

Mediation

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Hamline University Law School - Summer 2013
Syllabus and Course Information

I. Reading Materials

The required book for this course is:

Mediation Theory and Practice
by Alfini, Press, Sternlight, and Stulberg (2nd 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).

Mediation Success: Get It Out, Get It Over, Get Back to Business,
by Amy Lieberman (Amazon 2012)

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

II. Class Meetings

June 19, 20, 24, 25, 26, 27, 28 (W, Th, M, T, W, Th, F) from 4:30 - 9:30 p.m.
June 22 (Sat.) from 8:00 a.m. - 5:30 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.

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 Thursday June 27th. 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 take home final paper due on Monday July 15th (80%)

On the last day of class, you will be given additional instructions for submission of the final paper. *Note* Academic Rule AR-105(B)(8): A student who does not take a scheduled examination will receive a grade of "F" for that examination, unless properly excused. In addition, any student who does not turn in a required paper on the scheduled date will receive a grade of "F" for that paper, unless properly excused. Failure to meet any course requirement can be the basis for a final grade of "F" in the class, unless properly excused.

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, those who have webcams in their laptops are recommended to 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.

June 19

Introduction to Mediation	Ch. 1, skim
Basic Negotiation Theory	Ch. 2, 35-68

June 20

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. 95 (2011) (excerpt)

June 22

Morning

The Mediation Process (cont'd) Ch. 3, pgs. 117-148
Mediator Roles, Orientations, and Styles Ch. 4, pgs. 149-187, 196-202

Reader:

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

Afternoon

Closing the Mediation Session (reading assignment below)
Confidentiality Ch. 5, pgs. 205-256

Reader:

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

June 24

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

June 25

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

Reader:

7. Inquiry Concerning Judge Carmine Cornelio (may be out of order in the Reader)
8. Jordi Agusti-Panareda, *Power Imbalances in Mediation: Questioning Some Common Assumptions*, May – June Dis. Res. J. 24 (2004).

June 26

Mediation and the Lawyer Ch. 9, pgs. 461-516

Reader:

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

June 27

Minnesota Rule 114 – this portion of class led by Jessica Kuchta-Miller

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

Reader:

11. 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)

June 28

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

Wrap Up

Handout of Final Paper Topic