

## **APPENDIX D**

### **LEGAL SKILLS IV: 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

### Trial

#### Preliminary Matters:

- re-interviews client and witnesses as necessary; any interviews with witnesses or opposing parties are conducted in accordance with constitutional standards and with ethical standards regarding confidentiality, fairness to opposing parties and communication with third parties
- continues to work with trial plan to refine theory(ies) of case, review evidence to be introduced, anticipate and prepare responses to objections, evaluate and plan trial strategy
- if desired, meets with opposing counsel to discuss stipulations and/or admissions; any stipulations or admissions agreed to are factually accurate and tactically justified
- evaluates opponent's case and plans strategy for countering opponent's evidence and arguments
- plans opening and closing, questions and expected responses, for direct and cross examination
- adequately prepares client for direct and cross-examination
- if appropriate, uses pretrial motions to obtain early rulings; handles motions in accordance with Legal Skills and federal rules regarding form, content and procedure
- prepares trial notebook to organize material needed for trial
- prepares and submits to court Stipulations which include those required by Legal Skills and any agreed upon in meeting with opposing counsel; format and content of document comply with all relevant rules and standards
- prepares and submits to court Proposed Findings of Fact and Conclusions of Law:
  - format, content and length comply with all relevant rules and standards
  - each proposed finding of fact is presented in a separate numbered paragraph; includes each fact necessary to support a finding in client's favor for each claim
  - each proposed conclusion of law is presented in a separate numbered paragraph; includes a statement of each point of law necessary for a ruling in client's favor for each claim; statements of law are supported by citations to authority

### General Conduct of Trial:

- shows evidence of preparation regarding relevant rules of evidence (including rules specific to Legal Skills court), form and content of examination, logical order of questions, anticipated content of answers and potential objections
- knows and observes rules of court regarding time limits, order and manner of presentation
- observes relevant constitutional standards and ethical standards regarding zealous representation, fairness to witnesses and candor with court
- demeanor is professional and serious; addresses court and witness properly
- has readily available in court all factual and legal documentation that counsel could reasonably anticipate judge may request to see
- appropriately premarks evidence for identification
- shows awareness of relevance and potential use of any item of evidence sought to be introduced
- uses proper witness for foundation and introduction of any item of evidence sought to be introduced
- 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
- incorporates effective use of technology during the presentation of case
- moves for judgment as a matter of law when appropriate

### Opening:

- introduces self, client and matter
- provides court with nonargumentative, 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
- does not assert personal viewpoints or misstate facts
- avoids reading, maintains eye contact with judge

### 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
- questions are phrased clearly and follow a logical sequence
- shows awareness of tactical considerations regarding examining witnesses
- uses redirect only if necessary, and stays within proper scope

### Cross Examination:

- cross and recross (if necessary) stay within proper scope
- questions are phrased clearly and follow a logical sequence
- shows awareness of tactical considerations regarding examining witnesses
- uses leading questions based on good faith belief about underlying facts
- uses impeachment techniques as necessary and appropriate

### Objections and Responses:

- anticipates potential objections to questions or to admissibility of evidence and is prepared to respond
- responds to objections fully and with reference to appropriate rules of evidence
- makes offers of proof, if necessary
- recognizes objectionable questions and questionably admissible evidence
- objects in timely manner
- explains basis of objection fully and with reference to appropriate rules of evidence
- makes objections for proper purpose(s)

### Closing:

- summarizes evidence admitted during trial
- uses persuasive techniques to emphasize favorable points and inferences, and to draw explicit connections between facts and theory of case
- does not assert personal viewpoints or misstate facts
- avoids reading, maintains eye contact with judge
- rebuttal, if any, is used appropriately: brief, few points addressed, answers opposing arguments rather than merely reinforcing own arguments or raising new arguments

### **Plea Bargain Hearing** (only for those Client Cs with accepted plea bargains)

- is familiar with and observes all relevant Legal Skills and federal rules pertaining to plea bargain hearings
- defense counsel ensures that client fully understands all aspects of plea and its effect
- defense counsel adequately prepares client to respond to potential inquiries of judge, based on requirements of Fed. R. Crim. P. 11
- prepares any documents requested by court in accordance with Legal Skills and federal rules and standards

- is prepared to present statement of the case and/or summary of plea negotiation, if requested
- demeanor is professional and serious; addresses court and witness properly
- has readily available in court all factual and legal documentation that counsel could reasonably anticipate judge may request to see
- observes appropriate ethical standards with respect to zealous representation, fairness to opponent, safeguarding defendant's constitutional rights and candor with court

**Notice of Appeal (only for those doing Client E and appeal)**

- after meeting with partner, identifies all potential issues for appeal by reviewing available trial records
- format, content, service and filing are in accordance with relevant Legal Skills and federal rules
- Option for Replacement Case, if appropriate, is exercised in accordance with relevant Legal Skills rules

**Appellate Brief (only for those doing Client E and appeal)**

- includes appropriate parts: cover, Table of Contents, Table of Authorities, introduction, question(s) presented or issue statement(s), statement of the case, summary of argument (if appropriate), argument, conclusion and signature
- follows all relevant Legal Skills and federal rules and standards regarding content, format, service and filing
- if necessary, prioritizes and narrows number of issues identified in notice of appeal
- 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
- shows awareness and effect of standard of review for each issue on appeal
- uses accurate Bluebook citation form
- is written clearly and is free of errors in grammar, punctuation, spelling

Question(s) Presented or Issue Statement(s):

- question(s) include identification of parties by status, legal standard and key facts, generalized to a level of legal significance
- appropriate number of questions used, to cover all issues and sub-issues of significance
- question(s) introduce all issues to be covered in argument
- question(s) use subtly persuasive writing style and convey party's theory of case

Statement of the Case:

- identifies parties, procedural posture and type of dispute
- is limited to procedural history and to other relevant facts (facts that explain what case is about and that are relevant to issue(s) on appeal)
- contains all facts used in argument
- each assertion of fact is supported by citation to appropriate part of trial record
- uses chronological or other logical organization
- does not include analysis or argument, but uses subtly persuasive writing techniques

Summary of the Argument:

- is written succinctly, using conclusory statements to summarize argument
- organization is consistent with organization of argument

Argument:

- Point headings --
  - headings are framed as conclusory, explanatory assertions of party's position with respect to each issue
  - each main point heading summarizes one error or ground for relief
  - subheadings are used as appropriate, proceeding in logical order to break arguments framed by main point headings into component parts

- subheadings reflect levels of argument (procedural default, merits and harmlessness), as appropriate and as discussed in class and readings
- headings and subheadings include rule of law and legally significant facts to support conclusion
- proper form – 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 and levels of argument
  - 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
- Certificate of Service:
  - conforms to Legal Skills rules regarding form and manner of service

**Appellate Argument (only for those doing Client E and appeal)**

- demeanor and appearance are professional and serious
- tone expresses conviction
- avoids reading argument and maintains reasonable amount of eye contact with judges

- shows deference to appellate judges; addresses court properly
- 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
- shows evidence of being fully conversant with facts and law of case, including standard of review for all issues on appeal, and is prepared to provide legal and factual authority, if requested
- shows evidence of having anticipated potential questions by responding fully and appropriately to any questions asked by judge
- makes smooth transitions back to argument after responding to questions
- concedes points respectfully but only when necessary
- appellee's argument answers appellant's argument(s)
- argument ends with conclusion that gives brief, forceful summary of position and requests specific relief
- rebuttal, if any, is used appropriately: brief, few points addressed, answers opposing arguments rather than merely reinforcing own arguments or raising new arguments

**Client E (only for those doing Client E and appeal)**

- group members work cooperatively to identify roles within group that must be filled and fill

them

- in conjunction with other group members, identifies needs of client, converts client needs to appropriate tasks, participates in dividing work among group members, performs fair share of work, and communicates with group members
- handles any necessary court documents, court appearances, negotiations, files or other work in accordance with relevant Legal Skills rules, federal rules and Legal Skills I-IV Activity-Based Criteria
- is present and on time for group meetings and other activities, is 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
- shows professionalism in manner of dealing with client
- provides regular updates to, and maintains communication with, supervising attorney
- prepares accurate time and billing records
- written work is clear, free of errors in grammar, punctuation, and spelling

### **Client ET**

- group members work cooperatively to identify roles within group that must be filled and fill them
- in conjunction with other group members, identifies needs of client, converts client needs to appropriate tasks, participates in dividing work among group members, performs fair share of work, and communicates with group members
- handles any necessary negotiations, mediations, and review or preparation of transactional documents
- is present and on time for group meetings and other activities, is 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

- shows professionalism in manner of dealing with client
- provides regular updates to, and maintains communication with, supervising attorney
- prepares accurate time and billing records
- written work is clear, free of errors in grammar, punctuation, and spelling