FLORIDA. JUVENILE DEPENDENCY LAW

Law 6930

Spring 2019

Room 355C

Thursdays 5:30-7:20 p.m.

Two (2) credit hours

Professor Stephen Pennypacker

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# SYLLABUS AND CLASS POLICIES

REQUIRED TEXT:

There is no required text book. The following will be referred to throughout the course and are available on line:

Florida Juvenile Law and Practice, (15th Edition) Florida Bar Publications

Chapter 39, Florida Statutes

Florida Rules of Juvenile Procedure

Case Law

There will be additional materials provided including Family Functioning Assessment and sample pleadings

**Contact Information**

Office hours: By appointment

Phone: (352) 870-8766 or (352) 359-0157

Email: pennypackers@law.ufl.edu or stephen.pennypacker@pfsf.org

Because I will not have fixed office hours, I am happy to meet with you by appointment at the law school at a convenient time to discuss the class or any issue you like. If you will call or e-mail me, I will get back with you promptly. I will check my law school e-mail daily (and more often as time permits). If you have an urgent request, however, please call me instead of sending an e-mail.

**What You Should Expect to Get Out of This Course**

My goal in teaching this course is to help you think critically about the law governing juvenile dependency law in Florida. By now you already know how to read a case. In this course, we will begin by reviewing the federal law underpinning the child welfare system in general. We will then proceed through a dependency case in Florida from the initial call to the child abuse hot line through trial and achieving permanency (reunification, adoption, permanent guardianship, another planned permanent living arrangement or extended foster care). An emphasis will be placed on the perspective of an attorney representing a party in the dependency system (the Department of Children and Families, a parent, the Guardian ad Litem, or the child). We will cover due process, burden of proof at each stage, pleadings, evidence, expert and fact witnesses, paternity, mediation, case plan development, delivery of services, foster care and placement of children, human trafficking, and appeals. A continua theme will be the best interest of a child as it is addressed at each stage in the balance between child, parent, and state. We will also discuss the merits and deficits of the privatized foster and adoption system in Florida.

It is important to remember that we come to this class from various backgrounds, with many different beliefs about how the world should work, and what the law should be. My goal is not to change any fundamental beliefs that you hold. Instead, when you leave this course, my hope is that you not only have a good working knowledge of the subjects that we have covered, and can apply law from cases and statutes to real-life situations, but that you understand that there are assumptions that underlie the law in this area, what these assumptions are, and can think critically about cases, statutes and the body of law that governs dependency.

**Summary of Course Requirements**

In addition to carefully preparing for class and participating in class discussion, each student must complete a final examination.

**TWEN**

I will set up a TWEN site for this course. I will post the syllabus and other documents relating to the course. You should register on the TWEN site as soon as possible to have access to posted materials. To sign on, go to the law school page of Westlaw and click on the TWEN icon. Register as a participant in Professor Pennypacker’s Juvenile Dependency Law course.

**Email Address**

I will use the law.ufl.edu email system to communicate about schedule, assignment, and other issues. To facilitate communication in this course you should have a functioning “@ufl.edu” e-mail address. Due to continuing problems with email forwarding, you may want to think carefully about “forwarding” your @ufl.edu e-mail to certain other ISPs (aol, hotmail, msn) as you do not want to miss any important communications relating to class.

**Attendance**

Pursuant to law school policy and ABA requirements, students are required to attend class. It is your responsibility to sign the attendance sheet *during* class. You may not sign in for anyone except yourself. If you are less than ten minutes late, you may sign the roster at the end of class (see note below regarding excessive tardiness). ***If you are more than 10 minutes late, you will be considered absent.*** Failure to sign the attendance sheet will be treated as an unexcused absence. I will allow four (4) unexcused absences per semester on a no-questions-asked basis. If it should be necessary for you to miss more than four (4) classes, you must e-mail me to explain the reason for each additional absence. If you know in advance that you will have to miss a class, please make appropriate arrangements with me in advance. You will have no more than seven days after the time of the unanticipated occurrence to bring the reasons for your absence to my attention, provided however, that I will not accept any excuses offered after our last session of the semester. Any unexcused absence that exceeds the allowance will lower your grade by one level. For example, one additional unexcused absence will lower a B to a B- or a C+ to a C.

***I will deal with excessive absences and/or tardiness on a case-by-case basis; excessive absences (whether or not excused) or tardiness may result in your administrative removal from the course.***

**Participation in Class (10%)**

Participation in class will constitute 10% of your final grade. The other 90% will be the final exam. Your regular attendance and participation in class discussions are critical to the success of this course. Students should expect to be randomly called on during class to answer questions about the assigned materials. I will also call on students who volunteer questions or comments. As long as you are present and prepared, you will receive credit for class participation; it is the *quality*, not the *quantity*, of your contributions to class that I value. If you are *not* present when I call on you (unless your absence is excused or is one of your four allowed unexcused absences) or if you are not prepared, you will not help you in final evaluation. **At a minimum, you must participate (either by virtue of volunteering or being called upon) at least 2 times during the semester.**

**Religious Holidays**

The Florida Board of Education and state law govern university policy regarding observance of religious holidays. The following guidelines apply:

Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith. Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence. Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances. If a faculty member is informed of or is aware that a significant number of students are likely to be absent from class because of a religious observance, the faculty member should not schedule a major exam or other academic event at that time.

A student who is to be excused from class for a religious observance is not required to provide a second party certification of the reason for the absence. Furthermore, a student who believes that he or she has been unreasonably denied an education benefit due to religious beliefs or practices may seek redress through the student grievance procedure.

**Learning Objectives**

After completing this course, students should be able to:

1. Describe the statutory foundations of dependency law and its application in Florida;

2. Demonstrate an understanding of the procedural rules and statutes that govern the process of child protection and achieving permanency for abused and neglected children in Florida.

3. Explain an attorney’s ethical obligations when representing the State, a parent, a Guardian ad Litem, or a child in the child welfare process;

**Workload and Class Preparation**

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Juvenile Dependency Law has two (2) “classroom hours” of in-class instruction each week, requiring at least four (4) hours of preparation outside of class. Accordingly, you will have about 60 pages of reading each week. Because the course includes statutory and regulatory excerpts that require careful reading, you should spend at least one hour on every 10-15 pages of reading.

**Internet Policy and Related Issues**

The internet, and more generally your laptop, is a great learning tool and invaluable asset to effective advocacy. It should be used during class time as you will use it in practice: responsibly and ethically, consistent with the high professional standards that will be expected of you by your clients, the court, and other lawyers. Keep in mind that all the students around you are affected by how you use your computer. When you are talking, you should lower your laptop to facilitate communication.

During class, your laptop is to be used ONLY to take notes, unless I direct you to some other site. If we are working on another site, you are not to do any other internet or other computer work during class time. Cell phones, PDAs and any other electronic equipment should be turned off and not used during class. If you need to leave your phone on vibrate to receive an emergency call, please feel free to do so.

***If you are found in violation of this policy, you may not be permitted to use your laptop in this class, your grade may be lowered, or you may be dropped from the class.***

**Professionalism in Class**

You are all bound by the University Student Code of Conduct, the College of Law Honor Code and the rules for this course. Proper conduct in the classroom is intended to encourage everyone to participate in, to derive benefit from, and ultimately, to enjoy the class. Any unprofessional conduct and/or conduct that is in any way disrespectful to other students, disruptive, distracting or has a negative effect on the classroom atmosphere is prohibited.

***Any unprofessional conduct will be handled on a case-by-case basis. Such conduct may result in administrative removal from the course or a grade reduction. I will be especially strict with students who distract or harass other students in any way.***

UF students are bound by The Honor Pledge which states, “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: “On my honor, I have neither given nor received unauthorized aid in doing this assignment.” The Honor Code (http://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with Professor Pennypacker.

**Supplemental Material**

You may find supplemental material that might assist the learning of others. For example, you might find a clipping from an on-line article or newspaper that offers an interesting example of a case or a situation that raises one of the issues discussed in the material assigned for that day. If you wish to share the material with the class, please send it to me via email at least 24 hours in advance of the relevant class period; I may distribute it depending upon the submission and whether we have time in a particular class. If you submit material that I use in class, I will consider the submission when I am calculating your class participation grade.

A. **TWEN**

1. **Registration:** As soon as possible, you should register as a course participant on TWEN via the Westlaw website (http://lawschool.westlaw.com/twen).

2. **Access to Westlaw:** For problems or questions, contact your designated student representative.

**B. Final Examination** (90 %)

The final examination will be a two hour final examination. I will provide more information regarding the examination later in the course.

**Exam Accommodations for Students with Disabilities**

Reasonable exam accommodations are available to students with permanent or temporary disabilities. To receive accommodations, students should contact the Disability Resources Center ([www.dso.ufl.edu/drc/](http://www.dso.ufl.edu/drc/)), located in 0020 Reid Hall. You may reach Disability Resources at 392-8565 or [accessuf@dso.ufl.edu](mailto:accessuf@dso.ufl.edu). Once the appropriate documentation is evaluated by Disability Resources, a recommendation is then made and forwarded to the College of Law Assistant Dean for Student Affairs.

**Delay in Taking Exams**

There are four acceptable reasons for which students may request delaying their exams. Please read the descriptions below and select the form appropriate to your circumstances. Also note that students are not permitted to take exams before the scheduled exam time.

**Multiple Examinations**

A student may reschedule an examination if a student has in class examinations that meet the following criteria:

* 2 exams beginning less than 20 hours apart. Note: Examinations that BEGIN more than 20 hours apart (for example, at 8:30 a.m. on one day and 8:30 a.m. on the following calendar day), DO NOT constitute a conflict under this rule.
* 3 exams within 3 consecutive days
* 4 exams which must be completed within 5 days

Students are responsible for submitting the request(s) for an exam delay. All requests to reschedule an exam due to a conflict must be submitted to the Office of Student Affairs, and delayed examinations should be rescheduled to be taken as soon as reasonably possible with the sound discretion of the administration.

**Emergency Delay (accident/illness/death)**

In case of illness, contact the Assistant Dean for Student Affairs. If permission is granted, a written statement from the treating physician stating the student was too ill to take the exam at the scheduled time must be presented before the exam may be taken late. For serious reasons other than illness, a student should contact the Office of Student in advance and speak with the Assistant Dean for Students. Only after the student is notified the request has been granted may the student miss a scheduled exam. Arrangements must be made with Student Affairs for taking the exam late. The Assistant Dean for Students shall specify the date and time when a student with an excused absence may sit for the examination.

**C. Final Grades**

You will be graded based your performance on the final examination and on your class participation. At the end of the semester, the points for all students will be calculated and the letter grades for the course will be assigned subject to the requirements of the mandatory curve.

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

|  |  |
| --- | --- |
| Letter Grade | Point Equivalent |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0 |

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**D. Statement related to accommodations for students with disabilities**

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accomodation. Students with disabilities should follow this procedure as early as possible in the semester.

**E. Feedback on Quality of Instruction**

Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at https://evaluations.ufl.edu. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

**F. Campus Resources:**

Health and Wellness

U Matter, We Care:

If you or a friend is in distress, please contact umatter@ufl.edu or 352 392-1575 so that a team member can reach out to the student.

Counseling and Wellness Center: http://www.counseling.ufl.edu/cwc/Default.aspx, 392-1575; and the University Police Department: 392-1111 or 9-1-1 for emergencies.

*Sexual Assault Recovery Services (SARS)*

Student Health Care Center, 392-1161.

*University Police Department,* 392-1111 (or 9-1-1 for emergencies). http://www.police.ufl.edu/

Academic Resources

*E-learning technical support*, 352-392-4357 (select option 2) or e-mail to Learning-support@ufl.edu. https://lss.at.ufl.edu/help.shtml.

*Career Resource Center*, Reitz Union, 392-1601. Career assistance and counseling. http://www.crc.ufl.edu/

*Library Support*, http://cms.uflib.ufl.edu/ask. Various ways to receive assistance with respect to using the libraries or finding resources.

*Teaching Center*, Broward Hall, 392-2010 or 392-6420. General study skills and tutoring. http://teachingcenter.ufl.edu/

*Writing Studio, 302 Tigert Hall,* 846-1138. Help brainstorming, formatting, and writing papers. http://writing.ufl.edu/writing-studio/

*Student Complaints Campus:* https://www.dso.ufl.edu/documents/UF\_Complaints\_policy.pdf

*On-Line Students Complaints:* http://www.distance.ufl.edu/student-complaint-process

**READING ASSIGNMENTS:**

Readings are from the assigned text for the course and are subject to changes announced periodically.

DATE TOPICS READING

|  |  |  |
| --- | --- | --- |
| 1/10/19  Thursday | History and Overview of Child Welfare in the United States, Parens Patriae  Social Security Act  Child Welfare funding  Child Abuse Prevention and Treatment Act of 1974  Adoption Assistance and Child Welfare act of 1980  Multiethnic Placement Act of 1994  Adoption and Safe Families Act 1997  Keeping Children and Families Safe Act of 2003  Fostering Connections to Success and Increasing Adoptions Act of 2008  Families First Prevention and Services Act of 2018  Overview of Florida Dependency System  Dependency Flowchart | Be familiar with the issue and holdings in U.S. Supreme court cases of:  Meyer v. Nebraska (1923)  Pierce v. Society of Sisters (1925)  Prince v. Massachusetts (1944)  Stanley v. Illinois (1972)  Santosky v. Kramer (1982)  Troxel v. Granville (2000)  Review Chapter 39, Florida Statutes  Dependency Flowchart |
| 1/17/19  Thursday | Jurisdiction  Reporting and Investigating Abuse and Neglect, Confidentiality of Reporter  Information  Risk vs. Safety  Safety Methodology | F.S. 39.013  F.S. 39.01(27)  F.S. 39.01(1), (2, (35), (36), (47), (48), (50), (66), (75)\_  39. 201, 39.301, 39.202  Present Danger Assessment  Family Functioning Assessment  Padgett v Department of Health and Rehabilitative Services, 577 So.2d 565 |
| 1/24/19  Thursday | Shelter Petition and Hearing  Who may file a petition?  Who is a party?  Dependency Petition and Arraignment  Mediation  Paternity  Right to Counsel – parents, state, children  Non-judicial intervention,  Judicial intervention without removal  Case Transfer from DCF to lead agency  Injunction | F.S. 39.401, 39.402  F.S. 39.01(56), (57), (58), (75), (78), (79)  Rule 8.210. 8.215  F.S. 39.401, Rule 8.310, Rule 8.315  Rule 8.290  F.S. 39.503,  Rule 8.226  Department of Health and Rehabilitative Services v. Privette, 617 So.2d 303 (Fla. 1993)  Simmonds v. Perkins, 247 So. 3rd 397 (Fla. 2018)  J.S.H. v. DCF, (Fla. 2nd DCA 2018)  F.S. 39.01305, F.S. 39.0134, F.S. 39.4085  In re: DB and D.S. 385 So.2d 83 \*Fla. 1980)  Advisory Opinion HRS NonLaywer Counselor, 547 S0.2d 909 (Fla. 1989)  Rule 8.320  F.S. 409.988  F.S. 39.504 |
| 1/31/19  Thursday | Adjudication and Disposition,  Burden of Proof  Discovery  Presence of child at hearing, Child Hearsay  Single parent adjudication  Magistrate vs. judge jurisdiction  Placement of children | F.S. 39.01, 39.501, 39.521  Fla. R. Juv. P. 8.330, 8.8.335, 8.340  F.S. 39.138  In Re: M.F., 770 So. 2d 1189 (Fla. 2000)  B.J. v. DCF, 190 So. 3rd 391 (Fla. 3rd DCA 2016)  F.G. v. DCF,192 So. 3rd 1250 (Fla. 3rd DCA 2016)  C.W. v. DCF 10 So.34d 136 (Fla 1st DCA 2009)  Rule 8.245  Rule 8.255  F.S. 90.803(23)  F.S. 39.507, Rule 8.347  Rule 8.257 |
| 2/7/19  Thursday | Case Plan Development, Goal Setting, Concurrent planning  Provision of Services, Reasonable Efforts | F.S. 39.601, 39.602, 39.6035  Rule 8.400 |
| 2/14/19  Thursday | Incarcerated Parents,  Diminished Protective Capacities  Consent for medical treatment, administration of psychotropic medication, residential treatment | F.S. 39.407  Rule 8.350, 8.355 |
| 2/21/19  Thursday | Judicial Review | F.S. 39.701,  Rule 8.415 |
| 2/28/19  Thursday | Permanency,  Substantial Compliance,  Conditions for Return | F.S. 39.621, 6221, 6231, 6241, 6251  Rule 8.425 |
| 3/7/19  Thursday |  | No Class – Spring Break |
| 3/14/19  Thursday | ICPC  Application of ICPC to parents  Indian Child Welfare Act | F.S. 409.401,  Pennypacker Article in Juvenile Handbook  DCF v. M.A. 215 So. 3rd 1276 (Fla. 1st DCA 2017  B.G. v. DCF 189 So.3rd 305 (Fla. 4th DCA 2016).  Florida Administrative Code, 65C-28.013  25 USC Sections 1911-1923  J.P.H. v. DCF 39. So.3rd 560 (Fla 1st DCA 2010)  G.K. v. DCF 80 So3rd 1065 (Fla. 5th DCA 2012) |
| 3/21/19  Thursday | Termination of Parental Rights  Grounds, burden of proof  Advisory hearing, | F.S. 39.806, F.S. 39.810, 39.811,  Rule 8.500, Rule 8.510  A.M. v. DCF 223 So.3rd 312 (Fla. 3rd DCA 2017)  DCF and GAL v. A.R. and R.L. Fla. 3rd DCA 2018)  K.D. v. DCF, 242 So.3rd 522 (Fla. 1st DCA 2018) |
| 3/28/19  Thursday | Right to effective counsel  Single parent TPR  Disposition – manifest best interest, least restrictive means | F.S. 39.811  Rule 8.530  J.B. V. Florida Department of Children and Families 170 So. 3rd 780,  Interest of X.W. v. C.W., (Fla. 2nd DCA 2018)  S.M. v. DCF, 202 So.3rd 769 (Fla. 2016) |
| 4/4/19  Thursday | Adoption,  Intervention | In re SNW, 912 So.2d 368; §63.082(6); In re KAG, 152 So.3d 1272; RL and JM, 147 So.3rd 1054 |
| 4/11/19  Thursday | Extended foster care, normalcy | F.S. 39.701, 39.6251  F.S. 409.145, 409.1451  Rule 8.401, 8.435  FAC 65C-41, 65C-42 |
| 4/18/19 | Review for final exam  Q & A; Evaluations |  |
| FINAL EXAM TBD | | |