

## **APPENDIX A**

### **LEGAL SKILLS I: EVALUATION CRITERIA**

#### **GENERAL CRITERIA**

##### **Group work**

- present and on time for group meetings and other activities, prepared, participates, does fair share of work
- takes initiative with respect to administrative matters (setting up meetings, dividing work, etc.)
- displays cooperative attitude with other group members
- client file(s) conform to Legal Skills requirements

##### **In-class work**

- attends class and shows evidence of preparation for class by having read assigned material and preparing any required written or oral exercises
- shows willingness to participate in class discussion and in in-class exercises

##### **General**

- completes assignments on time
- shows sensitivity to ethical behavior expected from attorneys, and behaves in accordance with appropriate rules of ethics
- displays familiarity with Legal Skills Policies, Procedures and Rules (PPR); uses PPR to find answers to appropriate questions
- completely fulfills assigned roleplaying responsibilities

## ACTIVITY-BASED CRITERIA

### Client A Interview

#### Preparation:

- able to articulate goals of interview (for self and for client) and ideas about how to achieve goals

#### Interview:

- begins to establish relationship with client before moving into substance of interview
- displays understanding of lawyer's duty of confidentiality in attorney/client relationship
- communicates information about confidentiality to client as appropriate (in response to client's questions or more generally as part of building trust)
- allows client to tell story completely before inquiring about details
- uses systematic approach to get facts, fill in any gaps in client's story
- displays understanding of rules regarding scope of representation, roles of client and lawyer in setting goals, and determining how to achieve them
- helps client state and refine goal(s), if necessary; focuses on goal(s) that lawyer can ethically help client achieve
- summarizes information conveyed by client and goals set during interview
- undertakes professional duties appropriate to nature of client's problem and stage of attorney/client relationship (such as promise to do research)
- ensures that both parties understand the relationship and the next step(s) to be taken, including how and when they will have next contact
- explains fees and billing practices
- either obtains client's signature on agreement to provide legal services or encourages client to read contract, consider it, and re-contact attorneys about representation
- uses active listening techniques uses both open-ended and narrow questions as appropriate
- uses appropriate nonverbal ways of communication

Evaluation:

- in critique, interviewer(s) and observer(s) are able to articulate degree to which preset goals of interview were accomplished, and effectiveness of means used to achieve goals

Other:

- interviewer(s) and observer(s) show understanding of their roles in the process
- interviewer(s) and observer(s) show understanding of program rules and requirements regarding observation and critique, opening file and file opening memo, procedures for contacting client and reserving interview space; labor divided appropriately among group members
- prepares file memo describing results of interview

**State Bar Memo:**

- Format & Structure:

includes appropriate parts: heading, question(s) presented, short answer (if instructed to use), statement of facts, discussion, conclusion (if short answer not used)

- Heading:

to, from, date and reference line; "re:" entry identifies actual topic of memo as well as client or case name

- Question(s) Presented:

includes identification of parties by status, as well as legal standard and key facts, generalized to a level of legal significance

uses appropriate number of questions presented, to cover all issues and sub-issues of significance; if more than one question used, questions are presented in logical order which is followed throughout discussion

introduces all issues analyzed in discussion section

- Short Answer (if instructed to use):

accurately, clearly and succinctly answers the question(s) presented

- Statement of Facts:

begins with a topic sentence that generally identifies the client and the problem

focuses on facts that are relevant to the legal issues being discussed in memo

contains all facts mentioned in discussion section and any other necessary and background facts

uses chronological or other logical organization

does not include analysis or argument

concludes with statement of client's goals

- Discussion:

objective in tone and content -- identifies strengths and weaknesses of case

authority is presented objectively and accurately

uses thesis paragraph(s) to introduce claims and rule(s) of law and give road map of analysis that will follow

discussion follows organization laid out in thesis paragraph(s)

introduces legal rule(s) governing each claim or issue, then breaks down by element

discusses related ideas together, organized around the governing legal rules and standard

separately analyzes each claim and each issue and sub-issue (or element and sub-element) within each claim, at appropriate level of complexity

each part of analysis proceeds from law to application, by explaining precedent cases, then comparing and contrasting precedent case facts to client's facts (or by applying other rule-explaining material)

transitions between ideas and sections are clear, using subheadings if appropriate

discusses policies promoted by the legal rules, if relevant

contains a conclusion, at appropriate level of certainty, with respect to each issue or sub-issue discussed; conclusion is supported by the preceding analysis

- Conclusion:
  - presents overall conclusion with respect to legal question(s) presented, framed with appropriate level of certainty
  - briefly summarizes reasoning that was presented in discussion section; does not present new analysis or facts
  - if requested, includes strategy suggestions
  
- Research:
  - appropriately distinguishes among different levels of authority
  - makes appropriate use of sources, with respect to relevant point(s) of law and application to the case at hand, and includes citation to authority referenced
  
- Mechanics:
  - citation form is consistent and follows Bluebook form to the extent required by instructor
  - all assertions are properly supported by citations to authority
  - quotations are located in and cited to original source whenever original source can be found
  - quotations are used appropriately as support for analysis, not as substitute
  - quotations are proper in form and attribution
  - writing is concise and clear, particularly with respect to word choice and sentence structure
  - uses correct punctuation and grammar
  - free of typographical and spelling errors

**State Bar Committee Analysis – Discussion with Partner:**

- introduces legal rule(s) governing each claim or issue, then breaks down by element, discussing related ideas together, organized around the governing legal rules and standards
- separately analyzes each claim and each issue and sub-issue (or element and sub-element) within each claim, at appropriate level of complexity

- objective analysis proceeds from law to application, by explaining precedent cases, then comparing and contrasting precedent case facts to client's facts (or by applying other rule-explaining material)
- discusses policies promoted by the legal rules, if relevant
- reaches a conclusion, at appropriate level of certainty, with respect to each issue or sub-issue discussed; conclusion is supported by analysis
- if requested, includes strategy suggestions or personal opinion; answers partner's questions

### **Working Group Conflict of Interest Oral Report**

- identifies and articulates conflict issue
- identifies appropriate rules for resolution
- analyzes issue and reaches reasonable conclusion

### **Client A Memo**

- Effectively utilizes draft process to improve each part of the memo
- Same general criteria as required for State Bar Memo

### **Client A Follow-up Interview**

- same general criteria regarding preparation, technique and evaluation as described under Client A Interview
- Preparation:
  - reviews results of research and analysis to determine whether any additional facts are needed from client to clarify client's position
  - sets out goals and tentative format for interview
  - reviews information about alternative dispute resolution techniques
- Interview:
  - seeks any additional facts needed from client in an organized manner
  - communicates results of research objectively and appropriately, with respect to language used and amount of detail given

research results, options and alternatives communicated in a manner allowing client to make an informed decision about how to proceed

helps client frame realistic goals that the lawyer can ethically pursue

if negotiation with opposing party is the chosen course of action, obtains authorization to negotiate

### **Client A Negotiation**

- Preparation:

works with client to clarify goals and set priorities among them, identify variety of options for achieving goals, identify range of acceptable results and "bottom line" position, as well as BATNA (best alternative to negotiated agreement)

discusses and clarifies extent of lawyer's authority to reveal client secrets during negotiation

identifies parameters within which lawyer can accept settlement versus offers that require client approval

knows relevant facts and law, strengths and weaknesses of case, rights and power assessment, BATNA (best alternative to negotiated agreement)

anticipates legal arguments likely to be made by opposing party and leverage points available to opposing party

identifies information that could and should be communicated to and sought from opposing party

identifies client interests, goals and priorities, options for achieving goals, acceptable parameters for settlement (including client's bottom line position), range of lawyer's settlement authority

works with negotiating partner to clarify strategies, approaches and roles for negotiation; develops plans for opening and fallback positions, and for disclosure of information as appropriate

- Negotiation:

maintains professional, non-hostile demeanor

initially works with opponent to develop relationship and set agenda for negotiation

observes appropriate standards of truth-telling, as per Model Rule 4.1; able to distinguish material facts from immaterial facts and non-facts

shows evidence of ability to distinguish between positions and interests, and focuses on interests during negotiation

able to distinguish between client's interests and lawyer's own interests, and pursues client's interests during negotiation

uses appropriate nonverbal communication

uses law and facts to argue for client's interests

shows flexibility with respect to means for achieving client goals, while continuing to protect client's interests

divulges and obtains appropriate amount and type of information

makes and seeks concessions as appropriate

observes client confidentiality

recognizes and effectively meets approach used by opponent (e.g., competitive or cooperative)

either achieves settlement that accomplishes client's goals, or is able to identify obstacles to achieving settlement and form appropriate plan for counseling client about remaining options

- Teamwork:

neither partner dominates

show evidence of working with same understanding of approach and goals; don't undercut each other

recognize any inconsistencies in approach, if they arise, and take appropriate steps to correct

### **Client A Negotiation Result Letter and Draft Settlement Agreement**

- accurately states terms agreed upon in negotiation, or terms of the parties' last offers if no settlement reached
- observes appropriate standards of truth-telling in drafting of agreement and includes all necessary terms

- wording is precise, especially with respect to defining terms and identifying people, places, dates and time periods; any vagueness present is appropriate and intentional
- offers client the opportunity to seek clarification of anything that is unclear
- gives lawyer's evaluation of how well the agreement serves client's goals
- gives and supports advice about accepting agreement, or about other alternatives (including potential effect of rejecting agreement), but leaves final decision in client's hands
- suggests meeting with client to discuss result and client's decision