

CIVIL PRACTICE CLINIC
Professor Deborah J. Cantrell
M 12-12:50, Th 1-3

FALL 2008

Course Materials:

- You will find most of our course materials posted on TWEN. When I assign an article, the entire article will be posted on TWEN, but make sure and check the syllabus to see if I note whether you should focus on a particular section. If I ask you to focus on a section, I will not expect you to be fluent with other parts of the article, but I include the entire work for those who are particularly engaged with the piece.
- You will need to be familiar with the Colorado Rules of Civil Procedure. You have a choice about how you get them:

online at <http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=>;

or in hardbound, *Colorado Court Rules (State)(2008)*, published by Thomson West, <http://west.thomson.com/productdetail/145070/15343496/productdetail.aspx>.

- Near the end of the semester when we turn to negotiations, I have assigned the following book: R. Fisher & W. Ury (B. Patton ed.), *Getting to Yes: Negotiating Agreement Without Giving In* (2d ed. Houghton Mifflin)(1991), ISBN 0-395-63124-6

Evaluation/Critiquing:

I have posted on TWEN a separate sheet that discusses the measures that I will use to evaluate, critique and grade you.

Week 1: Introduction & Goal Setting

Aug. 25th: Joint orientation session for all clinic students. Room 204. You will be sworn in as a law student intern by Judge Lael Montgomery so **please be on time**.

Assignment (due by e-mail to Deborah before class starts on August 25th):

- Write a short narrative that answers the questions below. Your paper should be double-spaced, with a suggested length of 3-5 pages. Please do not exceed 5 pages.
 - In general terms, why are you taking this clinic?

- What are the top three goals you wish to achieve by the end of your time in the clinic?
- What are your top three concerns about taking the clinic?
- Briefly describe any experiences you have had working with someone as a “client.” You need not limit your description to legal settings.

Aug. 28th:

- Setting goals for the semester.
- Setting expectations for the semester.
- Some guidance on assessment and evaluation.
- Some thoughts on working with clients.
- Case assignments and keeping a case file.

Readings:

David F. Chavkin, *Clinical Legal Education*, chs. 1-2.

Jane H. Aiken, *Provocateurs for Justice*, 7 *Clinical L. Rev.* 287 (2001)

Week 2: Communicating – Interviewing, Corresponding, and Advising

Sept. 1st: No Class, Labor Day

Sept. 6th:

First hour: Introduction to basic concepts in family law.

Reading:

- The Colorado Judicial Branch website has posted the forms that we will be using in our family law cases. Before class you should go to the website and review a good portion of the forms. The website is at <http://www.courts.state.co.us/chs/court/forms/domestic/domestic.html>. You should bookmark the page as you will use it regularly during the semester.
- You may find it helpful to look at the FAQs about domestic relations at <http://www.courts.state.co.us/chs/court/forms/faq.htm>. Remember that the website is designed for non-lawyers.
- When you look at a form, consider in what kind of case would you be using the form?
- Some questions to think about: Do the forms help you discern whether there are there different kinds of divorces? Are there forms to be used if parents are not married, but they are no longer living together as a family?

Second hour: Some starting thoughts on communication

- Is your clinic case like any other interpersonal interaction?
- Is your clinic case different?
 - Interpersonal dynamics
 - Confidentiality: Rule 1.6
 - Attorney-Client privilege
 - Engagement letters: Rule 1.5

Readings:

- Joseph Allegretti, *Shooting Elephants, Serving Clients: An Essay on George Orwell & the Lawyer-Client Relationship*, 27 Creighton L. Rev. 1 (1993).
- Abbe Smith, *Rosie O'Neill Goes to Law School: The Clinical Education of the Sensitive New Age Public Defender*, 28 Harv. C.L.-C.R. L. Rev. 1 (1993), focusing on Part II.
- CO Rules of Professional Conduct: Rule 1.6, 1.5, available online at <http://www.cobar.org/index.cfm/ID/384/CETH/Colorado-Rules-of-Professional-Conduct/>.
- Master Engagement Letter, available in our clinic server space.

Special Class – Friday, Sept. 5th: Visit to Boulder County Court

Week 3: Communicating – Interviewing, Corresponding, and Advising (Part II)

Sept. 8th: Continued Introduction to family law.

Readings:

- Case Information Sheet – JDF 1000
- Petition for Dissolution of Marriage – JDF 1101
- Certification of Indigency – JDF 203
- Colorado Rule of Civil Procedure 16.2
- Sworn Financial Statement – JDF 1111
- Parenting Plan – JDF 1113
- Separation Agreement – JDF 1115

Sept. 11th:

Assignment before Class:

- **Before** you do any of the assigned reading for class, meet with a law school classmate (not someone also taking this clinic), and interview her/him about the first day of law school. Find out as much information as you can about what the student remembers about the first day of law school. Type up your interview notes.
- **After** you do the assigned reading for class, meet with a different law school classmate and interview her/him about the first day of law school. Compare your interview notes from this interview with your notes from your earlier interview. Consider the following:
 - Did any of your interviewing techniques change between the two interviews?
 - Did you consider adjusting your interviewing style because of the readings? Because of who you were interviewing? If yes, why? If no, why not?

At the start of class you will need to turn in a copy of your interview notes from both interviews and your answers to the above questions.

Readings:

- D. Binder, P. Bergman, S. Price & P. Tremblay, *Lawyers as Counselors: A Client-Centered Approach* (2d ed. 2004), chs. 1 & 3-4

Practice interviews

You and your teammates should have had at least one substantive communication with each of your clients by September 12th..

Week 4: Case Analysis and Strategic Planning

Sept. 15th:

Readings:

- Lucie E. White, *Subordination, Rhetorical Survival Skills, & Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 Buff. L. Rev. 1 (1990), focusing on Part II.A (“The Story”).
- Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 Mich. L. Rev. 485 (1994).
- D. Binder, P. Bergman, S. Price & P. Tremblay, *Lawyers as Counselors: A Client-Centered Approach* (2d ed. 2004), ch. 6

Sept. 18th:

Assignment (to be circulated by e-mail to all classmates and Deborah by 5pm on September 17th):

- For each case, the student team must prepare a case analysis and strategic plan.
- The Case Analysis and Strategic Plan should include:
 - A paragraph briefly outlining the facts of the case as you know them at this point. In the alternative, if it is more useful, a brief timeline of relevant events.
 - A list of the client’s objectives (legal and non-legal).
 - A list of the legal questions the team believes to be at issue in the case, and whether the question is answerable now, or not until further research is completed.
 - A list of factual information that needs to be gathered and the team’s best assessment of how such gathering will be accomplished.
 - A short narrative statement describing how the team believes it will be able to (or not be able to) meet the client’s objectives.
- In class, we will review a selection of the Case Analyses/Plans. All teams should be prepared to discuss their own plans.

Week 5: Starting an Action

Sept. 22nd: Setting the Stage

Reading:

- Hypothetical related to Jessica and Mark Chavez, posted on TWEN
- Excerpts from Austen Parrish & Dennis Yokoyama, *Effective Lawyering: A Checklist Approach to Legal Writing and Oral Argument*, (Carolina Academic Press, 2007), posted on TWEN.

For class, you should be prepared to answer the following:

- Consider the strategic choices in picking a fight: How does one “start” an action?
- Which Colorado Rules of Civil Procedure do you need to be aware of when you decide where to file your lawsuit?
- Which Rules do you need to be aware of when you decide what content to include in your complaint?
- Which Rules for service of process?
- What concept of civil procedure do you need to be aware of that is not explicitly contained in the CRCP?
- Sketch out the possible claims for relief that you might consider for Jessica and Mark Chavez. Do any of those claims have special pleading rules under the CRCP?

Sept. 25th:

Your assignment, which is due by e-mail no later than 5pm on September 24th, is to draft a demand letter and a complaint. Both documents should be based on the hypothetical related to Jessica and Mark Chavez. **MAKE SURE YOU CIRCULATE YOUR DOCUMENTS TO EVERYONE IN CLASS.**

Readings:

- Excerpts from Austen Parrish & Dennis Yokoyama, *Effective Lawyering: A Checklist Approach to Legal Writing and Oral Argument*, (Carolina Academic Press, 2007), posted on TWEN. The excerpts include a sample of a demand letter.
- Exemplar complaints posted on TWEN.
- You can find a template for state court captions at: <http://www.courts.state.co.us/chs/court/forms/caption/instructions.htm>. You should use the template to generate the caption for your complaint.

In class we will discuss some of the demand letters and complaints and talk about the strategic choices people made.

Week 6: Case Rounds

Sept. 29th & Oct. 2nd: During this week each team will give an update on the status of its case. We will set up a reporting schedule before the week begins. In advance of its report, each team will circulate a case status memo to the rest of the class.

- The case status report should include:
 - A brief paragraph describing the most relevant facts of the case
 - A brief paragraph setting forth the procedural posture of the case.
 - A description of the primary legal issues at play, noting any issues on which the team would like some class discussion.

- A description of what information/evidence has been collected and what information/evidence is outstanding.
 - A brief description by each team member of the most challenging/rewarding moment of the case thus far, explaining why the moment was challenging/rewarding.
- The case status report should be double-spaced and should not exceed 5 pages.

Week 7: Finding Information

Oct. 6th: Some methods of gathering information

Reading:

- Exemplar interrogatories and requests for production posted on TWEN.
- Pattern Interrogatories under CRCP 33, available at pp. 126-37 of West's Colorado Court Rules.
- Pattern Interrogatories in Colorado domestic relations cases, available at <http://www.courts.state.co.us/chs/court/forms/domestic/alldomesticforms.htm>.

For class, you should be prepared to answer the following:

- What informal ways do you have to gather information or documents?
- Which Colorado Rules of Civil Procedure relate to discovery?
- What is the general way in which discovery takes place in a civil action?
- On whom can you propound interrogatories and requests for production?
- Are there limits on the number of interrogatories you can propound?

Oct. 9th:

Your assignment, which is due by e-mail no later than 5pm on October 8th, is to draft a set of interrogatories and requests for production related to *Chavez v. Colorado Movers et al.* I will assign each of you to represent either the plaintiffs or the defendants. You should propound interrogatories and RFPs to the other side, following the restrictions laid out in CRCP 33 and 34. If you determine that Pattern Interrogatories are relevant, you may use no more than 5 of them. You should not understand me to be saying that I think there are 5 relevant Pattern Interrogatories. You need to independently assess that question. None of them may be relevant.

Week 8: Reflections on Community and Social Change: The Parameters of Strategic Advocacy

One of the goals of this clinic is to give you an opportunity to learn more about public interest advocacy, especially here in Colorado. For the next two weeks, we will examine the ways in which public interest advocacy has developed and has changed over time. We will consider the way in which our clinic advocates, focusing on individual client representation, consider in what ways we are "effective" and in what ways we are not, and contrast individual client representation with other advocacy methods.

Each of you will be responsible for learning about another public interest advocacy group working in the state (and it cannot be another law clinic). You may pick a legal advocacy group, but you do not have to. If you pick a non-legal advocacy organization, it must focus on some kind of social change work. For example, you could consider a grassroots organizing group (like Colorado ACORN), or a public interest lobbying group (like the Colorado Center on Law & Policy which also does litigation), but you could not pick a 4-H Club.

During the first week, we will think about the manner and methods of social change and the role that lawyers and the law play in such change. In the second week, each of you will report about the advocacy group you studied.

Oct. 13th: Some Historical Background

Assignment (to be circulated by e-mail to all classmates and Deborah by 5pm on October 12th): Prior to October 12th, you should have caucused with your classmates to make sure that each of you has selected a different public interest advocacy organization to review. By October 12th, e-mail everyone with the name of your organization.

Readings:

- Deborah J. Cantrell, *A SHORT HISTORY OF POVERTY LAWYERS IN THE UNITED STATES*, 5 *Loy. J. of Public Interest Law* 13 (2003).
- Gerald P. Lopez, *The Rebellious Idea of Lawyering against Subordination*, excerpted in *LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE* (S. Carle ed. 2005).
- Colorado Rules of Professional Conduct: Preamble and Rule 6.1, available online at <http://www.cobar.org/index.cfm/ID/384/CETH/Colorado-Rules-of-Professional-Conduct/>.

Oct. 16th:

Readings:

- Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, & the Struggle for Social Change*, 30 *Harv. C.R.-C.L. L. Rev.* 407 (1995).
- Victor M. Hwang, *The Hmong Campaign for Justice: A Practitioner's Perspective*, excerpted in *LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE* (S. Carle ed. 2005).

Week 9:

Assignment (to be circulated by e-mail to all classmates and Deborah by 5pm on October 19st): Report on public interest advocacy organization. Your report should include the following information:

- Name of the organization and a brief paragraph describing its mission.
- A discussion of the advocacy methods the group uses to achieve its mission, and the reasons it chooses to use such methods.
- Your assessment of whether the group is effective and why.

- Your recommendation for ways in which the group might become more effective in achieving its mission.

Your report should be double-spaced and should be in the range of 5-7 pages.

Oct. 20th & 22rd: Each student will orally report on their public interest advocacy organization.

Week 10: Practice Depositions

Oct. 27th: Setting the Stage

Readings:

- P. Lisnek & M. Kaufman, *Depositions: Procedure, Strategy and Technique* (West Publishing 1990), selected excerpts.
- D. Binder, P. Bergman, S. Price & P. Tremblay, *Lawyers as Counselors: A Client-Centered Approach* (2d ed. 2004), ch. 7

Oct. 30th: Practice depositions

Week 11: Case Rounds

Nov. 3rd & Nov. 6th: We will follow the same process as we did with case rounds earlier in the semester (including case status memos).

Week 12: Negotiation

Nov. 10th: An Introduction

Because the reading load is heavy for this week, we will not meet for class on Monday, giving you some extra time to complete the reading. However, by Thursday's class you MUST have read all of Fisher & Ury's book, as well as Grillo's article. I will expect each of you to demonstrate your knowledge of the readings in our Thursday discussion session, and in your response papers described below.

Readings:

- Roger Fisher & William Ury (w/ Bruce Patton), *Getting to Yes* (Houghton Mifflin Co., 1991).
- Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 Yale L. J. 1545 (1991).

Nov. 13th: A Discussion of the Readings

Assignment (circulated by e-mail to all classmates and Deborah Wednesday, November 12th at 5pm.)

- Draft a response paper to the readings in which you consider the following questions:

- From a positional bargaining point of view, what kind of bargainer do you think you are and did you know that about yourself before the reading?
 - Are you persuaded by Fisher & Ury? Why or why not?
 - Are you persuaded by Trina Grillo? Why or why not?
 - Think about any of your cases and consider an example of a negotiation. Briefly describe what happened in the negotiation, whether you would change your approach after the readings. If you would change your approach, in what way? If you would not, why not?
- Your response should be double-spaced, and each question should take no more than 1 page. Your total response should not exceed 5 pages (to give you room for headings and identifying information).

Week 13: Negotiation

Nov. 17th: Practice negotiations.

Nov. 20th: Practice negotiations and feedback.

Week 14: End of Semester Reflections

Dec. 1st & Dec. 4th: We will use this class time to reflect on the work we accomplished during the semester and to evaluate our clinic experiences thus far.