

Syllabus- Mediation of Environmental and Public Conflicts**Monday & Wednesday, 2:30- 3:45 PM****232 Katz Building, University Park · 104 Katz Building, Carlisle**

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Prerequisite: None (Meets Professional Skills Course requirement)

Texts/Course Materials:

There are three required books and a series of articles that we will use in this course. The books are indicated with an asterisk (*) in the reading assignments, and include the following:

1. Carpenter & Kennedy, *Managing Public Disputes: A Practical Guide for Government, Business, and Citizens' Groups* (2001)
2. Fisher, Ury, and Patton: *Getting to Yes: Negotiating Agreement without Giving In* (2d Ed., 1981)
3. Stone et al, *Difficult Conversations: How to Discuss What Matters Most* (1999)

Other readings and course materials will be posted on ANGEL throughout the semester.

Course Description:

Conflicts between parties with different views of "the public good" are often difficult to resolve, especially in the environmental and natural resource arena. The judicial dispute resolution process is often not well-adapted to addressing conflicts among jurisdictions and meeting the interests of the public and private parties affected by the conflict. Mediation, facilitation, and other dispute resolution techniques can be very useful tools in such cases. The course uses case studies and simulations to explore techniques and strategies other than traditional litigation that lawyers can use to represent clients and resolve disputes with multiple stakeholders. The course will address local water related issues with a focus on stormwater management in partnership with the Penn State Sustainable Communities program, but will also examine other environmental/public issues.

Course Objectives:

By the end of the course, students will:

1. Learn about different forms of alternative dispute resolution with a specific emphasis on mediation, and analyze what might make a case appropriate for dispute resolution/mediation.
2. Build skills related to negotiation and mediation by using interest-based negotiation techniques and working through simulations. Students will be expected to participate in role plays, both as a party and as a mediator. In addition, students are expected to attend at least one public meeting and to help facilitate at least one discussion with outside stakeholders.
3. Learn to identify any potential ethical issues, both from the perspective of an attorney representing a client in mediation and from a mediator's perspective. We will be addressing ethical issues throughout the semester.

Course Approach/Expectations:

Class sessions will include lectures, discussions, role plays (including participation in a negotiation marathon), guest speakers, and engaging with real stakeholders on targeted issues. Many class assignments will use the issue of local stormwater management as a focal point. Role plays depend on student willingness to try new roles and potentially stretch their comfort zones; role plays in class provide a good way to learn new skills and awareness of techniques that work for each person. In addition, students will be expected to research additional information to better prepare for their role plays. I also ask students to attend one public meeting and help facilitate at least one discussion with real stakeholders working on stormwater related issues. This class will be conducted in partnership with Penn State's Sustainable Communities program to give students more hands on experience.

In general, students are expected to

1. Have access to ANGEL. I will use the ANGEL course mail function to communicate with students; please make sure you have access to ANGEL and are receiving email from that account.
2. Read the assigned materials before each class and to be prepared to discuss what you have read, or be prepared for the role plays and facilitations.
3. Complete all written assignments in a timely manner.
4. Attend class ON TIME. **Attendance is mandatory.** Your participation is an important and valued component of the class. If you are unable to attend class, please communicate with me before class; your attendance may affect a role play and your absence may make class room exercises difficult to accomplish. You are allowed a maximum of three excused absences in this course. After that amount, your final grade for the course may be reduced.
5. Maintain focus on class discussion and activities. Multi-tasking in class is prohibited, unless required by an in-class assignment. *Specifically, prior to the beginning of class, please exit all laptop applications and internet browsers other than a word processor (Word, etc.).* Use of mobile phones (texting, calls, emails) is not allowed when class is in session. You will lose 5% of your final grade for each infraction.
6. Respect each other; do not talk over one another; avoid off topic conversations; ask questions.

Course Assessment & Grading. Assessment for this course depends on the following areas:

1. Attendance, general class preparation & participation (5%).
2. Preparation for and participation in role plays and stakeholder facilitation; contribution to evaluative discussion of role plays (20% for overall role play). The points for the role play will be determined as follows:
 - a. 10% for preparation (as determined by the "parties" involved).
 - b. 5% for outcome ("success" not required, but must determine next steps) (my discretion).
 - c. 5% for participation in role play and discussion afterwards (my discretion).
3. Several short applied writing assignments throughout the semester (50% total).
 - a. Reflections (3 reflections x 5%)
 - b. Agreement to mediate (10%)
 - c. Summary of potential implementation issues/considerations (10%)
 - d. Agreement in principle (10%)
 - e. Write up of Sustainable Communities Collaboration ideas (5%)

4. A final written project (3-5 pages) requiring research and analysis of a current conflict including a supported recommendation of the potential of dispute resolution techniques to resolve the conflict. This written project will also be presented and discussed in class (25%).

There is no final exam for this course. Under the Student Handbook, grades will be determined as follows (https://law.psu.edu/policy/handbook/grading_system):

A	(4.00)	Distinguished	C+	(2.33)	Satisfactory
A-	(3.67)	Excellent	C	(2.00)	Passing
B+	(3.33)	Superior	D	(1.00)	Conditional Failure
B	(3.00)	Very good	F	(0.00)	Failure
B-	(2.67)	Good			

Missed/Late Assignments:

Missed assignments are worth zero. Assignments received after 5 pm the day they are due are worth zero. All assignments will be submitted to ANGEL. If for some reason ANGEL does not allow you to submit your assignment, you may email it to me by the due date/time.

Learning Disabilities & Accommodation:

Students with learning disabilities must inform me during the first week of class so I can work with you to develop appropriate accommodations.

Course Recordings/Materials:

A student enrolled in this course may view class recordings, posted on ANGEL.

A student may not record any part of a class by any means without my prior express authorization. If a student receives authorization to record a class, the student may not copy or download such recording to a computer or other device, distribute it to any other person, or use the recording for any purpose other than personal education and study except with the prior express authorization of the faculty member. Unauthorized recording, distribution, or use of a class recording is a violation of the Honor Code. Penn State Law Honor Code, Violation 2.1(1) covers unauthorized recording and unauthorized use of class recordings or course materials. It prohibits "Taking, using . . . or otherwise abusing the property of another, including, without limitation, books, briefs, class notes, outlines, or any other academic items, without authorization."

Honor Code

The Honor Code is in effect for all assignments related to this course. Do not allow anyone to do your work for you, nor should you do anyone else's work for them.

Students must avoid plagiarism in their written submissions, whether graded or ungraded. If you have any questions about plagiarism, please see me, and/or consult the Penn State Law [Honor Code Appendix](#), which gives a detailed definition of plagiarism and is posted at http://law.psu.edu/honor_code/appendix.

See also, Penn State Dickinson [Student Handbook](#), Regulations Governing Papers Submitted for Course Credit, posted at http://law.psu.edu/handbook/regulations_governing_papers.

	<u>Date</u>	<u>Topic</u>	<u>Assignment</u>
Part I: Background			
Week 1	Wed., Aug. 20	Introduction	Find an environmental or public dispute in the news; submit a link on ANGEL and come prepared to discuss it.
Week 2	Mon., Aug. 25	Basics of dispute resolution generally	<u>Reading:</u> 1) Creo, Alternative Dispute Resolution: Law, Procedure and Commentary for the Pennsylvania Practitioner. Ch. 1: Overview of Alternative Dispute Resolution. (ANGEL)
	Wed., Aug. 27	Use of mediation/alternative dispute resolution in the public & environmental arenas - Type, nature of issues involved - Parties involved - Applicable dispute resolution tools	<u>Reading:</u> 1) Carpenter & Kennedy*, Ch. 1: The Spiral of Unmanaged Conflict [hereinafter "Carpenter & Kennedy"] 2) Susskind et al, Negotiating Environmental Agreements: Introduction (excerpt posted on ANGEL)
	On your own		Attend a public meeting in your community or listen to recordings. Writing assignment #1 (reflection paper) due by the end of Week 3.
Week 3	Mon., Sept. 1 st	Labor Day Holiday- no class, no assignment	
	Wed., Sept. 3 rd	Continued discussion of environmental mediation	<u>Reading:</u> 1) Carpenter & Kennedy, Ch. 2: Dealing with Conflict Productively: Alternatives and Case Examples
	Sat., Sept. 6 th		Assignment #1: Reflection on listening to public meeting due by 5 pm (ANGEL)
Week 4	Mon., Sept. 8 th	Interest-based negotiation & mutual gains Role Play #1- Dogs in the Park	<u>Reading:</u> 1) Fisher, Ury & Patton, Getting to Yes* (warning- long) 2) Susskind et al, Negotiating Environmental Agreements: The Mutual Gains Approach

	Wed., Sept. 10 th	Overview of a complex environmental situation: stormwater management (guest speaker Alan Sam from Borough of State College) <ul style="list-style-type: none"> - Players & issues - Role play outline, assignments 	<u>Reading:</u> 1) Information on PA's MS4 requirements (links below) http://www.stormwaterpa.org/ms4-program.html http://www.portal.state.pa.us/portal/server.pt/community/ms4_information_resources/21380
	Sat., Sept. 13 th		Assignment #2: Reflection on Role Play due by 5 pm.
Part II: Anatomy of a Mediation			
Week 5	Mon., Sept. 15 th	Getting Started <ul style="list-style-type: none"> - Ethical issues - Who is your client? - Setting the stage & preparation 	<u>Reading:</u> 1) Carpenter & Kennedy, Ch. 8: Guidelines for Making the Program Work: Using a Mediator (pgs. 186-196). 2) Mediation statutes 3) Selected RPCS 4) Carpenter & Kennedy, Ch. 3: Developing an Effective Program of Conflict Management: Ten Principles.
	Wed., Sept. 17 th	No class- research stormwater issues in your community, draft preliminary agreement to mediate	<u>Watch:</u> 1) http://waterblues.org/themes/stormwater-management/pittsburgh-plans-to-get-sewage-out-of-the-water 2) http://waterblues.org/themes/penn-state/penn-state-green-roofs
	Sat., Sept. 20 th		Assignment #3: Agreement to mediate (submitted to ANGEL by 5 pm)
Week 6	Mon., Sept. 22 nd	Framing the issues	<u>Reading:</u> 1) Excerpt from Lewicki, Gray, Elliott (Eds.), Making Sense of Intractable Environmental Conflicts (Chapters 1, 4)
	Wed., Sept. 24 th	Mediators' Assessment <ul style="list-style-type: none"> - Identification of players, history, issues - Potential process 	<u>Reading:</u> 1) Carpenter & Kennedy, Ch. 4: Analyzing the Conflict 2) Carpenter & Kennedy, Ch. 5: Designing a Strategy and Setting up the Conflict Management Program

Week 7	Mon., Sept. 29 th	Negotiation Preparation <ul style="list-style-type: none"> - As a party to a negotiation - As an attorney representing a party in the negotiation - As a mediator 	<u>Reading:</u> <ol style="list-style-type: none"> 1) Negotiation checklist 2) Reading to be determined
	Wed., Oct. 1st	Discuss Ground Rules Storm Water Role Play #1- Initial meeting <ul style="list-style-type: none"> - Ground rules - Process - Determine next steps 	<u>Reading:</u> <ol style="list-style-type: none"> 1) Carpenter & Kennedy, Ch. 6: Adopting Procedures, Educating Parties, and Developing Options (pgs. 116-124) 2) Carpenter & Kennedy, Ch. 8: Guidelines for Making the Program Work (pgs. 157-170) <p>Assignment #4 (a): Negotiation check list- due for the parties by the end of class Mediation preparation- due for the mediators prior to class</p>
	Sat., Oct 4 th		Assignment #4(b) Due by 5 PM to ANGEL: Negotiation checklist due for mediators Situation assessment due for parties
Week 8	Mon., Oct. 6th	Storm Water Role Play #2- Issue identification/ idea generation <ul style="list-style-type: none"> - Interests/goals - Constructively managing idea generation 	<u>Reading:</u> <ol style="list-style-type: none"> 1) Carpenter & Kennedy, Ch. 6: Adopting Procedures, Educating Parties, and Developing Options (pgs. 125-136)
	Wed., Oct. 8th	Storm Water Role Play #3 <ul style="list-style-type: none"> - Issue generation & brainstorming - Active listening - Difficult personalities 	<u>Reading:</u> <ol style="list-style-type: none"> 1) Stone et al, Difficult Conversations: read through Ch. 6 2) Carpenter & Kennedy, Ch. 9: Paying Attention to Underlying Dynamics: Values, Trust, Power
Week 9	Mon., Oct. 13 th	Debrief on Role Plays	<u>Reading:</u> <ol style="list-style-type: none"> 1) Finish Difficult Conversations <p>Assignment #5: Reflection on Mediation (due on Sat., Oct. 11th by 5 PM)</p>
	Wed., Oct. 15th	Managing the public and the press	<u>Reading:</u> <ol style="list-style-type: none"> 1) Carpenter & Kennedy, Ch. 8, pgs. 170-186 2) A Citizen's Guide to the Pennsylvania Sunshine Act (ANGEL) 3) Article/Op Ed related to the Chehalis River Basin (ANGEL)

Week 10	Mon., Oct. 20 th	Reaching and Carrying Out Agreements	1) Carpenter & Kennedy, Ch. 7
	Wed., Oct. 22 nd	Implementation Considerations - Science/Risk Management Short role play practice	<u>Reading:</u> 1) IPPC Summary of Risk & Uncertainty 2) Fischhoff, "Communicating Uncertainty: Fulfilling the Duty to Inform," Issues in Science and Technology. Vol. 28, Issue 4; pgs. 63-70 (Summer 2012). 3) Stern et al., Understanding Risk: Informing Decisions in a Democratic Society. Ch. 1: The Idea of Risk Characterization. National Research Center (1996). 4) Waldo, "Managing for Success" (2006).
	Fri., Oct. 24 th		Assignment #6: Draft Agreement in Principle for Storm Water Role Plays Research projects related to substance as identified (due by 5 PM- ANGEL drop box) Register for Negotiation Marathon
Week 11	Mon., Oct. 27	Storm Water Role Play #4 - Managing 3 rd party interests - Human dynamics and what to do when things go wrong	<u>Reading:</u> 1) Carpenter & Kennedy, Ch. 10: Handling the Human Side of the Process 2) The Art of Apology (article)
	Wed., Oct. 29 th	Transition to Sustainable Communities Collaborative Project	<u>Reading:</u> To be determined
	Sat., Nov. 1 st		Assignment #7: Idea(s) for final paper/presentation (due by 5 pm to ANGEL) (ungraded)
Part III: Practical Application			
Week 12	Mon., Nov. 3 rd	Sustainable Watersheds Forum- University Park - Facilitation Practice Note: for those unable to participate, use class time to research background information; specific question will be put on ANGEL.	<u>Reading:</u> Review Sustainable Watershed Forum agenda (for people participating in facilitation) Research assignments due on Wed., Nov. 5 th for those not participating in Forum.

	Wed., Nov. 5 th	Guest, Amy Kerner, Borough of State College Prepare for Negotiation Marathon	<u>Reading:</u> None
	Sat., Nov. 8 th	Negotiation Marathon- Carlisle 7:30 AM departure from State College. Negotiation Marathon from 10 AM to 4 PM. Return by 6 PM to State College. If you need transportation, please let me know.	
Week 13	Mon., Nov. 10 th	Discussion of issues, stakeholders, potential process for Sustainable Communities Collaborative discussion.	<u>Reading:</u> None <u>Assignment #8:</u> Reflection on facilitation, negotiation marathon (due by 5 pm to ANGEL)
	Wed., Nov. 12 th	Local watershed issues- Sustainable Communities Collaborative	<u>Reading:</u> To be determined
Week 14	Mon., Nov. 17 th	Local watershed issues- Sustainable Communities Collaborative Panel Discussion	<u>Reading:</u> To be determined
Part IV: Student Research/Presentations			
	Wed., Nov. 19 th	Student Presentations	
	Sat., Nov. 22 nd		<u>Assignment #9:</u> Write up assessment for Sustainable Communities Collaborative issues (due by 5 pm in ANGEL)
Week 15	Mon. , Nov. 24 th	Student Presentations	
	Wed., Nov. 26 th	No class- thanksgiving holiday	
Week 16	Mon., Dec. 1 st	Wrap Up	<u>Assignment #10:</u> Final Paper Due by 11 PM to ANGEL