

Family Law Education Reform Project

Ethical Issues in Family Representation Syllabus

OVERVIEW

This course is designed as a course in practical professional responsibility in the context of representing family members in a broad range of practice settings – including adoption, juvenile law, divorce, and estate planning.

EXPLANATION AND COMMENTS

Students will master the law governing lawyers in the context of these practice settings. At the end of the course, student should be able to identify, research, and resolve the core issues and governing law in any troublesome situation of family representation. In addition, skills-based exercises help students to develop a clearer vision of their own professional identity, the demands of practice in representing family members, and their stance on critical questions of professional role. The course helps students acquire practical strategies for avoiding common professional pitfalls. Finally, because the course is taught through the team-based learning approach, students learn to appreciate and successfully use collaboration as a professional work style.

ABOUT THE AUTHOR

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Barbara Glesner Fines is the Ruby M. Hulen Professor of Law and Associate Dean for Faculty at the University of Missouri - Kansas City, where she has taught since 1986. Professor Glesner received her law degree from the University of Wisconsin at Madison and her masters of law degree from Yale Law School. Professor Glesner teaches Professional Responsibility, the Seminar in Family Violence, and a course in Ethical Issues in the Representation of Families and Children. She is the author of *Ethical Issues in Family Representation* (Carolina Academic Press 2010) and *Professional Responsibility: A Collaborative Approach* (forthcoming Carolina Academic Press 2012) as well as numerous articles addressing issues at the intersection of professional responsibility and family law. She is the author of a library of computer assisted legal instruction lessons on Professional Responsibility topics and a member of the editorial board of the Center for Computer Assisted Legal Instruction. Professor Glesner is a member of the American Bar Association Center for Professional Responsibility, is on the executive committees of the American Association of Law Schools Section on Professional Responsibility and the Section on Family Law, and she serves on the editorial board of the *Family Court Review*. She maintains an extensive website of professional responsibility and family materials, which can be accessed **from her home page at the law school's website.**

Ethical Issues in Family Representation
SYLLABUS
SPRING 2011

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:

1. 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 law firm rules; Set grade "weights"; Quiz on syllabus and assigned readings
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 Watch the three videos on Attorney Styles at AAML website: http://www.aaml.org/aaml-video/best-practices-educational-video-series	Firms will complete Quiz #1 and we will discuss and take appeals. We will view a demonstration initial client interview for a limited scope representation.
3 Complete individually Quiz #1 online Chapter One continued	* Application Assignment A
Complete Individual Assignment portion of Assignment A and submit to drop box	* Application Assignment B Application Assignment C
4 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) Complete individually Quiz #2 online	Application Assignment D * Firms will take and appeal Quiz #2 Discussion of individual assignments * Application Assignment E Application Assignment F
Individual assignment: Choose one of the questions regarding competency in the reflective journaling assignment on page 64 and write a two-page reflective essay on the topic. Your responses will be confidential -- only I will read them; however, I will ask you to	

share insights on all of the questions with your firm.

Complete the CALI lesson on Active Listening

- 5 Text Chapter Four “Clients and Conflicts” (pp. 81-116) * Firms take Quiz #3 -- appeals may be submitted to the assignment drop box within 24 hours after class.
- 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
- Complete individually Quiz #3 online
- Write a letter clarifying your relationship with a client’s family member (described in Portfolio Problem on pp. 88-89). Submit the letter to the assignment drop box before class. During class you will share your letter with members of your firm and choose some of the best language from the collection.
- 6 Text Chapter Five “Clients, Danger, and Confidentiality” pages 81-116 * Application Assignment J
- Complete the individual drafting assignment from Assignment I
- 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”
- 7 Text Chapter Six “Candor to Third Parties and the Court” pp 141-167 * Firms take Quiz #4 -- appeals may be submitted to the assignment drop box within 24 hours after class.
- MRPC 3.1-3.4; 4.1
- AAML Standards 7 (pp. 288-299)
- Complete individually Quiz #4 online
- 8 Text Chapter Eight “Litigation Ethics” and Nine “Alternative Dispute Resolution” (pp. 197-247) * Firms take Quiz #5 -- appeals may be submitted to the assignment drop box within 24 hours after class.
- MRPC 4.2-4.4; 2.4
- Complete individually Quiz #5 online
- * Application Assignment G
- * Application Assignment H
- Application Assignment I
- * Application Assignment K
- Application Assignment L
- * Application Assignment M
- * Application Assignment N
- * Application Assignment O

- 9 Text Chapter Three “Working with Other Professionals” (pp. 67-79) We will have a panel of attorneys and other professionals discuss challenges and benefits of collaboration among professionals.
MRPC 5.1-5.4, 5.7
- 10 Text Chapter Seven “Representing Children” (pp. 169-95) * Quiz #7
Complete individually Quiz #6 online * Firms take Quiz #6 -- appeals may be submitted to the assignment drop box within 24 hours after class.
- 11-12 Group Final Assignments Work Days Application Assignment P
Assignments Q & R
- 13 Wrap up - Submit and report on final group projects
Take post-test on law governing lawyers
Complete Evaluation of Group Process
- Individual Final Exams Please schedule your Individual Client Interview during this week (see scoring rubric for guidelines). Submit your individual scoring on your peer evaluations.

ASSIGNMENTS

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 assignment drop box 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.

I will collect 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.

Consider the following fee agreement:

This agreement is made between LAW OFFICES OF BARBARA GLESNER FINES, hereafter referred to as "Law Firm," and MARY MARITAL hereafter referred to as "Client."

Law Firm shall represent Client in her divorce and custody action. Client may expect firm to be both sensitive and professionally responsive to her situation throughout the representation. Client will be truthful and cooperative with Law Firm; keep Law Firm reasonably informed of developments and of Client's address, telephone numbers and whereabouts; and timely make any payments required by this agreement.

Client will pay Law Firm for attorney's fees for the legal services provided under this agreement at the respective hourly rates of the individuals providing the services. The rates fall within the following ranges: \$150 to \$300 per hour for partners, \$100 to \$200 per hour for associates, \$100 per hour for law clerks and paralegals. Law Firm will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour. The minimum time charged for any particular activity, including travel necessitated on behalf of the client regardless of whether travel time is used for other matters as well, will be one tenth of an hour. When two or more of Law Firm's personnel are engaged in working on the matter at the same time, such as in conferences between them, the time of each will be charged at his or her hourly rate.

If, while this agreement is in effect, Law Firm increases the hourly rates being charged to clients generally for attorney's fees, that increase may be applied to fees incurred under this agreement, but only with respect to services provided 30 days or more after written notice of the increase is mailed to Clients. If Clients choose not to consent to the increased rates, Clients may terminate Law Firm's services under this agreement by written notice effective when received by Law Firm, provided Clients execute and return a substitution-of-attorney form immediately on its receipt from Law Firm if Law Firm is Clients' attorney of record in any proceeding.

Clients acknowledge that Law Firm has made no promises about the total amount of attorney's fees to be incurred by Clients under this agreement.

Law Firm will send Clients monthly statements indicating attorney's fees and costs incurred and their basis and any current balance owed. If no attorney's fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month. Any balance will be paid in full within 30 days after the statement is mailed.

The foregoing is agreed to by:

Date: _____
Client

Date: _____
LAW OFFICES OF BARBARA GLESNER FINES
By Barbara Glesner Fines

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), why do you suppose the attorney agreed 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?

Assignment G: Non-engagement Letters

From the letter on page 93, identify the following:

1. Which sentence in the letter is the most critical to have in a non-engagement letter (even if not written well)?
2. Which sentence in the letter causes the most liability risk to the attorney?

Assignment H: Analyzing Conflicts of Interest

Based on problem on pages 108-09. Suppose you represented Father in a termination of parental rights proceeding in which he consented to termination of his rights. The state has now proceeded against Mother to terminate her parental rights to those same children. What facts would you want to have before deciding whether you have a conflict?

Assignment I: Obtaining Consent to Dual Representation

We will practice the interview of the parents in a stepparent adoption described on page 109 as a firm in class. Discuss the contents of the letter you would write providing a conflict waiver. Each student is individually responsible for writing a conflict waiver letter and submitting it to the assignment drop box by the beginning of our next class.

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 L: Counseling a client about confidentiality

What should you say to your clients about your duty of confidentiality? Given the exceptions to confidentiality and privilege, should you warn your client so that they can choose whether to tell you information that you may then be required to reveal over their objection? Prepare a short "script" demonstrating what you will say to clients about your duty of confidentiality and the limits of that duty in the initial client interview.

Assignment M: Fairness to Third Persons

In your firms you will discuss Question 1-4 following the *Stare* case (p. 150) and Question 1 following the *Mirable* case (pp. 162-165).

Assignment N: Litigation Tactics

In your firm, you will discuss and decide Questions 1-5 following the *Nathan* case (p. 206-07) and Questions 5-6 following the *Wuliger* case (p. 214-217).

Assignment O: Preparing your Client for Mediation

Individually before class, prepare the checklist for preparing your client for mediation in the problem on pages 237-39. In class, you will be asked to demonstrate counseling your client regarding mediation.

Assignment P: Counseling a Teenage Client

In your firms, you will practice counseling one of the teen clients described in the problems on pages 193-94

Group Final Projects:

Assignment Q

Read the attached article on divorce financing companies. Be prepared to counsel a client regarding whether you would advise using this service.

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 that an attorney may ethically include these same statements in divorce settlement agreements or in client affidavits supporting a settlement? Should it?

Evaluation of Group Process

Use the following rubric to discuss and rank your group process. Provide one concrete example of the group's greatest strength and one suggestion for how you would improve group process for continuing to work with this firm.

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

Ethical Issues in Family Representation Scoring Rubric for Client Interviews.

1. The attorney clearly and appropriately established the terms of the relationship.

This item is designed to assess the lawyer's understanding of the essential terms of the attorney client relationship and the ability to communicate the lawyer's approach to their practice. At a minimum, the attorney should discuss confidentiality, fees, whether the client is otherwise represented, and the attorney's role.

1	2	3	4	5
No attempt to establish the terms of the attorney-client relationship.	Communicated some elements of the relationship, but communication was unclear and incomplete. Client was given no opportunity to confirm understanding.	Communicated some elements of the relationship, but communication was unclear or incomplete. Uncertain client understanding.	Communicated all elements of the relationship, but some communication was unclear or incomplete. Confirmed minimal client understanding.	Communicated all elements of the relationship, clearly and completely. Client confirmed understanding.

2. The attorney obtained the client's story.

This item is designed to assess the lawyer's ability establish rapport with the client and listen effectively and actively in order to obtain necessary information in order to diagnose the client's legal problem or issues (including jurisdiction, timing and factual basis and potential evidence for key elements of potential claims and defenses)

1	2	3	4	5
Attorney's questioning and listening technique interfered with client communication. Attorney did not listen actively to client. Attorney did not obtain all important and relevant information for the representation.	Attorney's questioning technique limited client's incentive and opportunity to provide all relevant information. Attorney did not listen actively to client. Attorney did not obtain all important and relevant information for the representation.	Attorney's questioning technique was effective in generating information and attorney listened actively much of the time. Attorney obtained some of the relevant information for the representation, but did obtain many important details and attorney did not follow up to confirm that the information was correct and complete.	Attorney's questioning technique was effective in generating information and attorney listened actively. Attorney obtained most of the relevant information for the representation, but did not follow up to confirm that the information was correct and complete.	Attorney's questioning technique was effective in generating information and attorney listened actively. Attorney asked all key questions for critical background. Attorney obtained all relevant information for the representation and clarified its accuracy and completeness.

3. The attorney assessed the client’s emotions and expectations of process and outcomes.

This item is designed to establish rapport with the client and listen effectively and actively in order to establish an effective working relationship with the client. The attorney acknowledges the client’s emotions and moderates the client’s expectations to match realistic outcomes and processes.

1	2	3	4	5
Attorney’s questioning technique discouraged client trust and confidence. Client expectations were unknown or unrealistic.	Attorney’s questioning technique did little to establish trust and attorney did not employ any active listening. Attorney asked few key questions regarding client motivations and goals. Client expectations were unknown or unrealistic.	Attorney’s questioning technique established some trust and attorney appeared to be listening but did not reflect emotional content in an active way. Attorney asked few key questions regarding client motivations and goals. Client expectations were assumed or unclear.	Attorney’s questioning technique established some trust and attorney listened actively. Attorney asked some but not all key questions regarding client motivations and goals. The attorney acknowledged the client’s emotions generally. Client expectations were only generally assessed and moderated.	Attorney’s questioning technique established trust and attorney listened actively. Attorney asked all key questions regarding client motivations and goals. The attorney acknowledged the client’s emotions and moderated the client’s expectations to match realistic outcomes and processes.

4. The attorney clarified the attorney’s legal and ethical obligations.

1	2	3	4	5
The attorney did not give the client any guidance regarding the attorney’s obligations to either the client or to the legal system as a whole.	The attorney gave the client guidance regarding the attorney’s obligations to the client but no indication of the limits of those obligations.	The attorney gave the client general guidance regarding the attorney’s obligations to the client and the limitations of those obligations, but it was either boilerplate or vague and confusing.	The attorney gave the client guidance regarding the attorney’s obligations to the client and the limitations of those obligations, as called for by the client’s situation, but did not confirm the client’s understanding.	The attorney gave the client guidance regarding the attorney’s obligations to the client and the limitations of those obligations, as called for by the client’s situation, and confirmed the client’s understanding..

5. The attorney provided the client with clear guidelines based on law regarding past and future conduct.

1	2	3	4	5
The client left knowing no more (or even less where inaccurate information was conveyed) about their legal rights and obligations than they did when they came in and had no promise of learning more.	The attorney did not give the client feedback on past conduct where appropriate nor did the client answer client questions about future conduct or provide guidance for how and when the client might obtain that guidance.	The attorney did not evaluate the client's past or future conduct or gave only general information about rights and risks of conduct.	The attorney gave the client general instruction on the client's legal rights and risks based on their past conduct and their future intended conduct and provided clear guidelines for how and when additional guidance, if any, would be provided.	The attorney gave the client clear instruction on the client's legal rights and risks based on their past conduct and their future intended conduct and provided clear guidelines for how and when additional guidance, if any, would be provided.

6. The attorney made the next steps clear.

1	2	3	4	5
The client had no idea what would happen next in this case.	The client had a confused idea of what would happen next in this case.	The client had a general idea of what would happen next in this case.	The client had clear direction for some next steps for either attorney or client, but other choices or next steps were left unclear.	A clear timeline of tasks and responsibilities regarding the case was developed for both attorney and client and communicated effectively.