

## **Mediation**

Professor Art Hinshaw  
Hamline University Law School - Summer 2011  
Syllabus and Course Information

### **I. Reading Materials**

The required book for this course is:

Mediation Theory and Practice  
by Alfini, Press, Sternlight, and Stulberg (2<sup>nd</sup> ed. 2006)

A supplemental reader will also be required. Instructions for pick up will be provided.

Two helpful, but not required, books are:

Getting to Yes: Negotiating Agreement Without Giving In,  
by Roger Fisher, Bill Ury and Bruce Patton, (2nd ed., Penguin 1991).

Difficult Conversations: How to Discuss What Matters Most,  
by Douglas Stone, Bruce Patton and Sheila Heen, (Viking 1999)

These books are great background readings before taking the course and are widely available in libraries, bookstores and online.

### **II. Class Meetings**

July 8, 11, 12, 13, 14 (F, M, T, W, Th) from 4:30 - 9:15 p.m.  
July 9 & 16 (Sat. & Sat.) from 8:45 a.m. - 5:00 p.m.

### **III. Course Description**

Through discussion, simulations, and role-play, this course focuses on the structure and goals of the mediation process and on the skills and techniques mediators use to aid parties in overcoming barriers to dispute resolution. The course also examines the underlying negotiation orientations and strategies that mediators may confront and employ; the roles of attorneys and clients; dealing with difficult people and power imbalances; cultural, race, and social identity considerations; and ethical issues for lawyers and mediators. In addition, special attention is devoted to the art of successful representation of clients in mediation.

### **IV. Teaching Philosophy and Goals**

You will find that mediation is a burgeoning field, yet most people fail to understand that mediation is as much an art as it is a science. In this class we focus on both the art and the

science of mediation. We will study the theory, strategy, skills and public policy issues involved in the mediation of disputes.

Specifically my goals for you are:

- To improve your skills in listening, questioning, problem solving, persuasion, negotiation, and professional judgment.
- To improve your abilities to work well with clients, to understand client interests, to balance legal and non-legal issues, to advocate for clients in a mediation setting, and to come up with creative solutions for resolving legal problems.
- To increase your understanding of mediation theory and practice, including ethical issues.
- To increase your appreciation of the advantages and disadvantages to mediation and to litigation as dispute resolution mechanisms.
- To encourage you to be more thoughtful about your professional work and your own approaches to dispute resolution, both as advocates and as mediators.

Everything we do in this class, from readings to demonstrations to experiential exercises, is focused on achieving one or more of these goals. Remember, learning the skills taught in this course is not something that can be done “to” you or “for” you. You must work on it yourself, and what you learn in this course in large part depends on your effort.

#### **V. Class Attendance and Participation**

Attendance is required. In every class you will be teamed with other students to do various role-play scenarios. Before each exercise, you will be assigned a role and given instructions about your role. The instructions are designed to be self explanatory, and may contain confidential information (i.e. information only your character knows). Do not show or discuss your confidential information to those who have been assigned different roles before the exercise begins. Doing so will undermine the learning opportunities for yourself and your classmates.

Hence, your timely attendance and participation are crucial in this course. If you are absent, your absence will preclude not only your participation that day, but also that of other students. The same applies to preparation for class. If you come to class unprepared, not only will you have a poorer experience, but your fellow students will also have a lesser experience.

#### **VI. Rule 114**

This course satisfies the training requirements for Minnesota General Practice Rule 114 (civil facilitative/hybrid roster) which will enable you to apply to join the roster of “qualified” neutrals maintained by the Minnesota Supreme Court upon completion of the course. In order to do so, you must not miss any portion of the course and you must complete specific instruction regarding Rule 114 which will be provided on Saturday, July 16. Details regarding applying for the roster will be provided during that session.

## **VII. Grading**

Your grade in this course will be determined as follows:

### **A. Class Participation (20%)**

Participation includes timely attendance, participation in class exercises (as discussed above) and participating in class discussions (quality trumps quantity). Participation also includes skill as a mediator in addition to your work as a disputant in roleplay scenarios.

### **B. A final paper due on Wednesday July 27<sup>th</sup> at noon. (70%)**

On the last day of class, you will be given the parameters of a final/writing assignment that is due on Wednesday July 27<sup>th</sup> to Kitty Atkins (or another designated person) at noon.

### **C. Reputation Index (10%)**

The Reputation Index is a proxy for the long-term effects of reputations created by negotiation activities. Within the legal community the negotiations you conduct today affect the perceptions and expectations of others tomorrow. The index recognizes that those individuals who have reputations as trustworthy and effective negotiators will have an advantage in future negotiations, and those who have reputations as untrustworthy and ineffective will have a disadvantage. Remember, improving your negotiation skills is one of the class goals, in part because participating in a mediation as a lawyer or a client is a negotiation activity.

At the end of the semester I will ask each of you to identify students who “you think have developed good reputations as negotiators” and students who “you think have developed poor reputations as negotiators.” I will also ask you to give specific examples supporting your reasons for identifying each person in response to each question.

## **VIII. Web Cams**

Recording your mediations via web cam (or other video device) will not be required in this course due to its abbreviated nature. However, I do suggest that those who have webcams record their mediations for later reviewing and reflection.

## **IX. Reading Assignments**

The assignment for each class is subject to change due to class progress. Any variations will be announced in class.

### **July 8**

Introduction to Mediation  
Basic Negotiation Theory

Ch. 1, skim  
Ch. 2, 35-68

## July 9

### Morning

Basic Negotiation Theory (cont'd) Ch. 2, pgs 68-105  
The Mediation Process Ch. 3, pgs 107-117

#### Reader:

1. Model Rule of Professional Conduct 4.1
2. Art Hinshaw and Jess K. Alberts, *Doing the Right Thing: An Empirical Study of Attorney Negotiation Ethics*, 16 HARV. NEG. L. REV. (forthcoming 2011) (excerpt)

### Afternoon

The Mediation Process (cont'd) Ch. 3, pgs. 117-148  
Mediator Roles, Orientations, and Styles Ch. 4, pgs. 149-202

#### Reader:

3. Douglas Stone, Bruce Patton and Sheila Heen, *Learning: Listen from the Inside Out*, in Difficult Conversations: How to Discuss What Matters Most

## July 11

Closing the Mediation Session (reading assignment below)  
Confidentiality Ch. 5, pgs. 205-274

#### Reader:

4. Kimberlee K. Kovach, "Writing Agreements," in Mediation: Principles and Practice
5. *Rojas v. Superior Court*, 93 P.3<sup>rd</sup> 260 (Calif. 2004)
6. *Cassel v. Superior Court*, 244 P.3d 1080 (Calif. 2011)

## July 12

Mediator Certification and Ethics Ch. 8 & Appx. A, pgs. 401-460 & 667-677

## July 13

Legal Issues in Mediation Ch. 6, pgs. 275-337  
Diversity and Power Ch. 7, pgs. 339-375

#### Reader:

7. Jordi Agusti-Panareda, *Power Imbalances in Mediation: Questioning Some Common Assumptions*, May – June Dis. Res. J. 24 (2004).

## July 14

Mediation and the Lawyer

Ch. 9, pgs. 461-516

Reader:

8. Bernard S. Mayer, "What People Want in Conflict," in Beyond Neutrality: Confronting the Crisis in Conflict Resolution (2004)
9. ABA Ethics Opinion 06-439, April 12, 2006

## July 16

Morning

The Institutionalization of Mediation in the Courts Ch. 10, pgs. 517-566

Justice: Mediation and the Rule of Law Ch. 7, pgs. 376-400

Reader:

10. Michael D. Young, *Mediation Gone Wild: How Three Minutes Put an ADR Party Behind Bars*, 25 Alternatives to the High Cost of Litigation 97 (2007)

Afternoon

Minnesota Rule 114 Certification

Wrap Up

Handout of Final Paper Topic