

## Interviewing, Counseling, Negotiation, & Mediation

Professor Tom Patrick

Fall 2013

### Syllabus

#### **Credits**

**Hours** Four credits; 10:30—11:50 MWF

**Seminar Perspectives** This course satisfies neither the seminar nor the perspectives requirement at the College of Law.

**Required Texts** BINDER, David A., BERGMAN, Paul, PRICE, Susan C., and TREMBLAY, Paul R. *Lawyers as Counselors: A Client-Centered Approach* (3<sup>d</sup> Edition 2012). CRAVER, Charles B., *Effective Legal Negotiation and Settlement* (7<sup>th</sup> Edition 2012); PUNNETT, Spencer, *Representing Clients in Mediation* (2013).

Register for ICNM in TWEN [www.lawschool.westlaw.com](http://www.lawschool.westlaw.com)

#### **Course Overview**

Interviewing, Counseling, Negotiation, and Mediation is a component of the skills offerings at the College of Law. Nested conceptually between Legal Research, Analysis, and Writing and Trial or Appellate Advocacy, Interviewing and Counseling exposes students to some of the rationale behind the skills developed in legal writing and forecasts the preparation necessary for effective representation of client interests in adversarial and non-adversarial settings.

ICNM provides an opportunity for students to explore the theoretical underpinnings of interviewing and client counseling. In addition, ICNM requires that students assume the role of a client or an attorney in order to encounter some of the “real life” aspects of these essential lawyering skills. While we may denominate these exercises “role play,” my contention is that these exercises are more “real life” than we would at first assume or, on more reflective thought, be willing to admit. This is so, I believe, because in “make-believe” as in “real life” we call upon our repertoire of learning and experience to bring life to the stage upon which we play our part. Accordingly, I encourage students to “play” roles as closely to real life as possible in order to glean real life lessons from these role-play experiences.

Providing opportunities for both experiential learning and reflective discourse means that IC has multiple agendas. One is a basic skills agenda: what identifiable skills or techniques are involved in interviewing and counseling clients in order to achieve the client's objectives? For example, interviewing a client may involve “passive” or “active” listening, as well as body- and verbal-language with which the lawyer communicates that the lawyer hears and

understands the client's interests and objectives. As another example, in learning techniques for counseling a client, a student explores how to explain options in a way that facilitates client understanding and decision-making. As we will learn during our third quarter of the course, effective negotiation will require that the student identify the strategies lawyers engage to achieve the optimum outcome. As a final example, in learning techniques for representing a client in mediation, a facilitated negotiation, a student explores how a neutral third party may be the key to the resolution of a matter that is destined for impasse in negotiation.

Developing effective skills in interviewing, counseling, negotiation, and mediation also requires careful observation of yourself and others as well as frank discussions about these observations. This reflection/toolbox agenda is complex. Our objective here is that the cycle—planning, performance, observation, and critique—inform the practice in the subsequent cycle. My sense is that we interview, counsel, negotiate, and represent clients in mediation either by default or by design. This course will encourage students to identify and evaluate their “default” and to experiment with “design.”

Finally, the course suggests exploration of a much more complex values agenda—the values which inform the choices we make as lawyers. Simulated exercises in interviewing, counseling, negotiation, and representing clients in mediation place you within contexts that will require you make choices—social, legal, ethical, even moral choices. In this process, the course reveals societal, professional, and individual values as a backdrop against which the student may explore what *becoming a lawyer* or *thinking as a lawyer* or *acting as a lawyer* may mean.

## Grading

There are three components to the course evaluation: 1) reflections toolboxes and short papers [10 pages]; 2) formal planning and self-critique; and 3) class participation and skills exercises.

Reflections Toolboxes & Short Papers: Each student is required to keep a journal in which the student's reflections upon course materials and exercises are recorded. Students are encouraged to independently explore and reflect upon other, related materials that may be of particular interest to the student. The journal also contains informal reflections upon yourself as a “lawyer-to-be” and your experiences as you interview and counsel clients during this semester. Often, you will be assigned a client role, entrusting your “case” to another student playing the attorney. Reflections upon how these course materials, skills, experiences, etc. will likely impact your “real life” interviewing and counseling is the focus of the journaling experience.

“Toolbox” is just that, a word-processing document where you record the assortment of tools you are developing. For example, after our work with the Myers-Briggs, in your reflections journal you may have reflected that your type and preferences may make it very difficult to interview a person with different

preferences. So, what skills tool can you develop (or borrow from Binder, other readings, or class exercises) for this contingency? Or, suppose you have never been very good at talking with introverts—that just drains the energy right out of you! What skills tool could you place in your toolbox to deal with that contingency? As another example, after our work with the ethics of negotiation, you may have reflected that you will not lie in negotiation. So, what skills tool can you develop (or borrow from Craver or Abramson, other readings, or class exercises) for this contingency? Suppose you have never been very good at keeping a “poker face”—when you want \$30,000. it is very difficult for you to suggest that you must have \$50,000. to close the deal! What skills tool could you place in your toolbox to deal with that contingency? This toolbox is “you” specific—what can you develop and use effectively.

The reflections toolbox will be submitted at three-week intervals, as outlined in the syllabus. Students are encouraged to write entries on regular basis, as often as materials are consumed, the class meets, or exercises are completed.

The two short papers [10 pages typewritten double-spaced Times New Roman 12 with one inch margins all around] will focus upon a deeper exploration of any topic of the student’s choosing, provided however that the topic has some relevance to interviewing, counseling, negotiation, or representing clients in mediation.

Students’ topic selections may be informed by the content of the reflections toolbox, and/or materials consumed during the course. For example, a student may realize that he or she is not very good at asking questions, a skill used often by lawyers. That student may want to explore the topic of “asking questions” in the short paper. Another student may observe that the gender of the client is a factor that affects the lawyer-client relationship and choose that subject-matter for deeper, personal exploration. As another example, a student may realize that he or she is not very good at working collaboratively in an adversarial setting, a skill used often by lawyers. That student may want to explore the topic of “collaboration” in the short paper—for example, how freely may one share information to create value when one must claim value to advance his or her client’s interests. Another student may observe that culture is a factor that affects negotiation and choose that subject-matter for deeper, personal exploration. One paper will be due after we complete the interviewing and counseling portion of the course; its focus should be upon interviewing and/or counseling. The second short paper will be due at the end, after we have explored negotiation and representing clients in mediation; its focus should be upon negotiation and/or representing clients in mediation.

In lieu of the papers, occasionally students take me up on an offer to develop a short instructional video, exploring some aspect of the course in greater depth.

For the video, students may work with another student or a small group and the submission will be a joint submission.

The reflection-toolbox submissions and the short papers (or video) together will be weighted at one-third of the course grade.

Formal Planning & Self-Critique: Each student (often working in teams of two, but not always with the same teammate) will submit four written plans: one prior to an interview, a second prior to a client counseling session; one prior to a negotiation; and a fourth prior to a mediation. These sessions will be videotaped. After the skills exercise has been completed, the student will then self-critique the plan and the exercise. These four planning/critiquing documents will be evaluated by the instructor, along with the videos, in light of course materials and will be weighted at one-third of the course grade.

Class Participation & Skills Exercises: Our class time will be consumed by discussion of course materials and short, in-class exercises designed to highlight particular concepts presented in those materials. The course texts are practice-oriented; our class discussion and short exercises will be designed to stimulate class reflection upon the practice aspects of the readings. Often, and usually on Fridays, a more formal skills exercise will be assigned in lieu of a class meeting. These exercises will require that you prepare to play the role of an attorney and a client in interviewing, counseling, negotiation, or representing a client in mediation and then meet with other students to conduct the exercises. As indicated above, four of these exercises will be videotaped; these will be self-critiqued by the students and submitted for review. Class participation in these exercises will be evaluated by the instructor and will reflect the final one-third of the course grade.

### **Course Materials**

Course materials may be posted to the TWEN ICNM Course Page in Adobe PDF file format. If you do not have Adobe Acrobat or Adobe Acrobat Reader you may download the most current version of Reader without charge at [www.adobe.com](http://www.adobe.com).

### **Class Sessions**

Daily assignments are listed below; modifications will be announced in class or through TWEN.

August 19

Visit [www.humanmetrics.com](http://www.humanmetrics.com) and take the Jung-Myers Briggs Typology, score the test, and then read the materials about your typology.

Additional materials will be posted to the TWEN site:

## Jung-Myers Briggs Typology

BRENNAN, Michael G. and DUSHKU, Alexander, "Each Lawyer's Crisis," 81 Marq. L. Rev. 831 (1998).

- August 21 Binder, Ch. 1-2
- August 23 Binder, Ch. 3-4
- August 26 Binder, Ch. 5-6
- August 28 Binder, Ch. 7
- August 30 Practical Exercise: Interview I—no class meeting.  
[Interview I Memo to File due September 4]
- September 4 Binder, Ch. 8-9
- September 6 Practical Exercise: Interview II—no class meeting.  
[Interview II Memo to File due September 11]  
[Reflections Toolbox I due on September 13]
- September 9 Binder, Ch. 10-11
- September 11 Binder, Ch. 12  
[Written plan for Interview III due September 13]
- September 13 Practical Exercise: Interview III [must be videotaped]  
[Interview III Self Critique due September 18]
- September 16 Binder, Ch. 13
- September 18 Binder, Ch. 14
- September 20 Practical Exercise: Counseling I  
[Counseling I Memo to File due September 25]
- September 23 Binder, Ch. 15-16
- September 25 Binder, Ch. 17-18
- September 27 Practical Exercise: Counseling II  
[Counseling II Memo to File due October 2]
- September 30 Binder, Ch. 19-20

- October 2 Binder, Ch. 21-22  
[Written plan for Counseling III due October 4]
- October 4 Practical Exercise: Counseling III [must be videotaped]  
[Counseling III Self Critique due October 9]  
[Reflections Toolbox II due October 11]
- October 7 Binder, Ch. 21  
  
Interviewing and Counseling Short Paper [or video] due October 16.
- October 9 Craver, Ch. 1-3
- October 11 Craver, Ch. 4-5
- October 14 Craver, Ch. 17
- October 16 Craver, Ch. 6, 9
- October 18 Practical Exercise: Negotiation I—no class meeting.  
[Negotiation I Memo to File due October 23]
- October 21 Craver, Ch. 7-8
- October 23 Craver, Ch. 10
- October 25 Practical Exercise: Negotiation II—no class meeting.  
[Negotiation II Memo to File due October 30]  
[Reflections Toolbox III will be submitted on November 1]
- October 28 Craver, Ch. 12-13
- October 30 Craver, Ch. 14  
[Written plan for Negotiation III due November 3]
- November 1 Practical Exercise: Negotiation III [must be videotaped]  
[Negotiation III Self Critique due November 6]
- November 4 Craver, Ch. 16
- November 6 Punnett, Ch. 1-2
- November 8 Practical Exercise: Mediation I  
[Mediation I Memo to File due November 13]

November 11 Punnett, Ch. 3-4

November 13 Punnett, Ch. 5-7

November 15 Practical Exercise: Mediation II  
[Mediation II Memo to File due November 20]

November 18 Punnett, Ch. 8-9  
[Written plan for Mediation III due November 22]

November 20 Punnett, Ch. 10-12

November 22 Practical Exercise: Mediation III [must be videotaped]  
[Mediation III Self Critique due December 4]  
[Reflections Toolbox IV due December 6]

THANKSGIVING RECESS

Negotiation and Mediation Short Paper [or video] due December 11.