

**AALS Annual Meeting 2011**  
**The Importance of Student Assessment:**  
**Why Student Assessment Matters**

**ROBUST, FORMATIVE STUDENT ASSESSMENT IN DOCTRINAL COURSES**

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**Family Law Divorce Negotiation: Exercise Prompts**

## **I. Prompts for Planning Memo**

*You should identify the principle issues to be resolved, and for each issue, consider questions such as the following:*

- Given the facts and what you know about the relevant law, how would you expect a court to resolve this issue if it is not resolved in negotiation?
- What are your client's interests regarding this issue? What possible results (or range of results) will satisfy these interests?
- What do you anticipate will be the interests of the opponent with respect to this issue? What possible results (or range of results) will satisfy your opponent's interests?
- In light of all the foregoing, what is your minimum settlement position on this issue? What is your ideal settlement result? What result do you reasonably expect?
- Are there any issues whose resolution hinges on the resolution of other issues? How will this affect your negotiation strategy?
- Are there any issues on which you foresee easy agreement? At what state of the negotiation might it be best to raise those issues?
- Are there any issues that are "dealbreakers" for your side? How and when would it be best to raise those issues?
- Do you think that, taken as a whole, the settlement your client would propose will produce an agreement? If not, what matters are you willing to concede on?
- Are there any ethical or professional issues raised by your proposed settlement with respect to either your client or your opponent?

## **II. Prompts for Small-Group Work**

### ***Substance***

- Given the facts and what you know about the relevant law, how would you expect a court to resolve the various issues if not resolved in negotiation?
- What are your client's interests regarding this issue? What possible results (or range of results) will satisfy these interests?
- What do you anticipate will be the interests of the opponent with respect to this issue? What possible results (or range of results) will satisfy your opponent's interests?
- In light of all the foregoing, what is your minimum settlement position on this issue? What is your ideal settlement result? What result do you reasonably expect?
- Are there any issues whose resolution hinges on the resolution of other issues? How will this affect your negotiation strategy?
- Are there any issues on which you foresee easy agreement? At what state of the negotiation might it be best to raise those issues?
- Are there any issues that are "dealbreakers" for your side? How and when would it be best to raise those issues?
- Do you think that, taken as a whole, the settlement your client would propose will produce an agreement? If not, what matters are you willing to concede on?
- Are there any ethical or professional issues raised by your proposed settlement with respect to either your client or your opponent?

### ***Style, Format, and Tone***

- What tone do you want the negotiation to take?
- What do you want to convey about yourself and your client?
- Do you know anything about the character or situation of the attorneys/client that might affect your approach?
- How would you like the negotiation sessions to be structured?
- Who should make the first offer?
- When and how will you indicate your willingness to compromise?
- Is there information that you don't want to disclose? Is there information you need or want from the other side?

### **III. Prompts for Contract Drafting**

*You may want to consider the following:*

- The terms and conditions of the agreement. These may include not only the rights and obligations the parties assume, but also the interests and commitments the terms are designed to serve. Does your agreement cover everything it needs to?
- Definitional and interpretive ambiguities. Think through the possible interpretations of each clause in the agreement, and make sure your client's interests won't be hurt by unclear language or ambiguous terms if there are disagreements about its meaning later on and a court must rule on its meaning.
- Clarity of terms for parties. Even if the terms have clear legal meanings, they may be confusing to the parties or difficult to follow, which may result in further disputes.
- Enforceability. Have you agreed to terms that a court is unlikely to enforce? If so, you may have negotiated away things that your client really wanted in return for an agreement that won't hold up.

### **IV. Prompts for Reflection Memos**

*You should reflect on your answers to the following questions:*

- How much of the other side's position did you anticipate in your planning? What took you by surprise? Were there legal issues or topics you should have reviewed in anticipation, but didn't?
- What role did the facts of this particular dispute play in the negotiation? Were you able to draw out and/or withhold information as you wanted to?
- What role did the law play in the negotiation? How constrained did you (or your adversaries) feel based on what you expected a judge would do if negotiations broke down and s/he were to decide the case?
- What kinds of stories did you, your partner(s), and your adversaries tell about your clients during the negotiation? Were these stories effective in getting your clients what you wanted?
- What were the dynamics in the negotiation? How much control over the negotiation did you have? Did it take the tone you wanted? Was it competitive, cooperative, collaborative, accommodating? Was the outcome affected by the personality or behavior of your adversaries, or your own? Were there other actual or perceived differences between the attorneys in the room that impacted the negotiation process? What role did emotion play in the negotiation? Were you surprised by your responses or others', even though you were not negotiating a personal dispute?
- Looking at your settlement agreement, do you think your client would be satisfied with it? Assuming you didn't get everything s/he wanted, how would you go about "selling" the settlement to your client?
- Did any ethical or professional responsibility issues arise during the course of the negotiation? If so, how did you resolve them?
- What did you learn about the law and family lawyering in this exercise? What would you do differently next time?