APPENDIX B

LEGAL SKILLS II: 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 prepared 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
- competently fulfills assigned roleplaying responsibilities

ACTIVITY-BASED CRITERIA

Client B 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, consider, and re-contact attorneys about representation
- uses active listening techniques
- uses both open-ended and narrow questions as appropriate

- uses appropriate nonverbal ways of communicating

<u>Evaluation</u>

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

<u>Other</u>

- 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

<u>**Client B Research Activities**</u>

<u>Research Process</u>

- identifies key words and questions that need to be answered, based on fact investigation completed to date

- shows understanding of factors that are important in shaping research, including parties' legal status and relationship, known facts, preliminary identification of cause(s) of action, appropriate relief and defenses

- distinguishes among different types of sources and levels of authority, and identifies appropriate use of resources of each type and level

- attends library labs and uses assigned exercises to begin the research process

- uses finding aids, appropriate types and range of sources

- uses both manual and electronic sources to extent directed by partners

- uses citators and pocket parts to update and verify research and to identify additional sources

- identifies relevant jurisdiction and substantive, controlling law

- identifies cause(s) of action, defenses and elements of each (i.e., facts that each party must prove to win or defend case)

- fits known facts of case into framework of law, as it is discovered during research process

- separates legally significant facts from non-legally significant facts

- identifies additional information needed, based on developing knowledge of relevant law

- identifies strengths and weaknesses of various legal theories and defenses examined during research process

- shows evidence of re-examining facts and issues as research proceeds, with respect to relative importance of various facts, usefulness of various possible legal theories, and identification of additional facts needed to support newly-identified theories

- revises and refines questions presented as necessary during process of learning more about the relevant law

- summarizes research findings from that week's sources in office meetings and written assignments

Secondary Source Research

- uses secondary sources to learn generally about relevant area(s) of law, to identify issues and elements, and to amass citations to primary sources for use in later stages of research

Primary Research

- identifies and locates statutes appropriate to the jurisdiction and the issue(s), including following up on any citations to statutory authority located during secondary source research

- distinguishes between mandatory statutory authority (federal and state constitutions, statutes and rules) and persuasive statutory authority (Restatements, Uniform and Model acts not adopted by jurisdiction)

- uses current, official codes

- focuses on the controlling jurisdiction to find mandatory authority

- follows up on any relevant case citations located during secondary source research

- if appropriate, distinguishes among levels of state courts with respect to strength of authority

- uses persuasive authority (federal and other states) when necessary to fill gaps in case law of the controlling jurisdiction or to suggest good faith arguments for extension or change in law of the controlling jurisdiction

- cites to the correct reporter(s)

<u>Client B Memo</u>

- final draft of memo incorporates any revisions suggested by partner(s) on first draft, including additional research if necessary

- 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 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 standards

  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 if requested, includes strategy suggestions

- Research:

  research is thorough and shows evidence of using appropriate sources with respect to relevant point(s) of law and application to the case at hand and includes citation to authority referenced

  relies mainly, if not exclusively, on primary, mandatory authority; uses secondary sources or persuasive authority sparingly and appropriately

  appropriately distinguishes among different levels of authority

- Citations and Quotes:

  all assertions are properly supported by citations to authority

  citation form is consistent and follows Bluebook form; uses Practitioner's Notes section of Bluebook, other rules as applicable

  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 and Other Mechanics:

  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

<u>Client B Follow-Up Interview</u>

- Same general criteria regarding preparation, technique and evaluation as described under <u>Client B Interview</u>

- Preparation:

  reviews results of research and analysis to determine whether any additional facts are needed from client to clarify client's position reviews information about alternative dispute resolution techniques

sets out goals and tentative format for interview

- Interview:

  communicates results of research objectively and appropriately, with respect to language used and amount of detail given

  seeks appropriate additional information from client, as suggested by legal research performed to date

  seeks information in logical, orderly manner

  communicates options and alternatives suggested by facts and by legal research results

  knowledgeably and succinctly presents information about alternative dispute resolution methods and their advantages and disadvantages (as discussed in class and readings)

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

  research results, options and alternatives are 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

<u>Client B Witness Interviews</u>

- Preparation:

  is able to articulate goals of interview and ideas about how to achieve goals

- Interview:

  observes appropriate ethical standards with respect to confidentiality, fairness to opposing parties and communication with third parties

  questions show familiarity with facts and law of case, and understanding of how this witness' information could supplement facts already known

  questions cover all necessary and relevant information that this witness could reasonably provide

  uses empathy and other appropriate techniques, as discussed in class and readings, to motivate witness to share information

begins to establish relationship before moving into substance of interview
allows witness to tell story completely before inquiring about details

uses systematic approach to get facts, and encourage witness to fill in any gaps in witness' story

summarizes information conveyed by witness during interview

ensures that both parties understand the relationship and the next step(s) to be taken, including how and when they will have next contact

uses active listening techniques

uses both open-ended and narrow questions as appropriate

uses appropriate nonverbal ways of communicating

prepares file memo describing results of interviews

<u>Complaint</u>

- includes appropriate parts: caption, title, preliminary statement (if appropriate), allegation of jurisdiction, description of parties, general allegations and counts, demand for judgment or prayer for relief, signature and certificate of service

- uses numbered paragraphs

- uses simple, clear language

- lawyers consult with client about final content of complaint, ensure accuracy of all facts

- is served and filed in timely manner and otherwise in accordance with Legal Skills and federal rules

- Caption:

  identifies correct court, parties and docket number if known

  follows form discussed in class and in readings

- Preliminary Statement:

  describes nature of the action briefly and clearly

- Allegation of Jurisdiction:

  describes basis upon which court can exercise jurisdiction over the case, including any facts necessary to support basis of jurisdiction

- Description of Parties:

  includes name and address of both parties; may include other factual information relevant to the dispute

- General Allegations and Counts/Claims/Causes of Action:

  facts alleged are based on reasonable, good faith inquiry including interviews with client and witnesses, and any additional investigation as required

  each claim is based on reasonable belief that it is warranted by existing law or by good faith argument for extension, modification or reversal of existing law

  each claim or cause of action is described in a separate count

  each separate count heading is designated with a roman numeral; if so instructed, each count heading names the legal theory underlying the cause of action (ex., "Negligence," "Strict Liability")

  fact allegations under each count describe facts sufficient to support each element of the cause of action, as developed during Client B research process

  allegations consist of statements of fact, not law

  each fact allegation is set forth in a separate, numbered paragraph

  facts are described with adequate specificity, based on federal rules

  fact allegations supporting more than one cause of action are either realleged or appropriately incorporated into subsequent counts

- Demand for Judgment or Prayer for Relief:

  appears at end of each count or at end of document, as instructed

  states the specific action that plaintiff wants the court to take

  relief requested is appropriate to the cause(s) of action

- Signature:

includes firm name, address and telephone number, designation of which party the firm represents, and signature of at least one attorney on behalf of the firm

- Certificate of Service:

  conforms to Legal Skills rules regarding form and manner of service

Amended Complaint, if any, is a complete document prepared in accordance with criteria for Complaint, and is properly served and filed

Reply (if Defendant files Counterclaim(s)) is prepared in accordance with criteria for Answer

Answer (and Counterclaim)

- Answer to Complaint

  includes appropriate parts: caption, title, response to each paragraph of Complaint, affirmative defenses (if any), counterclaim(s) (if any), demand for judgment or prayer for relief, signature, certificate of service

  uses simple, clear language

  lawyers consult with client about final content of Answer, ensure accuracy of all facts

  is served and filed in timely manner and otherwise in accordance with Legal Skills and federal rules

- Caption:

  identifies correct court, parties and docket number if known

  follows form discussed in class and in readings

- Responses to Allegations:

  are based on reasonable, good faith inquiry including consultation with client, witness interviews and any other reasonable investigation, if required

  each part of each allegation is answered by admission, denial or statement of insufficient knowledge

- Affirmative Defenses (if any):

  are included only if applicable

each affirmative defense is listed and titled separately and is supported with factual basis to the extent instructed

- Counterclaim(s) (if any):

  each counterclaim is listed as a separate count and is supported by sufficient facts, investigation and good faith belief, as described in criteria for Complaint

- Demand for Judgment or Prayer for Relief:

  appears at end of each count or at end of document, as instructed

  states the specific action that defendant wants the court to take

  relief requested is appropriate to the cause(s) of action

- Signature:

  includes firm name, address and telephone number, designation of which party the firm represents, and signature of at least one attorney on behalf of the firm

- Certificate of Service:

  conforms to Legal Skills rules regarding form and manner of service