Using Team Based Learning in the Professional Responsibility Course

Barbara Glesner Fines
University of Missouri Kansas City School of Law

July 18, 2012

For over ten years now, I have been teaching my professional responsibility courses[1] using the team-based learning (TBL) teaching strategy. Team-based learning is a teaching strategy first devised by Professor Larry Michaelsen in response to a sudden and dramatic increase in the size of his organizational behavior and business management classes. Wanting to retain the same level of student engagement and critical analysis that he and his students had experienced in his smaller discussion seminars, he developed an approach to comprehensive course design and teaching. [2] One leader of team-based learning scholarship describes the strategy as "A special form of collaborative learning using a specific sequence of individual work, group work and immediate feedback to create a motivational framework in which students increasingly hold each other accountable for coming to class prepared and contributing to discussion."[3] Over the past forty years, the TBL strategy has been used in educational settings from grade school to graduate school, mathematics to medicine, central Missouri to central China.[4]

There are four essential elements in a team-based learning course. First, groups must be properly formed & managed. Second, mechanisms for both individual and team accountability must be integrated throughout the course. Third, students must have opportunities for frequent, immediate feedback. Fourth, students must be given assignments that promote both learning and team formation

In this paper, I explore the justifications for using team-based learning in the professional responsibility course. I then examine how each of the four basic elements

---

[1] I teach two courses that fulfill our Professional Responsibility requirement: Professional Responsibility and Ethical Issues in Family Representation.

[2] Michael Sweet, What is TBL?, http://www.teambased learning.org

[3] *Id.*

[4] See demonstrations and translations at the TBL Collaborative website: http://www.teambasedlearning.org.

of team-based learning play out in the law school classroom, from the first day and forming groups; through the cycle of units of study that begin with a readiness assurance process and then require students to work through significant problems and learning activities; to the final peer evaluation and grading process. A sample course syllabus and sample problems is attached to the article to make more concrete how a TBL-PR course is structured.

I.   Justifications for Team-Based Learning in Professional Responsibility

Providing students guidance and opportunities for teaching one another is an extremely effective method for raising the expectations for the entire class as well providing a supportive climate. When peers interact in learning there tends to be both a cognitive and an affective difference in the approach to the process by both participants.[5] Hierarchies are broken down and learners view the relationship as a collaborative learning experience.   There is a greater likelihood of both empathic response and freedom from constraining deference that frees students to push the limits of their learning.[6]

Teaching collaboration in the Professional Responsibility course is especially appropriate. Traditional legal education trains students to work independently and competitively.[7]   Rules that prohibit collaboration on papers and explicit "ranking systems" may lead students to believe that this is the world of practice as well—every person for him or herself.   While there is no denying the degree of individual responsibility an attorney has in law practice and the amount of competition there may be for clients or cases, it is simply not true that attorneys never collaborate.   Most attorneys practice in firms, where increasingly work is shared among a team of attorneys and other professionals.

---

[5] NEAL A. WHITMAN, PEER TEACHING : TO TEACH IS TO LEARN TWICE 14 (ASHE-ERIC Higher Education Report No. 4 1988).

[6] Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 910 (1997).

7 *Id.* at 913. *Vernellia R. Randall, Increasing Retention And Improving Performance: Practical Advice On Using Cooperative Learning In Law Schools,* 16 T.M. COOLEY L. REV. 201, 213 (1999).

This is increasingly so as the law become more and more specialized. As comment 1 to ABA Model Rule 1.1 suggests, attorneys who are working outside their depth (which almost inherently means all new attorneys[8]) should consider the feasibility of associating or consulting with "a lawyer of established competence in the field in question."[9] Even for the one-third of attorneys who are in solo practice, a network of mentors and colleagues available for advice, collaboration, and backup component of competent representation. This networking reduces risk and increases quality and satisfaction.[10] As Professors Levit and Linder suggest in their work on career satisfaction:

> If the best elixir isn't money, but people—and one of the best ways to make people happier is to help them create strong and supportive personal relationships—law schools should work to increase social bonds. The practice of law is increasingly interdisciplinary and multi-disciplinary. Law schools should create team players, by developing more collaborative projects and assignments. [11]

Likewise, in his study of the legal profession, Professor William Henderson has built upon extensive empirical studies of knowledge workers at Bell Labs to suggest that law firms develop different models for recruiting and training new lawyers—models that rely less on numerical accomplishments (grades, billable hours) and more on qualities that extensive empirical study had demonstrated to be associated with high performance.[12] Those qualities included several that relate directly to collaboration such as networking ("tapping into coworkers' expertise and shar[ing] their own knowledge"); perspective ("understanding jobs within the larger context of the organization and analyzing problems from the viewpoint of customers, managers and team members"); followership ("setting aside their own agendas and using their talents to help other

---

[8] New attorneys in solo practice or without mentors are at special risk. See, e.g., In re Willer, 735 P.2d 594 (Or. 1987) ("classic scenario of an inexperienced lawyer who accepts work beyond her competency and capacity and, when faced with almost certain disaster, continues to dig herself further into trouble rather than seeking help.")

[9] American Bar Association, Model Rules of Professional Conduct, Rule 1.1, comment 1 (2012).

[10] Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459 (1993).

[11] Nancy Levit & Douglas O. Linder, *Happy Law Students, Happy Lawyers*, 58 SYRACUSE L. REV. 351, 363-64 (2008).

[12] *William Henderson, Are We Selling Results or Résumés?: The Underexplored Linkage between Human Resource Strategies and Firm-Specific Capital*, Indiana Legal Studies Research Paper No. 105, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1121238).

leaders accomplish the organization's goals"); and teamwork ("assum[ing] joint 'ownership' of goal setting, group commitments, work activities, schedules, and defusing conflict among group members").[13]

Team-based learning turns the tables on the traditional allocation of time and responsibility for learning in and out of the classroom. At one time, before the explosion of information available on the web, students came to classrooms to be provided information and insight. Lectures are efficient at conveying information but are one of the least effective methods for engaging student's critical reasoning or active construction of that knowledge.[14] They are even less effective for changing attitudes or teaching skills.[15] Moreover, except for the few students who are called upon to recite or engage in dialogue in class, students are not held accountable for their learning until the first examination, often at the end of the semester. Thus, students can engage in the "widely resented" professional shortcoming of procrastination.[16]

In team-based learning, students are responsible for reading and listening[17] to the assigned course materials in order to prepare themselves to apply those basic concepts in class. Of course, the standard Socratic classroom has the same expectation. However, as anyone who has taught a large upper-level law school class, ensuring the preparation of all students is difficult when only a few of those students can be engaged in a Socratic dialogue. Engaging the critical faculties of the by-stander students in the Socratic classroom is even more difficult.

Team-based learning shifts to the students the primary responsibility for "covering" basic content outside the classroom, and in the classroom the focus remains on the students and demands their ongoing individual accountability for learning. The teacher's role in a TBL classroom is less expert and more designer, facilitator. In a fully-functioning team-based learning classroom 70% of class time is spent in team work, with only 30% of the class time spent in faculty-centered lectures or questions/answers.

---

[13] *Id.*

[14] DONALD A. BLIGH, WHAT THE USE OF LECTURES? 8-12 (2000).

[15] Id. at 12-20.

[16] American Bar Association, Model Rules of Professional Conduct, Rule 1.3, cmt. 3 (2010).

[17] Many TBL instructors use podcasts or other supplemental out-of-class lectures to assist students in learning the material.

The components of team-based learning are a process that insures the readiness to engage in this group work, application assignments that force deep learning and collaboration, a peer evaluation process that creates confidence that groups will function fairly and effectively. The skills a TBL course emphasizes are inherently skills of of competent and ethical practice

1. critical thinking & problem solving

2. articulating personal values and defending recommendations

3. interpersonal teamwork skills

4. integrating course themes and content

5. understanding the ambiguity and responsibility of practice

6. self-assessing their own learning

The TBL classroom is structured as a series of units with three phases:

| Phase 1

Out of class | Phase 2

Readiness-Assurance

In-class (1-2 classes) | | Phase 3

Application of Course Concepts (3-6 classes) |
|---|---|---|---|
| **Individual Study of course content** | | **Instructor Feedback** | **Small Group Assignments** |
| | **Team Test** | | |
| | **Individual Test** | **Team Appeals** | |

The first two hours of the course are used to set up the teams and the system.

Then the course proceeds through a series of cycles of learning in these three phases. At the end of the semester, I generally provide an overview lecture, primarily so students can see how much they have indeed learned and an individual examination, primarily because I am uneasy in assigning an entire course grade based on group work given ABA Accreditation standards.[18] Finally, students evaluate one another on their contributions to the team's learning. This peer evaluation process is an essential component of team based learning as it helps prevent some of the most common problems with group work: freeloading and domination.

If you have not used TBL previously, you will benefit significantly by reading more about the method and planning carefully before using this strategy, as it is not a teaching method you use for one or two classes but a comprehensive strategy for course design. Some of the essential materials you will need for applying this strategy are included here:

- a detailed explanation of the first class
- a description of the readiness assurance process
- a discussion and examples of application exercises
- guidance on helping teams work and the peer evaluation process
- a sample course syllabus

II.   How the First Class Works

During the first class I arrange groups, have the students negotiate grade weights, take a quiz on the syllabus, and begin to set their firm's ground rules

On the first day of class, I have written on the board "BE PREPARED TO MOVE TO A DIFFERENT SEAT" so students do not settle in. I have students calculate a number through a short questionnaire that causes the students to be distributed

---

[18] While the standards do not prohibit group grades, they speak in terms of individual progress and suggest more traditional assessments. *See, e.g.,* American Bar Association, 2011-2012 Standards and Rules of Procedure for Approval of Law Schools, Interpretation 303-1 Scholastic achievement of students shall be evaluated by examinations of suitable length and complexity, papers, projects, or by assessment of performances of students in the role of lawyers.

according to experience in law practice and area of law in which they desire to practice. I do this during the class so that the method of assign them to their law firms is visible and random. I then have each firm choose where they will sit together in the classroom (I have pre-marked seat groupings to maximize this process).

For best results in forming groups, use a method that is visible to all students and generates a roughly random division, while also distributing resources to insure diversity among the groups. I have formed groups based on expressed interest in practice areas in the past, but have not found that as effective for the class as a whole as using a more visible and random method. If you want to divide experience or expertise among the groups, have the students take a short "quiz" in which they give themselves "points" for experience. In my Professional Responsibility class, I have arrived at the following for distributing students into groups according to their area of interest as well as their experience.

SURVEY: Give yourself 1 point for being here. Then add:

    A.   If you have practiced law (either as an attorney or as a Rule 13 student), give yourself 2 points for each semester of practice (up to 10 points)

    B.   If you have taken and passed the MPRE course give yourself 2 points

    C.   If you are in your third year of law school, give yourself 2, points.

    D.   If you are interested in representing entities (corporations, governments, organizations) rather than individuals, give yourself 20 points.

    E.   If you are primarily interested in practicing criminal law (defense or prosecution), give yourself 40 points.

Add your points and arrange yourselves in a line from 1 to 76. If someone has the same points as you, arrange yourself alphabetically by first name from A to Z.

Count off (to create firms of 5 to 7 members)

So, for example, in my class of 72 students, I will have the students count off 1 through 12 for firms of six students each. I give the first student a large colorful sign with the number of their firm and tell them to spread out and find their firm. I sometimes assign seating to the firms, depending on the classroom setup.

ASSIGNMENT : Forming your Firm

Introduce yourselves to one another and exchange contact information

Share with one another what you want to get out of the course

Print your names neatly on the firm folder attendance sheet

As a firm, complete the quiz in your folder.

Each firm has a hanging file folder. Affixed to the inside of the folder is an attendance sheet with the names of each student in the firm and the dates of all the classes. Students maintain attendance by initialing this sheet each class. This gives the students and me a record of student attendance. On the other side of the folder I insert a sheet with all the activities and the possible scores for each. I have the students put their names in their firm folder and introduce one another briefly.

Negotiate Grade Weights

Elect a representative from your group to negotiate on your behalf. You will be negotiating the percentage of the final grade to be determined by the following components:

- Your individual scores on quizzes and other preparatory assignments for class (must be at least 5% of the final grade)(each quiz and application assignment will weighted equally).

- Your group score on quizzes and on application activities (must be at least 20% of the final grade) (each quiz and application assignment will weighted equally).

- Your individual score on a final, closed book examination (must be at least 20% of the final grade)

- Your score on a peer assessment of your contributions to the group (must be at least 10% and may not exceed 25% of the final grade).

Readiness Assurance Process

> I then give each firm a quiz over the syllabus and the reading materials, using the readiness assessment process described in Part III.   The first day quiz might look like this:

QUIZ   Introduction to Professional Responsibility

1.   Why is this course being taught using team-based learning?

> a.   Students learn more and more effectively in courses taught using team-based learning methods.

> b.   Law practice requires collaborative skills and TBL teaches those skills.

> c.   The ability to work well with others is more important to success than intellectual expertise.

> d.   All of the above.

2.   The single most important factor in determining whether a team will be effective in problem solving is

> a.   The degree to which the team members share a common goal

> b.   The degree to which work is evenly distributed among members of the team

> c.   The degree to which the team members manage conflict

> d.   The abilities of the individual team members

3.   On a quiz, the correct answer was B. Firm #1 got the answer correct. Firms #2 & #3 chose answer A.   Firm #2 appealed the answer and was successful in the appeal. How will the group quiz scores be adjusted?

> a.   The scores of Firms #1 #3 will remain the same. The score of Firm #2 will be changed to reflect credit for the successfully appealed answer.

b.   . The score of Firm #1 will remain the same. The scores of Firms #2 & #3 will be changed to reflect credit for the successfully appealed answer.

c.   The score of Firm #1 will be dropped to reflect Firm #2's successful appeal of the answer. The score of Firm #2 will be increased for the successfully appealed answer. The score of Firm #3 will remain the same.

d.   The score of Firm #1 will be dropped to reflect Firm #2's successful appeal of the answer. The scores of Firms #2 & #3will be increased for the successfully appealed answer.

ANSWERS: 1. (d) 2. (c) 3. (a)

III.   The Readiness Assurance Process

Team-based learning creates rigorous demands for individual preparation, and assesses that readiness through a "readiness assurance process." Before this process, students are given assignments to prepare for the unit's study. These assignments are not entirely different from the preparation one assigns for any law class except the expectations for student competence must be very clear because students will be held strictly accountable for having achieved a preliminary competence in the basics of the unit's doctrine. These preliminary reading assignments, then, should emphasize basic concepts, vocabulary and rules, rather than more complex or ambiguous issues (those will be addressed in the problem discussion phase of the TBL cycle). Generally you should limit material to 30-50 pages of reading depending on its complexity. To insure students can truly learn the basics before the first class in the unit, you may wish to supplement your readings materials with outlines, CALI lessons, podcasts, or other "teaching" resources that might otherwise be used in "teaching the class."

The readiness assurance process begins with students taking a quiz over the reading assignments individually. That quiz is designed to test only basic knowledge and understandings: that is, preparation. Quizzes should be focused on the objectives for the course and limited in number to allow for complete discussion.

Multiple choice or true/false questions force the team to select one answer and thus force discussion and debate. Strive for questions that require analysis and challenge the students to demonstrate their understanding rather than mere rote

knowledge, but avoid questions for which there is no clear answer. You should aim for a success rate on the quizzes of about 80 or 90 percent.

Before administering the first quiz, introduce the quiz method. Explain that the purpose of this process is to ensure that all students understand the material so that the class time can be used for productive examination of practical applications. Particularly where questions include fairly elaborate hypotheticals, providing the quiz before class allows class time to be spent on discussion and debate rather than reading the quiz. The disadvantage of providing the entire quiz before class is that students may simply prepare the quiz and not study beyond that necessary to answer the specific questions. A middle ground is to provide the hypotheticals but not provide the call of the question and the multiple choice answers until class. After students complete their individual quiz, they turn in their answers for scoring.

Second, teams take the same quiz again. Emphasize that each student in the firm must understand why the answer chosen is the correct answer and that you will call on individuals at random to explain their firm's rationale. This forces discussion and debate over the materials, so that students deepen their learning of the material.

While the students are taking the quiz, walk around the room and listen in on discussions. Listen especially for common misunderstandings so you can include these as "distractors" in future quizzes. Do not, however, interrupt the discussions, even if invited to participate.

Methods of scoring the quiz that provide room for dissenting voices are especially helpful to encouraging discussion and engagement within the team. Many TBL instructors use IF-AT cards[19], which are scratch-off answer multiple choice answer sheets (like lottery tickets). If the team's first response is not correct (revealed by the absence of a star), the team can keep trying until they arrive at the correct answer. The fewer attempts at an answer, the higher the points the team achieves. Because this method provides immediate feedback on the correct answer and allows students to take risks when there is dissent in the group, it reinforces concepts, encourages dialogue, and

---

[19] IF-AT standards for "Immediate Feedback Assessment Technique." Cards are available at http://www.epsteineducation.com/home/about/default.aspx.

dramatically affects the ability of a group to form into a team.[20] As the IF-AT developers comment, "it quickly becomes apparent to participants that "loud and forceful" is not always "right"; each member is empowered by knowledge rather than personality."[21]

Other methods for team response can be response cards, in which all firms "vote" by holding up an A, B, C, or D (or T/F) card and visually displaying their answers. I would imagine that faculty using clickers could incorporate their use into this system as well. Using a system that requires students to simultaneously report their answers avoids the problem of students "following the crowd" as they sometimes do when polled for responses.

When a firm is done with the quiz, they hand in the answer sheet and the quiz. I review the answer sheets as they are turned in and provide public acknowledgement to the firm or firms that received the most points on the quiz, which creates a sense of competition among the firms, further facilitating group cohesion. Finally, we briefly review the quiz as a class. I don't necessarily review every question but use the results from the quiz and my own observations to reinforce points as necessary. I call on students to explain why certain answers are correct in order to spot check firm processes and student participation. I highlight interesting or important discussions I heard. I sometimes use presentation slides to visually reinforce key points from the quiz.

The third part of the readiness assurance process is an "appeal." Teams are provided an opportunity to appeal their scores, challenging the professor's choice of the correct answer. If a firm believes the correct answer is one other than that noted as correct, or that a question is unfair or unduly vague or "tricky", they can prepare a written response challenging the answer. You can provide in-class opportunities immediately for appeals, or take appeals on line outside of class. Appeals must be presented by a firm as a whole. If I accept an appeal, all firms that choose the newly correct answer are given revised points to reflect that change. Points are never subtracted from firms as a result of appeals. The "us against the teacher" dynamic an

---

[20] C. Birmingham and M. McCord, *Group Process Research: Implications for Using Learning Groups,* Larry K. Michaelsen, A. B. Knight, and L. D. Fink (eds.), TEAM-BASED LEARNING: A TRANSFORMATIVE USE OF SMALL GROUPS IN COLLEGE TEACHING (2004).
[21] http://www.epsteineducation.com/home/about/teamlearning.aspx

appeal sets up helps to forge firm cohesiveness and further refines understandings. For this reason, I intentionally include one "appealable" question in the first quiz. Be careful not to grant appeals that are not well presented and well grounded or they will undermine the seriousness with which the students take the quiz in the first place.

This quiz process requires the students to review the reading assignments three separate times (individual quiz, team quiz, appeal) and helps to keep individuals accountable to the team for their preparation. The quiz process generally takes one or two classes. It is followed by a brief lecture reviewing the most troublesome aspects of the materials.

IV. Group Assignments

Following this readiness assurance process, students work with their teams over the next three to six classes on more complex problems requiring them to apply the concepts to increasingly complex problems. These team assignments must be planned carefully. Tasks requiring mere recall of information will rarely sustain discussion and may convey an unintended message that individualized preparation of materials is unnecessary. Conversely, if you are asking for a very carefully phrased response (especially a response requiring extended writing) rather than ideas, solutions, or arguments, in-class cooperative groups are less likely to work effectively. Writing is essentially an individual activity, and cooperative work with written assignments is better left to cooperative critique and editing, rather than drafting.

Team-based learning emphasizes that the best team application assignments have three characteristics. All teams work on the *same problem*, case or question; those problems require a *specific choice*; and the teams providing *simultaneous reports* of their decisions.

Brainstorming might appear to be a useful activity for small groups. However, research indicates that, in fact, groups do not produce more or more creative ideas when brainstorming than do individuals working on their own. This is likely because brainstorming requires creative thinking and creativity requires taking risks. Risk-

taking while in a group setting requires trust. Few groups in a law school classroom are so well-established as to have the level of trust necessary to nurture good brainstorming. However, if students are directed to first brainstorm on their own and then share their ideas and have the group elaborate on those ideas, brainstorming can be an effective group activity.

Cooperative learning is most effective for tasks requiring critical analysis. Questions that work very well in TBL classes include those requiring the students to generate or choose among solutions to a problem presented by the case or problems assigned for class. Good candidates for team assignments include questions like: "Which rule/approach is better and why?" "How might the attorneys have avoided this problem?" "How is this rule likely to affect people's actions in the future?" "What is the best argument for and against this approach?" If a problem or question would require students to absorb any significant additional facts before discussion, these problems should ordinarily be provided to students ahead of class.

One of the differences between groups and teams is the degree of interdependence. Groups will often tend to short-circuit discussion and simply "vote" – Teams will work toward consensus. Requiring consensus helps build teams. Single choice exercises also make report back more efficient as it is easy to incorporate polling.

Not all assignments need to be "graded" in the sense that they count toward the final grade. However, allocating some grade points to these application activities rewards students for effective team work. There are several products from these assignments that you can assess for grades. These can include team reports or consensus documents (generally less than 500 words), team presentations of justifications, or peer assessments.

V.   Helping Teams Work

Team based learning relies on the structure of students working with the same team for more than seven weeks, with at least 70% of class time spent in group work. Within this framework, students are able to transform their group to a team, finding

shared goals, assigning roles, and setting up effective communications. However, I also include some express instruction on group processes and communication and opportunities for students to practice peer evaluations.

Early on in the course, I provide students the following handout on group process:

HANDOUT: What Makes Groups Work Well?

1.   A shared purpose

In any group there are likely to be a range of goals or purposes within the group. In a learning group, your task is assigned by the instructor, who has learning goals he or she wishes you to accomplish, but within your group, there are likely to be a diverse range of individual goals regarding that task. One student may want to get an A on every assignment. Another student may want to get the most practical learning out of each assignment but is less concerned about grades. A third student may want to accomplish enough to receive credit in the least amount of time possible.

"If a team learns together about its purpose and goals, it can avoid some of the dysfunctional team behaviors mentioned earlier. The root cause of social loafing, for example, often lies with team members who are privately pursuing their individual goals and have little commitment to the team purpose. At the other extreme, over-commitment can result, particularly in highly motivated voluntary teams… A political action group can become so focused on having its candidate win that it ignores other goals such as honesty and fairness." Anna B. Adams, D. Christopher Kayes, David A. Kolb, Experiential Learning in Teams, 36 Simulation Gaming 330-354 (2005)

2.   A shared process

To get the benefits of a group, you have to be willing to operate as a group. In many experiences, what seems like group work is actually the aggregation of individual work. Without any interaction among the individuals and their contributions, these groups gain

no advantage in effectiveness. Research has reported that the extent to which group members communicated and coordinated with each other predicted team effectiveness. J.E. Mathieu, T.S. Heffner, G.F. Goodwin, E. Salas and J.A. Cannon-Bowers, The influence of shared mental models on team process and performance, 85 Journal of Applied Psychology 273-283 (2000).

To get the benefits of group process, the group has to work toward cohesion, communication and conflict resolution. A team has to have some "spirit" or commitment to the group. This group cohesiveness is positively related with group performance and group effectiveness. R.A. Guzzo and G.P. Shea, Group performance and intergroup relations in organizations, M.D. Dunnette and L.M. Hough, eds., Handbook of industrial and organizational psychology 269–313 (Consulting Psychologists Press, Palo Alto, CA 1992). When a group is very homogeneous, it's easier to get along with one another. However, the downside of this type of cohesion is that a group can be prone to "groupthink" in which groups don't adequately consider their decisions or alternatives before they take action or close discussion. More diverse groups – especially diversity of personality, education, skills and background – are more effective in decision-making and complex tasks. But the downside of diversity is the possibility of conflict. One of the most important factors in the effectiveness of group decision-making is the ability to handle conflict.

Conflict resolution and effective processes require, above all, good communication skills – especially skills of listening and shared leadership. One of the ways in which a group can become terribly ineffective is if it is dominated by one or more individuals or if some individuals are unwilling or unable to contribute to the group.

3.   Confidence

"Several authors have argued that higher levels of perceived collective efficacy are associated with higher level group goals, greater levels of persistence toward the accomplishment of such goals, and greater performance accomplishments. When groups are confident of their abilities to perform a task, they will not only set higher goals but also will work harder toward accomplishing them even under adverse

conditions. The group's confidence in its ability to perform a task may also positively affect members' mutual support for one another to carry out the work." Mauricio G. González, Michael J. Burke, Alecia M. Santuzzi and Jill C. Bradley, The impact of group process variables on the effectiveness of distance collaboration groups, 19:5 Computers in Human Behavior 629-849 (2003)(Citations omitted).

The professor in a team-based learning class can facilitate these three aspects of effective groups.

To facilitate a shared purpose, I ask students to reflect on their learning goals and then ask the students to share those goals within their groups. Have students develop a group goal and concrete guidelines for reaching that goal. Giving students an opportunity to allocate grading percentages among various elements of the course can provide a tangible measure of shared purpose.

To insure shared processes I provide explicit instruction in communication and team work skills. This signals to the students that these skills are important. I provide students an opportunity to self-assess their skills in team work before they undertake peer assessments. Finally, the first class assignment requiring students to develop guidelines for their own group work allows students to refer to these external guidelines to nudge their fellow students toward shared process.

ASSIGNMENT: Professional Responsibility Law Firm Rules

As the chapter discusses, collaboration is an important skills for knowledge workers in general, including attorneys. In this course you will be working with your colleagues at regular intervals. You have been formed into law firms. Like real world legal practice, where few of you will have the opportunity to hand pick your work partners, you have been assigned to these firms according to your expressed interest and experience. Your work together will sometimes consist simply of sharing your learning through discussions and shared work product. Sometimes I will ask you to solve problems or make decisions as a firm. For the final project, you will combine

these cooperative and collaborative tasks into a final written project that comes from your shared decision-making. You will be evaluating one another on your work and contributions to each other's learning.

Your first assignment within your firms is to introduce yourselves to one another, trade contact information, and establish some ground rules for your working together. These will be the rules against which you will be evaluating yourselves.

Prepare a list of these operating principles or rules of professional conduct for your work together (at least three, no more than five). You will be evaluating yourselves against these criteria at various points in the course, so strive for concrete and clear rules. Identify, if you wish, the procedures you will use if problems arise in the group. This is not meant to be an elaborate code -- aim for no more than about two or three hundred words.

I will "grade" your firm rules on a scale of 1-3 and the assignment is part of your overall firm grade for the course.

Notes on this assignment

I give the students time in class to discuss and work on their code. Completed codes are due at the beginning of the following class. I have all work submitted through the course management software system because this helps me to easily keep track of submissions, but email or paper submissions work well also.

The third component of effective groups – confidence – can also be facilitated by the professor. It is critical that professors take the time to explain why group work is relevant to the students. [22] Early feedback to groups to demonstrate the efficacy of their group work. The readiness assurance process readily provides this demonstration. The individual and then shared group quizzes will nearly always provide statistical "proof"

---

[22] Susan Brown Feichtner and Elaine Actis Davis, Why Some Groups Fail: A Survey of Students' Experiences with Learning Groups, 9:4 Organizational Behavior Teaching Review 75-88 (1985).

that the group outperforms nearly all individuals, so I always make sure that I share those statistics with the class. [23]

Assurance that individual accountability is built into the system will boost confidence that the group will operate free from social loafing and dominance. For this reason, an essential component of team-based learning is the final peer evaluation process. Teaching students to provide feedback or critique is an essential skill for professional responsibility. I introduce the skill to the students first out of the context of peer evaluations by posing a problem in which students need to confront another attorney regarding that attorney's unethical behavior. I assign the following summary of the ideas in the text "Difficult Conversations"

Professional Responsibility Skill 6-A: Difficult Conversations

Your responsibility as an attorney is likely to involve many difficult conversations, and few are more difficult than the conversations in which you must discuss a mistake. Sometimes the conversation involves your acknowledgement of your own errors. Model Rules 8.3, 5.1, and 5.2 point out that sometimes these conversations will have to be about another attorney's mistake. While Rule 5.2 allows a subordinate attorney to defer to a supervisor's "reasonable resolution" of an "arguable" question of professional duty, determining whether a question is arguable or a resolution is reasonable can be challenging for a new attorney. The place to start, in addition to independent research, is a conversation with the supervisory attorney. If that conversation does not resolve concerns adequately, the attorney may talk to others in the firm, especially if there is an attorney in the firm who is designated as "ethics counsel" or if there is a firm ethics committee.

---

[23] What Makes Teams Work: Group Effectiveness Research From the Shop Floor to the Executive Suite. By: Cohen, Susan G., Bailey, Diane E., Journal of Management, 01492063, 1997 Special Issue, Vol. 23, Issue 3

Whether admitting your own error or questioning the conduct or direction of another attorney, the conversation will be difficult. How do you best approach these conversations effectively and professionally?

In their book Difficult Conversations,[24] Douglas Stone, Bruce Patton, and Sheila Heen point out that every difficult conversation is actually three conversations:

The "What Happened?" conversation, in which you disagree about the facts;

The Feelings Conversation, in which emotions influence the conversation, whether addressed directly or not; and

The Identity Conversation, which is our own internal conversation about how the situation affects our own view of ourselves.

The authors have several suggestions for making difficult conversations more productive.

1. Shift to Learning Stance

In a learning stance you do not assume you know the other person's perceptions, intentions, and interests. Without giving up your own emotions and perceptions, you are respectful of the dignity and interests of the other person and approach the conversation from a stance of forward-looking learning and problem solving rather than backward-looking blame.

2. Listen

Try to see the situation from the other person's point of view before you try to communicate your point of view. Use the essentials of active listening:

Ask open-ended questions. "Tell me more…" "Help me understand…"
Paraphrase for clarity. Express to the other person, in your own words, what you think you have heard.

---

[24] D. Stone, B. Patton, & S. Heen, *Difficult conversations: how to discuss what matters most*. (New York: Penguin. 1999). This is an excellent book and well worth reading in its entirety.

Acknowledge the other person's feelings. Feelings left unacknowledged will cause trouble in a conversation. Do not assume you know what another feels, but when they make their feelings clear, acknowledge those feelings.

3.   Adopt the "Yes, And…" Stance

The perceptions, emotions, and values of the other person have value AND so do yours. You are unlikely to impose yours on the other person. The critical component is that you allow yourself to express your view and listen to the other person's view as well. Once you have reached this stage, you can say: "Now that we really understand each other, what's a good way to resolve this problem?"

4.   Recognize the Story You Bring to the Conversation

In the "What Happened?" Conversation, you may assume you already know everything that happened, what was intended, and who should bear the blame.   If you approach a difficult conversation with these assumptions, you will not have a conversation, you will have a blaming session. Instead first change your assumptions that you cannot know the other person's perceptions and intentions until you ask and listen and that there are few situations in which one person is solely and completely at fault.

In the Feelings Conversation, an assumption that feelings are irrelevant and should be ignored (or that only your feelings count) is counterproductive. As the authors discuss, "Feelings are the heart of the situation." Address feelings (yours and theirs) before trying to problem solve.

In the Identify Conversation your or the other person may find the conversation challenging to their identity as good or bad or competent or incompetent. Adopting the assumption that both of you are complex and neither is perfect can help maintain balance in the conversation.

5. Focus on Contribution, not Blame

Focus on the factors that created the problem (including your own) in a forward-looking "how do we fix this" attitude.

I have the students practice the conversation they would have with their colleague and then write a short reflection on their experience in having a difficult conversation.

When we turn to a discussion of the peer evaluation process, some students make the connection to this exercise and recognize that many of the same principles apply to providing helpful feedback.   Before I have the students conduct individual peer assessments, I ask each team to assess themselves as a team.

> Group processing provides feedback to group members regarding their participation, provides an opportunity to enhance the members collaborative learning skills, helps to maintain a good working relationship between members, and provides a means of celebrating the group's successes. One strategy is to ask each team to list three things the group has done well and one that needs improvement.[25]

To help students learn to provide evaluative feedback, I have provided students the following rubric to discuss and rank their group process. I ask the students to individually rate their team using the rubric and then discuss and come to consensus on their ratings. I then ask them to agree on one concrete example of the group's greatest strength and one suggestion for how they would improve group process for continuing to work with this firm.   Alternately, I have asked students to take a portion of the class to assess their team using the law firm rules they had developed and consider whether those rules needed amendment or elaboration.

These preparatory peer evaluation exercises are never calculated into a grade, but are designed to help the team members become more comfortable with the process of peer evaluation.

---

[25] Smith, K. A, Cooperative Learning: Making 'Group work' Work, Sutherland, T. E., and Bonwell, C. C. (Eds.), Using active learning in college classes: A range of options for faculty, New Directions for Teaching and Learning No. 67. (1996).

Group Focus	We did not share a common purpose	We appeared to have similar purposes but sometimes with different levels of commitment to the purpose	We worked toward a shared purpose that respectfully balanced the goals of individuals in the group
Group Cooperation	We did most of the work by ourselves, we talked a little among our group members	We worked together most of the time, sharing information regularly	Everyone worked together using his or her abilities and knowledge to contribute to the learning of all and to the quality of assignments
Distribution of Group Tasks	Some group members did not contribute	Everyone contributed something but some contributions were sporadic or incomplete	Work was shared fairly according to the abilities and interests of the members
Group Leadership	We had no leader so we just did our own thing	No one person was a leader so we usually helped each other get the job done	One or more persons took a leadership role and gave good directions that kept us going
Communication among group members	We only talked when we thought we needed to, but received little feedback	We talked about what we were doing	We usually asked each other for help and showed our work to each other and provided feedback
Individual Participation	A few people tried very hard, but most didn't do much	Each person did some work and tried to do a fair share	Everyone did a good job, I would work with these people again
Listening to other points of view	We usually listened to what others were saying but some either did not share ideas or argued	We usually listened to each other and tried to use to improve our learning and our assignments	We listened while others talked, we learned about different viewpoints, and used what we heard to improve our learning and assignments
Showing respect	No one was courteous and opinions were not valued	Some were courteous and some opinions were valued	All were courteous and valued each other's opinions

At the end of the semester, I have the students submit peer evaluations to me as part of their final project. I use the following instructions for that assignment.

Professional Responsibility Law Firm Peer Evaluation

For each one of your firm partners, rate that partner on a scale of 1-10 on the degree to which he or she contributed to your learning and complied with the firm rules you set at the beginning of the semester. You must distribute your scores – that is, you may not give all partners the same score without a very clear justification for why that would be appropriate.

For each partner, give one example of how that partner was helpful to your learning and one suggestion for how that partner could improve their professional collaboration. The more concrete your examples and suggestions, the better. Keep in mind that helpful evaluation balances positive and critical comments and is concrete. It focuses on behaviors rather than persons.

Your peer evaluations are due the last day of class. If you do not provide sufficient examples, explanations, or a distribution of scores among the team without clear and convincing evidence, I will return your evaluation for further work. All returned peer evaluations must be completed by the first day of the exam period.

I will be collating the scores and comments and returning them to each person in your firm. The compilation will not identify who made which comments. Individuals may but need not respond to their peer evaluation within 5 days after I have distributed the compilations.

SUBMIT YOUR EVALUATIONS INDIVDIUALLY TO THE TWEN DROP BOX FOR PEER ASSESSMENTS. DO NOT SHARE YOUR EVALUATIONS WITH EACH OTHER.

For each partner, then, complete the following:

Name of partner _____

Rating _____

Positive contribution to your learning:

Suggestion for improvement in collaboration

One of the most common questions I get about this process is whether students are honest in their evaluations. That is, will students hold one another accountable. The answer is yes. Each semester there have been a small number of students who have clearly not been as engaged or prepared as their peers. In all but one instance, the peer evaluations of all students in the firm, including the underperforming student, reflect

that poor performance. I have more commonly noted groups in which one student appears to be working harder and contributing more to the group than his or her peers and the peer evaluations do not reflect this as clearly as underperformance. What I often discover from the peer evaluation comments, however, is that the students I had perceived as "over-performing" are, in fact, dominating the team and interfering with the ability of other students to contribute.

One method to improve peer evaluations is to "grade" the evaluations themselves, based on criteria of specificity of feedback, descriptions of behaviors rather than judgmental statements, constructive tone and usefulness to receiver of feedback.

VI.   A SAMPLE TBL SYLLABUS

Ethical Issues in Family Representation

SYLLABUS

Course Instructor:

Barbara Glesner Fines

Get the most for your tuition dollar. Call (816-235-2380), text (816-500-5474), email (glesnerb@umkc.edu), or stop by my office (1-206 Administrative Suite) if you have questions or would like to discuss any aspect of the course or of law school or professional preparation in general.

My office hours this semester are Mondays 9:00 to 11:00 am; Fridays 2:00 to 4:00 pm; or you can email me to set up an appointment. You are welcome to simply drop by my office at any other time. Occasionally, I may have something pressing that will require my putting out a "do not disturb" sign. Your visit really is important to me, however, so please do let me know if you are having problems catching me and we will make an appointment at your convenience.

 Required Texts and materials:

Barbara Glesner Fines, Ethical Issues in Family Representation (2010)

Model Rules of Professional Conduct (any recent copy or on line at the ABA Center for Professional Responsibility)

Student Learning Outcomes:

Each chapter in the text provides specific learning outcomes for that unit; however for the overall course I have four general objectives for your learning:

Master the law governing lawyers. You should understand the relationship between bar-generated disciplinary codes and other sources of law, such as cases, statutes and regulations. In particular, you should be familiar with those sources of general law and specialized guidance available for family law attorneys. You should be able to identify the core issues and governing law in any troublesome situation of family representation and be able analyze complex professional responsibility problems in the core areas of concern for attorneys:

the four C's of the attorney-client relationship
Competence, Communication, Confidentiality, and Conflict-free representation

the three C's of the attorney-court relationship
Candor, Compliance, and Civility

and the FAIR rule for the attorney's relationship with everyone else in society

Fairness, Access, Integrity, Responsibility

Finally, you should be able to recognize the tensions among these concepts, which are inherent in the regulation of attorneys, and the gaps, which are substantial when addressing issues of professional conduct as they arise in representation of families

2.	Be able learn more. You will have experience in researching issues of professional responsibility and be aware of sources for additional help.

3.	Have a clearer vision of your own professional identity, the demands of practice in representing family members, and your stance on critical questions of professional role.

4.	Be able to avoid getting yourself, your fellow attorneys, and your clients into trouble, by having learned some practical strategies for avoiding common professional pitfalls and having come to appreciate and successfully use collaboration as a professional work style.

Introduction to the Course and the Teaching Methodology:

Team Based Learning:

Collaboration is an important skill for knowledge workers in general, including attorneys. In this course you will be working with your colleagues at regular intervals. I use a team-based learning (TBL) approach to teaching this course. TBL is used in colleges and professional schools around the country and has been studied extensively. The research shows it improves student learning, not only about the subject matter but also about how to form effective teams among knowledge workers (lawyers, doctors, architects, etc.). TBL also prepares you for law practice. In family law practice

especially, you will be working with others – not only your clients and other lawyers, but social workers, psychologists, educators, and accountants — to serve your clients. Research has shown that, across all disciplines, the ability to work well with others is more important to success than intellectual expertise.

The Firms:

During the first class, I will assign you to diverse "law firms" of 5-7 students; these firms will work together the entire semester. You will be responsible for holding each other accountable to making the team work effectively. I will ask you during the first class to design thoughtful contribution guidelines and then discuss the guidelines with your team periodically.   If you have problems with your firm, I will ask you to work it out. The biggest reason that teams don't function effectively is because team members avoid conflict. You may have addressed conflicts between teammates effectively in your previous work, service, academic, and extracurricular experiences. Address the issue with your team as you would in a professional office. Consider how you would want to hear the message if your behavior was a challenge for your teammates. What would be effective? If the problem is not resolved using the team contribution guidelines, talk to me, and I can suggest ways for you and your teammates to work through the problem. In the rare case of alleged student misconduct, I will likely intervene.

How Class Works:

Unlike traditional classes, in which I would use class time to review basic information and explore some issues in discussions or occasional group work, in TBL, most our classes will involve you working within your law firm, using the course materials to solve problems and make decisions together. The course is divided into seven units. To prepare for each unit, you will read the assigned text materials, including the relevant rules of professional conduct, to master the material in that assignment.

Quiz:

You will then be tested individually on your understanding with a closed-book quiz. These quizzes count toward your individual grade for the course. There will be seven of these basic quizzes.   In class, your firm will take the quiz together and be graded immediately, with the score counting toward your firm grade. In well-functioning law firms, the team usually outperforms the highest scoring individual team member. That's because you will be bringing to bear all the intellectual resources of the group and the deeper learning that comes from debate and discussion as you work together on your answers.

Appeals:

You will then have an opportunity to appeal any questions for which you believe I have made a mistake in my choice of the answer, or in making the question clear, or in providing sufficient or clear reading materials that it would be fair for you to answer the question. Appeals are for the purpose of furthering your understanding of the materials and balancing any unfairness in the quiz process. An appeal must have written support. An appeal is granted if it demonstrates that your firm understood the concept(s) but

missed the question anyway or that your confusion was due to ambiguity in the reading material. As a result:

•   If the appeal is based on ambiguity in the question, you should:

1.   Identify the source of ambiguity in the question and,

2.   Offer an alternative wording that would have helped you to avoid the problem.

•   If the appeal is based on either inadequacies in the reading material or disagreement with our answer, you should:

1.   State the reason(s) for disagreeing with our answer and,

2.   Provide specific references from the reading material to support your point of view.

When an appeal is accepted on a question that a group has missed (no individual appeals will be accepted): It "counts" i.e., the points missed will be added to their group score and the score of any individual in the group who answered the same way the group did. Only those groups that appeal may add the additional points. Group member(s) who had the original correct answer will continue to receive credit on the question.

Application Activities:

Following each quiz and appeal, we will then have a series of one or more activities that allow you to actively engage in the material. You will be assigned materials to prepare for class individually but will work together on the activities during class. I will try to minimize as much as possible the amount of time you must spend meeting outside of class. I will give you feedback on these activities but most will not be graded, since they are designed to practice application of the knowledge you have demonstrated in the quiz.

Administrative Guidelines:

Your firm will have a folder in which you will have a copy of your firm's operating principles, you will keep track of your attendance, and your scores (individually and as a group) on quizzes and your firm scores on application problems. Before class begins, a member of your firm should pick up the folder. Each of you is responsible for initialing the attendance sheet in the folder.

Grade Calculation:

Your final grade will be determined based on a combination (to be negotiated in class) of the following:

Your individual scores on quizzes and other preparatory assignments for class

Your individual scores on a final project, for which you can receive critique from your firm before submitting the final product

Your group score on quizzes and on three of the application activities.

Your score on a peer assessment of your contributions to the group.

Assignments and calendar of learning activities

Text assignments are for reading and study only. You will not be responsible for completing any of the problems or assignments in the text unless specifically assigned.

Items marked with a * will be graded assignments and activities.

"Text" refers to B. Glesner Fines, Ethical Issues in Representing Families

 MRPC refers to the American Bar Association Model Rules of Professional Conduct;

AAML standards refers to the American Academy of Matrimonial Lawyers Bounds of Advocacy in Appendix A of the text

Week	Before Class	During Class
1	Syllabus Text pp. 329-337 "How to Research Professional Responsibility" Text pp. 249-254 "AAML Preliminary Statement" MRPC Preamble	Introduction to course; Form groups; Negotiate rules; Set grade "weights"; Pre-test on knowledge of course subject matter
2	Text Chapter One: "Forming the Attorney Client Relationship" pp 3-27 AAML standards on Fees, Text pp. 271-79 MRPC 1.2, 1.4, 1.5. 1.8(f)&(i), 1.15, 1.16(b)(4) and comments Missouri Supreme Court Rule 4-1.2. (go to http://www.courts.mo.gov/page.jsp?id=707 and click on 4-1.2 Client-Lawyer Relationship- Scope of Representation) Watch the three videos on Attorney Styles	* Quiz #1

	at AAML website: http://www.aaml.org/aaml-video/best-practices-educational-video-series	
3	Chapter One continued Practicing Client interviews	* Individual Assignment * Application Assignment A * Application Assignment B
4		Application Assignment C Application Assignment D
5	Text Chapter Two: "Competency in Family Representation" pp. 31-65 MRPC 1.1, 1.2, 1.4, 1.8(h) AAML standards 1 and 2 (pp. 254-68) Watch the "Initial Client Interview" video at AAML website: http://www.aaml.org/aaml-video/best-practices-educational-video-series Read the McCort case article posted to the Course Materials page of the course website	* Quiz #2 * Individual Assignment * Application Assignment E Application Assignment F
6	Text Chapter Four "Clients and Conflicts" AAML standard 2.6 (pp 264-65) and Standards 3 (pp 268-271) MRPC 1.7-1.13, 1.18, 3.7, 4.3, 6.3-6.5	* Quiz #3 * Individual Assignment * Application Assignment G * Application Assignment H
7	Text Chapter Five "Clients, Danger, and	* Quiz #4

	Confidentiality" pages 81-116 MRPC 1.6, 1.13, 1.14, 1.16 AAML Standards 2.5, 5.1, 6.2, 6.5, 6.6 Complete CALI lessons on "Confidentiality & Privilege" and on "Exceptions to Confidentiality"	Application Assignment I * Application Assignment J * Application Assignment K
8	Text Chapter Six "Candor to Third Parties and the Court" pp 141-167 MRPC 3.1-3.4; 4.1 AAML Standards 7 (pp. 288-299)	*Quiz #5 * Application Assignment M Individual Assignment Mar.7
9	Review Activity and Practice Peer Evaluations	
10	Text Chapter Eight "Litigation Ethics" and Nine "Alternative Dispute Resolution" (pp. 197-247) MRPC 4.2-4.4; 2.4 Read In re Mary Lynn Mabray (in course materials section)	* Quiz #6 * Application Assignment N * Application Assignment O
11	Text Chapter Three "Working with Other Professionals" (pp. 67-79) MRPC 5.1-5.4, 5.7	We will have a panel of attorneys and other professionals discuss challenges and benefits of collaboration among professionals.
12	Text Chapter Seven "Representing Children" (pp. 169-95)	* Quiz #7 Application Assignment P
13	Group Final Exam	*Application Assignments Q, R, & S
	Individual Final Exams	Please schedule your Individual Client Interview during this week.

Examples of Assignments

The following are some examples of team assignments I use in my course:

Assignment A: Limitations on Fees – Non-refundable Retainers

Individually, before class, research the problem regarding non-refundable retainers on page 15 of the Text to determine how this would be decided under Missouri law and submit to the drop box your citations for the top two sources that are relevant to the problem.

In class, you will

1. Decide as a firm how this case would be resolved under Missouri law

2. Report your decision and the reason for your decision in one sentence.

3. Discuss and decide whether you agree with Missouri's position.

4. Report your decision on whether you would recommend a change in the law on this issue in Missouri.   Report your reasoning in one sentence.

You will present your responses in class. You do not need to submit anything online as a firm.

Assignment B: Unbundling of Legal Services

In class you will decide which of the limited-scope representations on page 28 you can ethically agree to provide and, of those, which you would choose to agree to provide. You will vote on each. No online submissions are necessary. We will then observe a demonstration of counseling a client regarding limited scope representation.

Assignment C: Explaining Fees to a Client

Review Problem 11 on pp. 11-12.

Review the following engagement letter. Using the paragraph numbers in the left hand column, identify those portions of the letter that raise potential issues of discipline or liability. How would you redraft the letter to reduce those risks?

      Barbara Glesner Fines & Associates
¶ 1   25088 West Shawnee Mission Parkway
      Shawnee Mission, Kansas
¶ 2   September 20, 20xx
      Clarence Client

500 East 52nd Street
Kansas City, Missouri
Re: Engagement Letter
Dear Clarence:

¶ 3   We were pleased to have the opportunity to speak with you about your divorce today and to discuss our filing suit on your behalf. We look forward to working with you and we promise to provide you the highest quality legal services in a responsive, efficient manner.

¶ 4   The purpose of this letter is to clarify and confirm the terms and conditions of our representation. You asked us to represent you in connection with your contemplated divorce and custody action with your wife Wendy Client.

¶ 5   I will be the attorney primarily responsible for the representation, with the assistance of my paralegal Paula Para. You authorize us to incur all reasonable costs and to retain any investigators, consultants, or experts necessary in our judgment to pursue your claims. We may engage the services of another attorney if we feel that their assistance is called for.

¶ 6   When questions or comments arise about our services, staffing, billings, or other aspects of our representation, please contact Paula. Her direct telephone number is 816-500-5474. It is important that you are satisfied with our services and responsiveness at all times. We will return your phone call within 24 hours.

¶ 7   To enable us to effectively represent you, you agree to cooperate fully with us in all matters relating to the preparation and presentation of your case, to disclose all facts fully and accurately to us, and to keep us informed of new developments. You agree that we have the sole discretion to determine negotiation, discovery, and litigation strategy and approve causes of action and parties to any litigation. We will send you copies of any legal documents filed on your case that reflect these decisions. You agree to cooperate with us in determining acceptable terms of any compromise, settlement, or agreement.

¶ 8   Our fees will be based primarily on the amount of time spent by attorneys and paralegals on your matter. Your attorney, Barbara Glesner Fines, has an hourly billing rate of $350 an hour based generally on her experience and special expertise in this area. Barbara's paralegal Paula has a billing rate of $150 an hour. The rate multiplied by the time spent on your behalf, measured in quarters of an hour, will be evaluated by the billing attorney as the basis for determining the fee. From time to time, I will confer with Paula or with any other attorney I engage on your behalf and two or more of us may attend meetings or proceedings on your behalf.

¶ 9   These rates may be adjusted from time to time generally to reflect increased experience and special expertise of the attorneys and paralegals and cost increases affecting our practice, and the adjusted rates will apply to all services performed thereafter. In addition to our fees, we will expect payment for any disbursements we make on your behalf.

¶ 10   Before we will begin your representation, you will deposit $2,000 with us to secure our services. No part of this deposit will be used for disbursements or charges or shall represent security for payment of our fees. You agree that, upon our review of the case, we will have the right to request additional deposits as

advances on our fees based on our estimates of future work to be undertaken.

¶ 11   Once a trial or hearing date is set, we will require you to pay all amounts then owing to us and to deposit with us the fees we estimate will be incurred in preparing for and completing the trial, as well as jury fees likely to be assessed. If you fail to timely pay any additional deposit requested, we will have the right to cease performing further work. Your failure to pay required fees or deposits constitutes your consent to our withdrawal from the representation.

¶ 12   The fees and charges billed to you are your responsibility whether or not a court awards attorneys' fees against your wife. Courts may award attorneys' fees which they consider reasonable as a division of debt, but which are less than the amounts billed to you. In such cases, you continue to be obligated to pay us for our actual fees and charges even though the court awards less.

¶ 13   If a monetary judgment or award is made in your favor, we shall have a lien on the proceeds to the extent of any unpaid fees, disbursements, or other charges.

    If you agree to these terms and conditions of our representation, please confirm your acceptance by signing the enclosed copy in the space provided below and return it and the required retainer to me. If this letter is not signed and returned, you will be obligated to pay us the reasonable value of any services we may have performed on your behalf. We are pleased to have this opportunity to be of service and to work with you.

¶ 14   Very truly yours,
Barbara Glesner Fines

¶ 15   I/we read and understand the terms and conditions set forth in this letter (including the attached General Provisions) and agree to them.

_____
Client

Assignment:
1. Identify the sentence in this agreement that poses the most substantial risk of discipline or liability for the attorney.
2. Identify the sentence in this agreement that would be most likely to be considered unenforceable because it is unclear.
Practice explaining your fees to your client based on your revised fee agreement. Remember that one of your individual final exam problems will be an oral interview with me, so this is simply preparation for your final exam.

Application Assignment D: Choosing the Best Communication Model for Your Clients

You have all watched the AAML videos on the role of the attorney

http://www.aaml.org/aaml-video/best-practices-educational-video-series

Choose one of these models that your firm will adopt as its "default model" and be prepared to answer the questions below about that model.

DIRECTIVE LAWYERS

1. How does the directive lawyer avoid imposing her values on the client?

2. Does this model mean that the attorney is morally responsible for his or her client's choices?

3. How does this model work practically when the client refuses to agree with the attorney's moral assessment of a decision?

CLIENT CENTERED LAWYERS

1. What's the difference between being a client-centered lawyer and merely acting as a "hired gun" in the hands of the client?

2. How does this model work when the client has limited ability (a child, an individual with limited decision-making capacity, etc.?) Note that the Model Rules of Professional Conduct provide almost no clear direction on this matter. See ABA Model Rule 1.14

COLLABORATIVE LAWYERS

1. As a practical matter, is there really time for moral discourse in the hourly-billing-driven practice of today? Should a client pay for advice they don't want?

Assignment E: Competence Challenges

Discuss and answer briefly the following questions:

1. In considering the attorney's behavior in London v. Weitzman (page 34-39), what one reason best explains the attorney's willingness to agree to this representation?

2. Suppose your client has requested a limited-scope representation. She wants you to review a proposed settlement agreement without any further discovery regarding assets. She simply wants to know what the settlement agreement means and whether there is anything in it that is illegal or unenforceable. (Question 3, page 40)

If you decided to provide this representation, what are the three most important steps you could take to limit your risk of malpractice liability?

3. In considering the representation in Brice v. Denton (page 44), what else could the attorney have done to improve this representation?

4. If a client is almost no chance of successfully defeating a termination of parental rights action, why do we concern ourselves with the quality of representation really matter? (Question 2, page 51)

Assignment F : Competence and Communication

You will each practice interviewing a client in an initial client interview for ten minutes. Your colleagues in the firm will observe the interview and provide you the following feedback:

1. What was the best example of summarizing information?

2. What was the best example of reflecting emotion?

You will answer the following questions about the interview:

1. What is the client's goal?

2. Will you agree to represent this client?

* * * *

Application Assignment I - Diagramming a Rule

Draw a flow chart or decision tree that accurately guides your decision as to whether you can disclose a client's actions that will cause financial harm to others.

Assignment J: Making a Choice to Protect a Client

As a firm, you will discuss the problem regarding possible elder abuse of a client on p. 126-27 and decide whether you would be required to report your client's situation to the authorities. You will report and defend your decision.

Assignment K: Exceptions to Privilege

In connection with the Bersani case (p. 135-38) your firm will be asked to take a position on the following proposed rules governing the attorney-client privilege:

(5) No attorney-client communication privilege exists:

a) If the services of the lawyer were sought or obtained to enable or aid anyone to remove or plan to remove a child from the jurisdiction in violation of any other individual's custodial rights;

b) In an action regarding custody or a proceeding under [the child protections statute] if the court determines that the safety of a child requires disclosure of a communication regarding that child.

* * *

Assignment R

A recent New York case (Weissman v. Kessler - see attached file) holds that the client's statement prior to the court during the divorce that she was satisfied with her attorney's representation shielded the attorney from malpractice. It is common in most jurisdictions for divorces to be settled in open court stipulations, set on the record. For some historical reason, in matrimonial "allocutions" as well as in criminal plea allocutions, the Court asks the client whether client "is satisfied with the services of the attorney." Does this mean than an attorney may ethically include these same statements in divorce settlement agreements or in client affidavits supporting a settlement? Should it?