

Advanced Class: Representing Small Businesses
Syllabus

1. Intro
2. Interviewing (and other verbal communication)
 - a. The art of listening and engaging
 - b. Documenting conversations
 - c. Intake interviews
 - d. Assessing your client
 - i. Who is the client? Business or business owner?
 - ii. What if there are multiple owners of the business?
 - iii. Ethical considerations in determining who is your client
 - e. Conversations with opposing counsel
 - f. Conversations with third parties
 - g. Phone conversations
 - h. Providing options
3. Drafting in Plain English – what that really means
 - a. Short plain statements
 - b. Complete sentences
 - c. Basic grammar
 - d. Separation of ideas
 - e. Flow: Beginning, middle, end
 - f. Stating the obvious
4. Drafting Correspondence
 - a. The difference between letters and email
 - i. No guarantee of confidentiality in email
 - ii. Easier to forward email = easier to breach privilege
 - iii. If it's important, send a letter; If it's urgent, call
 - b. Tone and civility
 - c. Know your audience
 - d. Client correspondence
 - e. Correspondence with opposing counsel
 - f. Correspondence with third parties
5. Drafting Contracts
 - a. Preamble
 - i. Identifies parties
 - b. Recitals
 - i. Identifies legal subject matter
 - ii. Identifies offer and acceptance
 - c. Agreement
 - i. Inclusion of Preamble and Recitals
 - ii. Definitions
 - iii. Consideration
 1. Money
 2. Goods
 3. Services

- iv. Performance
 - 1. Conduct of parties
 - v. Relationship of parties
 - 1. Independent contractors vs. employee/employer
 - 2. No third-party beneficiaries
 - 3. Publicity/Confidentiality
 - vi. Place of performance
 - vii. Representations and Warranties
 - viii. Indemnification
 - ix. Time/Term/Termination
 - x. Failure to perform/breach
 - xi. Remedies
 - 1. At law
 - a. Money
 - 2. In equity
 - a. Specific performance
 - b. Injunctive relief
 - 3. Attorney's fees and costs
 - d. Boilerplate
 - i. Force majeure
 - ii. Further Assurances
 - iii. Merger
 - iv. Amendments
 - v. Assignability
 - vi. Waiver and Severability
 - vii. Jurisdiction/Venue/Choice of Law
 - viii. Notice
 - ix. Interpretation, Headings
 - x. Counterparts
 - e. Closing
 - f. Signatures
 - i. Just the signature
 - ii. Signed before witnesses
 - iii. Signed before a notary
 - iv. Sworn before a notary
 - g. Schedules and Exhibits
6. Drafting Memos and Opinions
- a. Opinion Letters (protect the client)
 - i. Purpose is to provide LEGAL opinion
 - ii. Research the law as well as the facts – don't take anyone's word
 - iii. Opinion letters carry weight. Do not give opinions lightly!
 - iv. Types of Opinion Letters
 - 1. Registerability of intellectual property
 - 2. Exposure to liability
 - 3. Due diligence
 - 4. Viability of business plan
 - b. Memos of Law (protect the lawyer)
 - i. Purpose is to provide an overview of the law

- ii. Research the law and apply it to the client's reported situation
- iii. NOT a legal opinion – won't hold up in court
- iv. Clients hate paying for memos – treat them like CYA letters
- v. Types of memos
 - 1. Current state of relevant laws
 - 2. Changes to the relevant laws
 - 3. Applicability of relevant laws
 - 4. Viability of legal argument

7. Negotiating

- a. Know your stuff before you start
 - i. Know the law and the facts
 - ii. Know your client
 - iii. Know with whom you will be negotiating
- b. Getting to yes
 - i. Choose your medium – phone, in person, letter, email?
 - ii. Picking your battles
 - iii. Where is your line in the sand?
 - iv. How can everyone walk away happy (or at least not miserable)?
- c. Getting past no
 - i. Overcoming objections
 - ii. Finding their line in the sand
 - iii. Let them “win”
- d. Types of negotiations
 - i. Lawyer's fee negotiation
 - ii. Contract terms negotiation
 - iii. Settlement negotiation
 - iv. Mediation

8. Administrative Law

- a. Dealing with federal agencies
 - i. IRS
 - ii. EEOC
 - iii. HHS
 - iv. HUD
 - v. USPTO and U.S. Copyright Office
- b. Dealing with state agencies
 - i. Division of Corporations
 - ii. Department of Revenue
 - iii. Health Department
 - iv. Professional Regulation
- c. Dealing with local government
 - i. Zoning and planning
 - ii. Business Taxes
 - iii. Property Taxes
- d. Dealing with independent agencies (accreditation)
 - i. JCOHA – Hospitals/Health Care Providers
 - ii. NWBOC – Women Business Owners
 - iii. NMBC – Minority Business Owners

9. Litigating
 - a. Know when you cannot represent the business or owner
 - b. Valuing your work as a litigator
 - c. Litigation avoidance
 - i. Demand letters
 - ii. Settlement negotiation
 - iii. Pre-suit/early mediation
 - d. Arbitration in lieu of litigation
 - e. Drafting
 - i. Complaints
 - ii. Answers
 - iii. Discovery requests
 - iv. Motions
 - v. Proposed orders
 - vi. Briefs
 - f. Depositions
 - g. Document production
 - h. Document review
 - i. E-Discovery Issues
 - j. Trial