CLASS ASSIGNMENTS AND READINGS
Employment Discrimination Mediation Representation Clinic
Spring 2011

Professor Joseph Daly
Law/Grad Room 219E
651-523-2121
jdaly@hamline.edu
Monday 11:00 a.m. – 12:50 p.m.
Law 301

Assigned Texts

- Harold I. Abramson, Mediation Representation (NITA 1020), second edition
- EDMR Clinic Manual (on TWEN)

Specific reading assignments are also noted for individual classes throughout the semester.

Class Assignments

1/24/11 Course Introduction: Clinic Goals and Evaluation Methods, Office Procedure

Reading:
Abramson: pp 1 - 16

Clinic Manual Tab 1 (all)
Clinic Manual Tab 12 ("Rethinking Zealousness" and "Why I am a Lawyer" only)

The first class is devoted to an orientation. We will review the Employment Discrimination Mediation Representation Clinic goals and office procedures, paying particular attention to the importance of self-evaluation.

1/31/11 Professional Responsibility/Ethics: Practice Challenges and Paradigms for Mediation Representation. Federal Rules of Evidence, Rule 408. Minnesota Mediation Rules

Reading:
Abramson: Model Conduct Standards for Mediation Advocates (ABA Rule of Professional Conduct) http://abanet.org/CPR/MRPC/model_rule.html

Clinic Manual Tab 2 and Tab 3 (all)

2/7/11 Time Management, Client Interviewing: A Focus on Interests; Representation Agreement and Releases

Reading:
Abramson: pp 129 - 154

Clinic Manual Tab 4 and Tab 7 (all)

We will focus our attention on the skills needed to be an effective interviewer. We will also look carefully at the Clinic's Representation Agreement so you are ready to answer any questions that your client might have at your initial interviews.

2/14/11 Evaluating Your Client's Claims: The Prima Facie Case, Evidentiary Hurdles, Damages, Formulating an Initial Demand

Reading:
Abramson: pp 194 - 206

Review Clinic Manual Tab 2 and Tab 3 (all)

We will continue our discussion of EEOC/DHR procedure and substantive law by discussing your Clinic cases, if possible, to brainstorm the potential strengths and weaknesses of a claim. We will talk about how to develop a plan for fact investigation, generate an initial theory of the case (to be discussed in more depth on October 4), and ultimately create a mediation representation plan (to be discussed in more depth throughout the remainder of the course).

2/21/11 Employment Discrimination: Causes of Action (Federal and State) (Or other substantive law depending on type of cases we handle); Good Facts/Bad Facts. Work on your cases today. Develop a Theory of the Case for your cases.

Reading:
Abramson: 222 - 237

Clinic Manual Tab 5 and Tab 6

During class, we will review basic EEOC/DHR procedure and the substantive law of employment discrimination. We will discuss overall case management and learn how a typical EEOC/DHR case moves through the administrative system.

2/28/11 Theory of the Case; Good Facts/Bad Facts. Work on your cases today – Continue preparing your client for the mediation

Reading:
Abramson: pp 248 - 270

Clinic Manual Tab 8

We will continue our discussion regarding generating an initial theory of the case. We will focus our discussion on the issues presented in your Clinic cases.

3/7/11 SPRING BREAK – NO CLASS

3/14/11 Case Preparation/Analysis: Preparing for Negotiation/Mediation Representation; ABA Video (How to Represent Your Client During Mediation)

Reading:
Abramson: pp 309 - 318

Clinic Manual Tab 9

During the first class hour, you will discuss the materials in Clinic Manual Tab 9. In the second class hour, we will view segments of the ABA video.

WRITTEN ASSIGNMENT: Complete and turn in to your supervising attorney the self-evaluation form which can be found under the "Forms" section on TWEN. It is your responsibility to schedule a meeting with your supervising attorney to discuss your self-evaluation.

3/21/11 Case Preparation; General-No formal class today-you will spend the time developing your cases

Reading:
Abramson: pp 319 - 337

Work on your cases.

3/28/11 Case Preparation/Mediation Notebook

Reading:
Abramson: pp 337 - 362

During class we will continue to view segments of the ABA video. Additionally, we will discuss your Clinic cases regarding fact investigation and preparing your clients for mediation.

4/4/11 Case Preparation; Negotiation Strategies to Maximize "Value-added" by Third Party Neutral

Reading:
Abramson: pp 207 - 221

We'll spend the first hour taking a more in-depth look at negotiation theory and ways to utilize the mediator to assist in the "dance toward settlement." During the second class hour, we will talk about your EEOC/DHR cases and "moot mediate" any problem areas you have identified.

4/11/11 Case Preparation; Opening Statement/Initial Offers

Reading:
Abramson: pp 270 - 299

Clinic Manual Tab 10 (all)

We will spend the entire class session discussing your Clinic cases. Please be prepared to "moot mediate" the theory of your cases.

4/18/11 Case Preparation; Closing the Deal-Settlement, Tax Awareness, Enforcement Concerns

Reading:
Abramson: pp 363 - 370

Clinic Manual Tab 3 (Minn. Stat. § 572.31-572.40 only)

Some of the hardest challenges of mediation are in the closing minutes of the session when everyone is exhausted and wants to go home. This is when the advocate really needs to be at the top of his/her game. In class, we'll focus on reaching a settlement agreement and how to effectively memorialize it. During the second class hour, we will talk about your EEOC/DHR cases and "moot mediate" any problem areas you have identified.

4/25/11 Exploring the Dark Side – Confidentiality Pitfalls; Traps for the Unwary, Justice Concerns

Reading:
Abramson: pp 371 - 387

Clinic Manual Tab 3 ("Confidentiality in Mediation" only)
Clinic Manual Tab 3 (Rule of Evidence 408, Minn. Stat. § 595.02, Minn. Stat. § 604A.305 only. Review Minn. Stat. § 572.31-572.4 and Rule 114.08-114.09.)
Clinic Manual Tab 12 (Fiss, Owen article only)

EDMR, and mediation in particular is not a panacea. Aside from the question of whether mediation serves your client's strategic interests, the advocate needs to be aware of the dark side – ways that mediation can harm your client. We'll explore the limitations on confidentiality, problems with enforcement of mediated settlements, as well as, the larger justice issues posed by the rapid proliferation of mediation.

5/2/11 Expectations of Competence – Picking and Evaluating Neutrals; Alternate Paradigms for Advocacy in Mediation; Case Closeout; Course Evaluation; Close Files

Reading:
Abramson: pp 94 - 111

Clinic Manual Tab 13 (all articles not previously read)

It is not uncommon to hear neutrals and/or clients complain that lawyers make mediation difficult. Some academics and mediation professionals have proposed that lawyers cannot operate within the code of professional responsibility without "corrupting" the mediation process. Indeed, a subcommittee of the ADR section of the American Bar Association has been created to consider proposing amendments to our professional rules to facilitate better use of mediation by lawyers. What is the "ideal" role for the advocate in mediation? Do the rules of professional responsibility need to be modified? We will explore these questions through debate and hypotheticals.

Reading:
Abramson: 112 - 128

Clinic Manual Tab 1 (pp. 11-12 only)

WRITTEN ASSIGNMENT: Teams should prepare case transfer or closing memos for each of their files and a case transfer or closing letter for each client. Due dates for your transfer or closing memos and letters should be arranged with your supervising attorney. Please follow the transfer and closing memo guidelines provided in Tab 1 at pp. 11-12. Each transfer and closing memo should indicate the number of hours each student worked on the file and tasks each student intends to complete before the end of the semester.

In class, we will debrief your cases, complete planning for case transfer and/or closeout, and seek your input regarding the future structure of this Clinic.

EMPLOYMENT DISCRIMINATION MEDIATION REPRESENTATION CLINIC

Syllabus Spring 2011

Class Date	**Topic**
1/24/11	Course Introduction; Clinic Goals and Evaluation Methods
1/31/11	Professional Responsibility/Ethics: Practice Challenges and Paradigms for Mediation Representation. Federal Rules of Evidence, Rule 408. Minnesota Mediation Rules
2/7/11	Time Management, Client Interviewing: A Focus on Interests; Representation Agreement and Releases
2/14/11	Evaluating your Client Claims: The Prima Facie Case, Evidentiary Hurdles, Damages, Formulating an Initial Demand
2/21/11	Employment Discrimination: Causes of Action (Federal and State) other substantive law depending on type of cases we handle. Theory of the Case; Good Facts/Bad Facts Work on your cases today. Develop a Theory of the Case for your cases. Visiting Lecturer
2/28/11	Work on your cases today-No formal class. Continue investigation of your cases.
3/7/11	SPRING BREAK – No Class
3/14/11	Case Preparation/Analysis; Preparing for Negotiation/Mediation Representation; ABA Video (How to Represent Your Client During Mediation)
3/21/11	Case Preparation; General
3/28/11	Case Preparation; Mediation Notebook - Staying Organized- Work on Your Cases Today- No formal class
4/4/11	Case Preparation; Negotiation Strategies to Maximize Value - Added by Third Party Neutral – Work on Your Cases Today – No Formal Class
4/11/11	Case Preparation; Opening Statement/Initial Offers
4/18/11	Case Preparation; Closing the Deal – Settlement, Tax Awareness, Enforcement Concerns
4/25/11	Exploring the Dark Side - Confidentiality Pitfalls, Traps for the Unwary, Justice Concerns
5/2/11	Expectations of Competence - Picking and Evaluating Neutrals; Alternate Paradigms for Advocacy in Mediation; Case Close-out; Course Evaluation; Close out Files