

CLASS ASSIGNMENTS AND READINGS
Employment Discrimination Mediation Representation Clinic
Fall 2013

Professor Elizabeth Thompson
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Wednesday 1:50 p.m. – 4:00 p.m.
Law 6

Assigned Texts

- Harold I. Abramson, Mediation Representation (NITA 2010), second edition
- EDMR Clinic Manual (on TWEN)

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

Class Assignments

8/21/13 Course Introduction: Clinic Goals and Evaluation Methods, Office Procedure

Reading:

Abramson: pp 1 - 16

Clinic Manual Tab 1 (all)

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

8/28/13 Professional Responsibility/Ethics: Practice Challenges and Paradigms for Mediation Representation. Federal Rules of Evidence, Rule 408. Minnesota Mediation Rules; Client Interviewing Techniques

Reading:

Abramson: pp 17-128

Clinic Manual Tab 2 and Tab 5

Handout: Ascertaining the Client's Problem and Legal Position (Tab 7)

Prepare Professional Responsibility and Moral Questions

9/4/13 Overview of Employment Discrimination Law; 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. Prepare an outline containing a preparatory explanation and plan for beginning a client interview

9/11/13 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 5 and Tab 6 (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 discuss fact investigation, theory development and creation of a mediation representation plan (to be discussed in more depth throughout the remainder of the course). Prepare an outline of how you plan to describe the mediation process to your client.

9/18/13 Employment Discrimination: Causes of Action (Federal and State) (Or other substantive law depending on type of cases we handle); Good Facts/Bad Facts. Develop a Theory of the Case for your case/simulated case.

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.

9/25/13 Theory of the Case; Good Facts/Bad Facts. Case Rounds – 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.

10/2/13 Case Preparation/Analysis: Preparing for Negotiation/Mediation Representation

Reading:

Abramson: pp 309 - 318
Clinic Manual Tab 9

During the first class hour, you will discuss the materials in Clinic Manual Tab 9. Case rounds.

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.

10/9/13 Case Preparation; Case Rounds

Reading:

Abramson: pp 319 - 337

10/23/13 Case Preparation/Mediation Notebook

Reading:

Abramson: pp 337 - 362

We will discuss your Clinic cases regarding fact investigation and preparing your clients for mediation.

10/30/13 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.

11/6/13 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.

11/13/13 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. During class, we will discuss your EEOC/DHR cases and “moot mediate” any problem areas you have identified.

11/20/13 Exploring the Dark Side – Confidentiality Pitfalls; Justice Concerns; Case Closings, Mediation Debriefing

Reading:

Abramson: pp 371 - 387

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.

WRITTEN ASSIGNMENT: Teams should prepare closing memos for each of their files and a closing and client satisfaction letter for each client (See Sue for more information). Due dates for your closing memos and letters should be arranged with your supervising attorney. Please follow the closing memo guidelines provided in Tab 1 at pp. 11-12. Each 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 closeout, and seek your input regarding the future structure of this Clinic.