

June 22, 2010

To: All Students Enrolled in the August 2010 Client Counseling Workshop

Fr: Marjorie Corman Aaron, Professor of Clinical Law

Re: IMPORTANT COURSE INFORMATION AND INSTRUCTIONS - and Welcome

Welcome to the August 2010 Client Counseling Workshop. My co-faculty Professor Richard Reuben and I very much look forward to working and learning with you.

We ask that you PLEASE read this memorandum carefully, as it contains important instructions for participation in the workshop, including how to access:

- a short assignment to be completed and handed in **BEFORE the workshop - DON'T WORRY**, the assignment is just to read a fact pattern and fill out a short questionnaire
- case role play information to be read **before the workshop**
- articles on the syllabus to be read **before the workshop**

Please read below for detailed information about my co-faculty, Professor Reuben, the course format and requirements, absence and class participation policies, the pass-fail grading policy, and the final individual client counseling skills exercise.

### Co-Faculty

I am delighted that Professor Richard Reuben of the University of Missouri-Columbia School of Law will return this year to co-teach the January workshop. Richard teaches interviewing, counseling and negotiation, as well as conflict theory, administrative law and legislation. He is a Senior Fellow at the law school's Center for the Study of Dispute Resolution, and Vice-Chair of the Ombuds Committee of the ABA Section of Administrative Law and Regulatory Practice. He served as a Reporter for the Uniform Mediation Act Project, which was recently enacted by the National Conference of Commissioners on Uniform State Laws and endorsed by the American Bar Association House of Delegates.

Professor Rubin came to Missouri from Harvard Law School, where he was a Senior Research Fellow and Instructor of Law, teaching negotiation. He has also taught Alternative Dispute Resolution Law and Policy at Stanford Law School; Conflict Theory at Hamline Law School and Central European University; Negotiation and Conflict Theory at Pepperdine Law School; and is currently a Research Affiliate of the Harvard Program on Negotiation.

A lawyer and journalist, Professor Reuben was nominated for a Pulitzer Prize for his coverage of the U.S. Supreme Court and other legal matters. He is currently the Editor of *Dispute Resolution Magazine*, a quarterly publication of the American Bar Association, and works extensively with the University of Missouri-Columbia School of Journalism. His current research focuses on arbitration, the relationship between conflict resolution and democracy, as well as the transformation, escalation, and formalization of disputes. More information about Professor Reuben and his publications can be seen at his web address <http://www.law.missouri.edu/reuben/>.

I have known Richard for many, many years. He is the first person I call to think through a teaching issue, or to vet a piece of writing. There is simply no finer professor/teacher/human being. I hope you will join me in welcoming him to Cincinnati again this year.

## **PRE Workshop Assignments and Readings**

### ***Reading***

The good news is that the workshop will be finished in just about four days in August (not including the half hour individual client counseling sessions and one short wrap up session to be scheduled in September). The workshop compresses but does not reduce the number of two credit-class hours. The bad news is that each day's reading assignment may seem long, because each day covers a lot of ground. Thus, you are strongly advised to do all of the first day's reading before the first class, and to get a jump on the second and third days' reading as well. We hope you will find the readings to be straightforward, accessible, and practical. (No appellate case decisions are involved!)

The course syllabus is posted on this TWEN site (in draft before August, then final). All course readings, OTHER THAN THE COURSE TEXT are also available and downloadable in pdf format from the course TWEN site.

### ***ASSIGNMENTS - case assessment exercises and role information***

For the workshop to work, all MUST be ready to "hit the ground running." To help make that possible, all case assessments and role information are accessible and downloadable from the course website. To find your assignments, go to the student Group on the website corresponding to your last name's place in the alphabet. [These should be posted by the end of the day on August 10, if not sooner.]

**If you somehow managed to register for the workshop after the deadline, you must see or email me Toni McGuire ([toni.mcguire@uc.edu](mailto:toni.mcguire@uc.edu) - 556-0090) for your group and role assignments. DO NOT USE THE ALPHABETICAL SYSTEM**

IT IS EXTREMELY IMPORTANT that you visit the twen site, go to your CORRECT student group, open, download, and print all of the documents there. Please do not open or download the materials for any other group. (YOU SHOULD PRINT THEM OUT AS I'D PREFER THAT YOU NOT HAVE YOUR LAPTOP SCREENS UP DURING CLASS EXERCISES.)

**For each student, one of these documents is pre-workshop case assessment exercise.** Don't worry. No outside research is required! But you should read it carefully and think about your answers to the questions on the form. **THESE MUST BE COMPLETED AND HANDED IN TO TONI MCGUIRE BEFORE THE START OF THE WORKSHOP.** We will be compiling class statistics from these, and need the time for number crunching.

Each group has also been given client or attorney role play information in three classroom role play exercises. You should have read these before the workshop date on which they will be used. **Note that the roleplays entitled *Hapless Harvest Interview* and *Family Matters Interview* will begin on August 17, the first workshop day!**

### **Course format**

The workshop will begin with all students in plenary session in Room 308 of BLEGAN HALL (UC building right next to the law school). At various times, students will work in smaller sections, either with Professor Reuben or with me. As you might anticipate, this course is designed for discussion, participation, interaction, role-playing, in-class problem sets and small group work. Please be ready to do some serious acting when in client roles, and some serious lawyering when in the attorney's role. While faculty and local practicing attorneys will offer a few demonstrations, the workshop's value depends upon your willingness to undertake the tasks of interviewing, counseling and decision-making as real and important.

### **Absence Policy**

Please don't get sick! We know that this is easier said than done, and we do not want someone in class delirious, nauseated.....etc. Unfortunately, to miss one day is to miss 1/4 of the workshop. Thus, after due deliberation, we have decided that if you are absent for 4 hours or more, you cannot receive credit for the workshop. You would be required to transfer to the regular semester sequence of this course. Absence shorter than 4 hours, but significant, may require make up work, at the faculty's discretion.

Of course, the paragraph above should not be read as permission to be late, leave, or miss even less than 4 hours. Your absence adversely affects your classmates in paired role playing exercises. Our agenda is TIGHTLY packed; missing even an hour or so may make it more difficult for you to perform effectively in the counseling exercise. (Coming in late, or returning late from breaks, unless excused, will affect that "high pass," "low pass" determination) and, more important, will make your professor unhappy.

Bottom line: we look forward to everyone being bright eyed, bushy tailed, on time, and healthy.

### **The Pass-fail Grading**

This course is graded on the modified pass fail basis. Students may receive the "grade" of "high pass, pass, low pass or unsatisfactory" (the latter meaning fail). While these words will appear on your transcript, they will not affect your GPA or class rank. A "high pass" signals exemplary performance on your transcript, and low pass the opposite. Failing the course would also appear on your transcript and you would be required to repeat it for credit and for graduation.

Your "high pass, pass, low pass, or unsatisfactory" grade will be based upon a written decision analysis exercise, the final individual client counseling exercise, and class participation (which

includes preparation for the in class simulation exercises). Students who do not perform the counseling or decision analysis exercises competently will be required to redo them to receive course credit.

***Proposal for student cooperation toward continuing the pass fail grading!***

Pass-fail grading for this course continues based upon my representation that it is successful. I propose that all join in a collective effort to prove that UC Law students are self-motivated to work diligently, complete reading, prepare and participate seriously, and perform skills exercises at the highest level, even in a pass-fail course.

The reasons for pass fail grading in this course are many:

- Our initial year's experience indicated that many students were resentful and anxious about being graded in a required course based upon performance in skills exercises that were less predictable than traditional law school exams. When professors provided critical feedback or suggested a "retake" of an exercise, students sometimes became defensive or flustered. Eliminating "grade anxiety" makes students more comfortable with honest feedback and more receptive to incorporating it.
- This course does include a significant segment on decision-analysis which does involve math. While it's easy math - arithmetic only - we know that many lawyers (and law students) are "math phobic." They would most likely choose to avoid an elective course with any math at all. We believe these students will learn better and find the requirement to be fair under pass-fail grading. WE WANT YOU TO LEARN THE BASICS OF DECISION ANALYSIS because a future client might well benefit from your familiarity with its application in client counseling and decision-making.
- Paradoxically, pass-fail grading may enable the professors to be more critical of students' skills, and to require higher performance. With traditional grades, we have no power to require students to do better, try it again. In this workshop, we are committed to asking students to demonstrate skills at a high level.
- With limited faculty, a LARGE number of students in the course and limited time, it would be difficult to fairly and precisely evaluate student performance of interviewing, counseling and decision making skills AND maintain focus on teaching and learning.

I believe that UC Law students are wise enough to realize that working with real clients can be challenging and thus will value and appreciate this course. I hope you will prove this to be true again this year! Perhaps it should go without saying that if many students do NOT appear to be taking the course seriously, pass-fail grading is unlikely to be offered in the future.

## Class participation

Full participation in the workshop means joining into class discussion (including discussion of the readings), being fully ready to “act” in your seat or occasionally in front of the class, providing feedback on classmates’ performance, engaging in small group tasks, completing problem sets and case assessment exercises. Class participation and quality of performance will “count” in the assignment of “high pass,” “low pass,” or plain “pass” designations.

## Counseling Skills Exercise

We think there is tremendous value for students to experience counseling a “real” client, consciously applying the collaborative counseling approach, skills, and strategic lessons taught in the course. Practicing with classmates is useful and efficient, but it cannot fully replicate a client counseling experience. We are committed to each student's receiving individual attention and “coaching” feedback, in a way that is not possible in class. For that reason, we have designed the final “capstone” individual client counseling skills exercise.

All students will sign up for the individual client counseling skills exercise in late January or February. In that exercise, each student will counsel a “real” client - who is an actor playing the client role. The actors will be prepared to provide realistic and consistent client performances. One of the faculty (Professor Aaron or perhaps another faculty member well versed in these materials) will be present and will, if helpful, intervene to coach students so that they will have performed the client counseling task well - at least by the end of the time slot. Each counseling session will be scheduled for approximately 30 minutes, and will be videotaped. The case facts and instructions for this exercise are on the course website.

Each student should prepare a decision tree indicating the structure of the case, assigning values and percentages, and “rolled back” to reflect the estimated monetary value. (This will make sense to you after you have completed the course.) **This should be handed to the Professor at the time of the counseling session. The tree will be helpful for your thinking about the case, but YOU SHOULD NOT USE THIS DECISION TREE DOCUMENT IN THE COUNSELING SESSION WITH YOUR CLIENT!!!**

While no library or on-line research is required, some students may find it helpful to review basic torts concepts as they prepare to explain them to a client within the counseling session. Students should also review the lessons of the workshop, and be prepared to demonstrate their application in the counseling session. Most importantly, students should demonstrate:

- Collaborative counseling approach to process
- Clear communication of legal issues and concepts
- Strong listening skills
- Strategies for psychological barriers (including framing around risk and loss)

- Strategies/skills for the emotional or difficult client

We ask that you participate in the exercise in good faith - be prepared and able - *with faculty coaching* - by the end of the time period - to demonstrate some mastery of the skills and concepts. Note the emphasis on *with faculty coaching*. If the faculty coach does not think the student is performing well, she will intervene and make suggestions. The student will be able to incorporate these suggestions for a more successful counseling session. However, if a student is unprepared, appears not to have read the materials, or demonstrates little familiarity with the concepts covered in the counseling sequence of the course, he or she will not pass the course.

I am happy to answer any questions regarding this exercise, or any other aspect of this course.

It should be fun, and a great learning experience!

Marjorie Aaron