

HAMLIN UNIVERSITY SCHOOL OF LAW
HEALTH LAW CLINIC
FALL 2011

SYLLABUS AND POLICIES

Clinic Professors: Susan Schaffer and Lindsay Davis

I. READINGS

A. Required Readings

1. TWEN course website. Students must enroll and provide an e-mail address. URL is: <http://lawschool.westlaw.com/twen/default.asp>. Class topics and reading assignments will be posted for each class.
2. *Volunteer Lawyer's Network (VLN) DHS Reconsideration, Attorney Handbook*, by Lindsay Shaw, Cara Hawkinson, and Laura Plummer Zrust, Sept. 2007, pp. 1 to 36.

B. Recommended Readings

1. Minnesota Rules of Evidence
2. Minnesota Rules of Civil Procedure
3. Minnesota Office of Administrative Hearings Contested Case Proceedings Guide
4. SMRLS Policy Handbook
5. *Essential Lawyering Skills* - by Stefan H. Krieger and Richard K. Neumann, Jr.

II. OFFICE HOURS AND CONTACT INFORMATION

We will set up appointments for each team to review your casework. These meetings and times will depend upon your schedule. In addition, you may contact Professor Schaffer or Professor Davis to set up additional appointments.

Susan Schaffer
sschaffer@visi.com
651-221-0683

Lindsay Davis
Lindsay.davis@smrls.org
651-894-6942

III. ATTENDANCE AND PARTICIPATION

Regular attendance and participation is critical in the Health Law Clinic. We are operating as a small law firm, and you will benefit from the opportunity to discuss your case theory and hone your advocacy skills in class. Attendance will be taken in each class. Due to the importance of class attendance in case development, two absences will be considered excessive. Class preparation and participation is part of evaluation and grading.

Students will track their clinic hours on weekly time sheets and SMRLS PIKA (case management system). Students will report clinic hours at mid-semester evaluation and faculty may check clinic hours randomly. Students are expected to complete clinic hour requirements on or before Wednesday, Dec. 7, 2011.

IV. LAPTOP POLICY

Laptops may be used in class to take notes and to look up statutes or class materials. Use of laptops for anything other than class work is not permitted. The Clinic is an interactive class requiring your complete attention and participation.

V. COURSE GOALS AND OBJECTIVES

A. Central Objective

The Health Law Clinic combines the experience of representing clients under close supervision with the opportunity for careful reflection characteristic of an academic setting. The clinic is intended to provide a foundation for the continuing acquisition and honing of the skills necessary to be a competent practicing attorney. Most cases involve Minnesota Department of Human Services maltreatment and disqualification issues. The clinic will provide students with substantive health law information, as well as the opportunity to interview and counsel clients, research client issues, obtain and review evidentiary records, and draft persuasive administrative appeals for clients. Some client cases may involve assisting in an administrative hearing.

B. Sub-Objectives used for Evaluation:

1. Uses critical observation of self and others as a tool for continuing learning and skill development.
2. Makes productive use of available support resources, including classroom experiences, supervision from supervising attorney and input from teammates and other class members.
3. Uses a systematic approach to lawyering.
4. Represents clients competently, effectively, zealously, and ethically.
5. Establishes and maintains a professional relationship with clinic clients.

VI. EVALUATION AND GRADING

The Health Law Clinic is a three-credit course with no final examination. Students will be expected to spend a minimum of 70 hours working on client cases in addition to class time and class preparation. Although students work in teams, they are graded individually based on their individual efforts and contributions to the client representation.

Written Work Projects to be submitted in WORD or pdf format may include, but are not limited to:

- Set aside request for maltreatment
- Reconsideration request for predominance of evidence determination
- Set aside request for misdemeanor/gross misdemeanor
- Research memorandum for LEAP
- Pre-hearing or post-hearing brief
- Advice letter
- Expungement petition and memorandum

Evaluation of students in the clinic will take five forms:

1. Informal, oral evaluation by the supervisor of the student's performance contemporaneously with, or immediately after the performance;
2. Feedback to be provided formally and informally through margin notes and rewrites, with comments on legal research and legal theory development and persuasiveness of arguments and use of facts as applied to the law. Poor organization and sloppy drafting interfere with persuasion. Students are encouraged to revise and resubmit work for self-development;
3. Completion by students of formal self-evaluation forms at mid-semester and at the end of the semester.
4. Completion by supervisor of an evaluation form at the end of the semester.
5. Assignment of a letter grade, to be determined based on the student's performance in each of the four major sub-objectives described in Section IV.B, using the attached evaluation form. Class participation is taken into account in grading.

Course and Self-Evaluation

At the mid-point of the semester, you will be asked to complete the self-evaluation form reproduced in the course syllabus. After completing the evaluation, turn it in to your supervisor and schedule an individual meeting to discuss your assessment. At the end of the semester, your supervisor will fill out a similar evaluation form which will be the basis for calculating a letter grade for your Health Law Clinic work.

A Method for Self-Evaluation¹

What happens in law school and in the skills program is only the beginning of your development as lawyers. Historically, law schools have claimed that they teach people how to “think like a lawyer.” The traditional classroom courses are training you to take apart cases and apply the previous cases’ analysis to the next case. In the traditional classroom, we pose hypotheticals so that you can apply the analysis to a variety of situations. You become legal problem solvers skills to find the law you will need in the future.

In the skills setting, we teach you a broader range of what a lawyer does. For example, we discuss the goals of an initial client interview and how to most effectively accomplish those goals. Unless you are able to look back at your own performance and evaluate whether you effectively executed the desired skills, the learning will stop. You must learn to constantly look at yourselves and others to continue to grow when there is no longer a supervisor to give you a critique. What makes lawyers improve rather than stagnate is the ability to examine and learn; this ability is as important as mastering substantive and procedural law.

It is doubtful that you will either be trained in the skill of evaluation or even necessarily critiqued in an effective manner once you are out of school and on the job. There is a vast range of training that goes on in the various settings in which you will work, but the dynamics of time and money are almost always at play and the training that will take place is usually focused on the particular type of practice you have entered.

Everything we teach in the skills course is a microcosm or specimen to be examined and therefore learned from. We teach areas as cerebral as how to develop a theory of a case to something as mundane as how to document time for billing purposes. Our hope is that every time you as a lawyer are faced with a new client’s case, you will routinely analyze the facts to develop a theory of the case that will guide your work. We also expect that you will routinely keep accurate time records so you can bill your clients or document your time for your public sector employer.

¹ This methodology is adapted from “The Skill of Evaluation as an Explicit Goal of Clinical Training,” by Nina W. Tarr, 21 Pac. L. J. 967 (1990).

We also expect you will routinely pause and examine your performances and those around you to continue to develop your skills. When you walk out of a hearing or a meeting, you should stop and consider what happened and why. Most lawyers go home at the end of the day and say “I did well in that hearing today” or “that other attorney really ruined my client’s case” but the excellent lawyers ask themselves what they can learn from what happened.

The first step is to develop the habit of reflection, what is absolutely critical to this continued learning process is the ability to realistically and critically examine activities and occurrences so you can use the experience to learn. Simply stopping after the interview or hearing and saying, “I did a great “job” is insufficient. The question must always be, “Why?” For example, did the interview go well because you established good eye contact with the client so it felt like she trusted you? Did the hearing go well because the hearing officer was really listening and the argument took on a personal and convincing tone? Is this something you can replicate or is it a peculiarity of this particular judge? Were you able to establish eye contact because you were unusually familiar with the law and facts and so felt comfortable and spontaneous? Consequently, more preparation on cases in the future might pay off. Was it because the argument was the first in the morning and you were alert and awake? Is sleep more critical to performance than you realized? Since you cannot always control the time of day a part of a case is heard, how can you compensate?

These are examples of beginning to distinguish between that for which you are responsible and can control versus that which is outside your control. Many of you will return from a hearing and complain your client surprised you with unknown facts on the stand. Why? You may want to shift the responsibility to the client, which is sometimes justifiable, but it is more often the case that the trial preparation was superficial and you must figure out what to do differently in the future.

The skill of evaluation is one of the skills we hope you will be learning from this course. Working together with your supervisor and teammate, we’d like you to use the following method for conducting critiques.

1. Begin by focusing your evaluation. Before undertaking a task, discuss with your supervisor what the focus of your evaluation will be. For example, for an initial client interview, you could choose to assess your probing skills, your ability to develop rapport with the client, your ability to spot legal issues, your ability to effectively use interpreters, or any number of other areas. The post-task evaluation should focus on one or two subjects.
2. Identify your goals. After performing a task, your supervisor and teammate will first help you identify what you intended to accomplish.

Only then are you in a position to learn from the gap (hopefully small!) between what you planned to do and what happened.

3. Identify responsibility. The next two steps are to determine what happened and why: what was the cause and effect. Here, you will try to distinguish between what you were responsible for versus what was the consequence of forces outside your control. For example, let's assume you just completed a maltreatment hearing for which you dutifully planned and prepared the client. The client arrived drunk and behaved thoroughly confused on the stand. The client's drunkenness is clearly outside your control; yet, the decisions on whether and how to proceed were within your discretion. Make sure your self-evaluation focuses not just on the client's behavior but on your own response as well.
4. Articulate specific components of theory. Articulate the components of the lawyering function in terms of the theory we have discussed in our class. For example, in class 5, we will encourage you to use a T-Funnel questioning pattern during your interview – you explore a subject by employing a series of open-ended questions at the beginning. This helps get at the facts the client recalls easily. When these questions are no longer productive, you employ a series of narrow, probing questions. Now, let's assume you identified your main goals in an initial client interview to be establishing an accurate chronology of your client's story and identifying key witnesses. Observation and discussion with your supervisor and teammate revealed that you failed to get important dates and the names and addresses of significant family members. The client had some trouble remembering some dates and names so it was partly the client's initial response that prevented you from accomplishing the stated goal. But to evaluate your own performance, you'll need to discuss in what ways you either effectively or ineffectively asked narrow, probing questions using the T-funnel approach.
5. Articulate new theory of action. Effective self-evaluation concludes with a statement of specific behaviors or activities that you want to discard or replicate. Again specificity is crucial.

1		3		5
Poor		Satisfactory		Outstanding

(Place "x" to indicate position on continuum)

C. USES A SYSTEMATIC APPROACH TO LAWYERING (10% of grade)

Clinic Standard

Keeps accurate, timely, and comprehensive narrative and time records of all activities undertaken in cases; organizes client files in systematic fashion appropriate to the case and consistent with SMRLS procedures; revises and uses SMRLS to track work; is punctual and reliable in dealings with clients, other attorneys, supervisors, courts and administrative agencies; checks mail box daily and promptly returns telephone messages; regularly informs clients of the progress or lack thereof on their cases; adheres strictly to deadlines and promises.

Rating

1		3		5
Poor		Satisfactory		Outstanding

(Place "x" to indicate position on continuum)

D. REPRESENTS CLIENTS COMPETENTLY, EFFECTIVELY, ZEALOUSLY, AND ETHICALLY (50% of grade).

1. Interviewing: Develops interview plans and objectives in advance; does sufficient advance legal research to answer anticipated client questions; uses active listening and empathetic responses to develop client trust; does advance research and prepares adequately for cross-cultural interviews; follows suggestions for interviewing effectively through interpreters; consistently obtains relevant facts and ascertains client objectives in interviews of reasonable length.

Rating

1		3		5
Poor		Satisfactory		Outstanding

(Place "x" to indicate position on continuum)

HEALTH LAW CLINIC
Course Schedule¹ – Fall 2011

	Date	Topic
Class 1	Aug 25	Orientation: Course goals and methods; evaluation method
Class 2	Sep 1	Professional responsibility and establishing professional relationship.
Class 3	Sep 8	Introduction to clinic substantive law – DHS and MDH background studies law for workers in health and human services providers Guest attorney faculty – DHS Licensing Attorney Patricia Sifferle
Class 4	Sep 15	Clinic substantive law [continued] VAA and Maltreatment of Minors law in individual and provider licensing. What are the proceedings available to dispute disqualification? One health care worker + one unfortunate event = multiple administrative/legal proceedings and consequences.
Class 5	Sep 22	Working with clients with mental health concerns. Ethical and practical issues Guest attorney faculty to be invited
Class 6	Sep 29	Evidence in an administrative hearing – Gathering it – releases, HIPAA, personnel file Presenting it at hearing
Class 7	Oct 6	Overview of individual health professional licensing, application of Vulnerable Adult Act (VAA) and disqualification laws
Class 8	Oct 13	Midterm conference; Expungement to avoid disqualification
Class 9	Oct 27	Minn. Dept of Human Services provider licensing (such as day care, foster care), administrative procedures and application of VAA and disqualification laws to provider licensure
Class 10	Nov 3	Minn. Dept of Health provider licensing (hospital, nursing home, home care, administrative procedures and application of VAA and disqualification laws to provider licensing
Class 11	Nov 10	Background study efforts of health care workers at Federal level and in other states
Class 12	Nov 17	Employment issues related to background studies – Guest attorney faculty: in-house attorney for employer (invited)
Class 13	Dec 1	Wrap-up: final case summaries and reports

Dev: 8/7/2011

¹ Subject to change based on clinic cases and other related learning opportunities.