INTERVIEWING AND COUNSELING (#916)
COURSE SYLLABUS
FALL SEMESTER 2013

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"**Interviewing** . . . refers to lawyer interaction with a client for the purpose of identifying the client's problem, and for the purpose of gathering information on which a solution to that problem can be based." D. Binder & S. Price, LEGAL INTERVIEWING AND COUNSELING - A CLIENT-CENTERED APPROACH 5 (1977).

"**Counseling** . . . refers to a process in which lawyers help clients reach decisions. Specifically, 'counseling' refers to a process in which potential solutions with their probable positive and negative consequences are identified and then weighed in order to decide which alternative is most appropriate." D. Binder & S. Price, LEGAL INTERVIEWING AND COUNSELING - A CLIENT-CENTERED APPROACH 5 (1977).

RULE 2.1: ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social, and political factors, that may be relevant to the client's situation.

Ohio Rules of Professional Conduct
Effective Feb. 1, 2007

"Attorneys who know how to think but have not learned respect or how to behave to the court, their opponent, or the witnesses are a menace and a liability, not an asset, to the administration of justice. We suggest the necessity for civility and respect is relevant to lawyers because they are the living exemplars - and thus teachers - everyday, in every case, and in every court, and their worst conduct will be emulated more readily that their best."

State v. Gardener
127 Ohio App.3d 538 (1998)

BRIEF COURSE OVERVIEW

Interviewing and Counseling (916) is a **two (2) credit-hour course** taught in one semester. The major subject matter components of the semester are interviewing the client, counseling the client, and the attorney as a professional and private person.

The course begins with several weeks devoted to your current attitudes regarding yourself as a person, a law student and a prospective attorney; your present impressions of attorneys currently engaged in the practice of law; and, your thoughts about the practice of law in general. We begin at this point because a client's objectives and, therefore, the objectives in interviewing and counseling are not realized automatically. Determining these objectives and successfully aiding the client assume ". . . that the counselor has basic human-relations equipment. He must have accurate awareness of himself. A counselor's clouded information about his needs, values and emotions clutters his relationships with clients. The counselor [interviewer] who has accurate self-awareness allows for, and controls his biases and emotional soft spots and avoids exploiting the relationship to satisfy his own needs rather than the client's needs." Grismer & Shaffer, Experience-Based Teaching Methods in Legal Counseling, 19 Clev. St. L. Rev. 448, 451.

Following this segment of the course, we will study the interviewing process in depth, utilizing assigned readings, video tapes, lecture materials, short exercises, and mock interviews as teaching-learning materials. Specifically, you will learn how to motivate clients in the presence of factors which severely inhibit the client's participation in the interview; you will study a model of interviewing which may be adapted by you to most interviewing situations; you will learn how to obtain crucial facts through proper questioning; you will observe tapes of both lawyers and former Interviewing and Counseling students conducting interviews; and, you will conduct mock interviews with classmates and one actual interview with a client of the Capital University Legal Clinic.

The next component of the course will involve the study of counseling. Counseling, as the preceding definition indicates encompasses identifying, for the client, the various legal and non legal alternatives. The goal of this identification process is to provide the client with the information he/she needs to make an informed decision as to how to resolve his/her problem. Many of the teaching-learning devices used in the interviewing segment of the course will also be used in this portion of the course.

The court concludes with several weeks devoted to the psychological crises encountered by attorneys in the practice of law and learning how to set and collect fees. These final weeks will draw together many things that have been touched upon during the semester.

SOME PHILOSOPHY

A survey, described in Trubek, et al., The Costs of Ordinary Litigation, 31 U.C.L.A. L. Rev. 72, 103, suggests that general practitioners spend at least 30 percent of their time in activities the attorneys themselves describe as client counseling. Practicing attorneys define client counseling as negotiating, interviewing, aiding in decision making, intervening in crisis, and simply listening to material that may not be relevant to the facts and issues of the legal problem.

Average Percentage of
Lawyer Time Devoted to Activities

Discovery	16.7
Conferring with Client	16.0
Settlement Discussions	15.1
Pleadings	14.3
Factual Investigation	12.8
Legal Research	10.1
Trials and Hearings	8.6
Other	5.5
Appeals and Enforcement	.9

You are each going to be an attorney, and in that capacity most of you will be dealing with clients, whether they be the clients of private practice, corporate clients or government clients. How you relate to your clients and how they relate to you, and your effectiveness in aiding the client in determining what he or she wants and what to do to obtain that result will be a large measure of your success as an attorney.

Your relationships with your clients will become increasingly more important in what is, at the beginning of your careers, an already highly competitive market. Statistics reveal that there are approximately 650,000 attorneys in the United States. This is a ratio of one for every 500 inhabitants, not to mention one for every 200 in New York City. This ratio is three times greater than Britain's, and 21 times more than Japan's. [Russell Baker, in discussing the abundance of American lawyers, once stated, "Since the United States could function very happily with no more than three dozen lawyers, we should be able to send Japan 611,964 lawyers by the end of the year."] Interviewing and Counseling is designed to aid you in obtaining skills, beyond your innate intelligence and substantive law training that will contribute to your success with clients.

A premise of the course is that the best attorney-counselors are those who recognize the human encounter in counseling and interviewing clients, are open to and accept their clients, respond to the whole person of the client, and help their clients help themselves. Law school education and many of the circumstances of the practice of law seem either to "train out" or suppress these qualities. Attorneys tend to become fact, calendar, and issue oriented; overly impressed with the rational and extremely scornful of the irrational in people, even in those closest to them where the essence of the relationship is emotional. Attorneys frequently try to ignore the fact that people are not always rational and forget that clients with real or imagined problems

particularly seem irrational.

Another premise of the course is that in order to help others, you must be aware of and understand yourself. I make no attempt to engage you in heavy analysis or self-discovery, but I do attempt to identify common problems and consequences that attorneys encounter, and encourage you to predict and examine your own responses to these situations. Therefore, one of the goals of the course is to provide a classroom understanding of the psychological stress that arises in the practice of law, in order to help you avoid some of the hazards of the profession which are frequently manifested in alcohol and drug abuse, marital problems, poor peer and client relationships, and, potentially malpractice. Thus, a further goal of the course if to give you emotional preparation for the practice of law. Hopefully, you will leave with an enhanced sense of your ability to deal with yourself as an attorney and with clients, and with an increased skill in doing so.

Because the course focuses on your identifiable future experiences, I attempt to provide experiential learning for you - in addition to lecture and reading. These experiences include simulations, role playing exercises, video tape exercises, and extensive group discussion. Initially, some of you may be frustrated with the course because we will be engaging in experiential learning (games to some) that may not seem sufficiently sophisticated for second, third and fourth year law students. Others of you may experience frustration because you have spent a year or more in the very structured law school classroom and are more comfortable with that environment. There is a great deal of structure to this course, but it is not analogous to your traditional training. I suggest that if you experience such feelings, you examine the source and not immediately reject what you don't immediately appreciate. I think, in the final analysis, that you will find it a rewarding endeavor.

To reiterate and expand, some of the goals of the course, randomly stated, are:

- To teach you skills applicable to interviewing and counseling clients;
- To consider ethical issues that arise in the representation of clients;
- To give substance for reflection regarding your participation in the practice of law;
- To explore the stresses and psychological conflicts inherent in the practice of law;
- To augment your positive feelings about yourself as a prospective attorney;
- To discuss and enjoy.

Caveat

The following material is particularly important in that it details the components of the grade. Any non-traditional course creates confusion regarding the course expectations. All procedure and substance relative to the grade are discussed hereafter. You are requested to retain this information for future reference, refer to it when appropriate, and follow it religiously. I, in turn, promise not to bore you by repeating the same material throughout the semester.

The grading system in I & C reflects my strong belief in the following Chinese proverb:

I hear and I forget;
I see and I remember;
I do and I understand.

GRADE

Your Interviewing and Counseling grade in this course will be determined as follows:

1.	**Client Interview**	**25%**
2.	**Interview Paperwork**	**15%**
	Statement of Facts, Precritique, and Post critique (paperwork submitted in conjunction with video taped interview detailed herein)	
3.	**Class Attendance/Participation/Professionalism**	**10%**
4.	**Final Assignment**	**50%**

The following is a discussion of each of these items:

1. CLIENT INTERVIEW: As part of the course requirement, each of you will conduct one (1) interview with a Capital University Legal Clinic client. This interview will be video-taped, and a later evaluation (critique) of the interview will be conducted by the course professor. The professor and the student will be present at that evaluation which is worth 25% of the course grade. More information regarding the actual interview procedure will be provided prior to the time the interview commences.

2. INTERVIEW PAPERWORK: Note the following procedure for evaluation of the interview (15% of the grade):

(a) Statement of Facts Following your interview, prepare a written statement of the facts you obtained during the interview. It is to be in narrative form and is to contain all the information that you learned about the client and the client's problem. Prepare it in a

comprehensive way, as if it were going to be used by an attorney who would not have time to interview the client. **Submit this Statement on 8 1/2 x 11 paper to the clinic office within 24 hours of the completion of the interview.** Give one copy of the statement of facts to the clinic and one to the course Professor.

(b) **Precritique Evaluation** After the interview, you are to prepare a written evaluation of the interview as you perceived it prior to viewing it on video. **BRING IT WITH YOU** to the evaluation of your interview that is scheduled with your Professor. The evaluation is to be submitted on 8 1/2 x 11 should discuss the following:

- A stage by stage discussion of your application of the "Three Stage Interviewing Model";
- Your reactions to the interviewing process;
- Your reactions to the client and responses to your client's legal and other problems;
- Your interaction with the client;
- Your success, or lack thereof, in fact finding and your analysis of why;
- Interviewing and counseling techniques used (i.e., active listening, motivator, etc.);

(c) **Post critique Evaluation** **Within two (2) weeks of completing the evaluation of the interview with the professor,** you are to submit a retrospective evaluation of the interview wherein you discuss what you observed while watching the tape, consider contrasts and comparisons with what you felt when you prepared your Precritique Evaluation, and discuss what you learned in the critique. This evaluation should also include a discussion of the comments made by the critiquer during the evaluation session. Submit this Post critique Evaluation on 8 1/2 x 11.

3. CLASS ATTENDANCE, PARTICIPATION & PROFESSIONALISM:

4. FINAL ASSIGNMENT: Details will be announced.

BOOK FOR THE CLASS:

LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH, by David A. Binder, et. al, Third Edition, (ISBN 978-0-314-19491-6) 2012

The books does not begin to cover all of the information that is developed during the semester. Class attendance, participation, and preparation enable you to assimilate all of the information. If you must miss a class when we are doing mock interview exercises, please give me as much advance notice as possible so that I may readjust student pairings. Finally, professionalism should be the goal for any attorney.