

**Macquarie University Law
Society Competitions**

Client Interview Manual

Acknowledgments

The compilers of the Client Interview Manual would like to acknowledge the following sources from which they have gathered information.

- The previous editions of the Macquarie University Law Society Client Interview Manual.
- The Australian Law Students Association Mooting Competition Bank.
- Shaun Star and Reece Corbett-Wilkins for their contributions.

2016 Client Interview Calendar (Senior)

| Week | Day | Date | Event |
|----------------|-------|---------------------------|----------------------------|
| Week 0 | Wed | February 24 th | Registration Opens |
| Week 2 | Thurs | March 3 rd | Registration Closes |
| Week 3 | Sun | March 5 th | Semester Draw Released |
| | Wed | March 9 th | Client Interview Workshop |
| Week 4 | Tues | March 15 th | Client Interview Round 1 A |
| | Thurs | March 17 th | Client Interview Round 1 B |
| Week 6 | Tues | March 29 th | Client Interview Round 2 A |
| | Thurs | March 31 st | Client Interview Round 2 B |
| Week 10 | Tues | April 26 th | Client Interview Round 3 A |
| | Thurs | April 28 th | Client Interview Round 3B |
| | TBD | TBD | Quarter Final Round |
| | TBD | TBD | Semi Final Round |
| | TBD | TBD | Grand Final Round |

Dates are subject to change at the discretion of the Competitions Department. Dates of Training Sessions and Round timetables will be released on www.muls.org. Dates for the Junior Client Interview Competition will be released over the semester break in July.

Who to Contact

If you have any questions or queries at all about the client interview competition feel free to contact any of the following people.

For all matters relating to judging, room booking, media enquiries, competitor appeals, and complaints:

MULS Director of Competitions

Janson Lim competitions@muls.org

Or

MULS Competitions Officer (Skills) (Senior)

Millicent Watt compsskills1@muls.org

MULS Competitions Officer (Skills) (Junior)

Marlow Bakous compsskills@muls.org

For all student competitors' queries including team make up, forfeitures, competitor availabilities and queries about the competition:

MULS Competitions Officer (Skills) (Senior)

Millicent Watt compsskills1@muls.org

MULS Competitions Officer (Skills) (Junior)

Marlow Bakous compsskills@muls.org

Where to find...

Rules and Documents:

All rules for Client Interview, including the MULS Competitions Appeals and Forfeiture Policy, are available from the MULS website at www.muls.org/competitions/

Where to find us:

The MULS office is located on the ground floor of the Law Building, W3A 332.

Locations of the Competition:

The Client Interview Competition will be held in the Sydney CBD at various locations as well as at our North Ryde campus.

Directions to and information about the locations:

Macquarie University (North Ryde Campus)

Rounds held at the North Ryde Macquarie University Campus will be in the Trevor Martin Moot Court on the ground floor W3A, the Blackshield Room on Level 6 and other rooms as may be required.

You can access this location by catching a train to Macquarie University, or driving. If you decide to drive, the most convenient car park is the X car park. You can access the X car park at the end of Link Road off Culloden Road, or turn left from the beginning of University Avenue.

Access to the building is restricted after 6pm. If you are judging or competing in a late round, you will need to ensure that someone inside the office lets you in. For more information and for a campus map, go to:

http://www.ofm.mq.edu.au/maps_campus.htm

Sydney City Location

In 2016 the Macquarie University City Campus is no longer available for use. If you are either competing or judging at a city location, the Competition Department will email you the appropriate details accordingly.

Introduction

The concept of a Client Interviewing Competition began in the United States approximately twenty years ago. The original idea was to develop a training exercise that promoted a client-centred form of legal service. The notion of a competition was borrowed from conventional mooting, which for many years has been common in law schools in the United States and elsewhere. While moots are primarily designed to focus on appellate advocacy, Client Interviewing is concerned with developing the skills that most practising lawyers implement on a day to day basis. The competition is designed to provide a forum for the development of interviewing and counselling models, which can be carried into practice.

Structure of the Competition

The competition runs as follows:

- Students, working in teams of two, conduct a 20-minute interview with a new client;
- Prior to the interview (generally a few days before), the team is given a short office memorandum indicating the nature of the problem which will form the basis of the interview. Typically the details are sketchy, although the team would know the general area of law to be involved (e.g. a contract dispute);
- The team then interviews a client who has been provided with a synopsis of the problem prior to the interview. He/she may also be provided with any relevant documents (e.g. a contract or demand letter);
- In essence, the team must endeavour to ascertain the nature of the problem at hand, the various legal and non-legal implications that may be involved, and begin the process of structuring a solution to the client's problem;
- Following the 20-minute interview, the team concludes with a post consultation analysis, in which they reflect on the interview, the nature of the problem and any follow-up work which is to be done.

The Judging of the Competition

The criteria for judging emphasises the process of interviewing. These include:

- the use of effective questioning;
- the ability to elicit relevant information in an efficient way;
- the ability to ascertain the clients goals;
- the structure of the interview; and
- the ability to communicate with the client in a clear and effective fashion.

In short, the competition criterion focuses on the teams' skill in building a good working relationship.

In theory, little attention is to be paid in the judging of the teams' knowledge of substantive law. In other words, the ability to identify issues is not regarded as central.

Time Commitment for Competitors

The time commitment required for participants is difficult to gauge with much precision, however some guidelines may prove of some assistance. The amount of preparation before the day(s) of the competition depends largely on the individual. The lack of emphasis of knowledge of substantive law means that there should not be concern about being on top of the law. Since little information is given about the nature of the problem prior to the interview, detailed research is rather pointless. Some brainstorming about the kinds of issues which might arise can be useful, but the best preparation is to practise basic interviewing skills.

Competitors Guide to Client Interview

The Client Interview is about you as the lawyer, extracting as much information as you need from your client in order to be able to help them in a specific scenario. The lawyer's principal role in society is to help clients resolve problems, not merely to identify and apply legal rules, strategies and techniques. Non-legal problems are frequently at the heart of a client's request for help. Effective interviewing requires that student lawyers elicit information about those non-legal aspects and factor them into a proposed solution.

Effective interviewing is broadly seen as having two components: understanding and action. The first component involves being receptive and responsive to clients by listening to their problems and concerns with sensitivity, warmth and understanding. The second component complements this responsiveness with action-oriented activities, such as identifying primary issues, gathering information and structuring the decision-making process. These components are highly interrelated, and both are essential to successful lawyer/client interaction.

The following is a list of suggestions that may be helpful when preparing for your Client Interviewing Competition.

Before the Competition

At this point it can be said that there are a number of fundamental key steps which can help in the successful completion of your client interview.

These include:

- researching the topic;
- the preparation of general interview questions;
- practice as a team; and
- increasing your awareness of the judging standards and learning the judges' names and their professional background

Whilst you will not be able to ascertain the exact nature of the scenario based on the briefing given, it may still be useful to refresh yourself on any general principles which seem relevant. Furthermore, though it is impossible to know how the interview will progress, you may be able to sway the interview in the way you would like it to head by preparing some general questions.

Prepare with your team. Get to know your partner academically! You have to develop an awareness of each other's, talents, styles, approaches and level of ability with respect to client interviewing. It is important to do this as don't want to be duplicating questions and therefore giving the impression that you are under prepared.

One of the most important steps is to become familiar with the judging standards. All the judges will have to follow these standards in assessing your mark, so a good point is to be familiar with them and make sure you cover them when practising an interview.

During the Competition

To compete successfully in this competition you must be well aware of the format. It is as follows: Each team will go through a thirty (30) minute session.

A. The consultation with the client (the interview)

The first thirty (20) minutes are devoted to a consultation with the client during which the student lawyers are expected to elicit the relevant information, outline the problem, and propose a solution or other means of resolving the problem.

Here, it is vital that the lawyers make the clients feel welcome and in no way through their use of voice or body language make them feel intimidated. This can be avoided by simple logistical ideas such as seating arrangements and the type of dress expected. It is also recommended that you start the interview with some polite introductory conversation to make the client feel comfortable.

After this it is expected also that you introduce the formalities such as:

- initial information for new clients;
- briefly explain the procedure of routine questions;
- explain that everything that is said is to be private and confidential.

Once again, as you move through the problem with the client trying to identify critical elements, it is vital that you have regard to the judging standards. It will be clear to the judges if the competitors adhere to the judging standards because the interview will run smoothly, and in no way will the client be frustrated that they were not able to convey their story or problem to the lawyer.

B. The post-consultation (the wrap up)

Once the client leaves the room, the judges have been asked to invite the client back in the room, and ask the competitors to leave. You should take this few minutes to have a think about what you will say next. During this time (no more than five (5)

minutes) the judge will ask the client about their experience with you as the solicitor team. Once five (5) minutes expires, you will be invited back into the room and the client will be asked to leave.

The post consultation may include;

- a) summarising the interview
- b) indicating the scope of the legal work to be undertaken; or
- c) stating the position or attitude taken by the student lawyers.

For example, it may appear to a 'spectator' that the lawyers during the interview were a bit hostile to the client. The post-interview discussion might explain the purpose of such hostility.

During the first five (5) minutes of the post consultation period, the student lawyers may review the facts, point out facts which have been omitted, offer a self-critique, comment on the substance, plan strategy, divide work, write a letter, or otherwise use the time creatively. The students may confer privately and then make a presentation to the judges. The student lawyers must talk loudly enough to be overheard by the judges or they may dictate a file memorandum on the interview or both. Competitors should also comment on their interview according to the criteria in the marking guideline.

C. Critique

For five (5) minutes, the judge will ask you questions about your performance to assist them decide who should win the competition.

Time limits are as follows:

- Consultation with client: twenty (20) minutes;
- Not less than five (5) minutes where judge questions client;
- Private post consultation between students: five (5) minutes;
- Critique with judge: five (5) minutes.

Note: The time limit changes for the client interview part of the competition during the final rounds, from twenty (20) minutes to thirty (30) minutes.

The 4 Part Interview Model

An interview can be broken up into four parts:

1. Icebreaking;
2. Initial problem identification;
3. Information gathering, and
4. Closing.

1. Icebreaking

It makes sense to begin an interview with a few moments of small talk. This allows the client to relax, to overcome initial fears and embarrassment s/he may have about his/her problem and to initiate a working relationship on a friendly level.

There is no hard and fast rule as to how much small talk is appropriate. There is no substitute for experience here. Students must recognise that the amount of introductory small talk must be tailored to each client's needs and desires. One client may want to chat about parking or the weather or last night's basketball game, while another, particularly one who is distressed, may want to get down to business. Too much small talk wastes time and may decrease your client's confidence in you. Too little chitchat may stamp you as cold and insensitive, interested only in his/her legal problems, not the "whole-client."

The important thing to know is that some icebreaking is important, and any student lawyer, if he or she is paying attention, will know when to chitchat some more, or begin information gathering.

2. Initial Problem Identification

No lawyer can solve a client's problem without the help of that client. Rapport in an attorney relationship is of such importance that it makes sense to begin to develop it as early as possible. By establishing rapport, lawyers motivate a client to provide needed information.

Throughout the preliminary problem identification students should use open-ended questions, active listening, and structural guides to encourage a client to continue describing the problem until s/he feels s/he fully understands the client's problem.

Examples of structural guide questions would be: "Can you give me a brief description of your problem, how it arose, and what solution you hope to find?" "Please start by giving me a description of our problem, whatever concerns you may have, and how you would like things to turn out."

A useful way to conclude this section of the interview is to summarise the client's problem. Brief summaries of this sort, conveyed to the client using his/her own words where possible, encourage rapport by showing the interviewer is listening and that s/he understands the client's problem.

3. Information Gathering

By the time lawyers gets to this stage of the interview, s/he is in the meat of the event. The lawyer has met his/her client, gained some rapport and identified the problem for which s/he has come to him/her for solution. Now is the time to gather the information necessary to begin a resolution of the client's problem.

There should be two phases of information gathering:

- the time line phase;
- theory development and verification phase.

During the time line phase, a volunteer seeks to create a chronological, step-by-step narrative of events giving rise to a client's problem. The chronology begins with

whatever the client believes first gave rise to the problem and continues to the time of the interview. Basically, the time line is a client's unembellished version of his/her story, refined only by student's suggestion to relate it in chronological order.

A time line story will suggest a number of potentially applicable legal theories. During theory development, such theories prompt a rigorous and systematic search for additional information from the client which a client failed to mention during his/her presentation of the time line. In other words, the client provides the skeleton of the story in his/her time line and the volunteer provides the flesh and blood by tailoring the conversation based on his/her legal theories and need for specific information.

Students develop interviewing skills by learning which questions to ask and how to ask them. The information received from clients, their motivation to speak, and their attitudes towards their interviewer are all influenced by the kinds of questions asked. Students must learn to ask questions that invoke the two components of effective interviewing: understanding and action.

Clients are served best by encouraging their active participation in the description and resolution of their own problems. Left to themselves, clients may not participate as fully as they should. Therefore, students should be aware of factors that tend to obstruct active client participation.

4. Closing

An interview should be closed with an understanding between the interviewer and client as to the client's status with his/her case, the actions to be taken by the volunteer and the client, and a brief assessment of the client's circumstances. Any uncertainties should be made identified.

The client will want to know what his/her "chances are" for getting what s/he wants. It is not wise to make any promises, but leaving a client completely in the dark may give him/her the feeling that the interview was unsuccessful, and that further efforts on his/her part are futile. A tentative assessment can help to keep the client interested and motivated to participate.

Finally, it should be made explicit what actions will be undertaken by the solicitor and what, if anything will be done by the client. Identifying the actions to be undertaken fosters client confidence, avoids miscommunication, and helps expedite matters.

Things that Inhibit Good Communication

Below are several "inhibitors" to full communication between interviewer and client which volunteers should be aware of:

Ego Threat - Clients tend to withhold information which they perceive as threatening to their self-esteem. If a client believes a truthful response will lead the interviewer to evaluate him/her negatively, such a response threatens the client's ego.

Case Threat - A client may believe that revealing certain information will "hurt his/her case."

Role Expectations - Clients will usually enter an interview with a set of expectations about what constitutes appropriate client behaviour. Many clients, who are often poorly educated, low income clients, may think of their "lawyer" as occupying a position of authority, with the client in the corresponding subordinate position, may be somewhat reluctant to communicate fully in the belief that the interviewer knows what subjects are worthy of inquiry. On the other hand, some clients may feel superior to young law students and not fully cooperate for that reason.

Perceived Irrelevancy - The most difficult of the inhibitors to recognise. This occurs where the client feels there is no need to provide the information to the interviewer.

Greater Need - A client may need or desire to talk about a subject other than that which is of immediate interest to the interviewer. As a consequence, the client is unable to concentrate on the interviewer's question, and full and accurate information is not obtained.

If a student recognises or suspects an inhibitor between themselves and their client, they must take actions to limit the inhibitors of their client. Several "facilitators" exist which help to encourage clients to participate in the interview.

Empathetic Understanding - This usually gives clients feelings of trust and confidence in the interviewer and thereby motivates the client to participate fully in conversations. It is important that the volunteer express that empathy for the client.

Empathy is not putting in your two cents or giving advice (e.g., "Don't worry, you'll feel better tomorrow," or, "You're probably angry because you didn't see it coming."). Empathy is acknowledging the feelings attached to descriptions by the client (e.g., "You must have been very frightened."). Volunteers may be surprised how a kind word and a little understanding can open a floodgate of information from a reluctant client.

Fulfilling Expectations - This refers to people's tendency to want to satisfy the perceived expectations of those with whom they interact. This facilitator is especially useful when interviewers sense that certain inhibitors are making a client reluctant to talk. An interviewer can verbally convey a strong expectation that the information sought should be revealed. Nearly every client who undertakes to seek legal help knows deep down when they go into an interview that certain information is expected to be revealed, even if they are reluctant to begin talking about it. By explicitly reinforcing this expectation the interviewer gives the client the go ahead to talk about matters s/he may not otherwise.

Recognition - Giving recognition to a client motivates him/her to be more cooperative and open. Everyone needs attention and recognition from people

outside their own circle of family and friends. Clients appreciate the feeling of importance and the esteem they receive from someone in a position of importance to them.

Even a simple "That was very important information you just gave me," provides the client with helpful recognition.

Altruistic Appeal - People often feel a need to identify with a high value or cause that is beyond their immediate self-interest. A person's performance of altruistic deeds usually increases their self-esteem. Thus, clients are often motivated to participate fully in the interview when doing so makes them feel altruistic.

Extrinsic Reward - Interviewers may facilitate the disclosure of information that a client is reluctant to discuss by pointing out why the information is useful to his/her case. A student must merely indicate to the client that providing the information is in his/her own best interest.

Once a student becomes familiar with and learns to recognise and use inhibitors and facilitators, s/he must carefully choose the form of questions s/he asks his/her client in order to fully maximise the information s/he is gathering.

Types of Questions You May Ask

There are three types of questions a student must recognise:

- Open questions;
- Closed questions; and
- Leading questions.

Each form of a question has its own advantages and disadvantages and each student must learn when it is proper to utilise which form.

Open Questions

Open questions allow a client substantial latitude to select the content and wording of a response. They indicate to the client an expectation that the response will be of some length and that the client should use his/her own words.

Examples of open questions are: "Tell me what brought you here." "What happened at the trailer that night?"

Open questions often motivate clients to participate fully because they allow the client to decide what information is significant. Open questions also overcome inhibitors by allowing clients to discuss sensitive information in their own time and in their own way when they are ready to do so.

Open questions also promote completeness by preserving the client's train of thought. Much the same as having the client proceed initially in a time line chronology; open questions promote recall of a more comprehensive set of facts.

Open questions do have their disadvantages as well. They can inhibit participation by putting too much burden on the client for recalling and describing information. They are also ineffective for gaining complete information. Open questions usually solicit sketchy outlines of events and leave out the detailed information usually necessary to obtain relief.

Finally, open questions can be an inefficient method of gaining information from loquacious clients. Occasionally student volunteers will come across a client of this type. Asking an open-ended question to this client is like pouring gas on a fire.

Closed Questions

When open-ended questions do not provide the necessary information, a student volunteer may switch to closed questions. Closed questions focus on specific topics, thereby stimulating memory and producing details that a client might otherwise have forgotten or glossed over in response to an open question.

Examples of closed questions may be:

"When did you first meet John?" "Who else was in the room with you at that time?"

Closed questions motivate clients because they are easier to answer. The topic is readily identifiable, their scope is readily apparent, and the client need only provide a limited amount of information. Closed questions also allow the interviewer greater control. The interviewer can decide what is important to ask, at what speed to perform the interview, and what topic to discuss next.

Over reliance on closed questions, however, may leave a client with the impression that they never got to say what was really on their mind. Also, closed questions often do not allow the client to express his/her true feelings and may not allow the interviewer the opportunity to express empathy and use other facilitators that strengthen the relationship.

Finally, closed questions, when not used with a combination of open questions, may cause the interviewer to see only trees and not the forest. The interviewer may be so caught up in the details of one particular event, s/he may forget to ask, and never learn of other important events.

Yes-no questions are the ultimate in closed questions. They are most effective when used to clarify client statements.

Leading Questions

Leading questions suggest to the client that the event asked about had taken place. These questions are extremely effective in overcoming certain inhibitors, such as ego threat, case threat and etiquette barrier. When an interview touches on a sensitive matter the client may be inhibited to discuss, leading questions suggest that the interviewer already knows about the troublesome information, and that s/he is prepared to talk about it in a forthright manner.

Problems with leading questions occur when the interviewer has an ardent desire for the facts to come out in a particular manner. Students may involuntarily put words in the client's mouth in order to mould the facts around their own conclusion, in a manner which may not reflect the actual case. Moreover, leading questions may be unethical where interviewers suggest "correct" answers to clients.

Motivating clients to participate fully in the interview process and gathering complete information will require student volunteers to make use of all the forms of questions. It is generally considered that the information gathering stage of an interview is best begun with use of open-ended questions. Once the interviewer uncovers events s/he requires further information about, s/he then utilises closed ended questions to steer the conversation toward the needed facts. Along the way the interviewer will encounter and suspect inhibitors and combat them with facilitators, leading questions and other interviewing strategies.

Once again, there is no substitute for experience. No single client is typical in all respects. Interviewers must tailor these interviewing techniques to the dynamics of individual clients' needs.

Contributions from Past Competitors

Shaun Star

Often the best way of learning how to apply legal skills is to apply them in a real life context. The MULS Client Interview Competition will provide you with these 'real life' scenarios that reflect what you are likely to experience as a practicing lawyer.

A client will generally come to a law firm for his or her first consultation in order to seek legal advice. It is important to remember, however, that most clients will have limited legal knowledge and may also feel intimidated by the prospect of meeting with a lawyer. It is therefore important to ensure that the client feels comfortable and confident that they can trust you as their legal advisor. Broadly speaking, in order to succeed in the client interview competition one needs to find the right balance between making the client feel comfortable in the interview whilst giving them sound, concise and easy to understand advice.

I will briefly outline how my partner and I typically conducted client interviews during the MULS and ALSA Client Interview Competitions in the hope that it will give you a few ideas of a structure you may wish to employ in your interviews.

Step 1: The Welcome and Introduction

In order to make the client feel welcome, introduce yourselves and before shoving your legal retainer under his or her nose, it may be useful to greet them and initiate the conversation with some *small talk*. If you have business cards, it may be helpful to provide the client with your contact details at this stage of the meeting – this is

useful for two reasons: it helps them remember your name, and enables them to have your contact details readily available should they need to contact you later.

To make the client feel at ease emphasise your duty to maintain confidentiality of all information that they disclose to you about their case. They will be more inclined to tell you relevant information if they feel confident they can trust you.

Give the client a general outline of how you plan to structure the interview (this *agenda* should be dynamic and flexible) so that they know what to expect for the next 30mins or so. During this phase of the interview you should also explain the retainer to your client, and provide a rough outline of your firm's billing/cost structure (ie, how much will this initial consultation cost [is it free?] and how much will every subsequent hour cost etc).

Step 2: Problem Identification

This stage of the interview process allows you to gather information from the client about their case. Broadly speaking, you should find out from the client why they have come to you to seek legal advice...

Usually, it is helpful to start asking the client open ended questions, allowing them to narrate their story, or the chain of events, that has led them to seek your legal opinion.

Firstly ask the client to explain briefly in their own words what has happened. Following this, by asking them questions such as 'what happened next...'; 'Please tell me more about this...', you will encourage them to elaborate in their own words.

During this stage of the interview it is helpful for one of the interviewers to take notes and highlight any areas of the client's story that may be worth querying later on. That is, after the client has finished explaining their story in their own words, it may be necessary to probe and ask closed questions to elicit more specific information. For example, if the client mentioned that they were involved in a car accident, it may be worth asking questions as to whether he/she noted the details of the other driver, whether any witnesses were present, whether he/she reported the situation to police etc.

It is important to ask narrower questions (cf open questions) as you should be asking questions that will help you ascertain if a legal cause of action will arise on the facts.

For instance, if the client has come to you disputing the existence of a contract, it will be useful to ask questions that will help you determine whether the elements of a contract can be established on the facts. That is consider asking questions about the offer, agreement, consideration and whether there are any vitiating factors etc.

Before moving on, it is helpful to paraphrase what the client has said and make sure that you have understood them correctly. It is also important to constantly build good

rapport with your client throughout this process by reassuring them that you understand their issues etc.

Step 3: Ascertain further information

Again, recap the relevant points of the client's story and check whether they have any relevant documentation etc. that may help your case. For instance, after recapping the issues, if you determine that your client wishes to enforce a contract, ask the client whether they have a copy of this contract.

Step 4: What are the client's desired outcomes?

Remember that as a lawyer *the client is instructing you*. Accordingly, it is important that you ascertain exactly what the client wishes to achieve by taking legal action or more generally by seeking your legal opinion. Their desired outcomes may include monetary compensation, the enforcement of a contract etc.

Step 5: Option Generation

Walk your client through the possible options that are available to them in resolving their legal issue. These options may be legal (eg, litigation, mediation, negotiation) or non-legal (writing a letter to the other party, simply talking to the other party etc.).

Remember to explain to your client what the advantages and disadvantages of each option are (as the decision of what course of action to pursue is ultimately up to them).

After explaining each possible alternative to them, ask them which they would like to pursue after weighing up the pros and cons of each.

Step 6: Summing up the interview

It is important to conclude the interview on a proactive and positive note so that the client leaves satisfied and wants to retain your services. Accordingly, briefly recap the main issues, their desired outcome(s) and the best courses of action available to them in their context.

If possible, give them an estimate of costs, otherwise assure them that you will let them know at your earliest convenience. Encourage them to take the retainer with them, read through it and sign it at their earliest convenience so that you can begin acting on their behalf. Remind them of any important documents that they should locate that will be useful in resolving their legal issues. Schedule a follow-up meeting with them in order to finish on a proactive note.

Finally, it is important to remember throughout the interview to avoid any ethical dilemmas that may arise. This is also a requirement of the Client Interview Competition. As such, be aware of your ethical duties as a lawyer and act accordingly.

It is also important to make sure that the client leaves the interview feeling more comfortable about their situation than when they walked into your office. Keep this in the back of your mind throughout the consultation.

During the **post consultation**, recap with your partner what you feel you did well as a team and what areas you think you could have improved upon. Consider also how you think the client felt throughout the meeting. During the post consultation period, briefly discuss with your partner the main points that came out of the interview and what roles each of you will take moving forward in order to achieve the client's desired outcome.

Best of luck in the competition!

All the best.
Shaun Star

Reece Corbett-Wilkins

Client Interview is a very unique competition in a number of ways. First of all it takes place in a comparative rather than a purely competitive sense. You do not compete against a team directly but rather perform the same interview as your opponents before or after them and try to get a better score.

Secondly, there is no clear way to deal with each scenario in advance and you really have to react to information quickly and be ready to adapt your plans at any stage.

Finally, you have very little control over the biggest variable in the competition, the client. In other competitions you can draft your submissions, prepare your statements, plan your BATNAs and WATNAs, but in client interview competitions you never know what type of client you will get.

The following is a collection of tips and tricks that have been gained from experience, learnt over time and in some cases, acquired from watching other teams. These tips and tricks are intended as a guide only and can be used by competitors at any level. One thing to bear in mind though is that Client Interview is all about the human element. You have to create a good atmosphere where the client is able to give you their trust, faith and understanding. Teams are encouraged to develop their own style and confidence.

I am a first time competitor, what do I do?

Starting C.I. for the first time can be somewhat confusing. You get very little idea of what is expected in the competition beyond that you must interview a client and advise them about their issues. Obviously to be successful you need a little more than this. So here are some steps that I encourage you to take.

Read the rules of the competition and understand what is required of you as early as possible. You can access the competition rules and judges marking guideline on the

MULS website. Once you understand how points are allocated in the competition, you will know how judges will award points. The score sheet is also a useful framework to work off. Remember, this is a competition. Make it easy on the judge to award you points.

Attend the training workshop

This will give you a good run down on what is expected, let you learn how to conduct an interview and ask questions about the competition. The workshop is also a great place to pick up handy techniques and useful catch phrases.

Team mates

This is a very important part of client interviewing as it is the foundation upon which you will build atmosphere and rapport. Your teammate should be someone that you work well with. A large part of winning C.I. comes down to the environment you create for your client and it is imperative that you work well with your partner. The best teams are those who are able to be on the same wavelength and almost read each other's minds. If you have been partnered with someone randomly or someone you do not know well it is important to work on getting to know one another's idiosyncrasies.

The working relationship with your partner is invaluable in C.I. If you are constantly talking over one another or pulling the client in different directions it is very hard to build rapport. If you can get your team working flawlessly before you get in the room you are already well on your way to success.

Once you have registered in a team, research how to conduct a client interview. As mentioned before, most teams should have their own style. Most of the format of the interview will remain unchanged amongst teams and from interview to interview. However, you will need to adapt your style based on the client, complexity and type of matter your client brings. To prepare, there are numerous written resources and also visual resources available to you. We have included some below which you can find in our library.

We understand the basics about the competition but what do I do before I compete to better prepare ourselves?

The first step is to work out a timeline or flowchart, which details how you will structure your client interview. You should also consider delegating tasks to each partner so you are clear who says what. By doing this, you will be sure to cover all the necessary items in the interview, and stay on task within the time limit.

The second step is to practice a few times with each other so that you can become comfortable with what to say and when to say it. However, be warned that you do not want to get this structure so ingrained that you cannot change it if your client reacts differently than expected. For example, a client may not want to discuss costs with you until the end of the interview, or they may not want to sign the retainer until they have taken it home first. You also do not want to fall into the trap of making your interview look too scripted. This will come across as fake.

If you want to get a better understanding of what an interview could be like, you may be able to obtain past questions by emailing the Competitions Director or Competitions Skills Officer at MULS.

We have received the memo from the ‘secretary’, what now?

The first port of call is to make sure you have good working knowledge of the area of law that the memo relates to. You need to familiarise yourself with the kinds of issues and processes that your client might face. However, only a very small amount of your total marks will be allocated based on your knowledge and understanding of that area of law. As such, you do not need to know the intricacies of that area of law.

Remember as well that you CANNOT give legal advice until the client signs the retainer as you are not covered by indemnity insurance (nor are you getting paid!). If you are intent on showing off your knowledge of the law, you should focus on giving legal information but not advice.

To this end, learning the legal process that the client will have to undertake to achieve their goal. For example, if a client wants to apply for a divorce, they would want to know that they must be separated from their husband or wife for 12 months. You might also want to explain that they must undertake pre action procedures before applying to court to nullify their marriage. You can tell them that they can file the divorce application in the federal magistrates court or the federal court. This is all legal information and not advice.

For some really good BASIC yet practical information about most of the areas of laws that you will have to deal with, consult the *Law Handbook*. Some of the chapters are available online at

http://www.legalanswers.sl.nsw.gov.au/law_handbook/.

NB: Some parts of this text are out of date (consumer credit law, tenancy law etc) but the information relating to the process that a litigant takes to assert/ defend their legal claim should remain the same. Alternatively, www.lawaccess.nsw.gov.au provides some practical legal information about most areas of law.

Remember the goal here is to provide legal information and not advice.

It is also important in your research to consider the non-legal options that might be available to the client. These options can be anything from alternative dispute resolution (mediation), to writing a letter or even just talking to their neighbour about the problem before they begin litigation. These are important as non-legal options play an important role in offering your client options and giving them ways of cutting costs.

It may also be a requirement that they first undergo non-legal options to resolve the dispute before they can rely on the courts to intervene. This occurs for example in disputes about property settlements and parenting orders after separation. You must also be aware that very often your secretary will inform you of one legal issue, but the client will often have multiple or even completely different legal issues

from what the memo says. There was one instance where a client came in complaining about an accident at the gym. We had researched everything to do with tortious liability, contractual liability and insurance only to find out that the accident at work was one of five issues, including an unrelated criminal law matter and an unrelated property law matter. So over researching one area of law may prove fruitless and will narrow your mindset too closely to the issue on the memo.

Finally, do not be afraid of not knowing the answers to the questions your client asks. Most of the topics are on very general areas of law. However, if you are unsure about a specific answer, then get as much information out of the client and let them know what you think at this stage. Inform them that you will do some research to give them a concrete answer. NEVER make things up, and do not give wrong legal information/ advice.

What do we NEED to cover in the interview?

There are a few basic points that you MUST cover in the interview.

- Who you are
- Retainer
- Costs (check the Client Interview Rules for the schedule of fees). For more information on fees go to http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_factsheet2
- Confidentiality
- Ensure you have their contact details correct and ask for the preferred contact method
- Run through their issue in their own words
- Clarify their concern
- Provide them legal and non-legal options
- Book next appointment and make sure they know how to contact you
- Have an action plan of what will happen after the interview, let the client know what you will be doing for them and what they need to do for you

What do we do at the end of the interview?

Once the interview is finished and the client has walked out the door, you will have some time by yourself with your partner to prepare for the post consultation. This post consultation is marked by the judge according to a set criterion (check out the manuals and rules for more information).

We need to emphasise here that the post consult can make or break teams. It is VERY important that you get this part right. Here is a brief case study example.

At ALSA 2010 grand finals Nick and I had 'lost' the client interview in the sense that the other team had been able to elicit certain key information early in their interview, and we had not been able to until the last 30 seconds of the client interview. We knew that there was something that the client was not telling us early in the piece, but we simply failed to elicit the information until the end of the interview.

It turns out the information was very important as it related to a beneficiary of our client's will possibly not having capacity based on some mental illness they suffered as a child. This meant the beneficiary may not be able to deal with their inheritance appropriately.

Consequently, the client's (testator) estate may not be devised according to their wishes in the will should they pass away unless we were to write the will with certain provisions to account for the fact the beneficiary had a mental illness.

Sitting outside the Supreme Court of SA, Nick and I were stressing out thinking "Oh gosh how did we manage to get that information out of them only at the very end of the interview?" Instead of focusing on what we did not do well, we focused on how we could turn this into an opportunity. What we did next handed us the win. We went into the room and conducted our post consult. We talked about what the client told us and how we could move forward on that information. We then talked about possible information the client DID NOT tell us and how, if we were to move forward without at least confirming that information, we would be providing wrong legal advice and not acting according to the client's wishes, and therefore opening ourselves up to liability.

So the end of the consult finished with these words: "I am not prepared to begin working on this client's matter until we confirm the entire situation with regard to the beneficiary's mental state. Let us first work on that, before we begin writing our client's will. If there is nothing further to confirm in that regard, then this is what you and I will do next for our client..."

So, to make the most of the post consultation period, you need to go through the criteria one by one. You need to give considerable time to answer each part. You also need to be realistic. If you did not work well as a team, then do not sugar coat your performance.

Say,

"Nick, when I was talking to the client you talked over me. This did not look professional, it confused our client, it made it more difficult to get back on track, and quite frankly, it frustrated me. Please ensure that you let me finish speaking next time so that we do not have the same problems. This will ensure we can work better as a team."

If you do well at something, make sure you point it out! (This is after all a competition).

Some general tips

Do not give legal advice! Give legal options and information but not legal advice. Sometimes there is a very thin line that separates the two. If you find yourself advising on likelihood of success, on financial figures, on time frames, then you are probably giving legal advice. If you are telling your client something that any client with a similar issue could find helpful, then this is probably legal information.

Give non-legal options as well as legal options. For example, if a client comes to you talking about their neighbour not paying half the price to fix the adjoining fence, you can tell them their options have the matter finalised may be to (a) obtain an order to fence through the land and environmental court (b) build the fence yourself and not split the costs (c) leave the fence as is (d) approach the neighbour and try and work it out amicably having obtained legal advice (e) offer to mediate at a community justice centre, legal aid, or 'our legal office' if you are not comfortable approaching the neighbour yourself (f) move to another area.

Can you see here that only option (a) is a legal option, but they are all realistic options that the client can take. Sure, your client may not like some of them (moving areas for example) but at least they are now informed of their options.

Sometimes the answer client's want is not really a legal option. Here is why. Taking the above example, if they fix the fence and then seek costs, or if they apply to the court for a fencing order before they build and in either situation the existing adjoining fence is a 'sufficient dividing fence' (the legal test) and therefore does not need to be knocked down and rebuilt, then your client may have to pay for: the fence, your legal fees, the other sides legal fees and court costs. And if they win, the other side may have to pay for, half the fence, your legal fees, their legal fees and court costs. And after months of court action where does that leave your client? Living next door to one very tempestuous neighbour!

Let the client tell his or her own story. Obviously you need to temper this with keeping them on track (as they will have a lot of red herrings and miscellaneous and irrelevant information to tell you). The point here is to make them feel comfortable in disclosing information to you. You will then have a 'full picture' from which you can pick out the important points. That said, sometimes they may provide you with irrelevant information.

Nevertheless, you have to realise that to them, everything is relevant. You have to remember that while this is just another client with another legal issue, this legal matter is consuming their everyday life. If they start to ramble bring them gently back on track with some questions.

Manage the client's expectations as to what you can and cannot do. Do tell them what you are going to do for them. Do not promise them the world. If you need to refer the matter to another partner who is an expert in this area of law, or you need to research the matter before you can advise them as to a likely outcome, then tell them that. Do not just say, "we can get you off", or "we can get you your house back" if you haven't the faintest clue as to whether you can or cannot!

Extract the information from the client in creative ways. Most of the time they will be briefed not to disclose some information unless you specifically ask them. Don't be frustrated; most clients in real life will not disclose information they think will prejudice their case. The trick to do this is keep asking open questions. Wait for them to tell their story. Write down inconsistencies or points that you need to clarify. Then

when they have finished, ask them if there is anything further they feel is important to their matter, and if so, could they please tell you now. If the answer is no, then repeat the key points they have told you. Once you have clarified their concern based on what you have been told (again an opportunity for them to shed light on what they *meant* to tell you the first time), you can then begin to ask closed ended questions.

Remind them of confidentiality throughout this repeat process. If they are lying, or omitting information once you have asked them about it, you can always appeal. In relation to “hidden” information; things like names, times, intoxication, dates, relationships should always be probed. If a person comes up in the client’s story make sure you know who they are and what their relationship is to the client. It is also a good idea to question the motive of the client. If the client makes a big deal about needing money from a slip they had at the shopping centre, then their real legal issue may be a bad mortgage, a need to buy a property or a way out of a job they are being harassed in. However make sure you ask about their motive in a tactful way as you do not want to put them off side.

Spot the ethical issues. Some may be harder to pick up on than others. For example, if your potential client has a matter involving another party, and you have represented that other party in the past, you cannot represent the new client. If a client tells you they cannot afford you, inform them of free legal services available to them after you have told them of your firm’s brilliant pro bono policy! Also tell them of ways they can reduce legal costs by doing research themselves, finding documents, contacting other parties etc.

Remember that although the client is coming to you with an issue and it could earn you money, sometimes you might not want to take on the client as they could be a liability. This rarely occurs and should never be mentioned to the client but should be covered in the post consult if applicable.

Find a good ‘client’ (the person you ask to be your client). Your client should be able to read the information, remember the most important parts, and then take on the role as though they are the person in trouble. The more convincing they are, and the less they rely on their notes, the easier it will be for you to conduct the interview. It will be a more authentic experience for you and you will get more out of it. I would recommend a student who is NOT a law student.

If the client mentions a contract, letter etc. ask for it. If they do not have it on them then ask as much detail as they can remember and make sure that in the action plan before the end of the interview that they know to get a copy to you.

If a client needs non-legal assistance (for example family counselling, relationship advice, financial advice etc.) you should help make that referral. You will come across to the judge as being aware of the bigger picture. Remember that client’s will have a plethora of issues that stem from the legal issue.

Good luck this semester!
Reece.