

Legal Education at the Crossroads III

Formative Assessment

Incorporating Effective Formative Assessment into Course Planning: A Demonstration and Toolbox

Introduction

Good morning. I'd like you all to choose a course you currently or have recently taught. Do you all have a course in mind. Now, think about the last time you were able to observe a student's learning at the end of that course – this might be the student's final exam or paper or it might be a recent representation task in a clinic or simulation. What did the student's performance tell you about what that student had learned? Did it surprise you? Disappointed perhaps?

Now think about how you might structure that student's learning differently if you had known then (that is, during the semester) what you know now that the course is over. Likely you would have wanted to give both you and the student an opportunity to find out what they weren't getting right in time to do something about it.

That's what formative assessment is and that's what we'll be working with today.

Objectives

- Believe that formative assessment is an important and useful part of your teaching and your students' learning
- Be able to plan and implement at least one type of formative assessment in your classes
- Be able to explain to your dean, your colleagues, and your students why you use formative assessment

When you leave this session, you can expect that you will

- Believe that formative assessment is an important and useful part of your law school teaching and learning
- Be able to plan and implement at least one type of formative assessment into your classes
- Be able to explain to your dean, your colleagues and your students why you use formative assessment

THE BEST PRACTICES PLAYERS

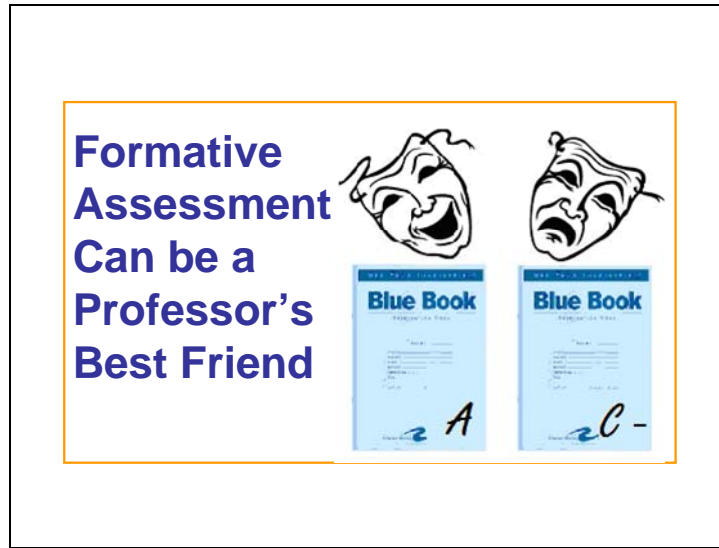
Prof. Peter Joy
Washington University College of Law

Prof. Carolyn Grose,
William Mitchell College of Law

Prof. Mary Lynch,
Albany Law School

Prof. Barbara Glesner Fines
University Missouri Kansas City

We are members of the best practices implementation committee of the Clinical Legal Education Association. I'm Barb Glesner Fines from University Missouri Kansas City. This is Mary Lynch from Albany, Peter Joy from Washington University and Carolyn Grose from William Mitchell College of Law. Our biographies are in the materials if you are interested in learning more about us.

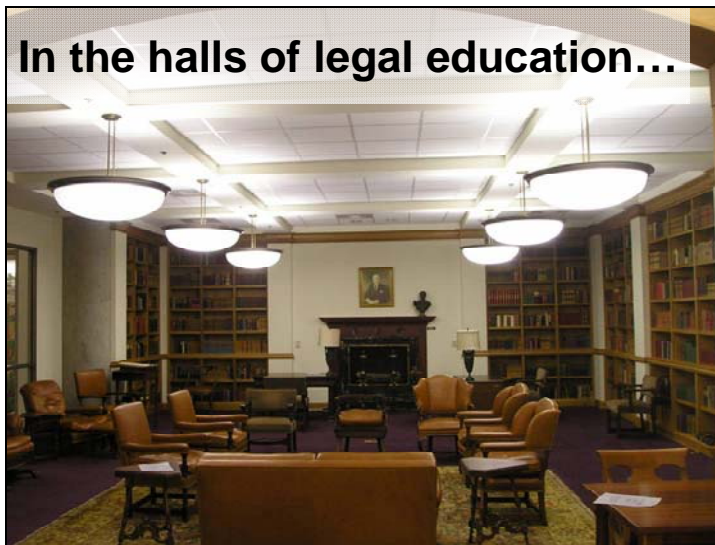


But for today we are someone else – we’re going to present a play in three parts for you – demonstrating the process of developing formative assessment methods. We have distributed a theater program for you and you will notice that the program has space for you to be a script writer – This is interactive theater. We want you to be writing the script for your own assessment play. So that class I asked you to think about? Well, keep thinking about it and we will give you a moment after each act to brainstorm ways in which this production might be staged at your own school with that class. You’ll want to have a pen or pencil ready to take some notes. You’ll also find one page of the script in the program. We give you a cue when it’s time to look at that page and we’ll hand out a couple more pages of script during the show.

So, with those logistics underway, let me introduce The Best Practices Players in “ An exercise in ‘Trust’ – Formative Assessment as a Teacher’s Best Friend”

Act I

The Tragedy of Unmet Objectives



Two professors are grousing to one another. The Associate Dean enters...

Associate Dean (Peter) – What's the matter you two? You look so distressed!

Professor (Carolyn) – We just finished our grading and we were lamenting our students' performances.

Associate Dean (Peter) – How so?

Professor (Carolyn) – Well, I just finished grading 98 final exams, and I'd bet that 92 of them recited the law without any reference to its purpose or policy. I assign all this reading on the history and politics behind the rules and they don't appear to have read any of it!

Professor (Mary) – Yeah, well, I think you can chalk some of that up to those time pressured final exams, but I saw the same thing in my seminar this semester – students had all semester to prepare their final papers and they still look little better than if they had been put together in the few hours before the deadline. I must have told the students 100 times that this type of law requires some creativity, but I didn't see anything other than rote recitations and applications of rules – no problem solving whatsoever. I wish I could do something to get these students to reach a little bit!

Associate Dean (Peter) – Pretty frustrating I agree. Can I help?

Professor (Mary) -- Oh I doubt it. It's just this generation of students. I'm not sure what we can do to get through to them that they still have more to learn. They're just putting in their time until they can graduate and start practicing law from form books!

Narrator (BGF) – We've heard these conversations forever in our halls. But something is different these days. BP and Carnegie signal a new determination and optimism about legal education's ability to better educate lawyers. More and more professors and schools are asking how they can teach doctrine, skills and values to truly prepare our students for the world in which they will be using their legal education. And the message from Best Practices, Carnegie, and the Legal Education at the Crossroads conferences is clear – know what you want the students to learn, teach what you want them to learn, and assess whether they are indeed learning. With the tremendous research and passion that is being brought to bear on improving legal education, faculty are beginning to have hope that we can indeed help our students to learn more and better.

Professor (Carolyn) – Oh it's not that bad. [To Associate Dean (Peter)] I'm willing to try to improve the situation. Can you help?

Associate Dean (Peter) – I think so. Let's meet at 3:00 today in my office. Bring your textbooks and syllabus and teaching notes so we can refer to them.

Narrator (BGF) : While our dean and professor retire to the office, take a moment to notice that the process of weaving formative assessment into our teaching begins with making a serious commitment to work – formative assessment isn't a “trick” you pick up along the way but a methodology of planning, implementation, and review that takes commitment. The good news is, we're not alone -- Okay, I see that our faculty are in the dean's office now – let's go back and watch their collaboration.

In the Associate Dean's Office



Associate Dean (Peter) – I heard you saying that your students weren't learning something you considered core to the course. That means you've really thought about what you want the students to learn and that's definitely where you have to start.

Narrator (BGF) – Associate Dean (Peter)'s got it right – before we can think about assessment tools, we have to know what we want students to learn. Identifying outcomes can be half the battle in assessment. At this point, you'll want to have handout one of your script available.

Associate Dean (Peter) - Do you have the objectives of this course written out?

Teacher – You bet (turn to Handout

Trusts & Estates Goals
(See Handout #1)

D)

**INCORPORATING EFFECTIVE FORMATIVE ASSESSMENT INTO COURSE PLANNING: A
DEMONSTRATION AND TOOLBOX
--HANDOUT ONE--**

Working Draft: TRUSTS AND ESTATES COURSE GOALS

1. Mastery of the core legal knowledge in the doctrine of trusts and estates:
 - a. Recognize triggers in estate planning that effect drafting instrument, e.g.
 - i. Disinherited child or spouse
 - ii. Blended family
 - iii. Medical assistance issue
 - iv. Disabled child or other heir
 - v. Homestead
 - vi. Economic issues
 - b. Basic numbers re: taxable estate
 - i. Federal and state trigger numbers
 - c. Basic rules of fiduciary duties
 - d. Difference between probate and non-probate instruments
2. Understanding
 - a. that Trusts and Estates is about assets, relationships, people and their issues, in crisis (death, disability, incapacity), needing control; and
 - b. what that might mean about the role and identity of a trusts and estates lawyer
3. Ability to
 - a. Explain law and options to a client
 - i. Why will v. intestate
 - ii. Why trust v. will
 - iii. Why probate v. non-probate
 - iv. What are triggers
 - b. Gather information and goals from client
 - i. Follow her, don't direct her
 - ii. About relationships, not law
 - c. Write a will
 - d. Write a trust
 - e. Conduct basic research
 - f. Draft a Simple probate petition to the court

Clarifying objectives

- What should they learn?
- How well should they learn it?
- What is core and what is extra?

Associate Dean (Peter) – Wow, great. Let's talk about these goals a little bit more. One of the questions you have to ask yourself is, are these goals realistic? – you are aiming for a lot here

Teacher – Well up until now, I think I've always placed the priority on doctrinal content – making sure we cover all of trusts and estates and get through the whole book. But I'd like to put that in the context of the actual practice of trusts and estates so I really want skills goals as well, so I've expanded my goals.

Narrator (BGF) : This is one of the key points that Carnegie brings to our attention – that the drive for content can push out skills/identity goals and that we need to strike a balance. That doesn't mean we have to throw doctrine out the window, and it doesn't mean that teaching doctrine means you can't teach skills or vice versa, but you need to be very explicit about your priorities and find methods that can teach both simultaneously. Let's watch that decision-making process in action...

Associate Dean (Peter) – Okay, but let's prioritize a bit here. What's the core goal – the one thing that you want every student to have when they leave the course. The thing that if you only had one day to teach them, you would want them to learn? Part of prioritizing is deciding what level of proficiency you are aiming for in each of these goals? Students can learn a lot of different skills and doctrine just a little, or one or two aspects of doctrine or skills very, very well.

Teacher (Carolyn): I guess if I had only three hours to teach this course, I would focus on the client interaction piece. I want the students to be able to interview a client about her estate planning questions, and then to be able to figure out how to

counsel her about her options, which includes knowing where to look for legal answers, but not necessarily having them all memorized. Learning the actual nitty gritty of the law seems to be secondary – they can learn that as they’re doing it. Same with the drafting piece. I want the students to know what questions to ask and what answers will trigger the need for further questions. I don’t need them to graduate from my course being able to draft a will without consulting authority.

This is an introduction course; I want the student to be able to go on to take my Legal Planning Clinic, or an externship or other estate planning apprenticeship. I see this as a first step toward becoming a competent trusts and estates attorney, as a gateway to the practical experience that will lead to practitioner competence.

Associate Dean (Peter) – Okay great – this is one of the hardest parts about assessment planning. We know where we’re going to focus our teaching and assessment of learning. Let’s knock it off for today and meet again next Friday to work some more on this...

Audience Participation Free Write

What is a core goal for your class? What is the most important, enduring idea, skill or value you want the students to take away from this class?

Narrator (BGF) (BGF) – Free write –during this one-minute intermission, please write down the answer to the question the dean asked: What is the core goal of your course? You have one minute only before the play resumes – please begin.

Now let’s return to our program

Act II

Formative Assessment to the Rescue

One week later...



Professor (Carolyn) - Wow, our discussion really helped. I think this will make a big difference. Here's my revised course statement (See handout II)

**INCORPORATING EFFECTIVE FORMATIVE ASSESSMENT INTO COURSE PLANNING: A
DEMONSTRATION AND TOOLBOX
--HANDOUT TWO--**

TRUSTS AND ESTATES COURSE GOALS OR OUTCOMES:

This is an introduction course; I want the student to be able to understand the basic principles of Trusts & Estates to be able to identify issues. I anticipate that students interested in the field of Trusts & Estates will go on to take my Legal Planning Clinic, or an externship or other estate planning apprenticeship. I see this as a first step toward becoming a competent trusts and estates attorney, as a gateway to the practical experience that will lead to such competence.

After completing the course, a student will be begin to be able to:

- identify the various plot lines and characters that might present themselves to him in a client's situation;
- figure out how the relevant law or laws interact with those characters and plot lines,
- explain that interaction to his client
- work with his client to construct a story or stories that meet his client's needs, which might involve creating one or more of estate planning instruments (will or trust or other) , and/or planning for the implementation of those instruments when necessary. The latter might include defending against challenges to the instrument and/or to the creation or administration of the instrument.

The student will have core legal knowledge in the area of trusts and estate law:

1. Triggers in estate planning that effect drafting instrument, e.g.:
 - disinherited child or spouse
 - blended family
 - medical assistance issue
 - disabled child or other heir
 - homestead
 - economic issues
2. Basic rules of fiduciary duties
3. Difference between probate and non-probate instruments

The student will understand that

- trusts and estates law is about assets, relationships, people and their issues, in crisis (death, disability, incapacity), needing control.
- that her role is to listen to her client, to counsel her client consistent with her client's goals and the lawyer's knowledge of the law,
- she must act ethically in light of relevant legal and non-legal concerns.

There will be ongoing formative assessments so that each student will be able to demonstrate that she is able to:

1. Gather information and goals from client
 2. Conduct research in case law and statutes
 3. Explain law and options to a client
 4. Write a will
 5. Write a trust
 6. Draft a Simple probate petition to the court
-

Teacher (Carolyn): Now all I have to do is work harder on making sure I'm teaching to these objectives right? I've got plenty of interviewing and drafting exercises lined up and some additional readings and materials for the students to help them put the doctrine in context. I even have a great guest speaker who's agreed to come to the class...

Associate Dean (Peter) – That's great. You've obviously planned engaging teaching methods and materials targeted to the goals. But, well, let me ask you this – Is this going to solve the problem you're experiencing, which is knowing if the students are learning?

Narrator (BGF) – Associate Dean (Peter)'s hit on an important insight here about teaching by design. It's important to shift our focus from what the professor is doing to what the student is doing, but it's just as important to focus not just on what the student is DOING but what the student is LEARNING from those activities. That's the assessment focus we're seeing the dean zeroing in on.

Associate Dean (Peter) – So, let's keep our focus on the students still and let me ask, how will you know if the students are achieved the learning objectives as the semester progresses?

Professor (Carolyn) -- Well, I'll have the students to do some work during the semester – see on my course goals list there...

- Plan for client intake interview
- Draft a letter to the client
- Draft a will
- Draft a trust
- Review a client file and draft a legal memo re: will or trust challenge
- Final exam

Associate Dean (Peter): You have identified several activities that you will use for assessment. These are wonderful activities that I'm sure the students will find very engaging, but how will each of these activities help you assess the student's learning.

Have a look at this chart comparing activity design and assessment design (show on overhead):

| An Assessor asks | An Activity Designer asks |
|--|--|
| What would be sufficient evidence of understanding? | What would be engaging activities? |
| What performance tasks must focus the class? | What resources and materials are available ? |
| How will I be able to distinguish between real and apparent understanding? | What will students be doing in and out of class? |
| Against what criteria will I distinguish work? | How will I give students a grade (and justify it)? |
| What misunderstandings are likely? Can I find them? | Did the activities work? Why or why not? |

What do you think? Are you thinking like an assessor?

Teacher (Carolyn) – well, no I think I’m still really designing activities here. But how do you assess student skills like client interviewing and counseling?

Associate Dean (Peter) : Rather than re-invent the wheel, let’s get some help. Mary does lots of client interviewing work in her clinic and classes. Let’s wander over to her office and see what kind of resources she can come up with. [Stand up and move to other side of stage to Mary’s “office”]

In Mary's Office...

Professor (Mary): Hi Peter, Carolyn! What's up?

Associate Dean (Peter) – Mary, we'd like some time to talk assessment of client interviewing.

Professor (Mary) – Well you're in luck – I'm free right now – come on in.

Professor (Carolyn) - I'm interested in what I should use to assess a client interviewing exercise. I want to be able to determine not only whether the students have a handle on some of the basic skills associated with client interviewing, but also whether they are getting the doctrine that we have been covering in the course. I know a good interview when I see it, but I want to provide students with some goals or criteria that make up a good interview, and I want to have a way to evaluate them against the criteria and not just each other.

Narrator (BGF) – Great point. Carolyn knows that effective formative assessment is criteria-referenced and norm referenced so that students have an incentive to improve even if they happen to perform better than other students. Carolyn also knows the importance of sharing the assessment criteria with students.

Professor (Mary) - Great. Let's do some brainstorming on assessment criteria for interviewing and look at some resources. The Best Practices website is a great starting point. Let's see what resources others have been using.

First, here is the Best Practices Blog
<http://bestpracticeslegaled.albanylawblogs.org/>

let's put in the words formative assessment in the search box and see what we come up with.

<http://bestpracticeslegaled.albanylawblogs.org/?s=assessment>

Professor (Carolyn) - This is great material, but if I use criteria referenced evaluations isn't it possible that all of the students will get As? We have a grading curve, and I'm nervous about it.

Professor (Mary) - That's unlikely. I use criteria-referenced evaluation in my clinic as much as possible, and even the best students have areas where they can improve. I know you must have the same experience in your clinic. Also, remember that you are doing this for formative assessment. The importance of this type of assessment is for students and you to receive feedback on their learning.

Again, this is a lot like clinic. On the other hand, you could combine the formative assessment with some summative assessment if you decide to grade the students on how well they perform the lawyering skills in Trusts & Estates. You'd just want to have a clear grading rubric.

Let's look at one of the other website resources we found on the blog. This is Center for Excellence in Law Teaching website. It lists a number of assessment resources

http://www.albanylaw.edu/sub.php?navigation_id=1709

Let's look at this assessment page and see what we find.

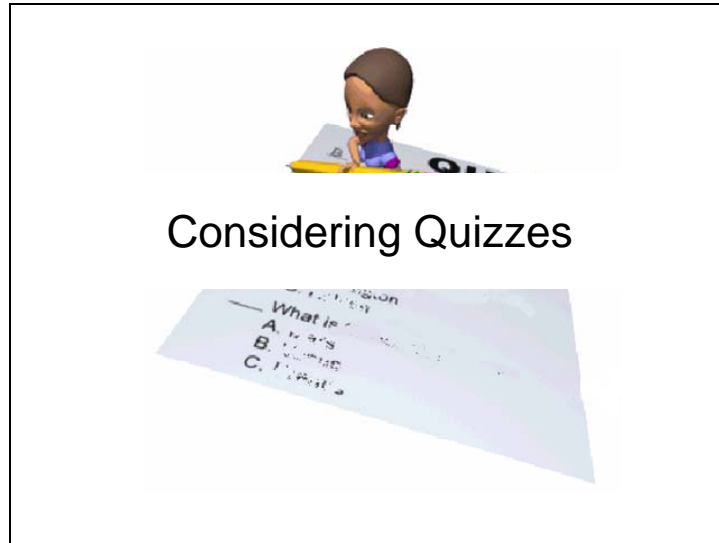
http://www.albanylaw.edu/sub.php?navigation_id=1753

Oh look here there are a lot of rubrics. Here's one by Sophie Sparrow – She's great!
http://www.albanylaw.edu/media/user/celt/clinical_rubric__analysis_performance_affect_competencies_sophie_sparrow_101108.pdf

And Debbie Maranville (she's great too) modified this for her own purposes. You can do that too.

http://www.albanylaw.edu/media/user/celt/clinical_rubric__analysis_performance_affect_competencies_sparrow__maranville_revison_3809.pdf

I've used some of these rubrics and they really work! Now of course, rubrics like these are only one form of formative assessment. This rubric will help to assess both skills and knowledge of doctrine. But you want to use multiple modes of formative assessment.



Associate Dean (Peter)- Yes, I use quizzes in my large Legal Profession class for formative assessment, and the students' performance on the quizzes accounts for 20% of their final grade. I do that to provide extra motivation, but I scale the grading in a way that almost all of the students receive the maximum.

Professor (Carolyn)- Tell me about how you use quizzes.

Associate Dean (Peter)- I list on my syllabus the dates for seven quizzes that are given throughout the semester roughly every other week, though a bit front-loaded so that there isn't a quiz in the last week. Each quiz has four multiple choice questions three of which cover material since the last quiz and the fourth question dealing with material to be covered on the day of the quiz. This is a good way to see what students are learning, where there is some confusion, and to provide incentives for students to keep up with their reading and comprehension throughout the semester. It also helps the class discussions. I give the quiz for the first 8-10 minutes of the start of the class, students can come to the classroom early if they want extra time, and right after they hand them in I use an overhead projector and go over each question to show student the correct answers. To minimize guessing, some questions have more than one correct answer but I don't tell students which questions those are in advance. To receive maximum credit, they have to select all of the correct answers for each question and no incorrect answers. I tell students that maximum credit is earned if over the semester they have scored 90% or better and I throw out the lowest quiz when I do the end of the semester scoring. A majority of students receive the maximum credit, and that shows me that a majority understand a baseline of the material.

Putting it all together...

Professor (Carolyn)- OK, so what happens if I use one of these methods and I find out the students aren't just getting it? Am I supposed to stop everything and go back over the material again? I'll never cover the subject matter!

Professor (Mary)- You might find some areas where it will be important to review some material, but only if the confusion appears widespread. Remember, you are teaching both lawyering skills and using the exercises to see if students have learned the doctrine of Trusts and Estates. If you have important learning goals for the students, then you will want to be sure that those goals are achieved.

Professor (Carolyn) - I see what you are saying. But I think this is going to take a ton of work, and I'm not sure it is worth it. I already spend a lot of time on teaching and I'm worried about finding time for my scholarship.

Professor (Mary) – A couple of thoughts. First there are some ways to borrow from other professors and not reinvent the wheel. A comment on Professor Sedillo-Lopez's blog post from professor Bob Seibel refers to using a CALI tool called media notes to review and give feedback to students on the videotape of the interview itself. So the interview could occur outside of classtime and you could just review it when you have time. The feedback would be available to both students and faculty – one of my colleagues in the Health Law Clinic uses medianotes and would be happy to work with you on this.

If you want to go a more traditional route, there is an Assessment page on the Albany law site that hosts the Best Practicers site, here there is compiled a number of draft assessments for client interviews. You might want to “borrow” what others have already drafted and modify for your own use.

Finally, there is a Blog post from a Trust and Estates Professor who uses will drafting to achieve some of your goals. I am sure she'd be happy to discuss what she has done and

lend you her materials and give you tips. The people who post job the tgeaching and legal reform Blogs are very generous in sharing their insights an materials.

Associate Dean (Peter) - And remember the basics: First, keep your goals for the course realistic. Second, consider how you can be most efficient with the exercises. Depending on the size of the class, there may be some exercises in which students help you by evaluating the work of other students, anonymously of course, using rubrics. You might also consider

Narrator (BGF) – Yes, the time for doing formative assessment is a concern. While our professors continue to brainstorm ways to make assessment more efficient, let’s help them. Turn to your program and at the end of Act II you will find space to jot down some ideas. If you wanted to introduce one of the skills Carolyn has as a learning objective, how might you find a way to assess that skills efficiently and effectively.

Free write –during this one-minute intermission, please answer the following question:

Audience Response Free Write

Choose one of these skills and consider how you might assess student proficiency:

- Plan for client intake interview
- Draft a letter to the client
- Draft a will
- Draft a trust
- Review a client file and draft a legal memo re: will or trust challenge

TIME IS UP – The Play Resumes in the Dean’s office a few day’s later...

Act III

**And she taught
happily ever after?**

Professor (Mary): Boy, you look happy today. What's going on.

Professor (Carolyn): I just finished grading by Trusts & Estates exams, and the class did great. I can't remember ever seeing a better set of exams. They really got everything I set out as goals for the course.

Professor (Mary): What do you think made the difference?

Professor (Carolyn): When they practiced their client interviews, I could see the parts that were still confusing them and help them. And look at the cool rubric I developed. It really worked!

Carolyn's Cool Rubric
Handout #3

**INCORPORATING EFFECTIVE FORMATIVE ASSESSMENT INTO COURSE PLANNING: A
DEMONSTRATION AND TOOLBOX
--HANDOUT THREE --**

| | |
|--|--|
| Client Interview Evaluation Sheet | |
|--|--|

Student:

1) Professionalism (5 points)

Icebreaking
Confidentiality discussion
Discussion of role of attorney
Client retainer
Client's rights

2) Building Trust through Competent Communication (5 points):

Spoke clearly, openly, and accurately
Listened well
Signaled competence, empathy, and safety

3) Obtaining information (25 points):

Sought and obtained specific data, background information, and context
Used an effective mix of open- and closed-ended questions
Demonstrated understanding of gaining information necessary under relevant legal doctrine, e.g.:

- Drafting triggers (family situation, income and assets, etc.)
- Client goals for estate plan

4) Providing Information (25 points):

Discussion of options, alternatives and next steps in light of client goals and relevant legal doctrine:

- provided counsel on difference between intestate and other options;
- discussed availability of range of probate and nonprobate instruments;
- explored relative pros and cons of various estate plans

5) Eliciting Direction (20 points):

Explored immediate and overarching goals

Discussed process preferences

Obtained explicit directions

6) Closing (5 points)

Clear and sufficiently detailed explanation of next steps

Clear description of business agreement

7) Written Plan (15 points)

Accurate statement of information to be verified

Thorough check-list of factual information yet to be obtained in light of relevant legal doctrine

Well considered plan for discussing client goals, process preferences and eliciting direction in light of relevant legal doctrine

Appropriate points for closing interview

Teacher (Carolyn): The only thing I'm worried about now is that maybe I skimmed a bit too much on some doctrine. Do you have any suggestions?

Narrator (BGF): I think you can see that planning is never a linear process – as you think about the criteria for assessment, you recognize that you may want to amend your objectives. Amending your objectives may require new teaching materials or methods, along with new methods for assessment. And through all of this process, collaboration is critical.

So you can see that this is not The End.

This is not
The End

There is time for your
questions and
comments