

MEDIATION PROCESS

Professor Alyson Carrel

This course focuses on the theoretical framework of the mediation process and skills necessary to mediate disputes as a neutral. Students will study a variety of mediation models, current laws regulating and guiding mediation, ethical considerations for mediators, implications mediation has on litigation, and broader applications of mediation skills for lawyers. The skills taught in this course are invaluable if you want to mediate or simply be a better negotiator – Research shows that the best negotiators have received mediation training. Even if a student does not plan to be a mediator, this course provides unparalleled experience thinking on your feet with personalized and intensive feedback from dispute resolution professionals. All students will also have an opportunity to observe a mediation in the Cook County courts.

Northwestern has partnered with the Center for Conflict Resolution (CCR) to provide professional mediation skills training during the course of the semester. CCR is a non-profit organization that provides free mediation services in Chicago through the Cook County court system and community-based referrals (www.ccrchicago.org). **All students must attend a one-day weekend training session conducted by CCR on October 5, 2014.** *For students interested in pursuing certification as a CCR mediator, there will be additional mandatory weekend training on **October 11 & 12, 2014.*** Students certified as CCR mediators will be eligible to conduct actual mediations on behalf of CCR in the 4 credit hour practicum during Spring semester (LITARB 676). Certification as a CCR mediator is determined by a committee of CCR trainers and is based on a student's ability to successfully complete a series of simulated mediations and demonstrate mastery of CCR's mediation model. In addition to the training held by CCR, students pursuing certification may be required to do other activities and simulations inside and outside of class in order to meet certification requirements. Once students complete their practicum experience, they may maintain their certification by continuing to mediate once a month at CCR.

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: Practice, Policy, and Ethics* (2nd Edition 2013) by Carrie Menkel-Meadow, Lela Love, and Andrea Schneider.

II. REQUIREMENTS

1. ATTENDANCE

- Attendance at all classes is required. This includes the mandatory weekend training on **October 5, 2014**. For students seeking mediation certification, attendance is required for all classes as well as for additional training **October 11-12, 2014**. A student who misses a class for any reason other than illness will lose participation points that could result in a lowered grade.
- 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 4:30PM, September 8, 2014. NO DROPS ALLOWED AFTER THAT DATE AND TIME.

3. REQUIRED TEXT

Mediation: Practice, Policy, and Ethics, 2nd Edition, Carrie Menkel-Meadow, Lela Love, Andrea Schneider

4. SCHEDULE

Class will normally meet from 4:00pm-7:00pm on Mondays. During week 7 (October 20th) we have an extended class period from 4:00pm-9:00pm to work with trainers from CCR who will be providing individualized feedback in full length mediation simulations. In addition, you will be asked to conduct mediations outside of class time. After class 5, students should anticipate spending 3-5 hours a week outside class mediating or role playing for their peers to meet certification standards.

5. CCR MEDIATION TRAINING and CERTIFICATION

Northwestern has partnered with the Center for Conflict Resolution (CCR) to provide professional mediation skills training during the course of the semester. CCR is a non-profit organization that provides free mediation services in Chicago through the Cook County court system and community-based referrals (www.ccrchicago.org). As part of this professional training, **all students must attend a mandatory weekend training session on October 5, 2014.**

Students certified as CCR mediators will be eligible to conduct actual mediations on behalf of CCR in the 4 credit hour mediation practicum during the Spring semester (LITARB 676). Certification as a CCR mediator is determined by a committee of CCR trainers and is based on a student's ability to successfully complete a series of simulated mediations

and demonstrate mastery of CCR's mediation model. **Students interested in pursuing certification must attend the additional training session taking place October 11-12, 2014.** In addition to the training held by CCR, students pursuing certification may be required to do other activities and simulations inside and outside of class in order to meet certification requirements. **Students pursuing certification are expected to meet CCR certification standards by November 3, 2014.** Because certification by CCR is a prerequisite to enroll in the Mediation Practicum course, a student must be certified before the end of the fall semester or they will not be eligible to enroll in the spring Mediation Practicum.

Once students complete the practicum, they may maintain their certification by continuing to mediate at CCR.

6. **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 this class has been taught for a number of years, 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.

7. **FEEDBACK**

This course provides students with a theoretical framework and practical application of the mediation process focusing on the role of mediator. You will not only learn the concepts behind the mediation process, but the skills necessary to effectively manage the mediation process as the mediator. In order to practice your skills, we will regularly run simulations where you will role play as the mediator. You will also role play as a party in the mediation

to observe other mediators to assess different styles and approaches. 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 mediation skills from CCR trainers who are all certified and experienced mediators. 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. However, for students looking to certify as a mediator with CCR and participate in the mediation practicum, please note that CCR uses a performance-based evaluation standard that will assess your skill level. Certification with CCR is NOT mandatory for this class, but is a pre-requisite for the mediation practicum in the spring. Regardless of your intention to certify as a CCR mediator, please listen with an open mind to the feedback from your peers, professor, and CCR trainers.

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, or smartphones 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 September 3rd.

CANVAS: To check access to Canvas go to:
canvas.northwestern.edu and enter your NetID and Password.

GOOGLE APPS: To check access to Google Apps, log in to Canvas and select the Mediation Process Course. On the left hand side select "Modules". On the Modules page, you should see a list of exercises and topics we will explore throughout the semester. Select "Introductions".

You must be signed into Google with your nlaw account and may need to log out of all personal Google accounts to access this Site.

9. **GRADING**

Grades will be based on demonstrated comprehension of the principles of mediation as demonstrated in class participation, group projects and presentations, a self-analysis and reflection. Specifically, grades will be calculated based on the following:

1. Class participation (25%),
2. reflection paper of a court mediation observation (15%),
3. group projects (30%), and
4. self-analysis of videotaped mediation (30%).

You will not be graded based on status of CCR certification, or whether or not you choose to participate in the CCR certification process.

10. MEDIATION OBSERVATION

Each student must observe a court mediation conducted by a CCR certified mediator and write a reflection paper. You should contact Rae Kyritsi at the Center for Conflict Resolution to schedule your observation. Her contact information is: Rae Kyritsi, rkyritsi@ccrchicago.org.

Students who are NOT pursuing certification with CCR must schedule and complete their observation between October 7, 2014 and November 3, 2014. Students who are pursuing certification with CCR must schedule and complete their observation between November 4, 2014 and December 3, 2014. There are a limited number of cases and observation slots available. So regardless of which time frame you are required to complete your observation, you should plan on contacting Rae well before then to schedule.

Your reflection paper should be 3-4 pages, double-spaced, analyzing the mediation you observed. I am not looking for a narration of the mediation, but am asking that you reflect on the mediation focusing on 2-3 teachable moments or topics that we explored during the course of this class. Here is a list of topics you could discuss:

- Party and attorney involvement
- Model of mediation used
- Party satisfaction
- Self-determination
- Outcome of mediation compared to BATNA
- Power
- Social justice
- Mediation environment
- Mediator qualifications
- Communication skills
- Confidentiality

11. GROUP PROJECTS

Students will work in groups to create a mediation guide for a specific substantive area (employment discrimination, foreclosure, small claims, family/domestic relations, elder care, etc.). Your project will be presented on-line using platforms such as YouTube, Storify, Google Sites, etc. You will be graded on your ability to effectively describe mediation and its use in this specific substantive area. You will be paired with an expert from that substantive area whom you may choose to interview. Please **Note:** *If your expert likes your guide, they may decide to use it as part of their practice. Please ensure your guide meets copyright guidelines.*

Guides should meet copyright rules so that your assigned expert can use it. You will also be expected to comment on the guides created by other groups. As you read the textbook each week, keep in mind this assignment as there are a number of great resources/checklists/criteria

you can reference or use as a structure.

12. SELF-ANALYSIS OF VIDEOTAPED MEDIATION

You will be responsible for videotaping yourself mediating a dispute. You will review this videotape and write a 4-6 page self-analysis of the mediation. You will identify 2-3 critical moments in the mediation and describe what happened and what is important about that moment. This should not be a blow by blow account of what happened, but should assess the effectiveness of your skills and ability to follow the Model Standards of Conduct for Mediators. Your grade will not be based on your ability to settle the case, but will be based on your ability to honestly assess your strengths and weaknesses as a mediator using criteria discussed throughout the course of the semester. Although your performance will not be graded, you will need to make your video available to Professor Carrel via YouTube, Google Doc, or DropBox. Please note, you will need to find 2 volunteers to play the role of disputants in this video-taped mediation.

13. 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

September 8, 2014

Read Before Class: *Chapter 1: Conflict, Dispute Resolution Processes, and Justice*

Topic: Introduction to Mediation

In Class: Disputes in Media
Thomas-Kilmann Instrument
Dispute Resolution Continuum

Class No. 2

September 15, 2014

Read Before Class: *Chapter 2: Negotiation: The Foundation of Mediation*

Topic: Negotiation and Mediator Techniques

In Class: CCR Mediation Skills Training

Class No. 3

September 22, 2014

Read Before Class: *CCR Training Manual*

Topic: CCR Mediation Model

In Class: Live Mediation Demonstration

Class No. 4

September 29, 2014

Read Before Class: *CCR Training Manual*

Topic: Mediation Process and Communication Skills

In Class: CCR Mediation Skills Training

Class No. 5

October 5, 2014

Class will meet 8:30am-5:00pm on the 8th Floor of the Rubloff building in the student area of the Bluhm Legal Clinic

Read Before Class: *CCR Training Manual*

Topic: Mediation Concepts and Skills in Practice

In Class: Mediation Skills Training – (CCR Training)

MEDIATION SIMULATION FOR ALL STUDENTS

**CLASS WILL RUN FROM 8:30 AM to 5:00 PM.
Refreshments will be provided throughout the day.**

Class No. 6

October 6, 2014

Read Before Class: *Chapter 8: Mediation: Legal and Policy Issues*
Appendix B: Model Standards of Conduct for Mediators

Topic: Mediator Qualifications and Standards

In Class:

Review Posts from Class No. 1
UMA
Group Project 1: State Standards of Conduct
Group Project 2: Mediation Guides

Guest Lecturer: Kara Young, NU Law Digital Services and Emerging Technologies
Librarian

TRAINING FOR ALL STUDENTS SEEKING CERTIFICATION

Please meet in the student area of the Bluhm Legal Clinic located on the 8th floor.

SAT, October 11, 2014 12:30pm to 5:00 pm

We will provide breakfast and light snack.

SUN, October 12, 2014 8:30 am to 5:00 pm

We will provide breakfast, lunch and light snack.

Class No. 7

October 13, 2014

Read Before Class: *Chapter 3: Mediation: Concepts and Models*

Topic: Different Approaches to Mediation

In Class: MEDIATE: Prosando

VIDEOS: Various Models

Class No. 8

October 20, 2014

All Students Pursuing Certification: Mediation Skills Training – (CCR Training)

MEDIATION SIMULATION FOR ALL CERTIFICATION STUDENTS

CLASS WILL RUN FROM 4:00 to 9:00 PM

A Pizza dinner will be provided

Read: CCR Training Manual

Students NOT Pursuing Certification: Tell us something we don't know

Choose from the following:

1. Interview someone who has attended a mediation and post to Google Site
2. Read a mediation text and post a summary to Google Site
3. Analyze an article in the news – is it appropriate for mediation?

Class No. 9

October 27, 2014

Read Before Class: *Chapter 9: Confidentiality and Ethics*
Mediation: Law, Policy and Practice, Chapter 10.4 (on Westlaw):
<http://lawschool.westlaw.com/shared/westlawRedirect.aspx?task=find&cite=1+Mediation%3a+Law%2c+Policy+and+Practice+%c2%a7+10%3a4&appflag=67.12>

Topic: Attorney-Mediators, Mediating with Attorneys, and Ethics

In Class: MEDIATE: James and Emma Herrod (fishbowl)
VIDEOS: Hamline University

Class No. 10

November 3, 2014

Students Pursuing Certification: Mediation Skills Training – (CCR Training)

Short Model Training for CCR mediators – 4:00 to 7:00 PM at the Chicago Center for Conflict Resolution (CCR) is located at 11 E. Adams St. in the Chicago Loop, near the corner of State and Adams.

Students NOT Pursuing Certification:

Choose from the following:

1. Mediate a simulation with my negotiation students (November 4, 2013 or outside of class).
2. Comment on previous blog posts from class no. 8

Class No. 11 **November 10, 2014**

Read Before Class: *Chapter 14 (Sections A-B): Thinking Critically About Mediation*

Topic: Thinking Critically About Mediation

In Class: MEDIATE: Steward Road Apartments

Distribute: CASE STUDIES:
Big Box Mediation

Class No. 12 **November 17, 2014**

Read Before Class: *Chapter 13: Counseling about Process Choice, Planning for Mediation, and Using Mediation in Other Processes*
Chapter 4: Descriptions of Mediations

Topic: Mediation in Specific Substantive Areas/Technology and the Mediation Practice

In Class: **Group Projects DUE**

Your projects will be presented entirely on-line. Please post your online mediation guide to blackboard under the Assignment “Mediation Group Projects 2014” no later than 4:00pm November 17, 2014.

Review and comment

Each student will be expected to review at least 2 other guides and provide

BIG BOX Mediation

Class No. 13 **November 24, 2014**

Read Before Class: *Chapter 10: The Array of Process Options*
Chapter 11: Consensus Building and Facilitation

Topic: Mediation Skills in Other Contexts

In Class: Guest Lecturers to discuss:

Holistic Law
Ombuds
Collaborative Law Practice
Restorative Justice
Facilitation

Capstone **DUE December 5th by 5pm**

Self-Analysis of Videotaped Mediation

MEDIATE: The Fence

You will mediate this case outside of class with 2 volunteers as your parties. Your written self-analysis will be due December 5th by 5pm. Please upload to blackboard under assignments

CENTER FOR CONFLICT RESOLUTION COURT PROGRAMS

DALEY CENTER – 50 W. Washington, Chicago, IL 60602

When: Monday-Friday, 9:00 a.m. – 12:00 p.m.

Where: Meet the case manager in the Clerk’s office behind courtroom 1308. Take the elevator bank to the 13th floor, walk through the hallway door marked “Judges’ Reception”, tell the person at the desk that you are with the mediation program, make a right hand turn, walk down the hallway until you reach the clerks’ offices and judges’ chambers. 1308 is the second office on the left.

Public Transportation Directions (*VERIFY TRAIN AND BUS SCHEDULES BEFORE USING*): Take Blue Line to Washington Station. From Blue Line Washington Station, you can enter the Daley Center from underground. On Red Line, get off at Lake and walk one block west to the Daley Center.

MAYWOOD – 1500 Maybrook Drive, Maywood, IL 60153

When: Monday afternoons, 12:45 p.m. – 3:30 p.m.

Where: Meet the case manager in the back of courtroom 112.

Driving Directions: Take the Eisenhower (290) to 1st Ave. Take 1st Ave. North (turn right at light), and go to second light and turn right. Notice the big, brown courthouse sign and follow the road back to the courthouse. Mediators can park in lot next to courthouse.

Public Transportation Directions (*VERIFY TRAIN AND BUS SCHEDULES BEFORE USING*): Take Blue Line to Forest Park Station and walk over the foot bridge to the courthouse (it is a five to ten minute walk from the station to the courthouse.) If you can catch the Pace Bus Route #320, it will take you to the Maywood (AKA Maybrook) Courthouse.

SKOKIE – 5600 Old Orchard Road, Skokie, IL 60077

When: Monday afternoons, 1:15 p.m. – 4:30 p.m.

Where: Meet case manager inside the Presiding Judge’s office on 2nd floor, Room 219.

Driving Directions: Take I94 west. Exit at Old Orchard and turn left (west). Courthouse will be on right hand side of the road.

Public Transportation Directions (*VERIFY TRAIN AND BUS SCHEDULES BEFORE USING*): Take Red Line to Howard Street Station and transfer to Yellow Line Skokie Swift. From Skokie Swift station, take Pace Bus Route #97 to courthouse.

BRIDGEVIEW – 10220 S. 76th Avenue, Bridgeview, IL 60455

**When: Tuesday mornings, 9:00 a.m. – 12:00 p.m. &
Wednesday mornings, 9:00 a.m. – 12:00 p.m.**

Where: Meet the case manager inside courtroom 203.

Driving Directions: Take I-55 South toward St. Louis. Take the Harlem Ave/7200 W exit. Turn left onto Harlem and drive south. Turn right onto 103rd Street, then turn right onto S. 76th Ave.

Public Transportation Directions (*VERIFY TRAIN AND BUS SCHEDULES BEFORE USING*): Take Orange Line to Midway and transfer to Pace Bus Route #386 to Bridgeview Courthouse *OR* take Red Line to 95th Street Station and transfer to Pace Bus Route #381 to Bridgeview Courthouse.

MARKHAM – 16501 S. Kedzie Parkway., Markham, IL 60426

When: Thursday mornings, 9:00 a.m. – 12:00 p.m.

Where: Meet the case manager in the room attached to the judge's chambers of courtroom 209, back right hand corner of room.

Driving Directions: Take 94 toward Indiana to I-57 South to 159th St. Go East on 159th St. to Kedzie. Turn right (South) on Kedzie to the courthouse on the left side of the street and park in the lot. (Note: lot fills quickly; arrive early to get a space.)

Public Transportation Directions (*VERIFY TRAIN AND BUS SCHEDULES BEFORE USING*): Take Red Line to 95th Street Station and transfer to Pace Bus Route #359 to Markham Courthouse *OR* take Metra Electric Line to Homewood Metra Station and transfer to Pace Bus Route #359 to Markham Courthouse.

ROLLING MEADOWS – 2121 Euclid Avenue, Rolling Meadows, IL 60008

When: Friday mornings, 8:45 a.m. – 12:30 p.m.

Where: Meet case manager either in or just outside of courtroom 206.

Driving Directions: Take 94 north/west to Lake Street (exit past Old Orchard). Go West on Lake Street, which will change into Euclid. Continue until you hit the courthouse, which will be on the left side of the street *OR* take I-290 W and follow this all the way to where it turns into Rte.53. Take this to Euclid Ave. and go East on Euclid until you hit the courthouse on the right side of the street.

Public Transportation Directions (*VERIFY TRAIN AND BUS SCHEDULES BEFORE USING*): Take Metra Union Pacific Northwest Line to Arlington Heights Metra and transfer to Pace Bus Route #696 to Rolling Meadows Courthouse.

If you have any questions about individual programs, please contact Rae Kyritsi at rkyritsi@ccrchicago.org.