



HAPLESS HARVEST

FINAL CLIENT COUNSELING SKILLS EXERCISE – DRESS REHEARSAL AND FINAL

Instructions for Attorneys (all workshop or course participants)

Due to time limitations, you should assume that you are familiar with Jan's basic personal circumstances from previous meetings - Jan's age, recent divorce, restricted physical and social activities, living in an apartment, etc. Jan has already entered your office for this scheduled meeting, and you have already exchanged pleasantries about the weather, parking, sports... etc. You have already offered Jan water or coffee. You have not learned anything about Jan's circumstances since your last meeting. You are now ready to transition to the business at hand.

Conduct an abbreviated but skillful counseling session. You should anticipate that it will be important to:

- communicate clearly (explaining any legal jargon) concerning the procedural status of the case and the legal challenges presented by the anticipated summary judgment motion.
- seek to understand the client's current and foreseeable future interests and discuss the impact of settlement or trial.
- deal with psychological barriers to wise decision-making in the face of uncertainty • work effectively with Jan's strong emotions.

Please note that this is the order in which these topics were covered in the course. They need not necessarily occur in this order in the exercise.

You should not attempt to present the decision tree because you do not have sufficient time and working with trees is not the focus of this exercise (though you may talk about risk and uncertainty in some fashion).

The Actors' Roles and Professor/Coach/Evaluators/Final Dress Rehearsal Phase

We are fortunate to be working with terrific actors as Jan Hapless. These actors will be prepared to play the part and respond to your counseling choices in a consistent manner. While your client may be emotional or "unreasonable" at points, he or she will shift when you use appropriate skills and strategies. I (your professor) will work with you as coach for this exercise. If all is proceeding smoothly, I will not intervene. However, if you are having trouble on some point, we will intervene and suggest using a specific skill or strategy that is more likely to be successful. Your client may also provide direct feedback.

THIS IS NOT INTENDED TO MAKE YOU NERVOUS; it is intended to be CONSTRUCTIVE! Sometimes (okay, often), I intervene when an excellent and well-prepared student is doing a fine job, and I see a way for an even better phrasing, etc. So, intervention does NOT necessarily mean subpar performance, really!

The purpose of the "Final Dress Rehearsal" is to offer coaching advice to each individual student, highlighting your strengths and suggesting ways you can be more effective in your



future, very real lawyer-as-client-counselor role. Ultimately, the goal is for all students to successfully employ certain counseling skills and strategies covered in the course. When working with a real (even almost real) client, this is more difficult than you might think.

These “FCSE Dress Rehearsal” sessions will be recorded. It’s easiest if student bring their preferred recording device to the session – cell phone, laptop, or other camera. However, I will also record each session as back up. This will insure that each student has access to his or her recording when preparing for the FSCE Final Take, as discussed below.

In a dress rehearsal (and particularly in this one), it is VERY important that you be completely prepared. Think of it this way, if you are NOT prepared, that will negatively affect your final grade on the high pass/pass/low pass range. If you ARE fully prepared, and still end up with lots of coaching during the session, it won’t affect the grade at all.

FSCE Final Take – stage two of the Final Counseling Skills Exercise

After the dress rehearsal comes the real show! Each student will then be required to produce their own NEW, DIRECTED AND EDITED video of the Final Counseling Skills Exercise – no longer than 15 – 17 minutes in length – demonstrating GREAT client counseling. Students should pair up to complete this exercise, playing clients for each other, or you may work with a relative or friend as client. A clear grasp of the client’s concerns should be demonstrated by students playing the client roles.

Regarding your own recording, editing, and submission format

Your video should be submitted in a format that will be viewable on my computer. That could be as a link, a file on a flash drive – whatever works. If you don’t have easy access to a recording device, a couple of the law school’s video cameras will be at the reserve desk to be checked out (and used in the building) by students in this course.

As for editing: I assume you’d like to have me watch your best work, and I am also assuming that might involve more than one “take” when you work on it. I admit, best for me is if you could use a simple video editing software (likely one of your laptop’s free applications). If that’s not available to you, I can handle a submission in which you tell me: “watch only my take 4 that is at minute __ to __.” Or, within reason, if you did the session in chunks [Summary judgment, settlement discussion, etc.] and you want to direct me to the minutes for what was the “final take” for each, I can live with that too.

Along with the video, each student should submit a brief memorandum highlighting and describing the client counseling strategies and skills it demonstrates. These can be in outline or bullet point form and, if possible, should include reference to approximate time codes at which identified behaviors can be found on the video. While these memos need not be long (2-3 pages should be plenty), it’s a good idea to highlight aspects of the exercise you found challenging in the “dress rehearsal” and to discuss how your final version reflects improvement.

Note the Reward for Flawless Performance

I anticipate that a very small number of students will demonstrate FLAWLESS client counseling in their recorded “FSCE Final Dress Rehearsal” session. If that happens, you will be permitted to opt-out of a second video, but will be required to submit a short memorandum identifying and the [successful] skills and strategies in their “dress rehearsal”, now final video.

Case Switching Option

Students who are absolutely sick of the Hapless Harvest case used in the “FSCE Final Dress Rehearsal” are free to elect to record a FSCE Final Take Client Counseling session using another case. Please check with me to discuss candidate cases.

Don't Forget Final Decision Trees

Each student must prepare a decision tree for Hapless Harvest case and a short memo explaining the method and the results to the client, and hand it in with their FSCE Final Take recording. Please note that you are NOT to use the written decision tree in the counseling session. You should be prepared to counsel your client without using the tree. (There will not be time to explain it to your client so you should not attempt it).

I hope the two-part FCSE does not sound onerous. I know the overwhelming majority of course alumni would agree that it was a terrific learning experience. Through the workshop, you will have had some practice with all of the FCSE elements, as well as practice putting them together on the fourth workshop day with the Upscale Accusations simulation.

As soon as possible, do sign up for a time slot within designated blocks on the course Canvas site's calendar.

Recommended preparation for the Final Counseling Skills Exercise – the FCSE Dress Rehearsal and the FSCE Final Take

- Carefully review the simulation facts and instructions provided.
- Review the readings from the *Client Science* book.
- Review your readings and your notes from lectures and in-class exercises.
- Practice demonstrating mastery of the important tasks, skills and strategies for client counseling that you think might arise in this fact pattern. As you'll see, it will require you to counsel a client through “bad news and other legal realities”, while explaining legal concepts and building trust and rapport along the way.

- The time is short, but practice permits brevity. It is humbling to see a TV attorney in the old show L.A. Law deliver a powerful 3 minute closing argument that would have lasted 30 minutes “in real life.”
- REMEMBER that your decision tree and a brief memorandum to the client explaining this method and the decision tree in his/her case should be handed in with your recorded FSCE.

LAST Post Workshop Class Session - to be scheduled

One short additional “Wrap Up” Class. One 60 – 90 minute additional class session will take place after all students have completed the Individual Counseling Skills Exercise.

Recommended preparation Carefully review this document, setting forth the attorney’s analysis and current case status. It largely tracks the fact pattern from the Hapless Harvest Interview completed during the course. However, some facts have been changed, added or embellished (as often happens in discovery). Review your readings and the power points from lectures and in-class exercises. Practice demonstrating mastery of the important tasks, skills and strategies reviewed in this course, particularly those you think might arise in this fact pattern.

Don’t be nervous, just be ready! I look forward to working with you, and I hope the exercise will prove valuable, far beyond counseling Jan Hapless.