

APPENDIX C

LEGAL SKILLS III: 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 office and large section meetings
- 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 Mandatory Discovery Conference and Exchange

- provides opposing counsel with mandatory discovery pursuant to FRCP 26(a)
- meets with opposing counsel to plan the discovery process pursuant to FRCP 26(f)

Discovery Motion and Memo

- includes all required parts: motion and proposed order, memorandum in support of or in opposition to motion, certificate of service

1. Motion and Proposed Order:

- includes appropriate parts: caption, title(s), statement setting forth grounds and relief sought, signature, proposed order with title and judge's signature line, certificate of service
- follows all relevant Legal Skills and Federal Rules regarding content, format, service and filing

2. Memorandum of Law:

General:

- includes appropriate parts: caption, title, introduction, statement of facts, argument, conclusion and signature
- follows all relevant Legal Skills and Federal Rules regarding content, format, service and filing
- appropriately uses various persuasive writing techniques as discussed in class and in readings
- states facts accurately and includes all legally significant facts
- shows awareness of ethical concerns regarding zealous representation, candor toward tribunal, fairness to opposing parties, and effect of advocacy techniques on reliability of fact-finding process
- uses accurate Bluebook citation form
- written clearly and free of errors in grammar, punctuation, spelling

Title:

- properly identifies document

Introduction:

- identifies parties, procedural posture, type of dispute, nature of relief sought
- uses subtly persuasive writing techniques

Statement of Facts:

- limited to relevant facts (facts that explain what case is about and that are relevant to issue(s) presented in this motion) and procedural history
- contains all facts used in argument
- uses chronological or other logical organization
- does not include analysis or argument, but uses subtly persuasive writing techniques

Argument:

Point headings --

- headings are framed as conclusory, explanatory assertions of party's position with respect to each issue
- each main point heading summarizes an independent ground for relief
- subheadings are used as appropriate, proceeding in logical order to separate arguments framed by main point headings into component parts
- headings and subheadings include rule of law and legally significant facts to support conclusion
- proper form for main headings and subheadings, organized according to established rules of outlining

Text of Argument --

- argument under each heading or subheading supports assertion made in heading and refutes anticipated opposing arguments
- argument is organized around governing legal rules
- uses overtly persuasive writing techniques

- assertions are appropriately supported by authority
- each part of argument proceeds from law to application, by explaining precedent cases or other appropriate authority, 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
- argument makes explicit connections between legal rules, policies and facts, supporting conclusion with respect to each argument made

Conclusion:

- states desired result and specifically requests relief

3. Certificate of Service:

- conforms to Legal Skills rules regarding form and manner of service

Objective Cover Memo to Partners:

- objective analysis of the issues to be presented to the motion judge
- authority is presented objectively and accurately
- discusses related ideas together, organized around the governing legal rules and standards
- 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 supported by analysis

Discovery Motion Argument

General:

- demeanor and appearance are professional and serious
- tone expresses conviction

- avoids reading argument and maintains reasonable amount of eye contact with judge
- shows deference in interactions with judge
- shows knowledge of rules governing argument, including time limits and order of argument
- shows awareness of ethical concerns regarding zealous representation, candor toward tribunal, fairness to opposing parties, and effect of advocacy techniques on reliability of fact-finding process

Argument:

- advocate introduces self, matter and client, and requests rebuttal time (if moving party)
- gives roadmap that introduces and outlines argument(s) to be made
- if appropriate, gives brief statement of the relevant facts
- argument includes all important and logically necessary points, and proceeds according to organization set forth in roadmap
- is prepared to provide legal and factual authority, if requested
- responds fully and appropriately to any questions asked by judge, and makes smooth transition back to argument
- argument of party opposing motion answers moving party's argument(s)
- argument ends with conclusion that gives brief, forceful summary of position and requests specific relief
- rebuttal, if any, used appropriately: brief, few points addressed, answers opposing arguments rather than merely reinforcing own arguments or raising new arguments

Client C 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
- if appropriate, accurately conveys information about criminal defendants' rights and privileges, types of pleas and effects of making various pleas
- if client desires plea bargaining, lawyer works with client to clarify goals and set priorities, to identify range of acceptable results and concessions client is willing to make, and to clarify extent of lawyer's authority to reveal client secrets and to accept offers on client's behalf
- helps client to frame realistic goals and goals that lawyers ethically can pursue
- displays understanding of rules regarding scope of representation, roles of client and lawyer in setting goals, and determining how to achieve them
- 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
- ensures that both parties understand the relationship and the next step(s) to be taken, including how and when they will have next contact
- if appropriate, explains fees and billing practices, and either obtains client's signature on agreement to provide legal services or encourages client to read, consider, and re-contact attorneys about representation
- if client presents any difficult challenges (such as anger, crying, uncommunicativeness, evasiveness), interviewer uses appropriate techniques to show empathy and to encourage client to give lawyer the necessary information
- recognizes potential conflicts if presented, and handles appropriately
- uses active listening techniques
- uses both open-ended and narrow questions as appropriate
- uses appropriate nonverbal ways of communicating

Evaluation:

- in critique, interviewer(s) and observer(s) are able to articulate degree to which pre-set 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

Charging Statute Application Memo

- objective analysis of the charging statute or statutes, breaking the statute(s) down into elements, including discussion of lesser – included offenses, where appropriate
- describes, with authority where possible, the law of each element applied to the facts you know of your case
- authority is presented objectively and accurately
- transitions between ideas and sections are clear, using subheadings if appropriate
- contains a conclusion supported by analysis
- demonstrates knowledge of sentencing possibilities

Client C Negotiation (Plea Bargain)

Preparation:

- knows relevant facts and law, including elements of charged offense(s), lesser included offenses (if any), relevant sentencing guidelines, strengths and weaknesses of client's case, types of pleas available, and rules governing plea negotiation and acceptance of plea agreements by court (Fed. R. Crim. P. 11)
- anticipates arguments likely to be made by opposing party and leverage points available to opposing party; knows BATNA (best alternative to negotiated agreement)

- identifies information that could and should be communicated to and sought from opposing party
- identifies client interests, goals and priorities, options for achieving goals, concessions client willing to make
- 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, in accordance with MR 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 law and facts to argue for client's interests
- uses appropriate nonverbal communication
- 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 agreement that accomplishes client's goals, or is able to identify obstacles to achieving agreement, and form appropriate plan for counseling client about remaining options

Teamwork:

- neither partner dominates

- team shows 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

Memo or Letter Re: Client C Plea Bargain

- accurately states terms agreed upon in negotiation or terms of the parties' last offers if no agreement reached
- gives lawyers' evaluation of how well the agreement serves client's goals and includes basis of lawyers' opinion, framed in terms appropriate to this client's level of understanding
- 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 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

Interrogatories

- include appropriate parts: caption, title, introduction, definitions, instructions, questions, signature of attorney or client, certificate of service
- complies with all relevant Legal Skills and Federal Rules regarding form, content, number, service and filing
- definitions define terms actually used in questions, and terms are then used in accordance with the way in which they are defined
- definitions and instructions serve to clarify and supplement the questions
- questions relate to facts, opinions and/or application of law to facts
- questions are worded precisely, to stimulate responses that provide the desired information

- questions show evidence that lawyers have reviewed case facts and law, to identify specific gaps that need to be filled
- questions are organized in a logical manner

Interrogatory Answers

- include appropriate parts: caption, title, answers, signatures of attorney and client, certificate of service
- complies with all relevant Legal Skills and Federal Rules regarding form, content, service and filing
- client is consulted and supplies information for answers, consistent with what client does, or reasonably should, know
- answers include a response to each question, with answer or with objection supported by a legitimate reason
- answers are complete and accurate, to best of party's knowledge and based on good faith reading of question and reasonable investigation of facts, but do not go beyond scope of questions asked
- any claims of insufficient knowledge or information are used legitimately

Practicum: Direct & Cross-Examination

- student comes to class prepared to perform pre-assigned role(s), if any, including witness roles
- shows evidence of preparation regarding relevant rules of evidence, form and content of examination, logical order of questions, anticipated content of answers and potential objections
- questions are phrased clearly and follow a logical sequence
- shows awareness of tactical considerations regarding examining witnesses
- observes relevant ethical standards regarding fairness to witnesses and candor with court
- demeanor is professional and serious; addresses court and witness properly

Direct examination:

- if appropriate, begins with background questions

- questions concern matters relevant to issue(s) of case and reasonably expected to be within witness' scope of knowledge
- avoids leading and narrative questions except as allowed
- uses redirect only if necessary, and stays within proper scope

Cross-examination:

- cross and re-cross (if necessary) stay within proper scope
- uses leading questions based on good faith belief about underlying facts
- uses impeachment techniques as necessary and appropriate

Objections:

- recognizes objectionable questions
- objects in timely manner
- is able to explain basis of objection
- objections are made for proper purpose(s)

Practicum: Introduction of Evidence

- student comes to class prepared to perform pre-assigned role(s), if any, including witness roles
- shows evidence of reasonable preparation regarding form and content of examination, logical order of questions, anticipated content of answers and potential objections
- demeanor is professional and serious; addresses court properly

Introduction of evidence:

- if required, appropriately pre-marks evidence for identification
- shows awareness of relevance and potential use of any item of evidence sought to be introduced
- if necessary, identifies proper witness to be used for foundation and introduction

- shows awareness of necessary elements of foundation for any item of evidence sought to be introduced, based on type of evidence, purpose, and relevant evidentiary rules
- asks questions necessary to establish each element of foundation before seeking to offer item into evidence
- uses proper form for offering item into evidence
- observes rules regarding proper form of questions, based on whether evidence offered during direct or cross-examination
- authenticates documents, if necessary
- anticipates potential objections to admissibility and is prepared to respond; makes offers of proof, if necessary

Objections:

- anticipates and recognizes objections to be made
- objects in timely manner
- is able to explain basis of objection
- objections are made for proper purpose(s)

Practicum: Opening and Closing

- student comes to class prepared to perform pre-assigned role(s), if any
- demeanor is professional and serious; addresses court properly
- does not assert personal viewpoints or misstate facts
- avoids reading, maintains eye contact with judge

Opening:

- introduces self, client and matter
- provides court with non-argumentative, succinct overview of theory, facts and law of case
- avoids reference to inadmissible evidence -- shows evidence of having used judgment regarding any arguably inadmissible evidence

Closing:

- summarizes evidence likely to have been admitted during trial
- uses persuasive techniques to emphasize favorable points and inferences, and to draw explicit connections between facts and theory of case