



**WEST VIRGINIA
UNIVERSITY
COLLEGE OF LAW**

**Legal Counseling & Negotiation—LAW 788
Spring 2015**

**Professor Tom Patrick
269 Law Center
tom.patrick@mail.wvu.edu
304-293-2871
Office hours by appointment**

Syllabus

Course

Description

Legal Counseling and Negotiation provides instruction in the lawyering skills involved in interviewing and client counseling, as well as negotiation on a client's behalf. Simulation is employed to develop and enhance these practical lawyering skills.

Expected

Learning

Outcomes

Upon completion of this course, the student will be able to

- 1) explain the theoretical underpinnings of interviewing clients, client counseling, and negotiation;
- 2) demonstrate a client-centered approach while interviewing typical and atypical clients, identifying a clients' legal and non-legal interests;
- 3) employ a four-phased counseling process to help a client identify alternatives that are available to the client and determine which options best serve the client's interests; and
- 4) demonstrate effective negotiation skills in the development an appropriate negotiation plan, the implementation of the negotiation plan, the identification of common barriers that arise in negotiation, and the employment of negotiation strategies to avoid impasse and successfully complete the negotiation.

Credits

Hours

Three credits; 1-2:20 TTh

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., TREMBLAY, Paul R., WEINSTEIN, Ian S. *Lawyers as Counselors: A Client-Centered Approach* (3^d Edition 2012); and CRAVER, Charles B., *Effective Negotiation and Settlement* (7th Edition 2012).

Course

Overview

Interviewing, Counseling, and Negotiation 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, ICN 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.

ICN provides an opportunity for students to explore the theoretical underpinnings of interviewing, client counseling, and negotiation. In addition, ICN requires that students assume the role of a client or an attorney in order to experience some of the “real life” aspects of these essential lawyering skills. While these exercises are “role play,” they are more “real life” than we would at first assume or may be willing to admit. This is so 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 and glean real life lessons from these role-play experiences.

Providing opportunities for both experiential learning and reflective discourse means that ICN has multiple agendas. One is a basic skills agenda: what identifiable skills or techniques are involved in interviewing and counseling clients or in negotiating with a client or with a client’s opponent 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 to a client 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. Finally, in negotiation, the student will explore whether to adopting a competitive or a cooperative style and the consequences that flow from the exercise of that choice or from the failure to choose.

Developing effective skills in interviewing, counseling, or negotiation also requires careful observation of yourself and others as well as frank discussions about these observations. This reflection/adjustment 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, or negotiate 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 interviewing, counseling, or negotiating places you within contexts which require that 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: reflections journal and short paper [15 pages], formal planning and self-critique, and class participation and skills exercises.

Reflections Journal & Short Paper: 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, counsel, and negotiate during this semester. Often, you will be assigned a client role, entrusting your “case” to another student playing the role of an attorney. Reflections upon how these course materials, skills, experiences, etc. will likely impact your “real life” ICNing is the focus of the journaling experience. Journals will be submitted at the end of January, February, March, and April as outlined in the course calendar. Students are encouraged to write journal entries on regular basis, as often as materials are consumed, the class meets, or exercises are completed. Journals written the day before the due date are of little reflective value to the learner.

The “short paper” [15 pages typewritten double-spaced Times New Roman 12 with one inch margins all around—no more, no less] is a deeper exploration of any topic of the student’s choosing, provided however that the topic has some relevance to interviewing, counseling, or negotiation. Students’ topic selections may be informed by the content of the reflections journal 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 negotiator is a factor that affects the negotiation and choose that subject-matter for deeper, personal exploration.

The reflection journal and short paper 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 three written plans, one prior to an interview, another prior to a client counseling session, and a third prior to a negotiation. After the skills exercise has been completed, the student will submit a self-critique of their plan and the completed exercise. These three planning/critiquing documents will be evaluated by the instructor 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. Sometimes, a more formal skills exercise will be assigned in lieu of a class meeting; sometimes exercises will be assigned as “homework” to be completed outside of class. These exercises will require that you prepare to play the role of an attorney or a client in interviewing, counseling, or negotiation and meet with other students for an hour or more to conduct the exercise. Some 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.

College of Law Grading Scale:

A+	=	4.3	C+	=	2.3
A	=	4.0	C	=	2.0
A-	=	3.7	C-	=	1.7
B+	=	3.3	D+	=	1.3
B	=	3.0	D	=	1.0
B-	=	2.7	F	=	0.0

Grading in this class will conform to the College of Law’s grading policy, available on the College of Law website at <http://www.law.wvu.edu/academics/grading-policy>.

Course
Materials

Course materials may be posted to the TWEN ICN 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.

Class
Sessions

Daily assignments are listed below and will be posted to the ICN Course Calendar on the TWEN Course Page. Modifications will be announced through TWEN.

Adverse Weather

In the event of inclement or threatening weather, everyone should use his or her best judgment regarding travel to and from campus. Safety should be the main concern. If you cannot get to class because of adverse weather conditions, you should contact me as soon as possible. Similarly, if I am unable to reach our class location, I will notify you of any cancellation or change as soon as possible through TWEN to prevent you from embarking on any unnecessary travel. If you cannot get to class because of weather conditions, I will make allowances relative to required attendance policies, as well as any scheduled tests, quizzes, or other assessments.

Social Justice

The West Virginia University community is committed to creating and fostering a positive learning and working environment based on open communication, mutual respect, and inclusion. For more information on West Virginia University's Diversity, Equity, and Inclusion initiatives, please see <http://diversity.wvu.edu>.

If you are a person with a disability and anticipate needing any type of accommodation in order to participate in this class, please advise me and make appropriate arrangements with the Office of Accessibility Services (293-6700).

West Virginia University is an Equal Opportunity / Affirmative Action institution and does not discriminate on the basis of race, sex, age, disability, veteran status, religion, sexual orientation, color or national origin.

January 13 Visit www.humanmetrics.com and take the Jung [Myers Briggs] Typology Test, score the test, and then read the materials about your typology.

Register for ICN in TWEN www.lawschool.westlaw.com

Additional course materials will be posted to that site throughout the semester.

January 15 Jung-Myers Briggs Typology
Review materials posted to TWEN.

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

Client Interviewing

January 20 Binder, Ch. 1-2

January 22 Binder, Ch. 3

- January 27 Binder, Ch. 4
- January 29 Binder, Ch. 5-6
- [Reflection Journals are due February 2]
- Practical Exercise: Interview I.
[Interview I Memo to File due February 3]
- February 3 Binder, Ch. 7
- February 5 Binder, Ch. 8-9
- Practical Exercise: Interview II.
[Interview II Memo to File due February 10]
- February 10 Binder, Ch. 10-11
- February 12 Binder, Ch. 12
- [Written plan for Interview III due February 13]
- Practical Exercise: Interview III [video-recorded—must be completed by
February 17] [Interview III Self Critique due February 19]

Client Counseling

- February 17 Binder, Ch. 13
- February 19 Binder, Ch. 14-15
- Practical Exercise: Counseling I
[Counseling I Memo to File due February 24]
- February 24 Binder, Ch. 16-17
- February 26 Binder, Ch. 18-19
- [Reflection Journals are due March 2]
- Practical Exercise: Counseling II
[Counseling II Memo to File due March 3]
- March 3 Binder, Ch. 20; Chapter 21 [from Binder, 2d ed. Posted to TWEN]
- March 5 Binder, Ch. 21-22
- [Written plan for Counseling III due March 6]

Practical Exercise: Counseling III [video-recorded—must be completed by March 10] [Interview III Self Critique due March 12]

Negotiation

March 10 Craver, Ch. 1-3

March 12 Craver, Ch. 4-5

March 17 Craver, Ch. 17

Practical Exercise: Negotiation I
[Negotiation I Memo to File due March 19]

March 19 Craver, Ch. 6

Practical Exercise: Negotiation II
[Negotiation II Memo to File due March 31]

March 21-29 SPRING BREAK

March 31 Craver, Ch. 7-8
[Reflection Journals are due on April 2]

April 2 Craver, Ch. 9
Practical Exercise: Negotiation III
[Negotiation III Memo to File due April 7]

April 7 Craver, Ch. 10 & 13

Practical Exercise: Capstone Negotiation [video-recorded—must be completed by April 21]

[Capstone Negotiation Written plan due April 14]
[Negotiation IV Self Critique due April 23]

April 9 Craver, Ch. 11-12

April 14 Craver, Ch. 14

April 16 Craver, Ch. 15

April 21 Patrick, “Mediation—An Overview”
Craver, Ch. 16.01-.09

April 23 Craver, Ch. 16.10-.16

Reflection Journals are due on April 27.

Reflection short paper due May 1.