Hamline University School of Law Mediation

Fall 2012-3 Credits Professor Sharon Press

spress01@hamline.edu 651-523-2356 / Room 306A East Hall

Required Text:

Mediation Theory and Practice, James Alfini, Sharon Press, and Joseph Stulberg (LexisNexis, 3rd edition, 2013) ("Text" in detailed syllabus) Note: the final version of the 3rd edition is not yet available so final page assignments may vary slightly.

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. As director of the DRI, I often have meetings and other appointments so 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 facilitative/hybrid 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 **Monday**, **October 28**th 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, November**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. The papers are to be submitted anonymously via TWEN using your exam numbers. All papers should be grammatically correct and must be proofread, or they will be marked down. No extensions and no e-mail submissions will be accepted.

2. Videotaped Performances and Critiques:

A. You will record your "mediation orientation" sometime after the September 30th class and write a two (2) page self-critique (double-spaced, standard font) due **Monday, October 14th** in class (you will turn in your paper and your recording in a format that I can view it).

B. You will participate in three recorded mediation sessions (approx. 60 minutes in length) sometime between November 4th and November 25th. In one, you will play the role of mediator; in the other two of them you will play a mediation party (litigant or attorney). 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, December 16th** at noon via TWEN. Between December 2nd - 13th, each student will have a 45-minute video review meeting with me. Additional information 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

Between <u>September 16 and September 23</u>, you will be required to post two comments to an on-line discussion (one original and one responsive post). 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% (10% meeting; 30% paper)

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

Detailed Course Syllabus (subject to change in response to class progress)

DATE/TOPIC/TIME	READINGS	ASSIGNMENT DUE
August 26 Course introduction; Conflict Theory; Causes of Conflict; Models of Conflict Resolution	Text, pp. 1 - 26 Minnesota Rule 114.01 – 114.03	
September 9 Negotiation Theory in Mediation Practice	Text, pp. 27 – 65	
September 16 No class – complete distance learning assignment	Text, pp. 141 – 158; 173 – 186; 195 – 205	Watch mediation simulations and post one on-line discussion comment by September 16 and one responsive post before September 23 class
September 23 Introduction to Mediation Beginning the Mediation Process	Text, pp. 88 – 97; 107 – 118; 187 - 195	
September 30 Confidentiality	Text, pp. 209 – 240; 244 – 248; 253 - 275 Minnesota Rule 114.08 and 114.10 MN Statute §595.02 Sample agreement to mediate	
October 7 Mediation Skills: Communication Skills; Information Gathering; Understanding Positions, Issues and Interests and Setting the Agenda	Text pp. 118 – 128; 158 – 173 Article on TWEN: <i>Training</i> Mediators to Listen	
October 14 Generating Movement; Use of Caucus	Text pp. 128 – 137; 309 – 330 Minnesota Rule 114.10	Critique of Mediation Orientation video (2.A) due October 14 in class.
October 21 Closing the Mediation; Writing an Agreement	Text, pp. 137 – 140; 330 – 355 Minn Statute §572.33, 572.35 – 572.36 Article on TWEN: Minnesota's Phantom Menace: the Civil Mediation Act	

October 28 Simulations in class		Short paper (1.A) due October 28 by noon via TWEN.
November 4 Mediation Ethics	Text, pp. 439 – 465 Rule 114 Appendix (Code of Ethics and Enforcement); Appendix A	Videotaping can begin after class, must be finished by November 25.
November 11 Advocacy in Mediation Simulation involving lawyers	Text, pp. 537 – 583 Minnesota Supplement: Rule 114.04 – 114.07	
November 18 Diversity, Power and Fairness	Text, pp. 368 (starting with note 5) – 416 Negotiating Your Public Identity: Women's Path to Power (on TWEN)	Implicit Bias https://implicit.harvard.edu/implicit/demo/ complete one demo test before class on November 18
November 25 Evaluation of Mediation; Issues of Institutionalization	Text, pp. 467 – 477; 480 – 484; 490 – 496; 507 – 517	Short paper (1.B) due November 25 at noon via TWEN.
		Video reviews begin on December 2 and must be completed by December 13; final papers (2.B) due Monday, December 16 at noon via TWEN.