as mentors and role models for their younger counterparts, and since the program started in 2005, about 2,500 students ranging in age from kindergarteners to high schoolers have participated.

The size of the student fellows course has doubled as more and more UB Law students get involved, Babb said.

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University of Maryland
Francis King Carey School of Law

By teaching students to think of their role as that of a problem solver rather than a potential winner or loser, the program helps students learn how to advocate for clients without being adversarial, she said.

“Most students found that it changed the way they will practice law,” she said. “They really see the big picture; they see how families are actually living their lives.”

Within the past two years, the center has added to the program an attorney who meets with parents to work out underlying legal issues, as well as a social worker, who helps families access social services.

“When you look at how families and children are living their lives, you have to look at all of the systems in which they function and try to make connections,” Babb said. Those systems include the home, the child’s school and the parent’s workplace, she said.

This kind of holistic thinking is also part of another CFCC project: advocating for unified family courts, or systems in which the court has the power to hear every type of case that affects the family dynamic.

In a unified family court system, Babb said, judges get a more complete picture of all the issues one family is dealing with, which might range from domestic violence to supervised visitation to addiction counseling.

“These issues are often as important, if not more important, in family law cases as the legal issues,” Babb said.

The center has held training sessions and workshops locally and across the country to help governments develop unified court systems. Although the center has not held as

many of these sessions in recent years, largely because of tighter state courts budgets, Babb said she hopes to be able to organize more soon.

More appealing approach

Experiential family law programs have seen growing interest from students, as they recognize the demand for family law attorneys and become eager to get experience in the field while earning their JD, Babb said.

“I think many of our students will go into private practice in a small firm or by themselves, and the majority of cases they will handle will be family law cases,” she said.

But the biggest factor behind the rising popularity of family law courses might be the evolving reputation of the field itself, Singer said.

“Years ago, the reputation of family law and family lawyers was, ‘oh, it’s mudslinging and it’s nasty and adversarial,’ and I think some students were not excited by that,” she said. “Now that family law has really been a leader in alternative dispute resolution and problem-solving, that really appeals to students who are interested in helping people resolve problems in a way that is not destructive.”

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