

Legal Interviewing, Counseling and Negotiation
Professors Silberfeld, Karabatos, Sethi, and Fernandez
Fall 2013

SYLLABUS

1. What This Course Covers: This course covers four specific skills in the following sequence: (1) client interviewing; (2) witness interviewing; (3) client counseling; and (4) negotiation. The course necessarily includes other skills such as fact gathering and analysis, strategic thinking, and lawyering within the law of ethics and within your own moral framework.

2. Textbooks: The textbooks for the course are:

1. Krieger & Neumann, Essential Lawyering Skills (4th edition)
2. Fisher, Ury and Patton, Getting to Yes (2d edition); and
3. The New York Rules of Professional Conduct, available on Westlaw and Lexis and online at www.nycourts.gov/rules/jointappellate (click on the link to “Updated Part 1200 Rules of Professional Conduct”; the document can be saved in pdf format).

3. Reading Assignments: They tend to be bunched (see the Calendar at the end of this Syllabus), with heavy reading early in the semester and when a skill is introduced and light or no reading during the weeks of video recorded simulations and at the end of the semester. Please plan your time accordingly. You cannot do a good job learning the skills unless you read the material in a contemplative way.

The reading assignments for each week should be completed before the Tuesday class (see below). In addition, the students may be contacted by e-mail prior to the Tuesday class with additional assignments or topics and questions for discussion.

4. What You Will Do In The Course: On Tuesdays, all students will meet with Professor Silberfeld in a one hour class in room 242 for lectures, demonstrations, drills, and discussion. On Thursdays, the students will meet for two hours in small groups called subsections (rooms to be announced). There will be four subsections, each consisting of no more than eight students; the subsection instructors are Professors Silberfeld, Karabatos, Sethi, and Fernandez. You will receive your subsection assignments prior to the first subsection meeting on August 29.

In some weeks, the subsection will take the form of a workshop in which you interview, counsel, or negotiate for a few minutes and receive immediate feedback. In other weeks, your subsection professor will meet with you individually or in pairs to critique your video recorded simulations, which are explained below.

For some workshops and video recorded assignments, students will be divided into Group A and Group B. You will receive your group assignments prior to the first workshop.

Outside of class, you will counsel a client and negotiate twice with adversaries (role played by other students in the course). One of the negotiations will be in a dispute setting. The other will be transactional (e.g., negotiating a contract). Subsections will not meet during the weeks that you counsel and negotiate outside of class.

The out-of-class counseling and negotiation sessions will be video recorded. You will then meet individually or in pairs with your subsection professor to critique your performance, but not to review the whole recording together from beginning to end. Instead, you will watch the video privately beforehand and choose several passages that you would like to talk about. You might have questions about what was going on, or you might want suggestions on solving problems, or you might want to talk about something you think went particularly well or badly. The subsection professor will also watch the video and similarly choose a small number of passages. At the critique, you and the subsection professor will talk about the passages thus identified and possibly even view one or more of the passages in question. This procedure makes the critique more focused and allows the student to set much of the agenda for the critique.

In addition to discussing or viewing selected passages from the video at your conference, your subsection professor will also provide you with a general assessment of your performance.

The procedures for recording the counseling and negotiation sessions and viewing the recordings in advance of your conferences will be explained in class.

Four of the Tuesday classes are presently scheduled as “Group Critiques.” At the Group Critique, we will discuss the video recorded assignments after they have been completed but before the individual conferences. For example, Counseling Assignment A will be video recorded during the week of September 23; the Group Critique to discuss Counseling Assignment A will take place on Tuesday October 8; and the individual conferences relating to Counseling Assignment A will take place on Thursday October 10. The discussions at the Group Critique will focus on research, preparation, and strategy, what worked and what didn’t. The professor may show excerpts from one or more student videos. In addition, the professor may ask students to reenact a portion of the assignment.

You will also keep a journal and write two short memos and one longer one (explained below).

5. Journals: These instructions apply to the counseling exercise when you act as the attorney and to the transactional and dispute negotiation exercises. Different instructions apply to the counseling exercise when you act as the client (see below).

After each video recorded counseling and negotiation session but before you review the video, you are required to write a journal entry evaluating your performance. Do this no later than the evening of the same day you are recorded. If you wait until the next day, much of your thinking will be lost overnight. In addition, after you watch each video session but before you meet with your subsection professor, you are required to write another journal entry evaluating your performance, but this time as seen on the video.

You must e-mail both journal entries to your subsection professor no later than 11:59 pm on the Friday after you have finished the video assignment. For example, the students who role play the lawyers in Counseling Assignment A must e-mail both journal entries to their subsection professor no later than 11:59 pm on Friday September 27. You will be notified later in the semester of the exact due dates for each journal.

In preparing your journal entries and evaluating your work, some of the questions worth considering are:

In what instances and areas were you most effective?

In what instances were you less or least effective?

What can you do to improve in the areas or instances where you were less or least effective?

How and why did your opinion of your performance change after viewing the video?

What else have you learned about yourself from this performance?

Remember, your journal entries should evaluate your performance, not simply describe what happened.

Journal entries can be of whatever length you think appropriate. Quality is more important than quantity. Only your subsection professor will see your journal entries. The contents of your journals will not be disclosed to other students. The professor may choose topics for discussion at your individual conferences based on your journal entries.

The following instructions apply when you act as the client in the counseling exercise: you are required to submit one journal entry discussing what you learned about counseling in your role as the client. This journal entry must be e-mailed to your subsection professor no later than 11:59 pm on the Friday after you have finished the video assignment. For example, the students who role play the clients in Counseling Assignment A must e-mail their client journal entry to their subsection professor no later than 11:59 pm on September 27. Remember, the purpose of this entry is not to critique the student who roleplayed the attorney but to discuss what you learned about counseling as a result of roleplaying the client.

6. Memos: You will write two short memos and one longer one. Before each of the two video recorded negotiation sessions, you will write a short memo (three to five pages) explaining your negotiation strategy. And before your video recorded counseling session, you will write a longer memo (five to ten pages) explaining your counseling plan. To prepare these memos, you may do whatever legal and factual research you believe may be necessary or helpful.

7. Lap Tops: Lap tops will be permitted in the Tuesday class. However, students may not use their lap tops in the Thursday workshops. The students in the workshops are expected to listen carefully and provide feedback to the students who are performing the simulated exercises. Experience has taught us that lap tops are a distraction in that context. If you feel you will need to rely on notes when you are performing a simulation in the workshop, please print them out or write them out in longhand and bring a hard copy to class.

8. How Final Grades Will Be Computed: Each part of the course is worth up to a certain number of points, as follows:

- 15 points — performances in workshops
- 25 points — counseling session and memo
- 25 points — transactional negotiation and memo
- 25 points — dispute negotiation and memo
- 10 points — journal

The total number of points available is 100. At the end of the semester, we will total up each student's points and assign a letter grade to each student, conforming the grades to any applicable course curve.

The professors will grade your performance in the workshops and on the video exercises by assigning you one of three grades. You will receive the highest grade (Impressive) if your work stands out from the work of the class as a whole. Most of the students in each subsection will receive the middle grade (Sufficient). You will receive the lowest grade (Cause for Concern) if you perform below the level of the other students and may have significant problems to overcome. The professors have the option for those students in the middle category to add a plus (+) or minus (-). In assessing your performance on the video exercises, the professors may also consider the contents of your counseling and negotiation memos, and whether those memos were handed in on time. For purposes of determining your final grade in the course, each grade on each assignment is worth a certain number of points. E.g., for the video exercises, an "I" is worth 25 points; an "S+" is worth 20; an "S" is worth 16; an "S-" is worth 12; and a "CC" is worth 7.

You will be graded both subjectively and objectively. All of your work in the workshops and on the video exercises will be graded subjectively by your subsection professor. Your subjective grades will be based upon an assessment by your subsection professor of the skills you demonstrate. Prior to each graded assignment you will be advised of the factors the professors will consider in determining your subjective grade. Your video recorded negotiation exercises will also be graded objectively by Professor Silberfeld. Your objective grades will be based upon the results you achieve for your client.

If you hand in your journal entries on time, you will automatically receive five points. Points will be added if your entries show careful thought and analysis.

There is no final exam.

9. Class Attendance: You are on the verge of becoming a professional and are expected to act like a member of a profession. For very good reasons, your work and conduct are judged according to professional standards, which are much more demanding than the standards you experienced in college. When a law school teacher looks at you, the teacher sees not just you but also the thousands of future clients who will depend on you. The teacher, the law school, and you are primarily responsible to those clients. That is why in law school attending class and actively participating in class discussions are not optional.

These considerations aside, the rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in all law school courses for which they are registered. To comply with these rules, you must attend at least 85% of your regularly-scheduled classes. Thus, you may miss no more than 15% of your classes.

This rule applies separately to the Tuesday lectures and the Thursday workshops, as follows: there are 16 hours of class on Tuesdays (this includes the two hour class on Thursday August 22); you may miss no more than 2 hours of these classes. Regarding the five two hour Thursday workshops, you may miss no more than 1 hour of these classes. However, since you will be graded on your participation in the workshops, and the work can not be made up, I strongly advise you not to miss any workshop time at all. On the remaining Thursdays, you will either video record a simulation or meet individually or in pairs with your subsection professor. You must attend the recording sessions and conferences.

If possible, if you are going to miss a Tuesday class or a Thursday workshop, please notify Professor Silberfeld or your subsection professor in advance.

I will circulate a sign-in sheet at the beginning of each regularly-scheduled Tuesday class, which shall be dispositive evidence regarding class attendance. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

Attendance sheets will not be circulated at the Thursday subsection meetings because it will be obvious when someone is absent.

If you exceed the permitted number of absences, your final grade could be adversely affected and you could be administratively withdrawn from the course. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

If you believe you must be absent from class for more than the permitted number of hours, you should speak with Professor Silberfeld and your subsection professor as soon as possible. Accommodations may be made for students who must be absent for religious reasons and in cases of truly compelling hardship.

11. Attendance at Out-of-Class Events: The course calendar, set forth below, includes four out-of-class events for each student: one counseling session where the student plays the role of the attorney; a second counseling session where the student plays the role of the client; and two negotiation sessions where the student plays the role of the attorney negotiating against another student playing the role of adversary attorney.

At each of these events, other people will carve out time on their schedules and be at a certain place assuming that you also will be there. Because other people depend on it, a good professional scrupulously honors time commitments.

The course calendar also includes four dates where the students meet individually or in pairs with their subsection professors to critique their performances on the video recorded simulations.

Schedules for the video recorded assignments and the critiques will be distributed well in advance. If you are not available at a time scheduled for you, tell Professor Silberfeld immediately and accommodations will be made. The scheduled time must be impossible for you, not merely inconvenient, in order to justify a change. The sooner you contact Professor Silberfeld with a scheduling conflict the better. As the date of the event in question gets closer, rescheduling becomes extremely difficult, as other people are involved in each event. If you do not appear at one of the scheduled events and have not supplied an acceptable explanation in advance, the grade for that aspect of the course will be reduced significantly.

12. How to Contact Professors Silberfeld, Karabatos, Sethi, and Fernandez: Professor Silberfeld's office and his mailbox are in room 216. His e-mail address is lawjzs@hofstra.edu. The LICN secretary is Betty Black. She is also in room 216. Her phone number is 463-5928. The best way to reach Professor Silberfeld is via e-mail.

Professor Karabatos is a senior partner at a law firm in Garden City. Her e-mail address is ekarabatos@soklaw.com. Her office phone number is 516-877-8000.

Professor Sethi practices labor and employment law in New York City. Her e-mail address is rita.sethi@gmail.com. Her phone number is 516-776-8209.

Professor Fernandez is a Deputy Nassau County Attorney. His e-mail address is pablofesq@gmail.com. His phone number is 516-776-8731.

Please telephone Professors Karabatos, Sethi, or Fernandez only if truly necessary. Practicing lawyers tend to have tightly scheduled work days.

CALENDAR

Note: The following calendar is subject to change depending upon the needs of the course as the semester progresses.

Week 1: Week of August 19:

Tues. Aug. 20: Reading Assignment:
 Course Syllabus
 Essential Lawyering Skills (“ELS”) Ch. 1-6: Becoming a
 Lawyer

Class: Introduction

Thur. Aug. 22: NO SUBSECTION MEETINGS THIS WEEK

Entire class will meet together in room 242 from 4:10 to 5:00 pm

Reading Assignment:
Skim the entire New York Rules of Professional Conduct,
focusing on those rules that may be particularly relevant to
the client interview
ELS: Ch. 7-8: Interviewing the Client

Class: Client Interview

Week 2: Week of August 26:

Tues. Aug. 27: Class: Client Interview (continued)

Thur. Aug. 29: Subsection meetings:
 First client interviewing workshop

Week 3: Week of September 2:

Tues. Sept. 3: Class: Client Interview (continued)

Thur. Sept. 5: NO CLASS: Rosh Hashanah

Week 4: Week of September 9:

Tues. Sept. 10: Reading Assignment: ESL Chapter 9: Interviewing Witnesses

Class: Witness Interview

Thur. Sept. 12: Subsection Meetings
Second client interviewing workshop

Week 5: Week of September 16:

Tues. Sept. 17: Reading Assignments: ELS Chapters 18-22: Counseling

Class: Counseling the Client

Thur. Sept. 19: Subsection Meetings
Witness interviewing workshop

Week 6: Week of September 23:

Tues. Sept. 24: Class: Counseling the Client (continued)

Thur. Sept. 26: NO SUBSECTION MEETINGS THIS WEEK

Counseling Assignment A video recorded.
Students who counseled in Assignment A watch the recording to
prepare for individual conferences during week 8.

Week 7: Week of September 30:

Tues. Oct. 1: Reading Assignments:
Required: ESL Chapters 10-14
Recommended: ESL Chapters 15-17

Class: Persuasive Fact Analysis

Thur. Oct. 3: NO SUBSECTION MEETINGS THIS WEEK

Counseling Assignment B video recorded.
Students who counseled in Assignment B watch the recording to
prepare for individual conferences during week 9.

Week 8: Week of October 7:

Tues. Oct. 8: Class: Group Critique Counseling Assignment A

Thur. Oct. 10: No subsection meetings: individual student conferences
Counseling Assignment A videos critiqued
(For “A” students only)

Note: The first negotiation class is Tuesday October 22. Since this is a light week, I suggest you begin reading the chapters in ELS on negotiation (chapters 23-28) that are due on 10/22; you may also want to begin reading Getting to Yes (“GTY”), which should be completed by Tuesday October 29.

Week 9: Week of October 14:

Tues. Oct. 15: Class: Group Critique Counseling Assignment B

Thur. Oct. 17: No subsection meetings: individual student conferences
Counseling Assignment B videos critiqued
(For “B” students only)

Week 10: Week of October 21:

Tues. Oct. 22: Reading Assignment: ESL Chapters 23-28: Negotiation

Class: Introduction to Negotiation

Thur. Oct. 24: Subsection meetings: First negotiation workshop

Week 11: Week of October 28:

Tues. Oct. 29: Reading Assignment: GTY

Class: Negotiation (continued)

Thur. Oct. 31: Subsection meetings: Second negotiation workshop

Week 12: Week of November 4:

Tues. Nov. 5: Class: Negotiation (continued)

Thur. Nov. 7: NO SUBSECTION MEETINGS THIS WEEK

Transactional negotiations video recorded.
Students watch recording to prepare for critiques during week 13.

Week 13: Week of November 11:

Tues. Nov. 12: Class: Group Critique Transactional Negotiation

Thur. Nov. 14: No subsection meetings: student conferences
Transactional negotiation videos critiqued.

Week 14: Week of November 18:

Mon. Nov. 19: Class: Negotiation (continued)

Thur. Nov. 21: NO SUBSECTION MEETINGS THIS WEEK

Dispute negotiations video recorded.
Students watch recording to prepare for critiques during week 16.

Week 15: Week of November 25:

Tues Nov. 26: THURSDAY SCHEDULE:
Entire class will meet together in room 242 from 4:10 to 5:30

Group Critique Dispute Negotiation

Thur. Nov. 28: NO CLASS: Thanksgiving

Mon. Dec. 2: MAKEUP DAY
Student conferences; dispute negotiation videos critiqued
4-6 pm/place TBA