

Negotiation Rubric

Teacher Name: _____

Student Name: _____

CATEGORY	Proficient Professional	Competent Professional	Emerging Professional	Unprofessional
Plan for Preparation of Client Example	Prior to the negotiation and prior to meeting with the clinical professor the law student identified an appropriate plan for preparing the client by ascertaining the client's needs and interests and setting the client's expectations.	With minimal prompting from his or her professor, the law student identified an appropriate plan for preparing the client by ascertaining the client's needs and interests and setting the client's expectations.	The law student with significant assistance from his or her professor identified an appropriate plan for preparing the client by ascertaining the client's needs and interests and setting the client's expectations.	The law student failed to identify an appropriate plan for preparing the client by ascertaining the client's needs and interests and setting the client's expectations and failed to seek the assistance of his or her professor.
Preparation of Client Example:	Prior to the negotiation the law student completed the plan for preparing the client and showed good judgment in modifying the plan as appropriate based on the needs of the client and unforeseen events.	The law student completed the plan for preparing the client and showed good judgment in recognizing the need to modify the plan as appropriate based on the needs of the client and unforeseen events and seeking the guidance of their professor to do so.	The law student completed the plan for preparing the client and was receptive to modifying the plan upon the advice of their professor.	Once a plan for the negotiation was made the student was unable to acknowledge the need to modify the plan despite the changing needs of the client and/or unforeseen events.

Lawyer Preparation – legal and theoretical doctrines Example:	Prior to the negotiation and prior to meeting with the clinical professor, the law student developed a reasonable understanding of the relevant legal and theoretical doctrines.	With minimal prompting, the law student developed a reasonable understanding of the relevant legal and theoretical doctrines in a timely manner.	The law student worked with their professor to develop a reasonable understanding of the relevant legal and theoretical doctrines.	The law student failed to develop a reasonable understanding of the relevant legal and theoretical doctrines.
Lawyer Preparation – Likely Outcome Assessment Example:	Prior to the negotiation and prior to meeting with the clinical professor, the law student, taking into account factors such as: factual circumstances, legal doctrines, witness credibility, and tribunal sympathy, will predict the party that is likely to prevail and the expected result of such an outcome.	The law student showed good judgment by recognized that she would need to take into account a number of factors that she was not fully versed in to predict the prevailing party such as: factual circumstances, legal doctrines, witness credibility, and tribunal sympathy, etc and by seeking the assistance of more experienced individuals.	With the assistance of her professor the law student was able to take into account a number of factors that she was not fully versed in to predict the prevailing party such as: factual circumstances, legal doctrines, witness credibility, and tribunal sympathy, etc.	The law student failed to consider multiple factors when predicting the outcome and failed to seek the guidance of her professor.
Lawyer Preparation- Assessment of Strengths and Weaknesses Example:	Prior to the negotiation and prior to meeting with the clinical professor the law student will write up an accurate assessment of strengths and weaknesses affecting own side and opposing side. The student also	Prior to the negotiation and prior to meeting with the clinical professor the law student drafted an adequate assessment of strengths and weaknesses affecting own side and opposing side. The student also demonstrated the	Working with her professor, the law student drafted an assessment of strengths and weaknesses affecting own side and opposing side. The student also demonstrated the willingness to modify the assessment upon receiving	The law student did not draft an assessment of strengths and weaknesses affecting own side and opposing side.

	demonstrated the willingness to modify the assessment upon receiving additional information.	willingness to modify the assessment upon receiving additional information.	additional information, but some uncertainty about what modifications would be necessary.	
Lawyer Preparation – Identify Principled Opening Offer Example:	Prior to the negotiation and prior to meeting with the clinical professor the law student identified a principled opening offer which took into account: principled rationales, sympathies, professional ethics, flexibility for ongoing negotiation, client's interests and needs, etc.	Prior to the negotiation and with minimal assistance from her professor the law student identified a principled opening offer which took into account: principled rationales, sympathies, professional ethics, flexibility for ongoing negotiation, client's interests and needs, etc	The law student identified the need for a principled opening offer which took into account: principled rationales, sympathies, professional ethics, flexibility for ongoing negotiation, client's interests and needs, etc and showed good judgment in seeking the help of her clinical professor.	The law student did not identified the need for a principled opening offer and/or did not put in the effort to develop one.
Lawyer Preparation – Familiarity with Opponent Example:	Prior to the negotiation and prior to meeting with the clinical professor the law student identified a plan for assessing the opponent as a negotiator.	The law student showed good judgment in seeking advice from more experienced individual when identifying a plan for assessing the opponent as a negotiator.	The law student showed good judgment in seeking assistance from her professor to identifying a plan for assessing the opponent as a negotiator.	The law student did not identify a plan for assessing the opponent as a negotiator.
Lawyer Preparation – Models, Strategies and Styles Example:	Prior to the negotiation and prior to meeting with the clinical professor the law student reviewed negotiation models (adversarial/problem solving) and styles (competitive/ cooperative)	The law student showed good judgment in asking her clinical professor for materials to review which provides information on negotiation models (adversarial/problem solving) and styles	With her clinical professor the law student considered possible negotiation models (adversarial/problem solving) and styles (competitive/ cooperative) to identify the appropriate approach for the upcoming	The law student did not review negotiation models (adversarial/problem solving) and styles (competitive/ cooperative) to identify the appropriate approach for the upcoming hearing.

	to identify the appropriate approach for the upcoming hearing.	(competitive/ cooperative) to identify the appropriate approach for the upcoming hearing.	hearing.	
Lawyer Preparation – Team Negotiation Example:	Prior to the negotiation and prior to meeting with the clinical professor, the law students worked together to coordinate strategy, distribute work load, and appoint a spokesperson.	With minimal prompting from their professor, the law students worked together to coordinate strategy, distribute work load, and appoint a spokesperson.	With direction from their professor, the law students worked together to coordinate strategy, distribute work load, and appoint a spokesperson.	The law students did not work together to coordinate strategy, distribute work load, and appoint a spokesperson.
Lawyer Preparation – Identify Process and Venue Example:	Prior to the negotiation and prior to meeting with the clinical professor the law student considered various venues for the negotiation (in writing, over the telephone, in our office, at opposing counsel's office, etc.) and used good judgment in selecting a venue that was well matched to the goals of the negotiation.	The law student considered various venues for the negotiation (in writing, over the telephone, in our office, at opposing counsel's office, etc.) and used good judgment in seeking insight from more experienced individuals when selecting a venue that was well matched to the goals of the negotiation	With guidance from her professor the law student considered various venues for the negotiation (in writing, over the telephone, in our office, at opposing counsel's office, etc.) and used good judgment in selecting a venue that was well matched to the goals of the negotiation.	The law student did not consider various venues for the negotiation (in writing, over the telephone, in our office, at opposing counsel's office, etc) .
Negotiating – Setting a Tone Example:	At the outset of the negotiation the law student established a tone which was appropriate and consistent with the	At the outset of the negotiation the law student established a tone which was appropriate and somewhat consistent with the interests of the client	The law student was able to quickly establish a tone which was appropriate and consistent with the interests of the client and the plan approved by the clinical	The law student did not establish a tone which was appropriate and/or consistent with the interests of the client and/or the plan approved

	interests of the client and the plan approved by the clinical professor.	and the plan approved by the clinical professor.	professor despite a somewhat awkward start.	by the clinical professor
Negotiating – Exchanging Information Example:	During the negotiation the law student demonstrated good judgment by using appropriate questions to solicit information, and used strategies to protect information and shared information that was appropriate.	With minimal prompting the law student demonstrated good judgment by using appropriate questions to solicit information and used strategies to protect information and shared information that was appropriate.	With the assistance of their professor the law student was able to solicit information and used strategies to protect information and shared information that was appropriate.	The law student did not ask appropriate questions to solicit information, use strategies to protect information and/or share information that was appropriate.
Offers and Counteroffers Example:	During the negotiation the law student demonstrated strong professional judgment by making offers and counteroffers that were well reasoned, client centered , strategically appropriate and consistent with professional ethics	During the negotiation the law student demonstrated strong professional judgment in recognizing a lack of sufficient experience and seeking insight from their professor to guide their offers and counteroffers.	During the negotiation the law student showed good judgment in recognizing a lack of sufficient experience and asking their clinical professor to identify appropriate offers and counteroffers. The student was able to make the offers in an appropriate manner.	The student did not by make offers and counteroffers that were well reasoned, client centered , strategically appropriate and/or consistent with professional ethics
Responding to Offers Example:	During the negotiation the law student demonstrated good professional judgment by carefully considering and exploring the offers made by opposing counsel in light of	During the negotiation the law student demonstrated good professional judgment by seeking insight from their clinical professor and carefully considering and exploring the offers made by opposing counsel in light of	During the negotiation the law student demonstrated good professional judgment by recognizing their lack of sufficient experience to appropriately consider the offers made by opposing counsel and asked their	

	appropriate assessment of the case, authority granted by client and professional ethics	of appropriate assessment of the case, authority granted by client and professional ethics	professor for guidance on how to respond.	
Problem Solving Bargaining Example:	During the negotiation the law student engaged in a process whereby they called upon their body of knowledge and prior experiences to facilitate brainstorming for solutions that were consistent with both parties' interests.	The student demonstrated good professional judgment by making good use of information provided by a more experienced professional in a negotiation process whereby the parties' interests and needs were taken into account to facilitate brainstorming for solutions that were consistent with both parties' interests.	The student demonstrated the ability to participate in a problem solving negotiation session where all of the possible solutions were fully explored with the professor prior to the negotiation session.	Faced with the possibility of a problem solving negotiation session the student was unable to identify solutions that were consistent with their client's interests and/or reasonably matched to the opposing party's interests.
Concluding the Negotiation - impasse Example:	If the parties reach an impasse the law student demonstrated strong professional judgment by identifying and implementing steps to help the parties reach resolution, expressing an ongoing willingness to negotiate when appropriate or identify time to move to next step in the hearing when	If the parties reach an impasse, the law student demonstrated good professional judgment by seeking support from their professor or a more experienced advocate to identify possible steps to be taken to help the parties reach resolution. The student then successfully implemented the same.	If the parties reach an impasse, the law student appropriately implemented steps identified by their professor to help the parties reach resolution.	The student made no meaningful attempt to overcome the impasse.

	negotiation will not resolve the dispute.			
Concluding the Negotiation – Clarification of Details Example:	Upon reaching an agreement, the law student successfully ensured that all of the details were clarified prior to the close of the negotiation. such as: time frames, follow up actions, future sharing of information, contingency plans, etc.	Upon reaching an agreement, the law student successfully ensured that substantially all of the details were clarified prior to the close of the negotiation and sought timely review from the professor to catch anything missed.	Upon reaching an agreement and clear direction from the professor, the law student successfully ensured that all of the details were clarified prior to the close of the negotiation and sought timely review from the professor to catch anything missed	The student did not ensure that substantially all of the details were clarified prior to the close of the negotiation.
Put it in writing Example:	The law student took on the role of memorializing the agreement and carefully laid out the details of the agreement in a manner that protected against future misunderstandings or further liability.	The law student showed good judgment when memorializing the agreement by seeking out the assistance of the professor to lay out the details of the agreement in a manner that protected against future misunderstandings or further liability.	The law student attempted to lay out the details of the agreement in a manner that protected against future misunderstandings or further liability, but needed substantial editing from the professor to successfully do so.	The law student either did not memorialize the agreement or did not consider future misunderstandings or further liability.

Review the Agreement Example:	Before the agreement was finalized the student carefully reviewed the agreement to ensure that it accurately and completely reflected the agreement reached in the negotiation, resolved any issues that were inconsistent with the understanding reached and reviewed agreement with the client to insure understanding and agreement.	Before the agreement was finalized the student carefully reviewed the agreement and showed good judgment by seeing the input of the professor to ensure that the agreement accurately and completely reflected the what was reached in the negotiation, resolved any issues that were inconsistent with the understanding reached and reviewed agreement with the client to insure understanding and agreement.	The student showed good judgment by seeing the input of the professor and was able to to ensure that the agreement accurately and completely reflected the what was reached in the negotiation, resolved any issues that were inconsistent with the understanding reached and reviewed agreement with the client to insure understanding and agreement	
Executing Agreement Example:	The law student ensured that the agreement was executed in a timely and appropriate manner.	With minimal prompting the law student ensured that the agreement was executed in a timely and appropriate manner.	The law student attempted to finalize the agreement in a timely and appropriate manner, but was unable to overcome unexpected obstacles i.e. unreturned phone calls, mismatched schedules, etc.	The law student did not make a meaningful attempt to finalize the agreement in a timely and appropriate manner.

This rubric is based on the following resources:

Legal Counseling, Negotiating, and Mediating 2nd Edition; G. Nicholas Herman, Jean M. Cary; Lexis Nexis 2009

Effective Legal Negotiation and Settlement 6th Edition; Charles B. Craver; LexisNesis 2009

Getting to Yes Negotiating Agreement Without Giving in 2nd Edition; Roger Fisher, William Ury & Bruce Patton; Penguin Books 1991

Negotiation Theory and Practice 2nd Edition; Melissa L. Nelken; LexisNexis 2007

Advanced Negotiation and Mediation Theory and Practice: A Realistic Integrated Approach; Paul Swiner and Thomas Guernsey; NITA 2005

Albany Law School Law Clinic and Justice Center's Grading Criteria

Evaluation of the student is based on the following stages of professional development:

Proficient Professional - The student in this category exhibits the following:

- Strong professional judgment.
- Outstanding interpersonal skills.
- Works independently and collaboratively depending on the needs of the case, project, or presentation.
- Resourcefulness in using professional teachings and readings in a creative manner, including the ability to modify the materials to suit the task.
- Utilization of a holistic, client-centered approach to problem-solving different aspects of a case.
- Consistently reflects on tasks and interactions with clients, supervisors, clinic colleagues, courts, etc. in a thoughtful manner that encompasses integration of the complex nature/different facet(s) of the problems present.
- Awareness of experiential and information deficits, which is shown by recognizing when sufficient experience or information is lacking to fully understand a problem, and then taking steps to identify resources and actions needed to fill the gap of knowledge.
- Ability to spot issues of a legal and a non-legal nature without prompting by supervisor.
- Strong understanding and consistent adherence to the ethical rules that apply to the case.
- Consideration of the economic, social, ethical, and emotional issues that impact the case rather than sticking to a purely legal approach.

- Strong reflective and corrective skills that are evident in verbal interactions with supervisors, clients, and clinic colleagues, as well as in written work products, such as reflective journals and papers.
- Efficiently uses case reviews, by working with peers and/or supervisors, in a collaborative manner, to see the case as a whole and to identify possible solutions.
- Strong leadership skills by regularly assisting, in a supportive and productive manner, fellow students in a way that achieves a greater understanding of the situation(s) presented.
- Effectively allocates time, effort and other resources necessary to carry out tasks in a timely and professional manner.
- Adheres to firm's office procedures and engages in reliable file management.

Competent Professional - The student in this category exhibits the following:

- Good professional judgment.
- Strong interpersonal skills, with only occasional prompting.
- Strives to work well independently and collaboratively, but may need assistance in identifying the most appropriate means to get a particular job done.
- Resourcefulness in using professional teachings and readings in a creative manner, including the ability to modify the materials to suit the task; however, input by the professor is occasionally necessary to clarify objectives and tasks.
- Strives to utilize a holistic, client-centered approach to problem-solving different aspects of a case, but may occasionally need some assistance to be successful.
- Some ability to actively reflect on tasks and interactions with clients, supervisors, clinic colleagues, courts, etc. while striving to encompass integration of the complex nature/different facet(s) of the problem(s) present.
- With minimal assistance, student is able to identify when sufficient experience or information is lacking to fully understand a problem, and then takes steps to identify resources and actions needed to fill the gap of knowledge.

- Ability to spot issues of a legal and a non-legal nature with minimal prompting by supervisor.
- With minimal prompting by professor, shows an understanding of and adherence to the ethical rules that apply to the case.
- With minimal prompting, is able to identify and consider the economic, social, ethical, and emotional issues that impact the case rather than sticking to a purely legal approach.
- With prompting, presents good reflective and corrective skills in verbal interactions with supervisors, clients, and clinic colleagues, as well as in written work products, such as reflective journals and papers.
- Strives to use case reviews, by working with peers and/or supervisors, in a collaborative manner, to see the case as a whole and to identify possible solutions.
- Demonstrates good leadership skills by assisting, in a supportive and productive manner, fellow students in a way that achieves a greater understanding of the situation(s) presented.
- Only occasionally miscalculates the time, effort and other resources necessary to carry out tasks in a timely and professional manner.
- With minimal prompting, adheres to firm's office procedures and engages in reliable file management

Emerging Professional: The student in this category exhibits the following:

- Emerging professional judgment with dependence on assistance to complete many tasks.
- Good interpersonal skills, but needs assistance in recognizing appropriate professional demeanor.
- Strives to work well independently and collaboratively, but needs assistance in identifying the most appropriate means to get a particular job done.
- With assistance, will attempt to use professional teachings and readings to guide casework, and will attempt to recognize needed modifications to suit the task.

- Strives to utilize a holistic, client-centered approach to problem-solving different aspects of a case, and shows good judgment in regularly seeking the assistance necessary to be successful.
- Ability to actively reflect on tasks and interactions with clients, supervisors, clinic colleagues, courts, etc. while striving to encompass the integration of the complex nature/different facet(s) of the problem(s) present.
- With assistance, able to identify when sufficient experience or information is lacking to fully understand a problem, and then shows good judgment in regularly seeking assistance to identify resources and actions needed to fill the gap of knowledge.
- Ability to spot issues of a legal and a non-legal nature with some prompting by supervisor.
- Understanding of the ethical rules and showing good judgment in seeking out assistance to figure out how to adhere to the rules that apply to the case.
- Good judgment in seeking out assistance to identify, and consider, the economic, social, ethical, and emotional issues that impact the case and shows desire to avoid sticking to a purely legal approach.
- Reflective and corrective skills in verbal interactions with supervisors, clients, and clinic colleagues, as well as in written work products, such as reflective journals and papers.
- Active participation in case reviews; responds positively to feedback from others when having difficulty seeing the case as a whole and/or identifying possible solutions.
- Strives to assist fellow students to achieve a greater understanding of the situation(s) presented.
- Frequently miscalculates the time, effort and other resources necessary to carry out tasks in a timely and professional manner.
- Seeks support from faculty and staff to ensure adherence to firm's office procedures and to engage in reliable file management.

Unprofessional: The student in this category:

- Does not display professional judgment and an inability to complete all tasks assigned despite the ongoing need to do so.

- Displays inappropriate interpersonal skills.
- Demonstrates lack of awareness of his/her substantial difficulty with working independently and/or collaboratively.
- Lacks awareness of the value of utilizing a holistic, client-centered approach.
- Does not demonstrate the ability to actively reflect on tasks and interactions with clients, supervisors, clinic colleagues, courts, etc.
- Does not demonstrate an understanding of when (s)he lacks experience or information needed to understand a problem, and does not seek assistance to identify resources and actions needed to fill the gap of knowledge.
- Does not demonstrate the ability to spot issues of a legal and a non-legal nature with prompting by supervisor.
- Does not demonstrate an understanding of the ethical rules, and does not seek assistance to determine how to apply the rules to the case.
- Sticks to a purely legal approach when working on cases without considering the economic, social, ethical, and emotional issues that impact the case.
- Does not demonstrate reflective and corrective skills in verbal interactions with supervisors, clients, and clinic colleagues, as well as in written work products, such as reflective journals and papers.
- Does not actively participate in case reviews, or participates in a disrespectful manner.
- Does not assist fellow students when appropriate.
- Regularly miscalculates the time, effort and other resources necessary to carry out tasks in a timely and professional manner.
- Does not adhere to firm's office procedures and/or engage in reliable file management.