**Domestic Violence Practicum Syllabus**

Law 283Q

Spring 2014 – Wed 6:25-8:05 pm

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***Course Description:***

The Domestic Violence Practicum classroom component is the 2-unit required companion course to the Domestic Violence Practicum, where students work in non-profit and government agencies under the supervision of attorneys to receive academic credit. Students will gain an exposure to and have an opportunity to explore professional responsibility issues, especially as they arise in their internships. Students will be urged to reflect on their placements and incorporate the skills they are learning into the classroom discussions.

The classroom component meets the law school's Professional Responsibility requirement.

The classroom component will include time to discuss the readings on Professional Responsibility and domestic violence issues. There will also be time for students to discuss their work and ask questions of the instructor and each other.

***Hours, Assessment and Grading:***

The on-site placement component of the Practicum is credit/no credit, and the classroom component is graded using the Berkeley Law system.

Students will keep track of hours spent at their internships to ensure these are sufficient for the units they are receiving in the course. Students are responsible for making up hours at their internship missed due to illness or emergencies. It is possible to frontload hours so that students finish early, if this is arranged with the on-site supervisor. It is also usually possible to make up missed hours during spring break.

Students will keep a weekly journal, to be turned in to the instructor before spring break and at the end of the semester. Besides reporting what they did that week, the journals should include reflections on what students are learning, ethical issues, problems that arise, the lawyering process, etc. The instructor is the only person who will read the journals so students are encouraged to feel free to be candid about the instructor, the class, their on-site supervisor, and the agency where they are working.

The purpose of the journals is to provide students with an opportunity to reflect on their field placement experience in accordance with ABA Standard 305: Study Outside the Classroom. Standard 305 is the ABA rule that allows the law school to give academic credit for these field placement experiences. Journals also provide useful feedback to the instructor regarding how the classroom component and placements are going, and if there are any problems arising that need to be addressed.

Evaluation forms will be completed by students and their supervisors. This will take place half way through the semester (self-assessment by student, then meeting with the supervisor) and also at the end of the semester (assessment by supervisor, then meeting with the student). Evaluation forms will be turned in to Ms. Lemon.

Grading for this course will be based on several factors:

1. Was all the homework turned in?
2. Was it turned in on time?
3. Was it well written? Did it respond to the questions, cite appropriate authority, include good grammar/spelling/punctuation, present clear and logical statements, etc.?
4. Did the student attend all classes?
5. Did the student participate in class discussions?
6. Did this participation include contributing interesting and original points of view, moving the discussion forward and helping the class develop a deeper and more nuanced understanding of the subject?
7. Did the student turn in the journals?
8. Were these turned in on time? (before spring break; at last class)
9. Were the entries in the journals thought-provoking and well-written, showing that the student was reflecting on the learning experience and not merely reporting on tasks accomplished?

Note that only law students taking this course the first time will be graded on items 1-3, homework, as it is based on learning Professional Responsibility for lawyers.

Non-law students and repeating law students will be graded on items 4-9 only.

***Goals:***

The goals of the classroom component of the Domestic Violence Practicum include the following:1. To provide students with an opportunity to reflect on their internship experiences.2. To introduce students to professional responsibility topics, particularly as they relate to internships.3. To engage students in discussions around topics such as access to justice, government lawyering, stress management/balance/time management, and civility/professionalism. 4. To encourage students to learn from each other how to deal with challenges at their internships and how to deepen their internship experiences.5. To expose students and provide them opportunities to practice their professional skills in the context of their internships.6. To examine the settings students are working in and the types of lawyering they are observing with the goal of helping them to make more informed choices when they move forward in their legal careers.7. To learn to reflect on and discuss how the ethics rules and cases they learn promote or impair justice, and how those rules help or hinder attorneys from doing their jobs.

***Laptops:***

To ensure participation and to show consideration to others, students are asked not to access the Internet or engage in emailing/instant messaging/texting during class.

**Materials**

The following materials will be reviewed throughout the semester:The ABA Model Rules of Professional Conduct: Without commentary: http://www.law.cornell.edu/ethics/aba With commentary: http://www.abanet.org/cpr/mrpc/mrpc\_toc.htmlThe California Rules of Professional Conduct: http://rules.calbar.ca.gov/Rules/RulesofProfessionalConduct/CurrentRules.aspxA chart comparing the two is available at: http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=MIP6xb6dO5w%3d&tabid=856

**California-Specific Resources**

California Bar Ethics Hotline 1-800-238-4427, <http://ethics.calbar.ca.gov/>

**Weekly Topics and Readings**

***Week 1***

Nancy K. D. Lemon, Domestic Violence Law (4th ed, West/Thomson, 2013) (recommended if you have not already read this - on course reserve or buy a copy online)

Discuss your own ethics and morals in relation to the topic of professional responsibility in the legal profession. Have you given it much thought? Has the topic been discussed in your classes or your work? What do you think it means to be a moral, ethical, and/or professionally responsible lawyer?

• Confidentiality within practicum class discussions

Distinction between duty of confidentiality and attorney/client privilege

Nancy K. D. Lemon, Guidelines Regarding Confidentiality Of Client Information When Discussing Outside Placements (2005) (bspace)

Model Rule 1.6 (read online at website above)

Ca. Bus. & Prof. Code section 6068(e) (bspace)

Ca. Evid. Code sections 952, 954 (bspace)

Restatement of the Law Governing Lawyers, Sec. 60(1)(a) (bspace)

Ca. Rule of Professional Conduct 3-100 (read online at website above)

***Week 2***

Nancy K. D. Lemon, Manual on Domestic Violence, Ca. Partnership to End Domestic Violence (4th ed, 2011) (bspace) - Chapter 1, Your Client, The Law and Society

Hypothetical Problem based on *Roberts v Healey* case

• Overview of Professional Ethics in Domestic Violence Cases

John M. Burman, “Ethical and Legal Implications of Domestic Violence on Practicing Law,” The Impact of Domestic Violence on Your Legal Practice, ABA, 2d ed, pages 8-13 (2004) (bspace)

• Forming the Attorney/client relationship – who is the client?

Does this depend on who is paying the bills?

Conflicts of interest and confidentiality

Model Rule on conflict of interest: 1.7(a), Ca rule 3-310 (read online)

*Roberts v. Healey*, 991 SW2d 873 (TX App 1999) – section on Attorney/Client Relationship

• Being asked to represent multiple parties - e.g. estate planning

Need to screen each party separately for domestic violence, if this is found, decline representation without telling other party, assist victim with safety planning or refer him/her to someone for this

Model Rule on conflict of interest: 1.7(a) (online) and 5.3(c) (third party paying client’s bill)

John M. Burman, Lawyers and Domestic Violence: Raising the Standard of Practice, 9 Mich. J. Gender & L. 207 (2003) – Section IV, A. and B., Screening, pp 234-238.

• Considering client’s financial situation in determining amount & structure of fee agreement – special implications in domestic violence cases

Model Rule 1.5 (duty to discuss fees with clients) (read online)

Ca. Rule 4-200 (no unconscionable or illegal fees) (read online)

Burman, supra (2004)

***Week 3***

Lemon, Manual on Domestic Violence, Chapter 2, Criminal Law (bspace)

Hypothetical Problem based on one of the examples in the Drew article

• Competence

Thoroughness and preparation,

issue spotting,

specialists held to higher standard,

reluctance to bring up DV with clients for various reasons,

need to learn how to screen for DV,

failure to address TRO violations, to preserve divorce client’s right to sue in tort, to ask for spousal support, to advise client of possible criminal case, to tell client of applicable statute of limitation, to seek attorneys’ fees so client has to pay herself, to argue validity of prenuptial agreement,

placing client in harm’s way (e.g., via mediation),

failure to advise re grounds for appeal

Model rule 1.1, Ca. rule 3-110 (online)

Margaret Drew, Lawyer Malpractice and Domestic Violence: Are we Revictimizing Our Clients?, 39 Family Law Quarterly 7 (2005)

Comprehensive Issue Spotting: A Tool for Civil Attorneys Representing Victims of Domestic and Dating Violence, Sexual Assault & Stalking, ABA (2008) – just skim, do not try to fill in the blanks

Roberta Valente, “Screening Guidelines,” The Impact of Domestic Violence on Your Legal Practice, ABA, 2d ed, pages 51-57 (2004)(bspace)

***Week 4***

Lemon, Manual on Domestic Violence, Chapter 3, Family Law (bspace)

Hypothetical Problem based on the other part of *Roberts v Healey* case

• Safety Planning and Risk Assessment with Clients

• Client Protection, including possible negligence in not obtaining TRO (foreseeability that abuser would injure/kill victim)

ABA Model rule 2.1 (rendering advice may include moral, economic, social, and political factors relevant to client’s situation)(online)

Burman 2003 (IV. C. and D. – pages 238-242)

Dana Harrington Conner, To Protect Or To Serve: Confidentiality, Client Protection, And Domestic Violence, fall 2006 Temple Law Review 877 (VII and X)

Donna Mathews & Deborah Goelman, “Safety Planning,” The Impact of Domestic Violence on Your Legal Practice, ABA, 2d ed, pages 40-47 (2004)(bspace)

Cindy Southworth, “Technology Safety Planning,” The Impact of Domestic Violence on Your Legal Practice, ABA, 2d ed, pages 48-50 (2004)(bspace)

*Roberts v. Healey*, 991 SW2d 873 (TX App 1999) (Opinion, Facts, and Causation sections)

***Week 5***

Lemon, Manual on Domestic Violence, chapter 4, Juvenile Court, Tort, Immigration, and Other Legal Issues (bspace)

Hypothetical Problem based on chapter 5 of Ca. Rules

• Special Rules Regarding Prosecutors, Threats to Involve Them, Suppression of Evidence, etc.

Difference between speaking to a civil attorney and a prosecutor

Prosecutorial obligations

Threatening criminal, administrative, or disciplinary charges

Duty not to suppress evidence

Interactions with prosecutors, judges, jurors

Ca. Rules 5-100 (threatening criminal, administrative, or disciplinary charges), 5-110 (prosecutor may not file criminal charges unsupported by probable cause), 5-220 (suppression of evidence), 5-300 (contact with officials), 5-310 (prohibited contact with witnesses), 5-320 (contact with jurors) (online)

***Week 6***

Lemon, Manual on Domestic Violence, Appendices: Power and Control Wheel, Resources, [skip Valente, Understanding Your Client: Screening Guidelines,] Safety Plan, Housing Issues, Unauthorized Practice of Law (bspace)

Hypothetical Problem

• Diligence, Communication, Scope of representation

When time is of the essence – filing quickly to protect client, children

What if taking any legal action, or pursuing certain claims or actions will endanger the client (e.g. child support or filing for RO or mediation)?

Model Rules 1.2 (a, b, and c) (scope of representation and allocation of authority), 1.3 (diligence), 1.4 (communication), 2.1 (candid advice to client), 3.2 (expediting litigation) (online)

Ca. Rule 3-500 (communication) (online)

Dana Harrington Conner, To Protect Or To Serve: Confidentiality, Client Protection, And Domestic Violence, fall 2006 Temple Law Review 877 (section X again, pages 935-936)

***Week 7***

Ruthann Robbins, Harry Potter, Ruby Slippers, and Merlin: Telling the Client’s Story Using the Characters and Paradigm of the Archetypal Hero’s Journey, 29 Seattle U. L. Rev. 767 (2006)

Hypothetical problem, 2 parts, based on *Newman* and *Taylor* cases

• Exploring Confidentiality and Attorney/Client Privilege in More Depth

Review distinction between duty of confidentiality and attorney/client privilege

Does presence of third party during communication with attorney destroy the privilege?

When does duty of confidentiality end?

Balancing confidentiality with client autonomy; when one can/should contact law enforcement to check on client or tell court of attorney’s concerns, thus violating confidentiality

Model Rules 1.2(a), 1.6 (a) (online)

Ca. Rule 3-100(A) (online)

Ca. Bus. & Prof. Code section 6068(e) (bspace)

ABA, The Impact of Domestic Violence on Your Legal Practice, chapter by Joan Zorza, “Confidentiality,” pages 64-67 (2004) (bspace)

*People v. Newman*, 863 A.2d 321 (Md. 2004) (pages 4-13 in bspace version -- stop at end of Communications Made With Landry on page 13)

*Taylor v. Taylor*, 359 N.E. 2d 820 (Ill. App. Ct. 1977)

***Week 8***

Hypothetical problem based on *Chappell* case

• Going underground, with or without children

How to advise clients who say they plan to do this

Changing names, etc.

Legal implications (fraud)?

Creating a power of attorney for client’s contact with the world – filing for divorce/spousal support while underground, attorney staying in touch with client while maintaining confidentiality, safekeeping property for client

Ethical obligation not to lie to the court

Model Rules 1.2 (d)(criminal or fraudulent plan by client vs. helping client determine validity, scope, application of law), 1.15 (safekeeping property), 3.3 (candor toward the tribunal), 3.4 (fairness to opposing party and counsel - don’t offer evidence to tribunal that lawyer knows is false), 4.1 (truthfulness in statements to others) (note that this may conflict with 1.1, competence = thoroughness & preparation, i.e. if you don’t ask client info you do not have to disclose it but is this ethical?) (online)

Ca. Rules 5-200 (candor toward the tribunal), 5-220 (may not suppress evidence when obliged to reveal it), 3-210 (may not advise violation of law unless believes it invalid)(online)

Ca. Bus & Prof code sections 6068(d), 6128(a), 6106 (online)

Ca. Penal code sections 277, 278.5, 278.6, 278.7 (online)

Leigh Goodmark, Going Underground: The Ethics Of Advising A Battered Woman Fleeing An Abusive Relationship, 75 UMKC L. Rev. 999 (2007) (bspace)

*People v. Chappell*, 927 P.2d 829 (Colo. 1996) (bspace)

***Week 9***

Binder and Price, Legal Interviewing and Counseling, “Motivation Within the Interview” and “Active Listening” (bspace)

Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases, ABA (2007)(bspace)

Model Rules and Ca. Rules – you determine which may be applicable (online)

Hypothetical Problem re dealing with unrepresented opposing party in civil court:

• Protecting your client from harassment and intimidation during cross-examination

• How to respond when other party tries to tell you what to do, and you are representing victim

• Your response to opposing party during hearing

• Any duty to explain the court order to opposing party?

***Week 10***

Binder and Price, Legal Interviewing and Counseling, “Questioning” and “Dealing with Client Reluctance”

Adrienne Jennings Lockie, Salt in the Wounds: Why Attorneys Should Not be Mandated Reporters of Child Abuse, 36 N M L Rev 125 (2006) (bspace) (skip pages 138-139 re NJ and pages 154-158, Solutions).

Hypothetical Problem based on Lockie article

Miscellaneous Issues, continued

• Protection of client’s children – if client goes back to abuser and children are involved, does attorney owe duty to children? Does reporting child abuse to CPS violate any ethical rules?

• Should attorneys be mandated child abuse reporters? What ethical rules are relevant to this policy decision?

***Week 11***

Ann Freedman, “Fact-Finding in Civil Domestic Violence Cases: Secondary Traumatic Stress and the Need for Compassionate Witnesses,” 11(2) J of Gender, Soc. Policy & the L 567 (2003) (Westlaw – skim briefly)

Dana Harrington Conner, To Protect Or To Serve: Confidentiality, Client Protection, And Domestic Violence, fall 2006 Temple Law Review 877 - Parts III, IV, VIII, and IX (bspace)

Model rules 1.14, 1.2, 1.16 (online)

Ca. Rules 3-700, 2-400 (online)

Hypothetical Problem: Client who may have diminished capacity, termination of representation of abused client

***Week 12***

Hypothetical Problem - Representing the alleged batterer, declining representation, termination of representation

Model rules 1.2 (scope of representation), 1.6 (confidentiality), 1.16 (declining or terminating representation), 3.1 (meritorious claims and contentions), 3.3 (candor toward the tribunal), 4.2 (communication with person represented by counsel), 4.3 (communication with unrepresented person), (online)

Ca. Rule 3-210 (advising violation of law) (online)

Ca. Bus & Prof Code section 6068(h) (may not reject cause of defenseless or oppressed for consideration personal to attorney)(online)

Lisa Angel and Lee Rosen, “Zealous and Ethical Representation of Batterers,” The Impact of Domestic Violence on Your Legal Practice, ABA, 2d ed, pages 83-86 (2004)(bspace)

*In re Marriage of Foran*, 834 P.2d 1081 (Wash. Ct. App. 1992) (bspace)

***Week 13***

Hypothetical Problem based on *Hawkins, Hansen, Dang*, and *Newman* cases

• Duty to Screen for Client’s Plan to Harm Own Counsel, Client’s Partner, or Others; Attempt to Dissuade & Duty to Warn Partner or other third parties (e.g., judges)

Dealing with threats by batterer or victim toward third parties, avoiding tort liability, balancing duty with confidentiality

Model rules 1.6(b), 1.16, 4.2 (online)

Ca. Rule 3-100 (online)

Ca. Bus & Prof Code section 6068(e) (bspace)

Ca. Evid Code section 956.5 9 (bspace)

Sarah Buel & Margaret Drew, Do Ask And Do Tell: Rethinking The Lawyer's Duty To Warn In Domestic Violence Cases, U of Cincinnati L Rev 447 (2006) (bspace) read Introduction

*Hawkins v. King Co*., 602 P.2d 361 (Wash. Ct. App. 1979) (bspace)

*State v. Hansen*, 862 P.2d 117 (Wash. 1993) (bspace)

*People v. Dang*, 113 Cal. Rptr. 2d 763 (Cal. Dist. Ct. App. 2001) (bspace)

*People v. Newman*, 863 A.2d 321 (Md. 2004) (bspace) – read the Crime/Fraud Exception and Its Application, Conclusion, and Part A of Dissent.

***Week 14***

Hypothetical Problem based on Goodmark’s 2007 article & rules

• Encouragement for attorneys to do 50 hours/year pro bono work to improve the law, the legal system or the legal profession

Professional responsibility to provide legal services to those unable to pay

Membership in Legal Services Organization

Law Reform Activities Affecting Client Interests

Non-profit and court-annexed limited legal-services programs (unbundled services)

Model rules 6.1, 6.3, 6.4, 6.5 (online)

Ca. Rules 1-600, 1-650 (online)

Goodmark 2007 article, excerpt starting “Years Ago…” on page 1021 (bspace)