

MEDIATION ADVOCACY

Professor Alyson Carrel

This course focuses on the perspective of the legal advocate in the mediation process. Over the last 70 years, we have seen a 90% decline in the number of cases going to trial. The vast majority of cases now settle prior to trial, with less than 1% of federal civil cases going to jury trial (bench trials are even lower). Attorneys today need to understand how to effectively advocate for a client in a wide variety of settings including negotiation, settlement conferences, judicial settlements, and mediation. Effective advocacy in mediation has some elements in common with effective advocacy in litigation, but also many different elements. Course materials and exercises will discuss different mediation models and mediator styles, mediator selection, attorney preparation, client preparation, as well as advocacy during the mediation session itself.

Prerequisites: Negotiation, LITARB 670 or 670K or Cultural Negotiation LITARB 674 are a co-requisite for this course. Students concurrently bidding to be enrolled in Negotiations may bid on this course.

Text: Mediation Representation: Advocating as a Problem-Solver (3rd Edition) by Harold I. Abramson.

II. REQUIREMENTS

1. ATTENDANCE

- Attendance at all classes is required except for illness. Anticipated absences must be reported to Professor Carrel in advance of class. Failure to comply with attendance requirements will result in a grade reduction penalty.
- Classes will begin promptly at the scheduled time. All students will be in class and ready to begin at each session's starting time, and after all breaks.

2. DROP POLICY

IF YOU WISH TO DROP THE COURSE, YOU MUST NOTIFY THE REGISTRAR'S OFFICE BY 5:00PM, January 12, 2015. NO DROPS ALLOWED AFTER THAT DATE AND TIME.

3. REQUIRED TEXT

Mediation Representation: Advocating as a Problem-Solver (3rd Edition) by Harold I. Abramson.

4. SCHEDULE

Class will meet from 4:00pm-7:00pm on Mondays. In addition, you may be asked to conduct mediations outside of class time.

5. EXERCISE/ROLE PLAY INFORMATION

For most exercises you will have both general (shared) information and confidential information, for your role only. You may disclose to other students the information on your confidential sheet if you wish to do so, but you may not show your confidential sheet to any other student, even a teammate, until the mediation is completed. When the mediation is completed, you may share your confidential information sheet with other students, but you are not obliged to do so.

The information that you need to play the disputants in the exercise should be in the materials. You may not invent facts that improve your bargaining position. If, however, you are asked a question calling for irrelevant facts not contained in your information, (e.g. "What is your middle name?"), you may invent a response, or, if more appropriate, say, "I don't know".

CAUTION

Because a version of this class has been taught before, it is possible that you will have the opportunity to look at confidential instructions given to students in prior classes, or that such students will offer to discuss mediation exercises with you prior to your doing them. You are prohibited from sharing your results with a classmate before they have completed the exercise. Additionally, you may not 'google' or otherwise search electronically for any of the exercises prior to doing them. Doing any of these activities, even with the best intentions, would be cheating both yourself and your classmates and is a violation of the honor code

6. FEEDBACK

This course provides students with a theoretical framework and practical application of the mediation process focusing on the role of legal advocate. At times, you may also role play as the neutral mediator in the mediation to experience this perspective first hand and how an advocate can effectively interact with this role. Feedback from your peers, outside trainers, as well as a self-analysis is crucial to your understanding of the mediation process and skills. Following each simulation you will write a short reflection on what happened. In addition, you will receive detailed feedback on your advocacy skills from experienced mediators and advocates. This feedback is immensely valuable to understand how others perceive your effectiveness in this new role. Students' skill levels are not part of the grade consideration for this course, but instead focused on your ability to reflect and assess your own effectiveness.

7. GRADING

Grades will be based on demonstrated comprehension of the principles of effective advocacy in mediation as demonstrated in class participation (25%), a randomly selected mediation representation plan (MRP) (35%), a self-analysis of videotaped simulation (30%), and external presentation (10%).

8. TECHNOLOGY IN THE CLASSROOM

I expect students to be fully engaged during class discussions and may deduct participation points if you are on your computer, phone, etc and causing disruptions. However, at times we will be using Canvas and Google Apps as part of this class. Unless we are actively engaged with something related to Canvas or Google Apps, I do not allow students on their laptops, tablets, smartphones, or other devices during class.

Please make sure you have recently logged into and have access to both Canvas and Google Apps. If you do not have access, please let Professor Carrel know in class on January 12th.

Canvas: To check access to Blackboard go to:
<https://canvas.northwestern.edu> and log in using your NetID and Password.

GOOGLE APPS: To check access to Google Apps, log in to Canvas and select the course Mediation Advocacy. On the left hand side select “Modules”. On the Modules page, you should see of topics. Select “Mediation Advocacy – Student Introductions” and post something about yourself

9. SELF-ANALYSIS OF VIDEOTAPED MEDIATION

At the end of the semester, you will have the opportunity to videotape yourself in a mediation simulation. You will review this videotape and write a 4-6 page analysis of the mediation. This should not be a blow by blow account of what happened, but should analyze the effectiveness of your skills using criteria discussed throughout the course and judging criteria from the Representation in Mediation Competition available in the online appendix of the text or available through the ABA-DR Section’s Representation in Mediation Competition website here: <http://tinyurl.com/8shh5hd>

Your grade will not be based on your ability to reach a settlement, but will be based on your ability to honestly assess your strengths and weaknesses as an advocate in the mediation proces. Although your performance will not be graded, you will need to make your video available to Professor Carrel via Canvas, YouTube, Google Doc, or DropBox.

10. CONTACT

If you have any questions, please contact me at a-carrel@law.northwestern.edu or stop by my office, RB 859 located on the 8th floor of the Bluhm Legal Clinic. You may also contact Nancy Flowers, Program Coordinator, at n-flowers@law.northwestern.edu or stop by her office, RB 862 located on the 8th floor of the Bluhm Legal Clinic.

III. SYLLABUS

Class No. 1

January 12, 2015

Read Before Class: *Introduction: The Foundation of the Book*
 Chapter 1: Negotiating in Mediations

Topic: ADR and Mediation

In Class:
4:00 – 5:00 Introduction to class, students and professor
5:00 – 6:15 Mediation Definitions
6:15 – 7:00 Discussion

Distribute: **San Nueve Museum**

Assignment: Negotiate **San Nueve Museum** with partner (no more than 60 minutes)
before class on January 26, 2015

Read: *Chapter 2: Familiarizing Yourself with Mediation*

*******January 19, 2015**

NO CLASS – Martin Luther King, Jr. Holiday

Students negotiating **San Nueve Museum** with partner

Class No. 2

January 26, 2015

Read Before Class: *Chapter 2: Familiarizing Yourself with Mediation*

Topic: Stages of a Mediation & Mediator Styles/Orientations

In Class:
4:00 – 6:00 Stages of Mediation: Live Demo
6:00 – 7:00 Communication Skills

Assignment:

Read: *Chapter 3: Counseling Your Client About Mediation*

Research: You are responsible for researching a current case or event. You will act
as a party in this case/event and discuss the facts and situation with an
assigned attorney to determine if it is ripe for mediation

Class No. 3

February 2, 2015

Read Before Class: *Chapter 3: Counseling Your Client About Mediation*

Topic: Client Interviewing and Counseling

In Class:

4:00 – 5:30 Introduce case to your attorney (in pairs)
5:30 – 6:15 Debrief
6:15 – 6:45 Interview Client – Fishbowl
6:45 – 7:00 External Presentations

Distribute: **Mumbai**

Assignment:

Read: *Chapter 4: Negotiating an Agreement to Mediate*

Simulation: Read **Mumbai**: You will research Chicago mediators and select a Mediator for the simulation **Mumbai** to propose to the other side.

Class No. 4

February 9, 2015

Read Before Class: *Chapter 4: Negotiating an Agreement to Mediate*

Topic: Recommending Mediation and Mediator Selection

In Class:

4:00 – 5:00 Meet with other side to discuss mediator selection for **Mumbai**
5:00 – 6:15 Discussion and presentation of mediators
6:15 – 7:00 Negotiate Agreement to Mediate with Prof Carrel

Distribute: **Dash Limo**

Assignment:

Read: *Chapter 7.2: Appearing in the Mediation – Mediation Session*

Simulation: Prepare to negotiate **Dash Limo** in the mediation setting

Class No. 5

February 16, 2015

Read Before Class: *Chapter 7.2: Appearing in the Mediation – Mediation Session*

Topic: Advocating in the Mediation

In Class:

4:00 – 5:30 MEDIATE: **Dash Limo**
5:30 – 6:00 Debrief with Mediator
6:00 – 7:00 Mediate: **Dash Limo** fishbowl – Compare styles

Assignment:

Read: *Chapter 5.1-5.7: Preparing Your Case for Mediation*

Simulation: Prepare to negotiate **Mumbai** in the mediation setting (MRP due February 23, 2015)

Class No. 6

February 23, 2015

Hand In: **Mediation Representation Plan (MRP) for **Mumbai**** (1 MRP per person)

Read Before Class: *Chapter 5.1-5.7: Preparing Your Case for Mediation*

Topic: Mediator Styles and Caucusing

In Class:

4:00 – 5:30 MEDIATE: **Mumbai** fishbowl
5:30 – 6:00 Discussion
6:00 – 7:00 Mediation Representation Plan

Distribute: **DNA 1**

Assignment:

Read: *Chapter 5.8-5.12, 5.16: Preparing Your Case for Mediation*

Simulation: Prepare to negotiate **DNA 1** in the mediation setting. Parties must submit an MRP due March 2, 2015. Mediators do not need to submit an MRP.

Class No. 7

March 2, 2015

Hand In: **Mediation Representation Plan (MRP) for **DNA 1**** (1 MRP per person)

Read Before Class: *Chapter 5.8-5.12, 5.16: Preparing Your Case for Mediation*

Topic: Opening Statements and Information Exchange

In Class:

4:00 – 5:15 Mediate **DNA 1**

5:15 – 6:15 Fishbowl DNA 1
6:15 – 7:00 Discussion

Distribute: Mercer v Ramirez

Assignment:

Read: Chapter 5.13, 5:17 Preparing Your Case for Mediation

Simulation: Prepare to negotiate Mercer v Ramirez in the mediation setting
Complete 1 MRP per team due March 9, 2015

Class No. 8 **March 9, 2015**

Hand In: Mediation Representation Plan (MRP) for Mercer v Ramirez (1 MRP per team of 2 students)

Read Before Class: Chapter 5.13, 5:17 Preparing Your Case for Mediation

Topic: Neuroscience

In Class:

4:00 – 5:15 MEDIATE: Mercer v Ramirez
5:15 – 7:00 Confidentiality and Ethics

Distribute: Mandez

Assignment:

Read: Jeremy Lack and Francois Bogacz: *The Neurophysiology of ADR and Process Design* (posted on Canvas and available here:
<http://www.mirenje.hr/attachments/article/277/The%20Neurophysiology%20of%20ADR%20and%20Process%20Design%20%28J%20%20Lack%20&%20F.%20Bogacz%29.pdf>)

Simulation: Prepare to negotiate Mandez in the mediation setting (MRP due April 13, 2015). This mediation will be conducted during class on April 13, 2015. Students will work in teams of two and must find a volunteer to play the role of your client. The mediation will be conducted by a professional mediator. Advocacy coaches will be in the room with you to provide individualized feedback. This mediation will be videotaped and used for your self-reflection assignment, due April 24, 2015.

Class No. 9 **March 16, 2015**

Read Before Class: Jeremy Lack and Francois Bogacz: *The Neurophysiology of ADR and Process Design* (posted on Canvas and available here:
<http://www.mirenje.hr/attachments/article/277/The%20Neurophysiology%20of%20ADR%20and%20Process%20Design%20%28J%20%20Lack%20&%20F.%20Bogacz%29.pdf>)

[20of%20ADR%20and%20Process%20Design%20%28J%20%20Lack%20&%20F.%20Bogacz%29.pdf](#)

Topic: Neuroscience

In Class:

4:00 – 5:30 Discuss External Presentations
5:30 – 7:00 Neuroscience and Mediation

Distribute: Wickens

Assignment:

Read: *Chapter 5.15: Preparing Your Case for Mediation – Mediation Submission*

Simulation: Attorneys in Wickens must submit a Premediation submission to the mediator by March 30, 2015 at 4pm CST.

Prepare to negotiate Mandez in the mediation setting (MRP due April 13, 2015). This mediation will be conducted during class on April 13, 2015. Students will work in teams of two and must find a volunteer to play the role of your client. The mediation will be conducted by a professional mediator. Advocacy coaches will be in the room with you to provide individualized feedback. This mediation will be videotaped and used for your self-reflection assignment, due April 24, 2015.

Presentation: Turn in External Presentation Proposal by March 13, 2015 by 5pm CST

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SPRING BREAK
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Class No. 10 **March 30, 2015**

Hand In: Wickens Premediation submission to mediators (due by 4pm CST)

Read: *Chapter 5.15: Preparing Your Case for Mediation – Mediation Submission*

Mediators must review Wickens premediation submissions and provide a 2 page summary reflecting on the attorneys’ effectiveness by April 6, 2015 at **4pm CST**

In Class: Guest Lecturers

Class No. 11 **April 6, 2015**

Hand In: Mediator reflection on Wickens

Read before class: *Chapter 5.15: Preparing Your Case for Mediation – Mediation Submission*

In Class:

4:00 – 5:00 Discuss Premediation Submissions
5:00 – 6:30 Creativity in Mediation

Assignment:

Simulation: Prepare to negotiate Mandez in the mediation setting (MRP due April 13, 2015). This mediation will be conducted during class on April 13, 2015. Students will work in teams of two and must find a volunteer to play the role of your client. The mediation will be conducted by a professional mediator. Advocacy coaches will be in the room with you to provide individualized feedback. This mediation will be videotaped and used for your self-reflection assignment, due April 24, 2015.

Class No. 12 **April 13, 2015**

BLOCKBUSTER CLASS: Please dress in business attire. This class may run a little past 7pm.

Hand In: **Mediation Representation Plan (MRP) for Mandez** (1 MRP per team of 2 students)

In Class: **MEDIATE: Mandez**

Class No. 13 **April 20, 2015**

NO CLASS: Students should be conducting external presentations about mediation

Groups of 2-3 students will present a presentation to an external organization or group of people about the benefits and pitfalls of mediation. The presentation should be at least 15 minutes long. Each team of 2-3 students should write a short 2-3 page summary of the presentation (1 per team) with accompanying handouts/materials and proof of completion (such as program book, evaluations, announcement, affidavit of completion). The presentation must be completed by April 20, 2015. Summary and supporting documentation should be turned in by 11:59pm, April 24, 2015.