

University of Cincinnati College of Law
Second Year - Client Counseling Class
August 23-November 8, 2010
Mondays: 3:05 – 5:15p.m.
ROOM 114

**[Plus Individual Counseling Coaching Sessions
and one short final wrap up class]**

Faculty:
Marjorie Corman Aaron, Esq.
Professor of Clinical Law

Mondays' Ten Week Semester Syllabus

Please GO TO THE COURSE TWEN SITE FOR ALL reading (other than the text), and for all simulation materials, evaluation exercises etc. The TWEN site includes an area to click on for readings and another area for each student to click on and download simulations and evaluation exercises, assigned in groups, according to last name alphabetical order. All documents are in pdf format.

Required Reading:

Text:

Cochrane, R., DiPippa, J., and Peters, M., *The Counselor-At-Law: A Collaborative Approach to Client Interviewing and Counseling* (Lexis Publishing, Inc. 2006) ("the CDP text").

Additional Readings (available in pdf format on the course website)

- Binder, D., Bergman, P. and Price, S., "Difficulties in Mastering Active Listening," *Lawyers as Counselors* 61-68 (1991).
- Sobelson, R., "Interviewing Clients Ethically," 27 *Prac. Law* 13 (1991)18-21.
- Birke, R., "Settlement Psychology: When Decision-Making Processes Fail," *Alternatives* Vol. 18, No. 11 (December 2000) 212 - 218.
- Feldman, S. and Wilson, E., The Value of Interpersonal Skills in Lawyering," *Law and Human Behavior*, Vol. 5, No. 4 (1981).
- Golann, D., "Death of a Claim: The Impact of Loss Reactions on Bargaining," *Negotiation Journal*, Vol. 20, No.4 (October 2004).
- Aaron, M., "The Right Frame: Managing Meaning and Making Proposals," *Harvard Management Communication Letter*, Vol. 2, No. 9 (1999) 1-4.

- Aaron, M. and Hoffer, D., “Decision Analysis as a Method of Evaluating the Trial Alternative,” Chapter 11 in Golann, *Mediating Legal Disputes* (Boston: Aspen, 1996) 307-334.
- Fisher, R. and Shapiro, D., *Beyond Reason: Using Emotions as You Negotiate* (Viking, 2005): 3-22; 178-207.
- DATA 3.0 User’s Manual, Chapter 2 (TreeAge Software, Inc. 1997) pp. 9-16.
- Aaron, M., “Finding Settlement with Numbers, Maps and Trees,” Chapter 13 in Moffitt, M. and Bordone, R. eds, *The Handbook of Dispute Resolution* (Jossey Bass, 2005).
- ABA Model Rule 1.4 and Comments 1-7.
- Oliver, E., “Reflections on Mirroring,” 36 *OCT Trial* 28 (Association of Trial Lawyers of America, October 2000).

Case Assessment Exercises

- Each student has been assigned ONE case assessment exercises (available from the course website). You should download and print out your assigned case assessment exercise from the course website. Please read it carefully, answer the questions posed at the end of the case exercise, and hand in your hard copy answers to Toni McGuire BEFORE class on September 20, 2010.

Please do not discuss the facts of your case assessment exercise or your answers with any of your classmates prior to the commencement of the course.

Simulation Exercises

- During second class session (August 30), we will be working with two cases: *Hapless Harvest* or *Family Business Matters*. You have been assigned to the role of client in one case and attorney in another case. It is IMPERATIVE that you read these exercises thoroughly and carefully before class, and come prepared to play the role.
- For the fourth class session (September 20), you have been assigned either to an attorney or a client role in a third exercise: *To Ditch or Not to Ditch Design Display*. It is imperative that you read your assigned information before the second day of class. Everyone should be thoroughly familiar with the facts and all assigned to the attorney’s role should be thoroughly familiar with the counseling advice before class.
- We may begin work on the decision analysis “problem set” entitled *Simple Hypo* at the end of class on September 27. Thus, you should print it out and bring it to class on the 27th in blank form. (Of course, you are welcome to try to do it earlier.) Work on the problem set will carry over to October 4. You must complete a first effort at this problem set and bring it to class on October 4. It will be based upon

the decision analysis materials readings and the lecture presentation in class on Sept. 27.

- For class on October 4, you must also prepare a decision tree analysis from American Steele's counsel's perspective in the Lancer case, in preparation for advising the client regarding settlement. The case facts are summarized in a document entitled *Balanced Trees on Balance Beams!*

Optional Software (download trial copy or purchase student version):

You are NOT required to purchase decision analysis software for this course. However, you may purchase the Student Version of TreeAge Pro Excel Software, available for \$45 at www.treeage.com.

If you do not want to pay \$45, you can download a streamlined version of the software without charge, for a 21 day trial period. You should choose the TreeAge Pro base model. While the free version does not permit you to build trees of any complexity, it is more than sufficient for this class. (Note that as a student, you can purchase a license for the full functionality version for longer periods, still at significant discount from the full price.)

Reading & Preparation Assignments for Session One – Monday, August 23, 2010

Read: Chapters 1, 2, and 4 in the CDP text.

- Feldman, S. and Wilson, E., "The Value of Interpersonal Skills in Lawyering," *Law and Human Behavior*, Vol. 5, No. 4 (1981).
- Sobelson, R., "Interviewing Clients Ethically," 27 *Prac. Law* 13 (1991)18-21. Ohio EC 7-2 - 7-10; ABA Model Rule 1.4 and Comments 1-7.

Prepare to explain the confidentiality that a client should and shouldn't expect in an initial interview and in subsequent meetings with his or her lawyer.

Session One – Monday, August 23, 2010, 3:05– 5:15 p.m.

Topical Agenda

- Introductions: Why and how this course
- Challenges of client interaction - interviewing, counseling, decision making
- A Course Stance: Collaborative Lawyering
- Interviewing Clients – The Big Picture Options, Opportunities and Ooops!!!
- Goals, Tasks, Techniques, Initial Stages of a Client Interview
- Oh yes, Confidentiality and Fees - An Exercise in Explaining

Reading & Preparation Assignments for Session Two -Monday, August 30, 2010

Read:

Chapters 3-6 in CDP Text (you will already have read Chapter 4, but you are free to review it here.

Binder, D., Bergman, P. and Price, S., Binder "Difficulties in Mastering Active Listening," *Lawyers as Counselors* 61-68 (1991).

Prepare for your lawyer and client roles for the initial interview in *Family Business Matters* and *Hapless Harvest*. (See the role assignments at the end of this syllabus and on the website.)

Session Two –Monday, August 30, 2010, 3:05 – 5:15 p.m.

Topical Agenda

- Initial Interviews - Practice in Case 1-*Hapless Harvest* and Case 2- *Family Business Matters*; Debriefing and Demonstration
- Moving into Substance Listening, Listening, Like You've never Listened Before
- Questioning Strategies: Open Inquiry; Getting Information; Steering with a Light Touch;
- Funneling to a Close
- In the Thick of It: Complete Interviews in *Hapless Harvest* and *Family Business Matters*

Reading and Preparation Assignments for Session Three – September 13, 2010

Read: Chapter 7, pages 107-121 in the CDP Text.

Fisher, R. and Shapiro, D., *Beyond Reason: Using Emotions as You Negotiate* (Viking, 2005): 3-22; 178-207.

Golann, D., "Death of a Claim: The Impact of Loss Reactions on Bargaining," *Negotiation Journal*, Vol. 20, No.4 (October 2004).

Consider and prepare to discuss your responses to the following questions. (These will be discussed in class.)

You litigate in the employment, personal injury or corporate arena. A client has consulted with you because he or she was terminated, physically injured, or sued. The client has never been involved in litigation before.

- What underlying beliefs in the U.S. legal system is the client likely to have?
- What were your beliefs about the U.S. legal system before law school? How have they changed?

How might a client's beliefs about the legal system impact the lawyer's role as client counselor?

ALSO

Prepare to explain to a client the meaning of at least two of the following legal concepts (these will be used for an in-class exercise):

- *motion for preliminary injunction,*
- *the requirement that personal jurisdiction be established, and*
- *a judgment notwithstanding verdict.*

Imagine (make up!) client circumstances such that these would pose a risk in your client's case. In other words, your client's business activities might be the target of

a preliminary injunction motion; your client's successful verdict might be overturned with a j.n.o.v (perhaps his case is likely to arouse jury sympathy but your ability to establish the essential legal elements is in question); or you may not be able to establish a defendant's personal jurisdiction in the state in which you wanted to sue.

Session Three – September 13, 2010, 3:05 – 5:15 p.m.

Topical Agenda

- Counselors on Clients – Can we TALK?!
- **Taking on The Five Counseling Challenges**
- Challenge – Clear Communication: Exercise in Translating Legalese
- Challenge – Working With Clients' (and Counsel's) Emotions
 - Emotions and the Core Concerns Model - presentation and class exercises
 - What works, and what doesn't for "difficult" clients

Reading and Preparation Assignments for Session Four –September 20, 2010

Read: CDP Text: Chapters 8, 9, 11

Read and Prepare for Your Role in *Deciding to Ditch or Not to Ditch Design Display* (See end of the syllabus or the website for your role assignment and case materials.)

Be ready to "act" the client when in that role. Come up with a client personality, style etc. Also prepare to counsel a DIFFERENT client personality (not all clients will be the same) to make a wise settlement decision in this case. You should practice articulating important legal concepts in a way the client will understand them. You should pay attention to how you will frame the decision, and how you will use voice and gesture to give the client confidence in his or her lawyer and in the lawyer-client relationship.

REMEMBER TO TURN IN YOUR CASE ASSESSMENT FORM for the case assessment exercise to Toni McGuire on the Fourth Floor before class on September 20 if you have not done so already. (You have been assigned only one of *Betting on This One, Finally, A Great Case, Calculations in Confidence, or Predicting What's Probable*). Your assignment is based upon groupings by last name and is available on the website. (You should NOT do any outside research and you should not confer you're your classmates regarding your answers. Just read and consider your case, and fill out all parts of the form. Use numbers where requested. I will be compiling statistics. Ranges or words such as "pretty high" or "fairly low" are NOT helpful.)

Session Four –September 20, 2010, 3:05 – 5:15 p.m.

Topical Agenda

- Directing Process; Collaborating For Wise Client Decisions
- Practice Counseling for Deciding, with *Deciding to Ditch or Not to Ditch Design Display*
- Debriefing

Reading and Preparation for Session Five, September 27, 2010

Read: Aaron, M. and Hoffer, D., “Decision Analysis as a Method of Evaluating the Trial Alternative,” Chapters 11 in Golann, *Mediating Legal Disputes* (Boston: Aspen, 1996) 267 - 307-334.

DATA 3.0 User’s Manual, Chapter 2 (TreeAge Software, Inc. 1997) pp. 9-16.

Session Five –September 27, 2008, 3:05 – 5:15 p.m.

Topical Agenda:

- Counseling Challenge – Decision Making Under Conditions of Uncertainty
- Introducing the VERY BASICS of Decision Analysis

Reading and Preparation Assignments for Session Six – October 4, 2010

Read: Aaron, M., “Finding Settlement with Numbers, Maps and Trees, “ Chapter 13 in Moffitt, M. and Bordone, R. eds, *The Handbook of Dispute Resolution* (Jossey Bass, 2005).

Draw: Decision trees for the *Simple Hypothetical* decision analysis exercise and a decision tree for American Steel in the Lancer case, in preparation and bring them to class. See the *dec-anal-hypos* and *Balanced Trees for Balance Beams* on the course website for facts and details.

Session Six – October 4, 2010, 3:05 – 5:15 p.m.

Topical Agenda

Making Certain We Can Climb Trees with Clients, for Important and Intangible Results

- Checking and Comparing Defense and Plaintiff’s Trees - in class work
- Value and Limits of Trees - lecture and class exercise
- Settlement Counseling - With and Without Trees - guest demonstration

Reading and Preparation for Session Seven, October 18, 2010

Read: CDP Text, Chapter 7, pages 121 (bottom) -134.

CDP Text Chapter 12

Birke, R., “Settlement Psychology: When Decision-Making Processes Fail,” *Alternatives* Vol. 18, No. 11 (December 2000) 212 - 218..

Aaron, M., “The Right Frame: Managing Meaning and Making Proposals,” *Harvard Management Communication Letter*, Vol. 2, No. 9 (1999) 1-4.

Session Seven –October 18, 2010 3:05 – 5:15 p.m.

Topical Agenda

Red Flags and Strategic Interceptions in Psychology for Savvy Lawyers: Intentional Impact on Minds and Hearts - Lecture and class exercises
Psychological Type and Dealing with Difference

Reading and Preparation for Session Eight, October 25, 2010

Read: Oliver, E., “Reflections on Mirroring,” 36 *OCT Trial* 28 (Association of Trial Lawyers of America, October 2000).

Session Eight – October 25, 2010, 3:05 – 5:15 p.m.

Topical Agenda

- Actors’ Advice for Lawyers’ Choice in Gesture and Voice
- Diving into Drama, for Communication At Close Range and Across the Room

Reading and Preparation for Session Nine, November 1, 2010

Read and prepare your role for Design Display Dilemma Interview (involving an age discrimination suit).

We may also get to the beginning of the counselling session in that case. If that appears likely, I will ask you to look ahead one week and read the information for the Design Display Dilemma Counseling Exercise (also the age discrimination suit).

Half the class will prepare to “act” the client. Come up with a client personality, style etc. Also prepare to counsel a DIFFERENT client personality (not all clients will be the same) to make a wise settlement decision in this case. You should practice articulating important legal concepts in a way the client will understand them. You should pay attention to how you will frame the decision, and how you will use voice and gesture to give the client confidence in his or her lawyer and in the lawyer-client relationship.

Session Nine – November 1, 2010, 3:05 – 5:15 p.m.

Topical Agenda

Starting to Put It All Together

- The Penultimate in Client Counseling: Design Display’s Age Discrimination Suit¹
- Design Display Interviews – and perhaps onto Counseling
- (Explanation of the Individual Client Counseling Skills Exercise & expectations)

Reading and Preparation for Session Ten, November 8, 2010

Read and prepare the lawyer and client roles in Design Display Dilemma Counseling Exercise

¹ Please note that while the name of this case SOUNDS much like Dale Doran and Deciding to Ditch or Not to Ditch Design Display, it is NOT the same exercise. This one assumes the same company, but involves an age discrimination suit. Next year, I’ll change the names to avoid confusion.

Session Ten – November 8, 2010, 3:05 – 5:15 p.m.

Topical Agenda

- Final Design Display Dilemma Counseling AND the Movie!!!
- Grand Summary!

Post Mid-Semester - to be scheduled: One short additional “Wrap Up” Class.

One approximately hour-long additional class session will take place after all students have completed the Individual Counseling Skills Exercise, described below.

Post Mid-Semester- Individual Client Counseling Skills Exercise - with Coaching!

The post workshop individual counseling skills session is an IMPORTANT part of this course. You will participate in an abbreviated counseling session with an actor or actress playing the client’s role. Your actor-clients will be prepared to play the part and respond to your counseling choices in a consistent manner. While they may be emotional or “unreasonable” at points, they will shift when you use the skills and strategies taught in the course.

Each student must prepare a decision tree for the case and hand it in before the counseling session begins. However, you are NOT NOT NOT to use the written decision tree in the counseling session. You should be prepared to counsel your client without using the tree. (There simply will not be time to explain the method to your client so you should not attempt it).

Professor Aaron or Attorney Patricia Foster (an alumna of this course) will be your coach for this exercise. If all is proceeding perfectly, your coach will not intervene. However, if you are having trouble on some point, she will intervene and suggest using a specific skill or strategy more likely to be successful. Your client may also provide direct feedback. THIS IS NOT INTENDED TO MAKE YOU NERVOUS OR TO LOWER THE FORM OF PASS-FAIL GRADE, it is intended to be CONSTRUCTIVE! When you then demonstrate that skill or strategy, all will be well. Our goal is for all students successfully employ skills and strategies from the counseling sequence of the course.

A student will only fail the Individual Client counseling Skills Exercise if he or she is unprepared and unfamiliar with the concepts covered in the course, and unable to apply them even after the professor’s coaching efforts. We have NO interest in hiding the ball. We do expect you to recognize it and pick it up when offered. (No student who showed up has failed the counseling skills exercise in the four year history of this course. On a few occasions, where a student was unprepared and unable to perform the exercise, we have required that student to make a second attempt.)

We hope the individual counseling skills exercise does not sound onerous. We believe last year’s students would agree that it was virtually painless and a terrific learning experience. This year’s students should be even more comfortable, because the fourth workshop day will provide practice in voice and gesture for counseling and through the Design Display Dilemmas counseling exercise.

Sign up sheets for the individual counseling skills exercise will be available at Toni McGuire's desk (unless we can figure out how to do this online).

Recommended preparation for the individual client counseling skills exercise

- Carefully review the simulation facts and instructions provided.
- Review your readings and your notes from lectures and in-class exercises.
- Practice demonstrating mastery of the important tasks, skills and strategies referenced in this course segment, particularly those you think might arise in this fact pattern.
- The time is short, but practice permits brevity. It is humbling to see L.A. Law attorneys deliver powerful 3 minute closing arguments that would take 30 minutes "in real life."

Speaking of television: we plan to record these sessions on video dvds, primarily for our own reference and teaching. They will most likely be recorded in three to four hour segments, but you will be able to borrow or copy your segment, after all your day's sessions are complete.