

Hamline University School of Law
Mediation (Section 2) – Professor Kenneth Fox
Fall 2008-3 Credits
Law School Classroom 04

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Office Hours

I am generally in the office on weekdays between 9:30 a.m. and 5:00 p.m. You are welcome to stop by my office whenever my door is open, or to schedule an appointment as needed. You are also welcome to contact me by phone or e-mail.

Mediation has become an integral part of the practice of law. As a result, you will most certainly experience the representation of clients in a mediation process at some point in your legal career. You also might decide to develop your own mediation practice or to otherwise incorporate the skills and insights mediation offers into your professional life. The essence of mediation is helping other parties to better understand and work through their conflicts, often leading to settlement, resolution or transformation. Learning and practicing effective mediation skills can add to your repertoire as an effective legal representative, negotiator, and counselor at law. It can enable you to more effectively conclude deals and to end litigation in a manner most beneficial to your client. This course will help you more deeply understand the various approaches to mediation practice and how they relate to the practice of law. It will also help you improve your own skills in listening, questioning, clarifying, working through conflict, and using your professional judgment as a lawyer, all within the broad context of understanding mediation theory and practice. While there is significant reading, most of this class will consist of discussions, simulations and exercises. Your active participation is required and welcome.

Required Text:

Mediation: Practice, Policy, and Ethics, by Carrie Menkel-Meadow, Lela Love and Andrea Schneider (Aspen 2006). (“Mediation” in the detailed schedule)

Periodic supplemental materials will be placed on the TWEN site

Hand-outs and simulation materials will be provided in class

Supplemental Readings:

Getting to Yes: Negotiating Agreement Without Giving In, by Roger Fisher, William Ury and Bruce Patton (Houghton Mifflin 1991) (if you have never read this classic, you should do so, but you do not need to purchase it).

A special word about how to pace yourself with the readings:

This course focuses on both theory and practice. As a result, you will find that some class sessions have significant reading assignments, while other class sessions are relatively “light” on reading as we turn our attention to simulations and related activities. For your own benefit, I strongly recommend that you pace your reading evenly over the course of the semester. This may require that you read ahead of the syllabus so you will not be overwhelmed as you come upon the longer reading assignments in preparation for the days for which they are required.

Expectations

I expect you will come to class on-time having completed readings and assignments and having prepared to actively participate in discussions, simulations and other class activities. I also hope you will come to class ready to seriously engage your classmates and to have fun.

While laptops can be a useful tool for taking notes and recalling readings, they can also become a source of distraction, particularly in an interactive course such as ours. I require that ***only word processing programs*** be open during class, unless expressly instructed otherwise. Anyone using web browsers, electronic games, entertainment programs or communicating via e-mail, instant messaging or otherwise during class will be asked to leave the classroom and will not be permitted to bring their laptops into the classroom again for the duration of the semester.

Attendance Policy:

This course will be certified 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 and interfere with other students’ learning. 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. I will consider more than two absences to be excessive under law school attendance policy.

Preparation/Participation/Feedback:

Your advance preparation is essential to the success of this class. It will be a benefit to you and, equally importantly, to your classmates. For contribution to class discussions, you will be evaluated on the **quality** of your contributions and insights and not on “airtime”. 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 any assigned TWEN discussions, is expected. For the simulations, each student is expected to make a good faith effort to play 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 both positive and constructive feedback
- Relate your feedback to the concepts we are studying

Assignments:

1. Short Papers.

1a. A short four (4) page paper (double spaced, standard font) about the simulations, due on **Tuesday, October 21st** at noon in the Registrar's office. This paper is designed to help you be reflective and integrate the simulations with readings and class discussions. Questions will be provided in class.

1b. 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 **Tuesday, November 4th** at noon in the Registrar's office. 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, excepting weekend students who may arrange e-mail submission with a follow-up hard copy.

2. Videotaped Performances and Critiques:

2a. You will videotape your "mediation orientation" sometime after the September 5th class and write a two (2) page self-critique (double-spaced, standard font) due **Tuesday, September 23th** at noon in the Registrar's office.

2b. You will participate in three 45-minute video-taped mediation sessions some time between October 17th and November 21st. In two of them you will play a mediation party; in one, you will play the role of mediator. After November 21st 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 **Wednesday, December 10th** at noon in the Registrar's office. Starting November 27th, each student will need to schedule one 45-minute video review meeting with me. More information about this will be provided in class.

Grades:

Your grade will be based on the following:

Short Papers: 40%

Videotaped performances and critiques:

Orientation: 15%

Mediation: 45%

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

I acknowledge Professor Bobbi McAdoo, on whose course syllabus this section is organized.

Detailed Class Schedule (subject to change in response to class progress)

August 26

Topics for today

Course overview and introduction. The importance of perspective in understanding conflict. Theories of conflict. Processes for handling conflict.

Reading for today:

Mediation, pp 1-36; pp 89-112

Assignments due today:

September 2

Topics for today:

Models of mediation. Overview of the mediation process.

Reading for today:

Mediation, pp 113-134;

“The Mediation Movement: Four Divergent Views” (Posted on Twen)

Optional additional reading (which you can skim): Mediation, pp 135-156.

Assignments due today:

September 9

Topics for today:

Facilitative Problem-solving Mediator Skills and practices; Beginning the session

Reading for today:

Mediation, Skim pp 215-253 with a close focus on pp. 219-225. We will go back and read this chapter more closely over the next few class sessions.

Assignments due today:

September 16

Topics for today:

Video-taping opening the session

Reading for today:

Assignments due today:

Note assignment due next week.

September 23

Topics for today:

Meditation skills: Communication skills; listening; gathering information

Reading for today:

Mediation, closely read pp 225-235

Assignments due today:

Critique of video-tape session opening is due in the registrar's office at noon today (assignment 2a)

September 30

Topics for today:

Mediation skills: Understanding positions, interests and issues; setting the agenda

Reading for today:

Mediation, pp 37-53; Closely read pp 53-66

Assignments due today:

October 7

Topics for today:

Mediation skills: Understanding motivation and movement; use of caucus; addressing barriers

Reading for today:

Mediation pp 235-248; pp 66-87

Assignments due today:

October 14

Topics for today:

Simulation class

Reading for today:

Assignments due today:

Note assignment due next week.

October 21

Topics for today:

Closing the mediation; co-mediation; Self-reflective practice

Reading for today:

Mediation pp 248-251; pp 256-264; Skim pp 264-269

Assignments due today:

Short paper is due in the registrar's office at noon today (assignment 1a). Video-taping can begin after today's class and must be completed no later than November 18.

October 28

Topics for today:

Representing parties in mediation

Reading for today:

Mediation, pp157-214; 417-442

Assignments due today:

Note assignment due next week.

November 4

Topics for today:

Transformative and evaluative mediation models revisited

Reading for today:

Mediation pp 251-253 (revisited)

Assignments due today:

Short paper due today in the Registrar's office no later than noon (assignment 1b).

November 11

Topics for today:

Difference, diversity, disadvantage and fairness

Reading for today:

Mediation, pp 253-255; 290-300

Assignments due today:

Note assignment due next week.

November 18

Topics for today:

Legal, policy and ethical issues in mediation

Reading for today:

Mediation, pp 271-289; 301-316; Skim 317-342 and 343-370; Read 370-378
Read also Mediation, Appendix B – Model Standards of Conduct for Mediators
(pp 593-598)

Assignments due today:

November 25

Topics for today:

Evaluation and Critiques of mediation

Reading for today:

Mediation, pp 539-569; 579-581

Assignments due today:

Video reviews begin with me beginning November 25. Final papers are due in the Registrar's office no later than noon, **Wednesday, December 10** (assignment 2b).