

Mediation

Syllabus – Spring 2015

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COURSE DESCRIPTION: A study in the process in which a trained neutral third party assists others in resolving a dispute or planning a transaction. Students are trained in basic mediation skills through readings, demonstrations, simulations, and the keeping of a mediation journal. Students who attend regularly and fully participate meet the basic training requirement for mediator certification under the Nebraska Dispute Resolution Act.

SCHEDULE: Monday, Wednesday, 4:30 p.m. – 6:30 p.m. Room 125.

REQUIRED TEXT: The following texts are required for this course:

1. Douglas N. Frenkel & James H. Stark, *The Practice of Mediation: A Video-Integrated Text* (2012) (hereinafter “CB”).
2. Kathleen Severens, *Basic Mediation Training Manual* (1992) (hereinafter “Manual”).

There also will be occasional handouts, which will be posted on Blackboard.

The *Basic Mediation Training Manual* is a required text in order for students to complete the Basic Mediation Training in the State of Nebraska under the Nebraska Dispute Resolution Act. Students may purchase this manual from me.

In addition to the two required texts, you may also purchase the Mediation Quick Reference Guide, which can also be purchased from me. This is an optional text that I have found to be very helpful, especially during the mediation sessions.

READING ASSIGNMENTS: Reading assignments are posted in the “Assignments” folder on Blackboard. The reading assignments are listed per week, and the list notes the topics to be covered in that week. Please keep up with all of the reading assignments as posted, even if we have fallen behind during class.

Please make sure to read the first assignment (CB 1-20 and Manual 1-25, 26-43, 204-09) for the first week of class (August 25 & 27).

CLASS ATTENDANCE AND PARTICIPATION: Each student is required to attend class regularly and punctually and to be prepared to participate in class discussions, simulations, and other exercises. Participation in class discussions, simulations, and exercises is a crucial portion of this class, which will be taken into consideration in your final grade.

You should consider your class obligation to be the same as any other professional obligations in your life, including work obligations. If you miss class, you will be required to **e-mail me in advance of class or as soon**

as possible thereafter, explaining the reason for your absence. If you do not attend class regularly, you will be dropped from the course.

Attendance in class is also necessary in order for you to receive a certificate noting that you completed a course in Basic Mediation Training in the State of Nebraska under the Nebraska Dispute Resolution Act. I will pass around an attendance sheet on each day of class. If you miss class, you will be required to make up the class in order to remain qualified for the certification.

SEATING: I will pass around a seating chart the second day of class and will ask you each to fill in the seat in which are sitting that day and remain in that seat for the rest of the semester.

GRADING: Your grade will be based primarily on your score on the research paper due at the end of the semester. Your grade will comprise of the following:

Class Participation:	10%
Mediation Journal:	40%
Final Exam:	50%

Class Participation

Because this class emphasizes skill development and practice, a portion of your grade is based specifically on class attendance. The class participation grade takes into account *both* class discussion *and* in-class exercises, including the many role play exercises scheduled for the semester. Simply showing up to class is not enough to earn a good class participation grade. Perfect attendance and participation in group work and role play activities *without* also participating in in-class discussions will only earn a student 6 out of a possible **10 points** for class participation.

Mediation Journal

You will be required to keep a journal throughout this semester. The class will focus on reflective practice and learning from our experiences, so the journal is an essential element of class. We will discuss journaling and reflective practice in class.

You will be required to journal on the following: 1) a reflective journal entry for each week of class (14 entries), reflecting on class discussion, the readings, and your experiences in your role play exercises, and 2) one (1) entry detailing how you will use the skills learned in Mediation class in your future practice – whether as a neutral, an advocate, in business, or any other manner you expect.

Your journal should NOT exceed 50 double-spaced pages (and you likely will not need this many pages for your fifteen (15) journal entries). You will be required to turn in to me your Journal entries for Weeks 4 and 8 the Monday following that week. More information on the “Journal Check-Ins” is available on Blackboard. Your journal will be graded and awarded up to **40 points**. Please see Blackboard for an additional memorandum regarding journaling.

Final Exam

The date of the final exam will be finalized soon. The exam will be scheduled for **8:00 a.m.** – NOT at 8:30 a.m. The exam will last **four-and-a-half hours** – NOT 4 hours. The reason for the longer exam is because during the first portion of the exam, you will be watching a mediation simulation and then commenting on the techniques used in that video as the primary portion of your final exam. Your exam will be graded and awarded up to **50 points**.

OFFICE HOURS: I do not keep formal office hours, but if my office door is open, please feel free to stop by. My office is Room 261 North, my office telephone number is 472-5245, and my office e-mail is kblankley2@unl.edu. In addition, you can e-mail me at any time to make an appointment to meet with me at a time that is mutually convenient. I am happy to meet with you without an appointment, but making an appointment with me is the best way to ensure that I will be available.

AUDIO OR VIDEO RECORDING: Classes may not be recorded, except in cases of special need with my prior permission.

CELL PHONES AND PAGERS: The use of cell phones and pagers in class is prohibited. Any cell phones or pagers brought to class must be **turned off** (*not just set to vibrate*) before class begins.

LAPTOP COMPUTERS AND PDAs: Computers may be used in class only for purposes directly related to the class. Game playing, surfing the Internet, sending messages or e-mail, or doing any work not related to this class is prohibited. **Anyone violating this policy is subject to being dropped from the class.**

NOTE: This syllabus incorporates by reference the University of Nebraska College of Law Academic Regulations (which can be found at: <http://law.unl.edu/academics/regulations.shtml>), including the Honor Code (which can be found at: <http://law2.unl.edu/HonorCode.aspx>).

ACCOMMODATION FOR STUDENTS WITH DISABILITIES: Students with disabilities are encouraged to contact me for a confidential discussion of their individual needs for academic accommodation. It is the policy of the University of Nebraska-Lincoln to provide flexible and individualized accommodation to students with documented disabilities that may affect their ability to fully participate in course activities or to meet course requirements. To receive accommodation services, students must be registered with the Services for Students with Disabilities (SSD) office, 132 Canfield Administration, 472-3787 voice or TTY.

MEDIATION

Instructors: Kristen Blankley and David Hubbard

Class Schedule Spring 2015

Week	Dates	Topics	Assigned Reading
1	January 12 & 14	<ul style="list-style-type: none">◆ Introduction (M)◆ Reflective Practice (M)◆ Conflict Theory (W)	<p><u>CB</u>, Chapter 1: 1-20</p> <p><u>Manual</u>, 1-25, 26-34, 204-209</p> <p>This week, we consider the origins of conflict and types of conflict, because mediation is one method of conflict resolution. By understanding conflict, we have a greater appreciate for conflict resolution. We will also consider the benefits of self-reflection in our daily lives, and how that reflection will help us become better mediators.</p>
2	January 19 & 21	<ul style="list-style-type: none">◆ MLK Jr. Day Holiday (M)◆ Negotiation (W)	<p><u>CB</u>, Chapter 2: 21-62</p> <p><u>Manual</u>, 35-52</p> <p>Negotiation is the foundation for all mediation. Mediation is simply assisted negotiation. This week considers the fundamentals of negotiation, and we will incorporate those principles throughout the semester as we help others negotiate.</p>
3	January 26 & 28	<ul style="list-style-type: none">◆ Negotiation con't (M)◆ Dispute Resolution Processes (M)◆ Mediation Overview (W)◆ Demo Roleplay 1 (W)	<p><u>CB</u>, Chapter 5: 123-132</p> <p><u>Manual</u>, 53-66, 90-95</p> <p><u>Blackboard</u>, Improving Civil Mediation</p> <p>Following our discussions of conflict and dispute resolution generally, we will begin our study of mediation specifically. The highlight of this week</p>

			is a demonstration mediation that will give students a frame of reference for their upcoming mediation simulations.
4	February 2 & 4	<ul style="list-style-type: none"> ◆ Mediation Styles (M) ◆ Intake & Preparation (M) ◆ Introduction (M) ◆ Opening Statement (W) ◆ Clarification (W) 	<p><u>CB</u>, Chapter 3: 63-92, Chapter 4: 93-122, Chapter 6 (§6.1, §6.2): 127-131</p> <p><u>Manual</u>, 83-89, 96-111</p> <p><u>Blackboard</u>, Dispute Resolution Models; Sensitive Bully; Introduction Checklist</p> <p>We begin the week by discussing a wide variety of mediation styles, although we will focus on teaching the facilitative style in class. This week, we will also be learning the first three steps of the eight-step mediation process. To help cement these skills, class will include a number of simulations, problems, and discussions aimed at getting students ready to begin mediating on their own.</p>
5	February 9 & 11	<ul style="list-style-type: none"> ◆ Clarification (M) ◆ Issues & Interests ID (MW) ◆ Reflective Practice (W) ◆ How to Roleplay (W) 	<p><u>CB</u>, Chapter 6: 133-164, Chapter 7: 165-206, Chapter 8 (§8.1 - §8.4): 207-216</p> <p><u>Manual</u>, 112-146</p> <p><u>Blackboard</u>, Joint Problem Solving Statements</p> <p>This week, we focus on the two most important steps of the mediation process – clarification (i.e., information-gathering) and issue and interest ID. Information gathering techniques are discussed and practiced in class, leading to a discussion of the heart of mediation – uncovering the true issues and interests at issue for the disputants.</p>
6	February 16 & 18	<ul style="list-style-type: none"> ◆ <i>Roleplays 1-3 (MT)</i> 	<p><u>Manual</u>, 179-184</p> <p><u>Blackboard</u>, Roleplay schedule & scenarios</p> <p>Students put steps one through four of the eight-step mediation process into practice by conducting mediation simulations. Mediation coaches from the local community will critique students and provide helpful advice.</p>

7	February 23 & 25	<ul style="list-style-type: none"> ◆ Demo Roleplay 2 (M) ◆ Agenda Setting (M) ◆ Option Generation (MW) ◆ Decision Making (W) 	<p><u>CB</u>, Chapter 8: 216-226, Chapter 9: 227-254, Chapter 10 (§10.1 - §10.11) 255-272</p> <p><u>Manual</u>, 147-160</p> <p><u>ICM</u>, Persistence and Follow Through by the Mediator</p> <p><u>Blackboard</u>, Knight to Remain as Indiana's Coach; Reaching Agreements: Observations from the Firing Line</p> <p>Having practiced the first four steps of the mediation process, we will begin learning the last four steps of the mediation process. These last four steps generally deal with the process of generating solutions and choosing solutions to resolve the issues facing the parties in the way that best meets their interests.</p>
8	March 2 & 4	<ul style="list-style-type: none"> ◆ Decision Making (M) ◆ Closure (M) ◆ Roleplays 4 & 5 (W) 	<p><u>CB</u>, Chapter 10: 273-284, Chapter 11: 285-302</p> <p><u>Manual</u>, 161-171</p> <p><u>ICM</u>, Continuing to Learn about Mediation</p> <p><u>Blackboard</u>, Small Claims Mediation</p> <p><u>Blackboard</u>, Roleplay schedule & scenarios</p> <p>We continue to work on the last four steps of the mediation process, focusing on how to help parties make decisions to resolve their dispute and how to close the mediation process. Students will also conduct role play simulations to begin putting in practice the last four steps of the mediation process under the Nebraska model.</p>
9	March 9 & 11	<ul style="list-style-type: none"> ◆ Roleplay 6 (M) ◆ Caucus (M) ◆ Co-Mediation (W) ◆ Evaluative Mediation (W) 	<p><u>Blackboard</u>, Roleplay schedule & scenarios</p> <p><u>Manual</u>, 172-178</p> <p><u>Blackboard</u>, Making the Decision to Settle: Decision Analysis; Barry's Burgers; Ten Things I Wished the Mediator Asked Me; Locating Personal Injury Verdicts; Locating Employment Verdicts</p>

			<p>Students continue with role play exercises dealing with the last four steps of the mediation process. During this week, we will also consider the benefits of caucusing (i.e., having private meetings with the parties). We will also discuss evaluative mediation – a popular form of mediation in which the mediator actively gives advice to the parties and tries to predict how cases would play out in the courtroom.</p>
10	March 16 & 18	<ul style="list-style-type: none"> ◆ <i>Roleplay 7</i> (M) ◆ Power Issues (W) ◆ Cross-Cultural (W) 	<p><u>Manual</u>, 67-82, 191-199</p> <p><u>Blackboard</u>, Dimensions of Potential Cultural Differences</p> <p><u>Blackboard</u>, Roleplay schedule & scenarios</p> <p>This week, we consider two issues that we encounter in every conflict – and in every mediation. Those issues are power and control, and issues of culture. Students are encouraged to consider these concepts in very broad terms to understand how the dynamics of human behavior affect conflict and resolution.</p>
11	March 30* & April 1	<ul style="list-style-type: none"> ◆ Confidentiality (M) ◆ <i>Roleplay 8</i> (W) 	<p><u>CB</u>, Chapter 12: 303-336</p> <p><u>Manual</u>, 221-225</p> <p><u>Blackboard</u>, Confidentiality Worksheet</p> <p><u>Blackboard</u>, Roleplay schedule & scenarios</p> <p>This week we consider one of the most important legal issues in the area of mediation, i.e., confidentiality. We discuss the underlying values confidentiality promotes, as well as some of the drawbacks to confidentiality. We also discuss the different means by which confidentiality can be achieved. Finally, we will work through exercises showing the application of Nebraska’s Mediation Act in the area of confidentiality.</p>
12	April 6 & 8	<ul style="list-style-type: none"> ◆ Representation in Mediation (M) ◆ <i>Roleplay 9</i> (W) 	<p><u>CB</u>, Chapter 13: 337-368</p> <p><u>Manual</u>, 185-190</p> <p><u>Blackboard</u>, Judges’ Score Sheet</p>

			<p><u>Blackboard</u>, Roleplay schedule & scenarios</p> <p>Most lawyers will encounter mediation as an advocate – not as a neutral. We teach an entire course on the advocate’s role in mediation, but in class this week, we consider mediation from the advocate’s perspective.</p>
13	April 13 & 15	<ul style="list-style-type: none"> ◆Attorney Mediators (M) ◆Ethics (M) ◆<i>Roleplay 10</i> (W) 	<p><u>Manual</u>, 200-227</p> <p><u>Blackboard</u>, Unauthorized Practice of Law Rules; Ethics Problems</p> <p><u>Blackboard</u>, Roleplay schedule & scenarios</p> <p>In these last weeks, we will continue doing our role play exercises with the helpful comments from our practicing mediators.</p> <p>We close our discussion of mediation with an in-depth discussion of legal and mediator ethics. In these classes, we will consider a series of hypothetical questions that details the subtleties of our ethical obligations.</p>
14	April 20 & 22	<ul style="list-style-type: none"> ◆Ethics – Continued (M) ◆Evaluation (W) ◆Conclusion (W) 	<p>In our last class, all students who have completed the class requirements will receive a Certificate of Completion of Basic Mediation Training!</p>
		Consult schedule for final exam information.	

*Spring break is the week of March 24-28.

CB = Casebook, The Practice of Mediation

Manual = Basic Mediation Training Manual