Mediation and other dispute resolution (DR) processes are established for the purpose of resolving disputed issues differently than would be expected in a court trial. As the outcome – the process and experience – is expected and intended to be different, so too should the input by the clients and attorneys be different. Preparing a case for mediation is substantially different from preparing the same case for litigation. This course will start with the process and procedures used in various dispute resolution venues in the North Carolina courts. We will focus on how to best prepare a case to utilize the assets available to us in the DR setting. As the core of mediation is negotiation, the first problem will be a negotiation one, followed by a series of mediation problems where students gain experience as attorneys, litigants and mediators.

Grading – There will be no final exam. Two case preparation memos and long term negotiation written assignments will be expected. Students will also select a topic of interest to present to the class. Grading will be descriptive grading. All writing assignments must be passed to pass the class.

Attendance – Class participation and preparation count toward your grade. You cannot learn if you are not in class. You cannot miss more than two classes and pass the course. After a second absence, I will expect to meet with you after class. Please let me know in advance if you are going to miss or be late.

As the teacher is an adjunct, he does not keep any office hours at the school, but is generally available before and after class and at other times by appointment. He can be reached most of the time at his office, 919-469-2853 or frank_laney@ca4.uscourts.gov
All work is to be submitted by email to this address. Do NOT send to the Campbell address as it is not checked.

Please contact Associate Dean Tim Zinnecker (or Director of Academic Support Sha Hinds-Glick) if you believe you need an accommodation in the class for an impairment.

Class 1 – Aug 19 – Introduction and Chapter 1 of Mediation Representation by Abramson

Introduction to Class
Meet my friend
FCL bio
ADR experience of students?
What do you want out of this class?
Abramson textbook
Getting to Yes, Ury and Fisher
Alternative Dispute Resolution in North Carolina (Green book) – need to order on line
Class overview
no exam – grading pass/fail
main grades will be writings – all writings must be passed to pass the class
quality of writing counts
negotiation preparation memo
mediation preparation memo – in class mediation with other class
items that are to be turned in to professor are to be turned in by 5:00 on the day of
the class unless otherwise stated and emailed to frank_laney@ca4.uscourts.gov
class participation counts, you cannot learn if you are not in class, please let
me know in advance if you are going to miss
use of laptops is fine

Sign up for topic presentations
Introduction to Negotiation Exercise – Clinton Center Contract with Ravel
  Assign teams
  Distribute fact pattern

**Negotiation memo – 2000 words or less**
  Fact summary – neutral, should not contain argument, needs or positions
  Case Analysis
    Your Client’s
      - Goals – specifically what they want from the deal
      - Strengths
      - Weaknesses
    Other Party’s – this part is probably shorter as you will have
      - Goals
      - Strengths
      - Weaknesses
  Needed information
    From Client
    From Other Party
  Innovative Ideas
    High value to client but low cost to other side
  Negotiation strategy
    Starting point – in $ if appropriate
    Moves and trades - in $ if appropriate
    Bottom line - in $ if appropriate
    Tone
  Alternate outline – see page 343 et seq of Abramson

**Narrative and Discussion of Negotiation**
  What happened in negotiation, including offers, moves and rationale
  Self-evaluation and evaluation of other participants
  Agreement or statement of last offers

ADR Rainbow

Long term negotiation problem
Class 2 – Aug 26 – Chapter 2
Chapter 1 of ADR in NC (Green book)
After class – meet with Clinton Center
Basics of Mediation
  What would you expect?
  4 word definition
  6 stages - BADGER
  Diamonds
  Styles of mediation settlement v relationship / facilitative v directive
  Video of mediation – Bongo Joe
  Mediation as a settlement tool
  Mediation from the parties’ perspective
  Comparison of use of mediation, arbitration, litigation
Mediation Demo – Brick Patio
Dealing with Conflict
  Explain Thomas-Kilman grid – self v other, relationship v goals, cooperate v assertive
    Accommodate, compete, avoid, collaborate, compromise
  Demo with student – go out to dinner
  Divide into 4 groups – no compromise
    List biggest advantages and disadvantages of being in this group
  Dos and Don’ts – how should the rest of the world behave if we want to
    be successful in negotiating with you?

Class 3 – Sept 2 – Appendix A
Getting to Yes, by Roger Fisher and William Ury
After class – meet with Ravel
Litigation Risk Analysis and Decision Trees – with other class

Negotiation and Getting to Yes
Positions v Interests

Class 4 – Sept 9 – class will be 3 hours, from 6:00 – 9:00
Negotiation Fact Summary and Case Analysis Due – 1700 words
Guest lecturer – J. Anderson Little – Author of Making Money Talk: How to Mediate Insured
Claims and Other Monetary Disputes
  Positional bargaining and decision-tree analysis

Class 5 – Sept 16 – Chapters 12 and 18 of ADR in NC (Green book)
Completed Negotiation memo – 2000 words due
Assign 3 small mediations – no memos
Do Negotiation in class and debrief
Agreement and Negotiation Evaluation is due Friday Sept 19 at 10:00 PM

Class 6 – Sept 23 – Chapter 3
Know Your Case
Advising Your Client
BATNA

In class mediation 1 – Barking Dog

Assignment of Mediation Problem
Mediation memo – 2500 words
   Fact summary
   Case Analysis
      Your Client’s
         - Goals
         - External Factors – things that limit your client beyond their control
         - Strengths
         - Weaknesses
      Other Party’s – this part is probably shorter as you will have
         - Goals
         - External Factors
         - Strengths
         - Weaknesses
   Needed information
      From Client
      From other Party
   Innovative Ideas
      High value to client but low cost to other side
   Risk analysis
   Negotiation strategy
      Starting point - in $ if appropriate
      Moves and trades - in $ if appropriate
      Bottom line - in $ if appropriate
      Tone
   Mediator
      Selection
      Timing of the mediation
      Strategies for using the mediator

Narrative and Discussion of Mediation
   What happened in mediation, including offers, moves and rationale
   Self-evaluation and evaluation of other participants
   Agreement
Sample Mediation memo – The Glen

Class 7 – Sept 30 – Chapter 4.2, 4.3
Meet Employee attorneys after class
Selecting a Mediator
Pre-mediation Matters

In class mediation 2 – *Simple Assault*

Class 8 – Oct 7 – Chapter 5
Mediation Fact Summary due – 500 words
Meet Employer attorneys after class
Opening Statement
Conducting the Mediation

In class mediation 3 – *Concrete Cadillac*
Debrief Concrete Cadillac, legal analysis

Class 9 – Oct 14 – Chapter 6
Diplomacy overview memo due
Guest lecturer – Christopher Nichols, Plaintiff’s attorney
   Presenting plaintiff’s attorney’s perspective from meeting client, preparing client, readying for mediation, selecting a mediator, valuation of cases, settlement packages/demand letters, mediation conference, and settlement agreements or impasse

Class 10 – Oct 21 – Chapter 11 of *ADR in NC* (Green book)
Mediation Fact Summary and Case Analysis due – 1700 words
Drafting a Mediation Settlement
Enforcing a Mediated Agreement

Class 11 – Oct 28 Chapter 7
Guest lecturer – Jennifer Ruiz, Defense attorney
   Presenting defense attorney’s perspective from file transferred from client, opening file and gathering information, readying for mediation, selecting a mediator, evaluation letter, seeking demand from plaintiff’s attorney, mediation conference, and settlement agreements or impasse

Class 12 – Nov 4 – Chapter 8
Completed Mediation memo due – 2500 words
Ethics
Mediation Programs in NC

Class 13 – Nov 11
All groups will conduct Mediation 1 in class – Laney class will do employment problem
Debrief Mediation 1
Mediation Agreement and Evaluation 1 due by Friday 8:00 PM

Class 14 – Nov 18
All groups will conduct Mediation 2 in class – Clare class will do the Hoghouses problem
Debrief Mediation 2
Mediation Agreement and Evaluation 2 due by Friday 8:00 PM

Frank C. Laney is Circuit Mediator for the US Court of Appeals for the Fourth Circuit, has
taught at the Campbell School of Law and an ex-officio member of the NC Dispute Resolution
Commission. He also serves as a Chair of the ADR Committee of the NC State Judicial Council.
He is the former Mediation Coordinator for the NC Industrial Commission, a former partner in
Mediation Inc. and in the early 1990's limited his private practice in Raleigh to mediation. He
has been a member of the NC Bar Association Dispute Resolution Committee/Section since its
inception, and is a past Section Chair. He was a consultant with the NC Bar Association's
Mediated Settlement Conference and District Court Arbitration Pilot Programs. Mr. Laney is
certified as a Superior Court and Family Financial mediator by the NC Dispute Resolution
Commission and as a practitioner member of the Academy of Family Mediators. Born and
raised in North Carolina, Mr. Laney attended NC State University and UNC Law School. His
wife, Anne Whaley Laney, is Principle Flutist with the North Carolina Symphony. They have
two children.