

## **GUIDELINES FOR SUPERVISION IN THE CIVIL CLINIC**

While the ultimate ethical responsibility for providing adequate representation rests on the attorney of record, students who are adequately supervised can and should assume significant responsibility for case handling in the Clinic. To that end the College of Law is committed to training the students in the fundamental lawyering skills (interviewing, counseling, negotiating, advocating, problem-solving) needed in their practices, to instructing students about ethical concerns that frequently arise in practice, and to communicating with individual supervisors about students' individual strengths and weaknesses in these areas as necessary. The classroom component also seeks to encourage the students to think critically about the skills they see and use in practice, and about the institutions and practices which they encounter. The College of Law is open to supervisors' ideas about how the Clinic can be made more educationally useful or can better assist participating programs in their legal work, and about how the clinical fieldwork experiences and classroom experiences can be made more complementary. The College of Law encourages supervisors' participation in any and all aspects of the instructional process.

### **I. EDUCATIONAL GOALS AND METHODS OF FIELDWORK**

The goal of the Clinic, in most general terms, is to have students assume "lawyering roles" and to learn from this experience. Therefore, the first and most vital service that the supervising attorney can provide is allowing the student to undertake lawyering tasks. These include interviewing and counseling clients, interviewing witnesses, investigating a case, drafting pleadings and other written documents, negotiating with opposing counsel, advocating in an administrative or court hearing, and analyzing and strategizing about cases. The second important service that the supervisor provides is critiquing the student's performance of all lawyering tasks and guiding the student's learning from his experience.

### **II. THEORY OF SUPERVISION AND CRITIQUE**

Naturally, few students are ready and able to undertake many (or any) of the lawyering tasks unguided. Few of the students are able to critique their lawyering performances and to learn from them without input from more experienced attorneys. Thus, some preparation is usually necessary before a student undertakes any task for the first time, and some feedback is desirable after most tasks.

However, over the semester, students do acquire some expertise in various lawyering tasks and in an area of law, and some students have better judgement and superior skills than other students. Therefore, the degree of supervision necessary may change over the course of the semester, and may be different from student to student.

Just as students have different levels of knowledge and skills, they also have different strategies for interacting with supervisors. One student will ask a supervisor for approval before doing even the most basic task, another student may make decisions and put them into effect without even letting the supervisor know what he is doing. Again, it is important to know the predilections of the student and to explain in concrete terms the degree of responsibility and the amount of checking with you that you expect. (Here students can also learn about interacting in a

professional setting.)

Finally, the type of preparation, supervision and feedback may differ from task to task. Some preparation and supervision will need to be done in person. At other times it will be the best for the supervisor to correct the student's draft or make a written response to the student's memo (e.g. to a memo setting forth the status of the case and suggestion the next course of action). Occasionally, (e.g. before a hearing) a "dress rehearsal" of the student's planned performance will be best.

With these general propositions as a background, the following is the protocol for supervision which should provide a controlled educational experience for the student while providing assistance to the program and adequate representation for the client.

### **III. SUPERVISION PROTOCOL- - AN OUTLINE**

#### A. Before a Task (e.g. Interview, Counseling Session, Investigation, Negotiation, Hearing):

1. Whenever possible, the student should first observe an experienced lawyer perform the same or similar task. (It may be useful for the supervisor to know whether the particular task has been covered in the classroom component, and what instruction has been provided in class and in the readings.)
2. The student should be asked to explain to the supervisor what he plans to do, and any reasons for his plans, before undertaking the task for the first time. (With more complex tasks- - e.g a hearing- - the "explanation" may need to include the supervisor's review of the student's draft written questions and legal memo, and/or a dress rehearsal.)
3. The supervisor should give the student feedback about his plans (e.g. "Have you prepared for what the client/opponent/judge may want from you?")
4. The supervisor should provide the student with additional instruction to assist in preparation. (E.g. "Please remember to get any papers from the client." "Please see me after the interview and before the client leaves to make sure everything has been covered.")

#### B. The Performance of the Task Itself:

1. For some tasks (e.g. a hearing, the student's first meeting with a client the supervisor is representing) the supervisor may need or want to be present. If so, the supervisor should be sufficiently familiar with the case and the plans to be able to take over for the student (fully or partially) should that prove necessary to provide the best representation.
2. For other tasks, it will be sufficient if the supervisor or another attorney is available for consultation when the task is being carried out. (E.g. During an intake interview the client may raise an issue that needs immediate action and advice and the student will need to consult with an attorney.)

3. During the task, the supervisor should provide the student with additional guidance as necessary to enable the student to complete the task successfully. (E.g. Instruction about the law during a break in an interview, advice about making an objection or asking for a ruling in a hearing.)
4. During the task, the supervisor may need to correct or add something to what the student has done. (E.g. A line of questioning in an interview which the student would not know to ask, an answer to the court regarding implication of a ruling, etc.) Of course, such corrections or additions should be done so as to cause the minimum disruption and the minimum embarrassment to the student.

### C. After the Task

1. If the supervisor was not present during the task, the supervisor should insure that the student informs her of the outcome of the task and of any information relevant to the case. This can take place personally or through written communication. (E.g. The student could provide the supervisor with an opening memo with attached documents after an initial interview, or could meet with the supervisor to discuss the interview. The student could provide a draft memo of law or draft interrogatories for the supervisor to read.)
2. The supervisor should solicit the student's critique of his own performance. This should include the goals he was trying to accomplish and the methods he was trying to use.
3. The supervisor should provide feedback to the student regarding his self-critique and regarding the performance. To the extent possible, the feedback should be nonjudgmental, descriptive and personal. (E.g. "I was a little confused at the beginning of your argument when you were citing all the various regulations without reference to their content." Is better than: "Never start an argument with a bunch of citations." Similarly, "That was real good, you can be proud" is not as helpful as: "Your explanation allowed the client to respond and ask good questions. This let you know that she was understanding you. I think that she is going to make an informed decision.")
4. The supervisor should provide instruction in the course of the critique/discussion. (E.g. "Usually the rules of evidence aren't strictly followed in a hearing like this; I guess I didn't realize that you didn't know that.")
5. The supervisor and student should formulate things to work on in the future, especially if the task is one which the student is likely to repeat. (E.G. "I think it would be helpful to you and to the program if you worked to eliminate 'legalese' from your discussions, at least with clients.")
6. If the case will continue after the completion of a task, the supervisor should elicit from the student the approaches the student thinks should be taken and the next tasks that the student thinks should be done. The supervisor should provide additional instruction and guidance, and clarify for the student exactly what he should undertake. (See A above.)

#### D. Hearings:

Contested court or agency hearings are the most complex lawyering task that students are asked to undertake. They are also fast-paced interactions where mistakes are at least easily corrected. Therefore, the following protocol is recommended for preparing for a hearing:

##### 1. Assignments of Open Case and Case-Planning

Allow student to review entire file. Discuss the student's understanding of the law and facts, and the strategy which should be followed in preparing for the hearing. Guide student to insure that all necessary preparation will be done. Have student write check-list for hearing preparation.

##### 2. Preparation

The student and supervisor should arrange to meet about a week before the hearing for final review of the student's preparation.

Prior to this time, the student should prepare a trial brief or memo of the law. Even if no brief will be turned in to the judge, it will serve as an outline for the student's presentation of the case and will allow the supervisor to know whether the student understands the interrelation of law and facts in the case. The student should also prepare written witness examinations. Additional preparation may also be needed (e.g. organization of documents to admit into evidence). The supervisor should review these items.

The student and supervisor should, where time permits, do a full or partial dress rehearsal of the hearing. In this way, the supervisor will be able to gauge the student's mastery of the advocacy skills before the actual hearing. (It may be sufficient to only do a dress rehearsal of one witness and to review the examination outline of other witnesses, where the student has good advocacy skills.)

Following the supervisor's review of the student's written material (or the "dress rehearsal"), the student and supervisor should discuss any changes the student should make or additional work that needs to be done.

Ordinarily, the student should personally meet with (or talk to by phone) the client and all witnesses he will call prior to the hearing. Ordinarily, the student and the client/witnesses should do "dress rehearsal" examinations (even if over the phone).

##### 3. Hearing

(See B. "The Performance of the Task" above.)