Hamline University School of Law Mediation

Spring 2010-3 Credits Professor Sharon Press

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Required Text:

Mediation Theory and Practice, James Alfini, Sharon Press, Jean Sternlight, and Joseph Stulberg (LexisNexis, 2nd edition, 2006) ("Text" in detailed syllabus)

Supplemental materials will be placed on the TWEN site

Hand-outs and simulation materials will be provided in class

Course Overview:

Mediation has become such an important option in today's society that you likely will encounter participation in mediation regardless of what avenue you choose to pursue as a lawyer. This course examines mediation theory and practice. A variety of readings, exercises and role-play simulations will be employed to encourage rigorous analysis of mediation concepts and critical assessment of the application of these concepts in practice. Topics to be covered include negotiation theory, stages of the mediation process, ethical issues in mediation, bringing parties to agreement, dealing with power imbalances, and the lawyer's role in the mediation process. In addition to participating in exercises at various stages of the mediation process, each student will conduct a complete mediation as the mediator. Learning and practicing mediation skills will add to your repertoire as effective negotiator. This course will help you to improve your skills in listening, questioning, problem-solving, and professional judgment, all within the broad context of understanding mediation theory and practice.

Course Objectives:

Students will be able to successfully conduct a mediation session as a mediator. Students will understand the benefits and limitations of mediation and the lawyer's role in advising clients regarding the use of mediation.

Students will be able to identify appropriate techniques and approaches for representing clients in mediation.

Students will fulfill the training requirements of MN General Practice Rule 114, for Civil Facilitative Neutrals.

Office Hours/E-Mail:

I am generally in the office between 8:00 a.m. and 5:00 p.m. Monday – Friday. Because I often have meetings and other appointments, it would be helpful to schedule a time to meet, but you are welcome to stop by anytime my door is open. You can reach me by phone, (651) 523-2356, or e-mail (spress01@hamline.edu).

Laptop Policy

Given the nature of this course, laptops are not to be used in class unless specifically authorized on a particular day.

Attendance Policy:

This course will satisfy the training requirements for civil facilitative mediators under Minnesota General Practice Rule 114. Upon completion of the course you may apply to join the roster of neutrals maintained by the Minnesota Supreme Court. **Students are roster eligible ONLY IF they do not miss any part of any class.**

In addition to foreclosing roster eligibility, **class absence and/or lateness** will adversely affect your grade. If you must miss a class, it is imperative that you give me as much advance notice as possible so that I can rearrange role assignments for class activities.

Preparation/Participation/Feedback:

Your class preparation is essential to this class; it will be a benefit to you and, importantly, your classmates. For contribution to class discussions, you will be evaluated on the **quality** of contributions and insights. Effective comments offer unique but relevant perspectives that move the discussion and analysis forward. They avoid the "I feel" syndrome, and demonstrate recognition of key concepts, with concrete links where possible to assigned reading. Participation in class, as well as TWEN discussions, is expected. For the simulations, each student is expected to make a good faith effort at playing an assigned role as realistically as possible. Feedback to mediators also is required and should follow these guidelines to ensure quality feedback:

- *Be honest and respectful
- *Be specific i.e., identify the specific language or behavior which triggered your observations
- *Include positive and constructively negative feedback
- *Relate your feedback to the concepts we are studying

Assignments:

1. Short Papers (graded anonymously).

- A. A written agreement based on fact scenario provided due on $\underline{\text{Monday, March}}$ at noon via TWEN.
- B. A short four (4) page memo (double spaced, standard font) to a client about the selection of a mediator and preparation for mediation, due on **Monday, April 25th** at noon via TWEN. Further instruction will be given in class.

All papers will be graded on the basis of your analysis and also on the strength of your writing. All papers should be grammatically correct and must be proofread, or they will be marked down. No extensions and no e-mail submissions accepted.

2. Videotaped Performances and Critiques:

- A. You will record your "mediation orientation" sometime after the February 14th class and write a two (2) page self-critique (double-spaced, standard font) due **Monday**, **February 28th** in class (you will turn in your paper and your recording in a format that I can review it).
- B. You will participate in three recorded mediation sessions (approx. 45 minutes in length) some time between March 28th and April 18th. In two of them you will play a mediation party; in one, you will play the role of mediator. After April 18th, you will write a 10 to 12 page paper (double-spaced, standard font), at least half of which will be a self-critique of your mediation performance. The rest of the paper will be a critique of a classmate's performance as mediator in the same mediation. These papers are due **Monday, May 16th** at noon via TWEN. Starting April 20th, each student will need to schedule a 45-minute video review meeting with me. More information about this will be provided in class.

TWEN technical support: 1-800-850-9378; west.support@thomson.com
TWEN non-technical support: 1-800-486-4876; west.twensupport@thomson.com

3. On-Line Discussion

After class on January 31 and before class on February 14, you are to watch a mediation simulation. You will be required to post two comments to an on-line discussion, one after watching the tape and before class on February 14 and one after class. More information about this assignment will be provided in class.

Grades:

Your grade will be based on the following:

Short Papers: 40%

On-Line Discussion: 10%

Videotaped performances and critiques:

Orientation: 10% Mediation: 40%

Exceptional class participation can earn you a bump up in your grade; exceptionally poor class performance might result in a lowering of your grade.

<u>Detailed Course Syllabus</u> (subject to change in response to class progress)

DATE/TOPIC/TIME	READINGS	ASSIGNMENT DUE
January 24 Course introduction; Conflict Theory; Causes of Conflict; Models of Conflict Resolution	Text, pp. 1 - 33 Minnesota Rule 114.01 – 114.03	
January 31 Negotiation Theory in Mediation Practice; Overview of Mediation	Text, pp. 37 – 49; 51 – 58; 61 – 68; 96 – 104	
February 7 No class	Text, pp. 149 - 203	Watch Mediation Simulation DVD on reserve and post one on-line discussion comment and one response before class on February 14.
February 14 Beginning the Mediation Process; Confidentiality	107 – 117; 205 – 230; 234 – 240; 245 - 256 Minnesota Rule 114.08 and 114.10 Minn Statute §595.02 Sample agreement to mediate	
February 21 Mediation Skills: Communication Skills; Information Gathering	Text, pp. 117 – 125 Additional Reading posted to TWEN	
February 28 Understanding Positions, Issues and Interests and Setting the Agenda	Text, pp. 125 – 128; 287 - 314	Critique of Mediation Orientation video (2.A.) due February 28 st in class.
Manah 14	SPRING BREAK	
March 14 Generating Movement Towards Resolution; Use of Caucus	Text, pp.128 – 137	
March 21 Closing the Mediation; Writing an Agreement	Text, pp. 137 – 140; 315 – 331 Minn Statute §572.33, 572.35 – 572.36 Minnesota Rule 114.10 Minnesota's Phantom Menace: the Civil Mediation Act	Short paper (1.A) due March 28th by noon via TWEN.
March 28 Simulations in class	Text, pp. 140 - 148	Videotaping can begin after the March 28 th class and must be finished by April 18 th .

A : 1 /	Tout pp 140 170: 410 449	
April 4	Text, pp. 149 – 170; 419 – 448	
Mediation Ethics	Rule 114 Appendix (Code of	
	Ethics and Enforcement)	
<u>April 11</u>	Text, pp. 494 – 508	Short paper (1.B) due April
Advocacy in Mediation	Minnesota Supplement: Rule	25 th at noon via TWEN.
	114.04 – 114.07	
	Additional readings posted to	
	TWEN	
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April 18	Text, pp. 357 – 382; 394 - 400	
Diversity, Power and Fairness		
<u>April 25</u>	Text, pp. 401 – 419; 521 –	
Issues of Institutionalization;	526; 531 - 535; 555 - 566	
Mediation in Different		
Contexts		
May 2		
Wiay 2		
NO CLASS		
NO CLASS		
		Video reviews with me begin
		on April 20th; final papers
		(2.B) due Monday, May 16 th
		at noon via TWEN.
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