MEDIATION-707 (3 Credits) Fall 2014

INSTRUCTORS:

Forrest S. Mosten, Adjunct Professor of Law
mosten@mostenmediation.com; 310-473-7611

Elizabeth Potter Scully, Clinical Assistant
elizabeth@jssfamilylaw.com; 310-481-9900

CLASSROOM 2477
OFFICE 2494: Office Hours: Wed. 11:30-2:30 and by appointment

CLASS TIMES: Wednesdays: 3:20-6:20PM; Fridays: 2-5PM

COURSE OBJECTIVES

The course will cover mediation theory, skills, and perspectives developed through readings, demonstrations, simulations, and observations.

The objectives of this course are:

- Learn the basic skills to serve as a neutral mediator.

- Learn the basic lawyering skills to advise clients competently about the advantages and disadvantages of mediation and to represent clients effectively inside and outside of the mediation room. These skills include listening, questioning, problem-solving, negotiation, and professional judgment.

- Learn how conflict resolution that can be used in both professional settings and personal life.

- Gain insight into mediation policy, mediation’s relationship to legal access, and ethical issues.
COURSE REQUIREMENTS

The requirements of this course are:

- Timely completion of all required readings, written assignments, observations of a court mediation, and completion of videotaped mediation simulations, including follow-up feedback sessions with instructor.

- Regular attendance. Missing one class is the same as missing an entire week of another course.

- Constructive Participation in class discussion and exercises. Proactive participation is a cornerstone of this course.

NOTE REGARDING MEDIATION OBSERVATIONS

During the course of the semester, you will go in pairs to observe actual mediations in courthouses throughout Los Angeles County. In the past, students have found the mediation observations fascinating and rewarding.

We partner with organizations which are operating under the California Dispute Resolution Programs Act and therefore are subject to stringent state oversight. You will be representing UCLA Law School, and your conduct directly impacts not only public perception of UCLA but also the ability of future mediation students to enjoy this profound educational opportunity. Once your mediation observation dates are set, they are firm, and it will be your responsibility to manage your other obligations to ensure that you fulfill observation assignment on the scheduled day and time.

The mediation observations are the functional equivalent of a court appearance. Just as if you were appearing in court on behalf of a client, court-appropriate attire (i.e. suits (and ties for men); no jeans or sandals) is required. You must arrive on time and you will need to arrange and plan your mode of transportation and route carefully in advance to make sure you are not late.

Failure to arrive on time and/or failure to dress appropriately for the mediation observations may be grounds for a failing grade in this class. This is a zero tolerance situation.
COURSE GRADING

This is a Pass/Fail Class. There will be no Final Exam.

Written Self-Evaluations (available for future use by student) will include thoughtful assessment of the following factors:

- Class Attendance
- Class Participation: demonstration of understanding of reading; contribution to class discussion; involvement in role playing and other class activities.
- Written Assignments: timeliness; demonstration of understanding of reading and class discussions; legal reasoning and strategy; creativity; practical problem solving.
- Skill Proficiency: thorough and thoughtful preparation for role plays, class exercises and simulations.
- Ability to Reflect on Performance and Strategize Corrections for Self-Improvement.
- Collaboration with other students and support for their development and success.
- Active Participation in mediation learning opportunities
- Improvement in knowledge of subject matter and skills throughout the semester.

REQUIRED READING


Forrest S. Mosten & Elizabeth Potter Scully, Law 707 (Mediation) Course Reader
RECOMMENDED READING

The following books have been placed on reserve at the law library. They are not required reading but are additional resources.

Daniel Bowling and David Hoffman, Bringing Peace into the Room (Jossey-Bass, 2003)
Nan Waller Burnett, Calm in the Face of the Storm, (DRP Publishers, 2007)
Folberg, Jay et al., Resolving Disputes, (Aspen ,2005)
Eric Galton, Ripples at Peace Lake (Trafford, 2004)
Margaret S. Herrman, Blackwell Handbook of Mediation (Blackwell, 2006)
Jeffrey Krivis, Improvisational Negotiation (Jossey-Bass, 2006)
Menkel-Meadow et al, Dispute Resolution: Beyond the Adversarial Model (Aspen, 2005)
Forrest S. Mosten, Unbundling Legal Services (ABA, 2000)
Forrest S. Mosten, Mediation Career Guide (Jossey-Bass, 2001)
Leonard Riskin and James Westbrook, Dispute Resolution and Lawyers, ( West, 1997)
Andrea Schneider and Christopher Honeyman, Negotiator’s Fieldbook (ABA, 2006)

Students are also encouraged to browse www.mediate.com and www.mostenmediation.com for an overview of resources and themes that will come up during the course. For inspiration to be a peacemaker, see http://www.beyondintractability.org/; www.collaborativepractice.com and http://www.mediatorsbeyondborders.org/
CLASS SCHEDULE AND WRITTEN ASSIGNMENTS

Wednesday, August 27: Introduction; Mediation as the Last Stop on the Dispute Resolution Highway

Failure to attend this class session without prior approval from the instructors will result in being dropped from the course.

Peacemaker Perspectives and Values
Definition and Elements of Mediation
Benefits of Mediation for Parties and Lawyers
The Spectrum of Dispute Resolution Options
Lawyer’s Ethical Duty to Advise Clients about Options to Litigation

Read: Frenkel and Stark pp.1-20
Course Reader:
Mosten, Lawyer as Peacemaker
Mosten, Do You Have What It Takes to be a Mediator
Nan Waller Burnett, Values of Peacemaking
Mosten, Tips for Lawyers Using Mediation for Their Own Personal Disputes
ADR Pledge of the Beverly Hills Bar Association
Letter from Presiding Judge, Los Angeles Superior Court, Family Law Department
Remarks of US Secretary of State, John Kerry, July 30, 2013
Instructions for Journal Assignment

Written Assignment Due: None.

Practice Perspective in Class: Developing Congruent Peacemaking Personality, Values, and Approach to Conflict Resolution

Friday, August 29: Role of the Mediator; Mediation as a Structured Process

Read: Frenkel and Stark: Chapters 3 and 5

Written Assignments Due:

1. 1- Page Outline for Client Consultation with David Krupp, focusing on explaining to client the structured process of mediation.

2. 3-Page Paper reflecting on a specific conflict and its resolution as you personally observed it from first reading this Syllabus until you complete the paper. The conflict can be observed in your family, friends, and classmates, in your neighborhood or any other aspect of your life.
Practice Perspective in Class: Client Consultation with Frank Krupp comparing Mediation with other forms of dispute resolution.

Wednesday, September 3: Setting Up the Mediation

Selecting the Mediator
Assuring Mediator Competence
Designing the Mediation Format
Who Should be Sitting at the Table?

Read: Frenkel and Stark, Chapter 4
Course Reader:
Practice Tips in Setting Up A Mediation
Overcoming Resistance to Mediate
Mediation Formats
California Rules of Court re: Mediation of Civil Cases (Skim)

Written Assignment Due: 1-Page Outline of strategic points common to both sides from the attorney point of view to set up Krupp mediation.

Practice Perspective in Class: Lawyers work with David and Frank Krupp to set up mediation.

Wednesday, September 10: Starting and Contracting for the Mediation

Conducting an Orientation Session
Role of the Mediator
Disclosures by Mediator to Assure Neutrality
Stages of the Mediation Process
Reviewing the Mediator’s Contract
Confidentiality Issues
Use of Lawyers and Other Experts in the Mediation
Payment of Mediator

Read: Frenkel and Stark, pp. 321-328 (§12.5)
Course Reader:
Outline of Orientation Session
Sample Mediation Agreement
Chart of Mediation Confidentiality Cases
Excerpts from Foxgate Homeowners’ Association, Inc. v. Bramalea (2001) 26 Cal.4th 1 and Cassell v. Superior Court (2011) 51 Cal.4th 113
California Evidence Code §§ 1115-1128 (Skim)
Written Assignment Due: 1-Page Outline of talking points regarding the mediation agreement and confidentiality for the mediator to cover in a discussion with parties.

Friday, September 12: Opening Statements and Setting an Agenda

Opening Statement of Mediator
Opening Statements of Parties
Developing an Agenda
Exchanging Information and Concerns
Avoiding Premature Negotiation of Positions
Active Listening
Pointing Out Agreements
Reframing
Clarifying
Coaching
Developing and Enforcing Ground Rules

Read: Frenkel and Stark, Chapters 6, 8, pp. 149-160 (§§6.6 – 6.9.5)
Course Reader:
  Reframing Worksheet
  Active Listening, Response Modes, Avoiding Miscommunication

Watch: Frenkel and Stark, Tracks 6-M, 9-G

Written Assignment Due: 1-2 Page Memo to Frank from his lawyers regarding points he should make in his opening statement and proposed mediation agenda.

Practice Perspective in Class: Conduct Opening Statements of Mediator, Opening Statements of the Parties and Development of Agenda.

Wednesday, September 17: Facilitating Negotiation

Read: Frenkel and Stark, Chapters 2 and 9;
Course Reader:
  Mosten: Developing Options Through Exploring Interests
  Mosten: Toolbox to Build an Agreement
  BATNA, WATNA AND MLATNA Handout

Watch: Frenkel and Stark, Tracks 9-B, 9-E, 9-H, 10-A

Written Assignment Due: 1-2 Page Memo to David from his lawyer restating David’s concerns and offering 1-3 options for addressing each concern.
Practice Perspective in Class: Mediator generates movement to build an agreement by creating value, creating dissonance and helping parties evaluate their BATNAS (“Best Alternatives to Negotiated Agreement”), WATNAS (“Worst Alternatives to Negotiated Agreement”) and MLATNAS (“Most Likely Alternatives to Negotiated Agreement.”)

Wednesday, September 24: NO CLASS

Wednesday, October 1: Dealing with Impasse

Preventing and Recognizing Impasse
Late Stage Strategies

Read: Frenkel and Stark, Chapter 7 through p. 201 (§§7.1 – 7.6) and Chapter 10 pp. 255-269 (§§10.1 – 10.9)
Course Reader:
  Mediator Proposal
  25 Wild and Crazy Ideas for Breaking Impasse

Written Assignments Due:

1. 3-Page Memo Reflecting on Observations of Court Mediation;
2. 1- Page Outline of Mediator’s Use of Late Stage Strategies in Roommate v. Roommate

Practice Perspective in Class: Mediator uses late stage strategies to keep parties from walking out the door.

Wednesday, October 8: Private Sessions and Caucusing

Initial Separate Private Sessions with Each Party (and Counsel)
Separate Caucuses During the Mediation Process
Strategies for Defusing Conflict Within a Private Session

Read: Frenkel and Stark, pp. 201-206, 259-262 (§§10.4 – 10.5); 332 (“Self-Determined Decisions”) -335 (top)
Course Reader:
  Outline of Initial Private Session
  Mechanics of a Caucus
  Party Self-Soothing/Self-Confrontation
  Parties or Lawyers Presenting Offers

Watch: Frenkel and Stark, Tracks 10-B, 10-F, 10-L
Written Assignment Due: 1-Page Written Mediator Statement Separating Roommates from Joint Session into Caucus.

Practice Perspective in Class: Mediator Conducts Private Caucus.

Friday, October 10: Lawyers Representing Clients Inside and Outside the Mediation Room

Unbundled Legal Coaching—discrete task shadow representation
Lawyer as advocate with mediator and opposing party
Mediator Strategies with Lawyers Present
Battling Lawyer Interference—Converting Interference into Alliance

Read: Frenkel and Stark, Chapter 13, pp. 346-356, 359-366
Course Reader: Unbundled Legal Services Today

Practice Perspective in Class: Mediator Conducts Mediation Session with Lawyers.

Wednesday, October 15: Drafting the Agreement, Enforcement, Modification

Memorandum of Understanding
Interim Agreements
Civil Contracts
Court Judgments and Orders
Role of Lawyer in Drafting and Execution
Monitoring the Agreement—Dealing with Agreement Remorse
Renegotiation and Modification
Enforcement

Read: Frenkel and Stark, Chapter 11
Course Reader: CCP: 664.6
Utah Rule 2.4: Mediator Drafting Agreement

Practice Perspective in Class: Draft Memorandum of Understanding.
**Week of October 20**  VIDEO SIMULATION 1: STUDENTS CO-MEDIATE IN TEAMS

VIDEO SIMULATION 2: STUDENTS REPRESENT CLIENTS IN THE MEDIATION ROOM

**Wednesday, October 22: NO CLASS**

**Wednesday, October 29: Preventing Future Conflict**

Preventive Mediation  
Contracting for Future Dispute Resolution  
Using Symptomatic Conflict Raised in Mediation to Improve Legal and Conflict Wellness

**Read:** Course Reader, Preventing Future Conflicts

**Written Assignment Due:** 1-Page Summary of Conflict Wellness Check-up conducted with person over 35 years of age.

**Practice Perspective in Class:** Educate parties about compliance, enforceability and preventing future conflict.

**CLASS DINNER will be held at 6:30pm at Professor Mosten’s home**

**Friday, October 31: Team and Individual Feedback Sessions**

**Written Assignments Due:**

1. 4-Page Paper reflecting on performance in simulation exercises, utilizing criteria provided by instructors.

2. Written Self-Evaluation, utilizing form provided by instructors.