

University of Cincinnati College of Law
Second Year - Client Counseling Workshop
August 17 - 20, 2010
[Plus Individual Counseling Coaching Sessions
and one short final wrap up class back at the law school in the fall]

BLEGAN Hall, ROOMS 308
(with breakout rooms 214 and 219)

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

Richard Reuben, Esq.
Professor, University of Missouri School of Law

Workshop Syllabus

Please GO TO THE COURSE TWEN SITE FOR ALL reading (other than the text), and all simulation roles and other exercises. 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 exercise (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 Tuesday, August 17, 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

- On the first day of class (August 17), 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 second day of class (August 18), 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.
- We *may* begin work on the decision analysis “problem set” entitled *Simple Hypo* at the end of class on August 18. Thus, you should print it out and bring it to class on the 18th in blank form. (Of course, you are welcome to try to do it earlier.) Work on the problem set will carry over to August 19th. You must complete a first effort at this problem set and bring it to class on August 19th. It will be based upon the decision analysis materials readings and the lecture presentation in class on Day Two (August 18).
- For class on August 19th, 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 is summarized in *Balanced Trees on Balance Beams!*
- In class on August 19, we will work on client counseling for *Design Display Dilemmas*. Everyone will eventually play lawyer and client roles, so everyone should read both parts. Please be thoroughly familiar with the facts and counseling advice before class.

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. You need only the “limited functionality” version.

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. 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 and Preparation Assignments for Day One - Tuesday, August 17, 2010

Read: Chapters 1-6 in the CDP text.

Sobelson, R., “Interviewing Clients Ethically,” 27 *Prac. Law* 13 (1991)18-21.

Feldman, S. and Wilson, E., The Value of Interpersonal Skills in Lawyering,” *Law and Human Behavior*, Vol. 5, No. 4 (1981).

You have been assigned as counsel in ONLY ONE of these case assessment exercises:

Betting on This One
Finally, A Great Case
Calculations in Confidence
Predicting What’s Probable

Your assignment is based upon groupings by last name and is available on the website. **Read, consider, and fill out** your answers to your case assessment exercise, and **TURN THESE IN TO TONI MCGUIRE BEFORE CLASS ON TUESDAY, AUGUST 17** (It would be great if you could drop them off before that day, but we understand that the 17th may be the first day you are on campus for the semester).

Consider and prepare to discuss your responses to the following questions. (These will be discussed in class, toward the end of the afternoon.)

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?

Day One: Tuesday, August 17, 2010, 9:00 a.m. - 4:30 p.m.
(Day includes a 1 hour lunch break and short mid-morning and mid-afternoon breaks.)

Topical Agenda

- Introductions: Why and how this course
- Challenges of client interaction - interviewing, counseling, decision making
- A Course Stance: Collaborative Lawyering
- Goals, Tasks, Techniques, Initial Stages of a Client Interview
- Oh yes, Confidentiality and Fees - An Exercise in Explaining
- 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: Interviews continued in *Hapless Harvest* and *Family Business Matters*
- Interviewing - Last Words
- Introducing the Challenges of Counseling REAL Clients - *can we talk????*

Reading and Preparation Assignments for Day Two – Wednesday, August 18, 2010

Read CDP Text: Chapters 8, 9, 11

Binder, D., Bergman, P. and Price, S., *Lawyers as Counselors* 61-68 (1991).

ABA Model Rule 1.4 and Comments 1-7.

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).

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. Handout.

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). [*If you're short on time or energy, this last article could be read in preparation for Aug. 19.*]

Prepare to explain to a client the meaning of at least two of the following legal concepts:

- *motion for summary judgment,*
- *the standards for grant of preliminary injunction*
- *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 your client may face a motion for summary judgment or seek to file one to end the case against him.

Day Two - Wednesday, August 18, 2010, 9:00 a.m. - 4:30 p.m.

(Day includes a 1 hour lunch break and short mid-morning and mid-afternoon breaks.)

Topical Agenda

- Taking on The Five Counseling Challenges
- Translating Legalese - class exercise
- Directing Process; Collaborating For Wise Client Decisions
- Practice Counseling for Deciding
- Emotions and the Core Concerns Model - presentation and class exercises
- Introducing the VERY BASICS of Decision Analysis

Reading and Preparation Assignments for Day Three – August 19, 2010

Read CDP Text Chapters 7 and 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.

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). *[If you didn't read it earlier.]*

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.

Thursday, August 19, 2010, 9:00 a.m. - 4:30 p.m.

Topical Agenda

- Building and Checking 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
- Red Flags and Strategic Interceptions in Psychology for Savvy Lawyers: Intentional Impact on Minds and Hearts - Lecture and class exercises
- Drama Does It! Actors' Advice for Lawyers' Choice in Gesture and Voice

Reading and Preparation Assignments for Day Four – August 20, 2010

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

Client and Attorney roles in *Design Display Counseling Exercise*.

Prepare

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.

Friday, August 20, 2010, 9:00 a.m. - 2:30 p.m.

Topical Agenda:

- Interviewing perfection - play it both ways.
- Debriefing the interview and “real life” initial client conversations.
- Client counseling in *Design Display*.
- Finally, Design Display: the movie.
- Grand Summary! (plus explanation of the Individual Client Counseling Skills Exercise & expectations)

Post Workshop - 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 Workshop - 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 another faculty member 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. (Only one student has failed the counseling skills exercise in the four year history of this course and that had a lot to do with failure to show up. 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. You will have had some practice in the fourth workshop day's exercises in voice and gesture as well as the Design Display Dilemma simulation.

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 a TV attorney in L.A. Law deliver a powerful 3 minute closing argument that would have lasted 30 minutes "in real life."

Speaking of television: we plan to video tape these sessions, primarily for our own reference and teaching. They will most likely be taped in three to four hour segments, but you will be able to make a copy of your session from the master tape, after all of the sessions are complete.

By August 11 (if not sooner), your *Group assignment and corresponding simulation roles and other exercise documents* should be available at the course TWEN site, by last name alphabetical order.