

# How to Run a Transactional Clinic

The proliferation of transactional legal clinics amongst law schools is a relatively recent phenomenon. Though nearly all accredited American law schools now have some sort of clinical program, only about 10% of total clinical offerings are transactional. The numbers, however, are growing substantially with law students demanding more diverse experiential learning that reflects the practice alternatives that exist in the marketplace.

The information in this section is intended to assist faculty and administrators at law schools develop, plan, and operate transactional clinics. It is organized by the different operational components that one must think about before offering legal services to clients. Many of these components are supplemented with sample documents from assorted law schools already offering transactional clinics to students and clients.

It is important to note that there is no singular way to organize and operate a transactional clinic nor is there a template that will work for all comers. The purpose of this section of the Website is to give one a basic understanding of some of the issues involved, and a few ideas for how others have dealt with them.

## **Student Enrollment**

Every school has its own method for selecting students for a clinic. It ranges from a lottery (and there are many versions of this) to open registration during general course selection to a more selective interviewing process. If clinics have any discretion over the method of enrollment, some of the issues to consider are:

- Student demand
- The sophistication of the clinic's work
- Is it a single term or multi-term clinic
- Will there be both second year and third year law students in the clinic simultaneously
- Diversity of viewpoints, perspectives, and experience
- How many students can faculty reasonably supervise

A common tension exists between providing students and clients with the best experience possible and maximizing the number of students that can cycle through a clinical course. Faculty must keep in mind their pedagogical goals with regard to what they want students to take with them after they finish working in a clinic. That may influence how one treats enrollment.

Clinicians almost certainly will have to draft a description of the clinic. This is an important marketing tool for a clinic as well as it being necessary for registration. (See [Course Descriptions](#) for more information). A description may highlight the

types of client engagements students experience in a clinic, the skills they are likely to develop, or the pedagogical goals of the course. Translating the experience (however one conceives it) into something that will make students stronger in practice, is essential.

### Clinic Procedures

A transactional clinic is often one practice group in a larger clinical law firm. As such, it must often coordinate its practices, policies, and procedures with that of the larger firm. Depending on the size of the clinical program at one's school and the bureaucratic tendencies of those involved, this can involve significant time and effort before getting a specific clinic operational. In addition to the larger firm procedures, a clinic may want to initiate its own, that relate to how it wants to produce work for its clients.

The primary purpose of implementing uniform policies, practices, and procedures is to bring uniformity and professionalism to the aggregate work being done by the many students that cycle through a clinic. One can imagine how inconsistent and unprofessional it would look if a client received numerous letters from its lawyers with each one written in a different font, with different formatting, and sent on random letterhead (or no letterhead at all). Another important purpose for establishing procedures is to implement a system that allows supervising attorneys to regulate the output of students. In other words, to make sure law is not being practiced without a license.

Many clinics produce a "clinic manual" that codifies all of its policies, practices, and procedures and acts as a resource for students through the course of their time in a clinic. Some of operational matters that clinics address in manuals are:

- Access to shared/networked computer drives
- Client communications (phone calls, email correspondence, regular mail)
- File creation and maintenance
- Conflict checks
- Travel reimbursement
- Copying and faxing procedures
- Same day or overnight courier delivery process
- Reserving conference rooms
- Time keeping

Samples of clinic [Manuals](#) are posted in this section.

Though a manual may appear like a great idea on its surface, it's important to note that the reality of its use may belie the point of its existence. Students are quick to ask a question and slow to refer to a manual. If the actual practice in a clinic is one where students learn procedures by asking questions of the staff or faculty, then the robustness of a manual may be more of an academic exercise. The use of a manual is

highly dependent on the staff and faculty enforcing the requirement that students know the material that is included in it. That means not answering the simple questions even if it's easier for the faculty supervisor. It also means that the manual may be used more as a reference and consulted as needed. Therefore, one may want to organize it in such a way that students can easily access the information they are looking for. With the increased advent of intranet technology, creating and posting an electronic version of the manual with hyperlinked contents could prove useful.

### **Client Selection and Intake**

Transactional clinics, like litigation clinics, can choose to service a wide variety of clients. This section is not meant to provide any guidance regarding "mission" even though it is a very important issue to consider. Regardless of mission, however, every clinic must have a process by which it chooses clients. Sometimes that process is described in a clinic manual. Some clinics have their students involved in the process and layout defined criteria for what makes an appropriate client. Other clinics relegate those decisions to faculty for pedagogical consistency and institutional considerations. In any regard, every clinic must have a process in place that collects enough information from applicants to be able to make determinations about whether to accept them as clients.

This can be done in many ways but often starts with an application form which asks basic information about the individual or organization seeking assistance, including information about their business or venture (See [Client Intake](#) for more information). Some clinics have automated the process by making the application form web based. The application acts as the first vetting in the intake process. Will an applicant take the time to fill out the application completely and thoroughly? If not, that reveals something about the applicant's commitment toward being a productive client. A clinician can design her application to be more or less discriminating as desired. Most clinics are capacity constrained, so they cannot service every client that desires assistance. Clinics may decide to choose clients that will provide the best educational opportunities for students.

Client applications are usually followed up by a screening telephone call. A staff member, student, or faculty supervisor can do this depending on preferences and pedagogical objectives. Each has its advantages and disadvantages. The idea behind the call is to further screen the applicant to determine whether the client is in need of service, appropriate for the program, and will be a good client for students to work with. A face-to-face meeting is the next step and one where it is always good to have students involved in some capacity (if not in charge of the interview entirely).

### **Pro Bono vs. Fees**

Though the traditional model for legal clinics has been to provide pro bono legal services to indigent or needy clients, in the transactional setting, some clinics do charge fees. Apart from the philosophical and strategic reasons for doing this, a

program will want to consult its state's student practice rules to see if they constrain its ability to implement a fee model. In some areas, consulting with the local bar association may also be a good idea.

### **Client Assignments**

How clinics assign clients to students is influenced by the needs of the client, the ability of the student, pedagogical considerations, and efficiency. If a clinic takes on more sophisticated matters for clients, the work load may be more than one student can handle by himself, thus clinics may want to team students. Even without an overly complicated matter, teaming students can provide student counselors a built-in resource. In the best circumstances the students learn how to work together toward a shared goal. Special considerations when teaming students include how to supervise the work and how to handle compatibility issues between teammates.

Solo assignments also can provide a tremendous experience for students in that students are forced to figure out matters for themselves. They must establish their own relationship with the client, ascertain the client's needs, develop a plan, and execute it. Students tend to emerge more confident in their own abilities after handling a client individually. The downside to this is that in some real-life job markets, young lawyers are unlikely to work alone. Many clinics use a combination of teamed and solo assignments.

### **Engagement Letter**

Once a clinic accepts a client, it is a good practice to have students draft an engagement letter outlining the scope of the representation and the relationship with the client. Often, struggling with the threshold determination of who is the client is a meaningful exercise. More directly, however, the engagement letter allows a clinic to define the scope of the work it is undertaking for a client so that it fits within whatever time, capacity, and expertise constraints it is working within. An engagement letter is one of the first opportunities for students to begin managing client expectations. It is also a place where potential conflicts can be dealt with and certain waivers integrated—for example, the acceptance of law students as counselors or consents to be video recorded during meetings. (See [Engagement Letters](#) for more information).

It is good practice for students to create an engagement letter at the beginning of every term (in single term clinics) regardless of whether they are working with a new client or not.

### **Case Logs**

After accepting and assigning a client, a clinic will want to track the work being done by students. A case log is simply a spreadsheet that allows the tracking of activity with a particular client. In clinics where students have primary authority over client

matters or single term clinics where there will be numerous students working on the same client over time, tracking all the activity that occurs on a particular matter is very important. The case log acts as a summary document of that activity so that a supervisor can quickly figure out what has occurred on a matter without having to read through the entire case file. With advances in technology, it is easy to hyperlink these case logs to actual documents that were created by students. (See [Files, Case Logs and Memos](#) for more information).

### **Case Memos**

In addition to case logs, a clinic may require that students draft memos after every substantive contact with a client or after researching any substantive issue. Like the case logs, the memos serve as a mechanism for subsequent students (or faculty supervisors) to learn what has transpired with a client in an efficient and orderly manner. It also allows students to organize their thoughts and distill lots of information down to the most important and helpful. (See [Files, Case Logs and Memos](#) for more information). Case memos can be hyperlinked to the case logs for ease of access.

### **Student Resources**

What resources a supervisor provides to students and how one makes them accessible are decisions that are entirely tethered to teaching philosophy. Resources may include form documents, practice guides, checklists, or references to agency websites and materials (like the secretary of state or IRS). (See [For-profit Transactions](#) and [Nonprofit Transactions](#) for other resources). These resources may be made available via a resource webpage through Blackboard or a school's intranet system or can be in an old-fashioned library. The key is determining when a supervisor wishes to provide these resources to students and how easily accessible one wants them to be. If much of the learning that takes place in a clinic is through the struggle of students to think through problem solving by themselves, then having always accessible resources may be counterproductive. Sometimes recreating the wheel does have value. On the other hand, there is clearly an enhanced efficiency that comes with providing these resources to students.

### **Office Hours and Time Keeping**

Some clinics mandate that students maintain office hours. These are pre-designated times when the student will be in the clinic workspace every week. The benefit of office hours is that it allows clients to contact students at a time when they know they will be at the clinic and allows a supervisor to track them down at non-supervisory times if needed. Office hours can also provide some discipline and regularity to students' work schedules in terms of pacing themselves with regard to the work that they have to perform over the course of a term. On the other hand, with the advent of laptops, virtual private networks, and remote access, the traditional view of "office" is quickly becoming out of place. In this respect, office

hours may not add much value to the already motivated and disciplined student counselor. (See [Timekeeping and Scheduling](#) for more information).

Supervisors may want to keep track of the time students spend on clinical work. Depending on overall clinic structure, a school may already have some sort of time management software that allows for this. In litigation projects, time keeping serves a different function in that it is a metric for IOLTA funding or, if successful in certain representations, the clinic may petition for attorneys' fees. In transactional matters, rarely are either of those considerations relevant. However, some clinics may track time as a barometer of relative workload or to get students used to keeping track of their time as they will in private practice. Even without a timekeeping program, setting up a simple spreadsheet makes this process very easy. (See [Timekeeping and Scheduling](#) for more information).

### **Closing Letters**

Just as the Engagement Letter lays out the expectations at the beginning of a term, a Closing Letter summarizes the work that was, in fact, completed during a term. This a useful vehicle not only to keep the client informed of what has been going on and to hold the student accountable for what they promised to do, but also allows a supervisor to know the status of things at the end of a term and whether a client should be retained for continuing terms. (See [Memos and Closing Letters](#) for more information).

### **Transition Memos**

For clinics that pass clients from one student to another, the transition memo is one of the most important documents that one can have. A student writes it to another student. It should include a description of all the work a student performed for a client such that a new student picking up the client in a subsequent term can get up to speed as quickly and competently as possible. In addition to the functional aspect of these memos, the exercise of writing one proves to be very valuable for students because it forces them to reflect on the work they actually did. Most students care about what their peers think of them, so they spend quite a bit of time on the transition memos. (See [Memos and Closing Letters](#) for more information).

### **Student Supervision**

Providing students with feedback during the course of a term is vital to the development of the student. How one sets-up a clinic determines the mode and method for much of this feedback. One model places students in the role of primary representative of clients. Though faculty members supervise everything students do, in this model students are the clients' main contact. Supervision of students occurs with students submitting drafts of emails, letters, and documents to faculty supervisors who must review, comment upon and return them to students in a timely manner. Incorporating the time necessary to do this is essential to operating a

transactional clinic. Often students will meet with clients instead of or in addition to communicating through written means. Reviewing outlines of the meetings or simulating conversations are other ways to supervise these types of matters. Some clinics do this by an informal, “as needed” basis. Others have more structured, regularly scheduled supervisory sessions with students over the course of the term. In any regard, supervision is essential to not only ensuring that a clinic’s clients receive the best counsel, but also that its students are not practicing law without a license. Having students come prepared to present their strategy, plan, or analysis to supervisors at meetings where supervisors act as “consultants” rather than “partners in charge,” empowers students to produce their very best work. A limiting factor to this approach is the sophistication of work that can be produced for a client since the students’ ability is the driving force behind the work.

A common decision to be made in the “student as primary counsel” model is whether a faculty supervisor should be in attendance during client meetings and phone calls. Some faculty members are uneasy about students meeting or speaking with clients outside of their presence for fear that the students will commit malpractice. If “in the room” with students, a faculty supervisor can step in if the students go astray. However, when “in the room,” some faculty supervisors have a difficult time maintaining their role as lifeguard. They will sometimes take over a meeting at the expense of students. Correspondingly, students may not completely embrace their role as primary counsel when their supervisor is in the room with a client. Even clients will often look to the faculty supervisor when questions arise. One of the most important lessons that any law student (or lawyer) can learn is when and how to tell a client that they don’t know the answer to a question. Supervisors who are in the room with a student during client meetings can impede this lesson.

Some clinics employ real-time, closed-circuit video feeds from their clinic conference rooms to their desks to avoid having supervisors be present in a room with students and clients. This allows professors to still monitor interactions and advice being given without the risks discussed above. Clinics that have this ability usually also have the ability to video record meetings. Debriefing a meeting with a student by going over the recording can be invaluable as can self-critiques by students themselves.

An alternative clinical model to the one discussed above features faculty members as primary counsel and students more like associates to partners. This method allows for the inclusion of more sophisticated matters and can be more efficient in terms of work output. Students may be given discrete tasks or may even be charged with completion of significant matters but do not have “ownership” over the client. The client thinks of the faculty member as their primary contact and lead counsel. Likewise, students funnel all communication through the faculty person. Supervision under this model is different. Instead of helping students think through their own strategy, plan, and analysis, a supervisor must help students think through his thought process. Since it is usually the faculty person that has the big picture perspective of a matter, students will need to be educated on what it is they are doing, how it fits with the larger matter, and whether their work satisfied the needs of the client. This

model need not exist in competition with the former model but can be used in tandem, depending on the needs of a client.

Regardless of which model of faculty involvement one employs, scheduling and preparing for supervision sessions is important. Often students will simply stop-by a supervisor's office when a question arises. We call these "drive-by" supervisions. Every clinician has his or her own talents, skills, and preferences. For some, the "drive-by" supervision is fine in that the issue confronting the student is fresh in their mind and the supervisor has no problem setting aside whatever else they were working on to engage in a discussion. Other clinicians, will discourage the "drive-by" and ask students to make an appointment. This allows the student to collect his or her thoughts and present them in a more succinct, organized, and comprehensible manner. Either way, it is something that should be employed deliberately rather than reactively.

The final arena where student supervision often occurs is during clinic-wide sessions involving all clinic students, called "Case Rounds." Case Rounds provide a forum where students can present issues they are dealing with to the larger group either for feedback or brainstorming. They can also be used to present case studies of clients' problems and resulting resolutions found by students. This method draws from medical education's "grand rounds" tradition. For students that are developing their own insights and modes of analysis, seeing how others deal with similar problems not only adds to their insight, but can build confidence as well.

All of the supervision discussed above tends to deal with specific client matters. It is often useful to step back and give students feedback about their general performance. One method of doing this is to conduct mid-term evaluations. This gives both the instructor and the student an opportunity to address any issues that may be impeding the development of the student. At the same time, it is an opportunity for the student to provide feedback about the Clinic administration and teaching (see [Evaluations and Surveys](#) for more information). Transactional clinics use of reflection papers and journals are an adoption of core clinical teaching methodology.

### **Clinic Evaluations**

Just as it is important for students to receive ongoing feedback from faculty supervisors, it is equally important for supervisors to solicit feedback from students about their teaching and administration.

At the end of a student's time in a clinic they will have had some kind of experience. We all hope that it has been a good experience, but it will be an experience in any regard. A mid-term evaluation followed by an end of the term evaluation is a good way to capture student feedback and incorporate it into future plans. Most mainstream law school evaluations are not designed to capture the totality of a clinical experience. In order to get good feedback that will be useful for future terms,



it may be necessary for clinicians to design their own evaluation forms. (See [Evaluations and Surveys](#) for more information).

As with much of the process that we have discussed, technology has increased the modes by which we can solicit this feedback. SurveyMonkey or any other online polling tool will allow anonymous feedback that can be easily summarized in a report created by the software and easily exportable to an excel file. Of course, there is nothing wrong with the old fashioned hard-copy evaluation either.

### **Prerequisite Classes and Co-Curricular Courses**

Clinicians will want to consider whether students will be better prepared to work in a clinic if they have taken particular courses in the law school curriculum as prerequisites. One consideration before making this decision is to what extent a clinic wants to create barriers to enrollment. Every prerequisite places a barrier to entry in the path of a student. If a clinic has long waitlists, this may not be a concern. Secondly, does the prerequisite that is required actually enable a student to better perform his or her duties for the client? This decision may be coupled with whether or not there is a classroom component that goes along with a clinic and what topics the instructor teaches in it. There are many models for courses that accompany or are related to clinical fieldwork. (See [Classroom Teaching](#) for more information).

Some clinics will be constrained by curriculum committees with regard to some of these matters. The key point with regard to prerequisites is the return a clinic may get for the extra requirement. With regard to what one teaches in the co-curricular course, the key is to balance time and the topics covered to achieve maximum impact on the work of the students. With regard to credit hours, many transactional clinics have adopted the same policies as their institution's other clinics to maintain consistency across clinical offerings. Setting the appropriate number of credit hours for a clinic should be a simple calculus dependent on the time that students spend on the course; however, it can be bureaucratic, random, and political. In addition, some states may not count clinical credits as credits earned "in the classroom." This may affect requirements for sitting for certain bar exams.

### **Interdisciplinary Collaboration**

Involving students from other disciplines in a transactional clinic can be rewarding for both the students and the clients but poses certain challenges that must be managed. First, different schools may be on different schedules so logistically, coordinating between law students and business students or engineering students can be difficult. Second, if a clinic's goal is to have multi-disciplinary students enrolled in the clinic contemporaneously, working out the credit parity between schools can be challenging. Third, there are confidentiality constraints imposed by the rules of professional conduct on lawyers and law students, but how those rules apply to non-lawyers is less defined. A clinician will want to implement clinic procedures that shore-up this issue.

There are ways to work with other disciplines that do not go so far as to integrate those students into a clinic. Instead, a clinic may wish to consult with business students or engineering students on behalf of a client. Again, if confidentiality concerns are managed, this can be fruitful for both students and clients.

For more information, see the list of [Interdisciplinary Programs](#) under the Resources Links tab.

## **Grading**

The worst part of the job for any teacher is grading. Just as no student wants to receive a bad grade, no teacher wants to give one. However, in most of our institutions, grading is a necessary evil. If an institution requires clinics to give traditional grades (meaning something other than pass/ fail), some of the factors that influence a grade include:

- Class participation (if having a class component)
- Effort (which can be evaluated in a number of ways)
- Diligence (the ability to struggle with problems before coming to the supervisor)
- Work product (including research and writing ability, problem-solving, and attention to detail)
- Efficiency
- Professionalism
- Client management
- Collaboration
- Communication (written and oral)
- Assignments (if given)

How one balances the various factors is up to individual faculty supervisors. Some of the factors are not easily measurable. In a clinic, we tend to get to know our students both personally and professionally. If we are working with a student that is trying hard but doesn't produce the best work, our tendency is to resist giving that student a bad grade (understanding that a "bad" grade is relative). On the other hand, we may have a student that we do not like personally and whom we think does not share our own values but produces great work for the client. How does all of that translate into a grade? There are no easy answers to these questions, but making a matrix with whatever factors a supervisor thinks are important and then rating each student in each category will at least give consistent results. (See [Grading](#) for more information).

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