

SYLLABUS MEDIATION 6383 SPRING 2015

Robin Davis

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Class: Tuesdays 3 p.m. – 5:50 p.m. Room 283 & 284
Office Hours Tues. & Thurs. 9:30 a.m. – 11:30 a.m. (Virgil Hawkins Clinic)
Other Times as Mutually Arranged

TEXTS, MATERIALS and OBJECTIVES: *Mediation Theory and Practice* (Third Edition) by Alfini, Press, and Stulberg and *Getting to Yes: Negotiation Agreement Without Giving In* by Fisher, Ury, and Patton are both assigned for the course. Please read *Getting to Yes* in its entirety as soon as possible; the class will refer to it throughout the course. Reading assignments in the *Mediation Theory and Practice* text are listed in the Syllabus. The reading assignments separate the seamless web of effective mediation into individual components and describe critical action theories that facilitate analysis and skills practice that will be utilized during the course. The class will also use and be knowledgeable about Florida Statutes Chapter 44 and the Florida Rules for Certified & Court-Appointed Mediators. Various supplemental materials and assignments will either be provided to you, posted on the TWEN Syllabus Page, or accessible in the Legal Information Center. We are also scheduled to have several guest lecturers throughout the semester who are included or may be added to the syllabus at a later date. By the end of this course, students should be knowledgeable about Mediation and have acquired the skills and experience to mediate an entire case.

GRADING: Please read the following section carefully. Grading in this class will be based on the following as well as the *grading criteria* set forth at the end of the syllabus:

1. In-class and homework assignments, and quizzes. Students should expect in-class assignments/quizzes based on their syllabus reading assignments. 30%

2. Each student will observe 1 mediation and will write a Reflection Paper about the observation experience. Students may observe circuit civil, family, dependency, county, small claims, workers compensation or other types of mediations. Students are responsible for obtaining their own observation opportunities, however, Professor Davis will provide information in class as to some available options. The Reflection Paper should be 3 double spaced typed 8 ½ x 11 inch pages and is due to me at **3 pm Tuesday April 14.** See below for more information. 10%

3. Each student will be responsible for researching and presenting to the class on a substantive topic related to our syllabus, text, or class discussions. Other ADR-related topics may be selected (and are encouraged) so long as cleared with Professor Davis in advance. Further information about the presentations will be covered during class. The topics will also be the subject of students' final papers. 30%

4. As a Final Paper, each student will turn in a written paper on the topic they researched and presented to the class. The papers should be a maximum of 8 double spaced typed 8 ½ x 11 inch pages.* Creativity is encouraged. The Final Paper will be in lieu of a Final Examination and is due to me at **3 pm Tuesday April 14.** See below for more information. 30%

* Exception for Brodsky Essay Competition Entries which should be 15 – 25 pages

6. CLASS ATTENDANCE/PARTICIPATION AND GRADE EFFECT: Standard 304 d of the ABA Standards for the Approval of Law Schools, which requires “regular and punctual class attendance” governs. You should view class participation as an important part of your learning experience. Volunteered answers in class are always welcome. Students will also be expected to be prepared if randomly selected to participate in class discussions and exercises. Both regular attendance and participation in class discussions and exercises is expected. Please plan to attend every class. Missing class may affect your grade. Class participation will be taken into account, and I have the option of giving extra credit for excellent participation (quality, not mere quantity). In the alternative, lack of quality class participation or preparation could result in a diminution of your grade. All assignments are due at the beginning of class (3:00 p.m.) unless expressly noted otherwise, and assignments will be penalized for tardiness.

See <http://www.registrar.ufl.edu/catalog/policies/regulationgrades.html> for University of Florida grading policies.

ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES: Students requesting classroom accommodation must first register with the Dean of Students Office. The Dean of Students Office will provide documentation to the student who must then provide this documentation to the Instructor when requesting accommodation.

USE OF PERSONAL TECHNOLOGY IN THE CLASSROOM: This skills class is a very interactive one, and your absolute attention and participation is essential. Furthermore, the classroom environment must support learning for all students, and technological devices may be distracting to individuals in the class and thus undermine that goal. Accordingly, in addition to other professional conduct and courtesies, there are to be no laptops nor cell phones nor any other electronic or communication devices allowed in class unless otherwise directed (*Exception - student presenters may use a laptop, power point, and other technology for their final presentations*).

COURSE SCHEDULE*

**Subject to Modification*

Week 1

Tuesday January 6 First Day Class Meeting - Room 284

Assignment Due: Read: *Getting to Yes (entire book)*; Chapter 44 Fl. Statutes; Alfini 1-21

Negotiation Exercise/Modes of Negotiation

Introduction to the Principles of Conflict Resolution

Continuum of Dispute Resolution Processes

Introductions

Overview of course

Review Course Syllabus

Observation and Reflection Paper

Oral Presentations and Final Paper Assignment (Sign up for topic anytime during the semester)

Other Assignments and quizzes

Confidentiality

Assignment Due Next Class: Alfini 103 – 145; 175-177; 183-191; Write an Opening Statement; Write 1 page maximum response to: “Some claim that anyone can be a good mediator if suitably trained.” Do you agree or disagree? Support your position.

Week 2

Tuesday January 13

Assignment Due: Alfini 103 – 145; 175-177; 183-191; Write an Opening Statement; Write 1 page maximum response to: “Some claim that anyone can be a good mediator if suitably trained.” Do you agree or disagree? Support your position.

In-Class Quiz

Review Guidelines for Observing Mediations

Characteristics and Functions of a Mediator

Types of Mediators

Opening Statement

Assignment Due Next Class: READ ALFINI ON TWEN: 37 – 49; Written Response to Question 1 p.48 (1 ½ page Maximum – double spaced)

Week 3

Tuesday January 20

Assignment Due: READ ALFINI ON TWEN: 37 – 49; Written Response to Question 1 p.48 (1 ½ page Maximum – double spaced)

Opening Statement (Cont.)

Components of a Mediation Conference - BADGE

County Mediation Video Simulation

Handling Non-Parties

Assignment Due Next Class: Alfini 305-326; Written response “Is there a Good Faith Requirement for Mediating Parties in Florida?” I expect you to do research and cite authority to support your answer. (1 ½ page maximum – double spaced)

Week 4

Tuesday January 27

Assignment Due Next Class: Alfini 305-326; Written response “Is there a Good Faith Requirement for Mediating Parties in Florida?” I expect you to do research and cite authority to support your answer. (1 ½ page maximum – double spaced)

Agenda Development; Accumulating Information; Issue Development; Cultural Competence;

Listening and Communication Skills; Note Taking

Assignment Due Next Class: Read Alfini 365-389 and Respond to Question 3 on page 384. (1 page maximum)

Week 5

Tuesday February 3

Assignment Due: Read Alfini 365-389 and Respond to Question 3 on page 384. (1 page maximum)

Diversity, Power, and Justice
Family Mediation
Final Paper Examples
Role Plays

Assignment Due Next Week:

Written response of your opinion as to how to best promote competence, cultural, ethnic, and racial diversity of mediators, including whether or not you think certification or licensing is beneficial? (1 page maximum); Alfini 124-133; 463-486 (top); 515-517; Fl. Rules Civil Procedure Rules Common to Mediation and Arbitration Rule 1.700-1.750; Rules for Certified and Court Appointed Mediators Chapter 44 Fl. Statutes; you may bring laptops to next class.

Week 6

Tuesday February 10

Assignment Due: Written response of your opinion as to how to best promote competence, cultural, ethnic, and racial diversity of mediators, including whether or not you think certification or licensing is beneficial? (1 page maximum); Alfini 124-133; 463-486 (top); 515-517; Fl. Rules Civil Procedure Rules Common to Mediation and Arbitration Rule 1.700-1.750; Rules for Certified and Court Appointed Mediators Chapter 44 Fl. Statutes; you may bring laptops to next class.

In-Class Quiz
Court Process
Confidentiality
Generating Movement
Caucus
BATNA/WATNA

Assignment Due Next Class: : Assignment Due: Read and be familiar with Rules for Certified and Court Appointed Mediators – Part I Mediator Qualifications, Part II Standards of Professional Conduct and Part III Discipline 10.100 – 10.900; Alfini: 413-461; Respond in writing to any 2 of the following *Notes and Questions* or *Mediation Dilemmas for Discussion*: Page 416 - 1; Page 419 - 1, 2; Page 457 - 2 Written responses should be 1/2 page per question (total 1 page - double spaced); you may use laptops next class; Final paper topics due next week.

Week 7

Tuesday February 17

Assignment Due: Assignment Due: Read and be familiar with Rules for Certified and Court Appointed Mediators – Part I Mediator Qualifications, Part II Standards of Professional Conduct and Part III Discipline 10.100 – 10.900; Alfini: 413-461; Respond in writing to any 2 of the following *Notes and*

Questions or Mediation Dilemmas for Discussion: Page 416 - 1; Page 419 - 1, 2; Page 457 - 2 Written responses should be 1/2 page per question (total 1 page - double spaced); you may use laptops next class; Final paper topics due next week.

**Personal Conflict Examples
Ethical Dilemmas**

Assignment Due Next Class: Write a conflict scenario that would be suitable for both litigation and mediation (should preferably be from your personal experience). Examples provided in class this week – 2 page maximum, preferably, one from each disputant’s perspective.

Week 8

Tuesday February 24

Assignment Due: Write a conflict scenario that would be suitable for both litigation and mediation (should preferably be from your personal experience). Examples provided in class this week – 2 page maximum, preferably, one from each disputant’s perspective.

Mediating Conflicts

Assignment Due Next Class: Alfini: 133-136; 326 bottom – 327 top; 346-350; Review Opening Statement and All Elements of a Mediation

SPRING BREAK

Week 9

Tuesday March 10

Assignment Due: Alfini: 133-136; 326 bottom – 327 top; 346-350; Review Opening Statement and All Elements of a Mediation

Concluding the Mediation; Writing the Agreement
Final Mediation Role Plays including Writing Agreements

Assignments Due Next Week: Alfini: Chapter 11; Read Worker’s Comp Articles on TWEN Syllabus Page; Have several questions prepared for Mr. Suskin about his work; Respond to the following question: If you decide to pursue a career in Alternative Dispute Resolution, how would you go about gaining entry into this competitive field, and what factors would be most important in your quest? (1 page maximum)

Week 10

Tuesday March 17

Assignments Due: Alfini: Chapter 11; Read Worker's Comp Articles on TWEN Syllabus Page; Have several questions prepared for Mr. Suskin about his work; Respond to the following question: If you decide to pursue a career in Alternative Dispute Resolution, how would you go about gaining entry into this competitive field, and what factors would be most important in your quest? (1 page maximum)

Guest Lecturer – Stuart Suskin, Esq. – State Worker's Compensation Mediator

Assignment Due Next Class: Have several questions prepared for Mr. Schwait about his work as a defense attorney attending mediations; Alfini Chapter 10; Respond in writing to any 2 of the following *Notes and Questions*: Page 540 – 1 or 2; Page 541 – 4; Page 548 – 3; Page 553 – 2 or 3; p.575 – 2 or 3. Written responses should be ½ page per question (total 1 page – double spaced).

Week 11

Tuesday March 24

Assignments Due: Have several questions prepared for Mr. Schwait about his work as a defense attorney and mediation; Alfini Chapter 10; Respond in writing to any 2 of the following *Notes and Questions*: Page 540 – 1 or 2; Page 541 – 4; Page 548 – 3; Page 553 – 2 or 3; p.575 – 2 or 3. Written responses should be ½ page per question (total 1 page – double spaced).

Guest Lecturer – Prof. Carl Schwait, Esq. - Representing Clients in Mediation: The Attorney's Role

Assignment Due Next Class: Oral Presentations (1/3 class)

Week 12

Tuesday March 31

Assignment Due: Oral Presentations (1/3 class)

Oral Presentations (1/3 class)

Assignment Due Next Class: Oral Presentations (1/3 class); Evaluations

Week 13

Tuesday April 7

Assignment Due: Oral Presentations (1/3 class)

Evaluations

Oral Presentations (1/3 class)

Assignment Due Next Class 3 pm: Oral Presentations (1/3 class); Hard copies of all Final Papers and Reflection Papers

Week 14

Tuesday April 14 (Last Day of Class)

Assignment Due 3 pm: Oral Presentations (1/3 class); Hard copies of all Final Papers and Reflection Papers

Oral Presentations (1/3 class)

GOOD LUCK ON FINALS!

STUDENT OBSERVATIONS AND REFLECTION PAPERS

Observe a mediation and document your experience with a Reflection Paper. **Reflection Papers are due to me on Tuesday April 14 at 3 pm.**

Each student will observe a court ordered or other mediation during the semester and will write a Reflection Paper about the observation experience. These papers should be 3 - 4 double spaced pages.

Generally, your Reflection Papers should give specific examples of and reflections about the experience you had observing. They should describe what happened that was significant, why it was important, and what you think about it. Your paper should start with a brief summary of the basic “facts” of the case (what happened, parties’ positions, underlying interests), but I am most interested in learning about your reaction to, concerns about, and analysis of the mediation process. Be sure to maintain confidentiality by not revealing any names or other identifying information about the parties.

Your Reflection Papers should focus primarily on 2 things:

A. The Parties’ Behaviors and Motivations, such as:

1. Did the parties seem to have “equal” bargaining power?
2. If the parties were represented, how did the attorney(s) affect the mediation?
3. Did any issue “cloud” or “taint” the parties’ objectivity during the mediation?
4. What were the parties’ positions?
5. What were the parties’ interests?
6. Any cultural considerations or gender-related issues that arose during the mediation.
7. What type of negotiation(s) took place - Distributive? Integrative? Principled?
8. How satisfied, or not satisfied, was each party at the end of the mediation? Why or why not?

B. The Mediator’s Action Choices, such as:

1. What the mediator did that was effective and why it was effective.
2. What the mediator did that was not effective and why it was not successful.
3. How ineffective action choices could have been improved and why these suggestions are likely to prove more effective in similar future situations.
4. Were any “ethical dilemmas” encountered in the mediation, and if so, how did the mediator deal with them?
5. What were the decisive or turning points in the mediation, and why were they critical.
6. What the mediator did that impressed you most.
7. What the mediator did that bothered you most.
8. What surprised you during the mediation.
9. Note that mediators differ widely in their approaches. What were the pluses and/or minuses of your mediator’s “style?”

It is usually instructive to engage in a post-mediation discussion with your mediator. While you should be careful not to criticize the mediator in any way, it is appropriate to ask questions that you may have.

TO SCHEDULE A FAMILY OR DEPENDENCY OBSERVATION AT THE ALACHUA COUNTY CIVIL JUSTICE CENTER, CONTACT BECKY MACFARLANE AT :
ADR Office, 201 E. University Ave., Ste. 303, Gainesville, FL 32601.

Telephone: 352-491-4417 Fax: 352-381-0109 (Note – Becky cannot return long distance calls) Email: macfarlaneb@circuit8.org

TO SCHEDULE A WORKERS COMP OBSERVATION, CONTACT STUART SUSKIN, Esq., State Mediator, AT: Office of Judge of Compensation Claims,
1900 SW 34th Street, Suite 202 Gainesville, FL 32608

Telephone: 352-955-2244 Fax: 352-955-3129 Email: stuart.suskin@doah.state.fl.us

Hard copies of all Reflection Papers are due Tuesday April 14 at 3 pm in class

STUDENT ORAL PRESENTATIONS AND FINAL PAPERS

Each student will be responsible for researching and presenting to the class on a substantive topic from our syllabus, text, or class discussions. Other ADR-related topics in areas of interest to you may be selected (and are even encouraged) so long as cleared with Professor Davis in advance. The papers should not be mere “reports” which summarize others’ ideas; students should develop an original thesis which is supported by research and analysis. Oral Presentations should be approximately 10 – 12 minutes, with a maximum of 12 minutes, and an additional 5 minutes reserved for questions. Obviously you will have to skillfully edit presentations to communicate your thesis and main points in the allotted time.

As a Final Paper, each student will turn in a written paper on the topic they researched and presented to the class. The papers should be a maximum of 8 double spaced typed pages*. Critical thinking, scholarliness, and originality are paramount, and creativity is encouraged. Please see Grading Criteria for Written Assignments below. The Final Presentation and Paper are in lieu of a Final Examination.

Highest quality papers and exercises may be shared with other classes, individuals, or submitted for publication. *I will assume I have permission to do so unless you notify me in writing otherwise during the semester.*

* Exception for Brodsky Essay Competition Entries which should be 15 – 25 pages

FINAL PAPERS

THE FOLLOWING ARE IMPORTANT ASPECTS I WILL CONSIDER:

- A. Originality, critical thinking, and scholarliness
- B. Significance of the topic to the field of conflict resolution
- C. Quality of analysis
- D. Quality of research and authority provided
- E. Clarity of the thesis presented and supported
- F. Organization
- G. Grammar, syntax, and form

RESEARCH AND AUTHORITY SHOULD INCLUDE THE FOLLOWING (if relevant):

- A. Common Law
- B. Statutes & Rules
- C. Case Law
- D. Mediation or ADR Context
 - Legal issues
 - Psychological issues

Practical applications

- E. Authority such as articles, journals, law reviews and other sources
- F. Please use footnotes at the bottom of each page rather than endnotes

Hard copies of all Final Papers are due Tuesday April 14 at 3 pm in class

Grading Criteria for Written Assignments

An “**A**” (4.0) paper addresses the assignment carefully and thoughtfully, and then goes beyond it to say something original and scholarly. It demonstrates critical thinking and analysis that is clearly outstanding. It is grammatically and structurally strong and utilizes noteworthy authority with appropriate citations.

A “**B**” (3.0) paper addresses the assignment and shows a good approach to the topic as well as some critical thinking and analysis. This paper is above average from the typical paper because it demonstrates complete understanding of the topic as well as the purpose of the assignment. The paper adheres to good writing principles both grammatically and structurally and utilizes substantial authority with appropriate citations.

A “**C**” (2.0) paper addresses the assignment but does not go beyond it in any significant way. It represents a minimum amount of effort that still completes the work. It may lack clear structure and critical thinking. There may be some grammatical and structural problems with the writing style and only adequate utilization of authority and citations.

A “**D**” (1.0) paper may somewhat address the assignment but seems to miss its essential point or go off on tangents. The paper lacks clear structure, critical thinking, and an organized format and is difficult for the reader to understand the writer’s key points. References and citations are less than satisfactory.

An “**F**” (0) paper does not address the assignment in a satisfactory manner. It reveals a lack of understanding and critical analysis and will usually be poorly organized and have numerous grammatical and structural problems. References and citations are inadequate.

The above grading scale will also be adjusted, as appropriate, with pluses and minuses.

4/15/15