

CLASS ASSIGNMENTS AND READINGS
Employment Discrimination Mediation Representation Clinic
Fall 2008

Professor Joseph Daly
Law/Grad Room 219E
651-523-2121
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Wednesday 10:30 – 12:20 p.m.
Law Room 303

Assigned Texts

Cooley, John W., Mediation Advocacy, 2nd Edition (NITA 2002)

EDMR Clinic Manual (on TWEN)

NOTE: Please read the Cooley book, chapters 1-7 in their entirety by August 20 (it's a fast read and very informative). Specific reading assignments are also noted for individual classes throughout the semester.

Class Assignments

8/20/08 Course Introduction: Clinic Goals and Evaluation Methods, Office Procedure

Reading:

Cooley, pp. 1-13

Clinic Manual Tab 1 (all)

Clinic Manual Tab 12 (“Rethinking Zealousness” and “Why I am a Lawyer” only)

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

8/27/08 Professional Responsibility/Ethics: Practice Challenges and Paradigms for Mediation Representation. Federal Rules of Evidence, Rule 408. Minnesota Mediation Rules

Reading:

Cooley, pp. 150-170; 193-200

Clinic Manual Tab 2 and Tab 3 (all)

**9/3/08 Time Management, Client Interviewing: A Focus on Interests;
Representation Agreement and Releases**

Reading:

Clinic Manual Tab 4 and Tab 7 (all)
Cooley, pp. 49-62

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.

**9/10/08 Evaluating Your Client's Claims: The Prima Facie Case, Evidentiary
Hurdles, Damages, Formulating an Initial Demand**

Reading:

Review Clinic Manual Tab 2 and Tab 3 (all)
Cooley, pp. 66-72

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 talk about how to develop a plan for fact investigation, generate an initial theory of the case (to be discussed more in depth on September 24th), and ultimately create a mediation representation plan (to be discussed in more depth throughout the remainder of the course).

**9/17/08 Employment Discrimination: Causes of Action (Federal and State) (Or other
substantive law depending on type of cases we handle); Good Facts/Bad
Facts**

Reading:

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.

9/24/08 Theory of the Case; Good Facts/Bad Facts

Reading:

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.

10/1/08 Case Preparation/Analysis: Preparing for Negotiation/Mediation Representation; ABA Video (How to Represent Your Client During Mediation)

Reading:

Cooley, pp. 91-125, Appendix C
Clinic Manual Tab 9

During the first class hour, you will discuss the materials in Clinic Manual Tab 9. In the second class hour, we will view segments of the ABA video.

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.

10/8/08 Case Preparation; General

Reading:

Cooley, pp. 127-200

During class we will continue to view segments of the ABA video. Additionally, we will discuss your Clinic cases regarding fact investigation and questions pertaining to preparing your clients for mediation.

10/15/08 Case Preparation/Mediation Notebook – Staying Organized

10/22/08 Case Preparation; Negotiation Strategies to Maximize “Value-added” by Third Party Neutral

Reading:

Reread Cooley, pp. 133-148

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.

10/29/08 Case Preparation; Opening Statement/Initial Offers

Reading:

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.

11/5/08 Case Preparation; Closing the Deal-Settlement, Tax Awareness, Enforcement Concerns

Reading:

Cooley, pp. 182-192; 319-323, Appendix E
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. In class, we'll focus on reaching a settlement agreement and how to effectively memorialize it. During the second class hour, we will talk about your EEOC/DHR cases and "moot mediate" any problem areas you have identified.

11/12/08 Exploring the Dark Side – Confidentiality Pitfalls; Traps for the Unwary, Justice Concerns

Reading:

Clinic Manual Tab 3 ("Confidentiality in Mediation" only)
Clinic Manual Tab 3 (Rule of Evidence 408, Minn. Stat. § 595.02, Minn. Stat. § 604A.305 only. Review Minn. Stat. § 572.31-572.4 and Rule 114.08-114.09.)
Clinic Manual Tab 12 (Fiss, Owen article only)

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.

11/19/08 Expectations of Competence – Picking and Evaluating Neutrals; Alternate Paradigms for Advocacy in Mediation; Case Closeout; Course Evaluation

Reading:

Clinic Manual Tab 13 (all articles not previously read)

It is not uncommon to hear neutrals and/or clients complain that lawyers make mediation difficult. Some academics and mediation professionals have proposed that lawyers cannot operate within the code of professional responsibility without "corrupting" the mediation process. Indeed, a subcommittee of the ADR section of the American Bar Association has been created to consider proposing amendments to our professional rules to facilitate better use of mediation by lawyers. What is the "ideal" role for the advocate in mediation? Do the rules of professional responsibility need to be modified? We will explore these questions through debate and hypotheticals.

Reading:

Clinic Manual Tab 1 (pp. 11-12 only)

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

11/26/08 No Class, Thanksgiving Break

12/3/08 Case Analysis