

Mediation Clinic – Law 775
Hinshaw
Course Information and Syllabus – Spring 2015

I. Instructors

Professor

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Clinic Veteran

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II. Class Meetings

Class will be on Mondays and Wednesdays from 1:30-3:30pm in the Old Library Classroom, Room L-102. There will also be three days of mandatory training sessions – Wednesday January 7th, Thursday January 8th, and Friday January 9th. The training sessions will run from 9 am – 5 pm.

III. Course Philosophy and Goals

This course focuses on the process by which mediators assist others in resolving disputes. You will find that mediation is a burgeoning field, yet most people fail to understand that mediation is as much an art as it is a science. In this class we focus on both the art and the science of mediation. We will study the theory, strategy, skills and public policy issues involved in the mediation of disputes, and we will put our skills to work by mediating real cases in the Maricopa County Justice Courts and at the EEOC.

Specifically our goals for you are:

- To improve your skills in listening, questioning, problem solving, persuasion, negotiation, and professional judgment.
- To improve your abilities to work well with clients, to understand client interests, to balance legal and non-legal issues, to advocate for clients in a mediation setting, and to come up with creative solutions for resolving legal problems.
- To increase your understanding of mediation theory and practice, mediation advocacy, and mediation related ethical issues.
- To increase your appreciation of the advantages and disadvantages to mediation and to litigation as dispute resolution mechanisms.
- To encourage you to be more thoughtful about your professional work and your own approaches to dispute resolution, both as advocates and as mediators.

Everything we do in this class, from readings to demonstrations to experiential exercises, is focused on achieving one or more of these goals.

IV. Books

To give you a foundational understanding of the mediation process, the following book is required reading for the first class of the semester.

Mediation Success: Get It Out, Get It Over, Get Back to Business
by Amy L. Lieberman (Amazon, 2012)

It is only available on Amazon.com.

The required textbook we will use in this course is:

The Practice of Mediation: A Video-Integrated Text,
by Douglas N. Frenkel & James H. Stark, (2nd ed., Wolters Kluwer 2012)

This book is available in the ASU bookstore.

Two helpful, but not required, books are:

Getting to Yes: Negotiating Agreement Without Giving In,
by Roger Fisher, Bill Ury and Bruce Patton (2nd ed., Penguin 1991).

Difficult Conversations: How to Discuss What Matters Most,
by Douglas Stone, Bruce Patton and Sheila Heen (Viking 1999)

These two books are widely available in libraries, bookstores and online.

V. Clinic Materials

There are two sets of materials you will need to pick up in the Copy Center in the law school's basement. The first is the Mediation Clinic Training Manual, which contains various mediation documents, training materials and court rules regarding mediation. The second is the Mediation Clinic Reader, which consists of reading materials to supplement our readings from the textbook.

VI. Attendance, Punctuality and Class Preparation

In many of our classes, you will be teamed with other students to do mediation role-play scenarios. Hence, your timely attendance and participation are crucial in this course. If you are absent, your absence will preclude not only your participation that day, but also that of other students. The same applies to preparation for class. If you come to class unprepared, not only will you have a lesser experience, but your fellow students will as well.

If you do not expect to be able to attend every class, you should not take this course. Attendance is required, and any absence is presumptively unexcused. That said, emergencies do arise. If you must miss class, or if you are not prepared to participate on a particular day, you must provide me with a note or email, in advance, explaining the reasons why you are requesting an exception from the normal expectation of participation. A phone call or a conversation, while helpful in adjusting mediation groupings, is not sufficient. I will make a final decision as to whether your absence should be excused.

Lack of punctuality and lack of preparation will be taken into account in calculating class participation grades. I also reserve the right to impose other sanctions permitted by university and law school rules. For example, in the past I have given pop-quizzes on reading assignments when it became clear that no one was reading.

Remember, learning the skills we will be teaching in this course is not something that can be done “to” you or “for” you. You must work on it yourself, and what you learn in this course in large part depends on your effort.

VII. Mediation Exercises

Throughout the course, particularly earlier in the semester, you will be participating in role-play exercises as mediators or as disputing parties. The class before each exercise, you will be assigned a role – mediator, party A, or party B. The parties will receive instructions about your role and the facts of the case. The instructions are designed to be self explanatory, and may contain confidential information (i.e. information only your character knows). Do not show or discuss your confidential information to those who have been assigned different roles before the exercise begins. Doing so will undermine the learning opportunities for yourself and your classmates. Mediators get little to no written instructions before the exercise.

The instructors will be sitting in on your mediations and critiquing your performance. We will also ask you to use web cams to videotaping your mediations so you and we can review them later. This gives you the opportunity to review your performance for a

better understanding of areas for improvement and will help with your self-assessment assignments.

For more specific instructions about your duties and responsibilities in role-playing, please see “General Instructions for Role-Play Scenarios” in the Training Manual.

VIII. Fieldwork Experiences

Since this is a clinical class, you are required to do work in the “real world.” To satisfy this requirement, you must participate in at least 15 mediation fieldwork experiences during the semester. The breakdown is as follows:

- Conduct two supervised Justice Court mediations as a co-mediator (with a faculty member or a designated experienced community mediator).
- Co-mediate a total of ten Justice Court and/or other mediations if the opportunity presents itself (sometimes we are asked to mediate other kinds of disputes).
- Co-mediate two EEOC mediations through the EEOC’s Mediation Program.
- Observe one other professional mediation.

After each mediation experience you are required to complete out a Mediation Fieldwork Report describing the mediation you observed or conducted. A form for the Report is in your Training Manual and a copy will be sent to you electronically. This form is to be completed and delivered by hand or as an email attachment to Suzy Lynn **within 7 days of the mediation’s occurrence**. A fieldwork report turned in after 7 days of the mediation will not be accepted, resulting in no credit for your experience. **All fieldwork reports are due no later than 2 weeks after the end of final exams**. Note that examples of completed reports are in your Training Manual.

Suzy will keep the **official tally** of your number of field experiences, and her numbers come from these completed documents. You should also keep track of your *mediation experiences* in the Mediation Log at the back of the Training Manual. This is especially important should your numbers differ from Suzy’s official tally. You should also keep track of your *mediation attempts* on the form in the Training Manual. An “attempt” is when you are at the court to mediate a case and the mediation does not go forward because a party fails to show up or the court failed to notify anyone that the mediation was cancelled. At the end of the semester you will turn both your Mediation Log and your Mediation Attempts Log into Suzy.

Once we begin our mediations, we will do case rounds where you and your classmates will report on the happenings in the mediations you are observing or conducting. For detailed instructions on presenting your case to the class, please see “Guidelines for Oral Reports on Mediation Experiences” in the Training Manual.

IX. Field Trip to Justice Courts

We will be visiting the Justice Courts on January 28th or Feb. 2nd (date not finalized at the time of writing) so we can tour the Justice Courts where we will be doing most of our mediations and meet the court staff we will be working with. We will meet in the courthouse lobby just to the left of security at 1pm. We will be done by 3pm so those of you w/ class at 3:30 can make it back to campus in a timely manner. Please dress professionally.

X. Grading Policy

This class is graded on the law school's letter grading system following the grading curve established for classes of less than 20 students.

The following factors will go into your final grade:

- A. Attendance and class participation (10%)
- B. Self-Assessment Evaluations (30%)
 - 1. Video Evaluations – 5%
 - 2. Mid-Semester Self Evaluation – 10%
 - 3. Final Self Evaluation – 15%
- C. Your ability as a mediator (30%)
- D. A Research Paper and Class Presentation (30%)
 - 1. First Submission of Paper (5%)
 - 2. Final Paper (25%)

Note that your grade in this class will not be determined by the outcome of the mediations you conduct.

XI. Self Assessment Evaluations

You are required to complete three separate kinds of self evaluations: three Video Self-Evaluations, a Mid-Semester Self Evaluation, and a Final Self-Evaluation. Any time your in-class mediation is videotaped, you are to view the video and prepare a self critique to be turned in. ***Video Self Evaluations are due 7 days from the day of the mediation.*** The Mid-Semester Self Evaluation will focus on your strengths and opportunities for growth as a mediator and will be a part of your mid-semester meeting where we discuss your progress to that time. It should be no longer than 7 pages. ***The Mid-Semester Self Evaluation will be due on Wednesday March 4th at 4pm.*** The Final Self Evaluation will contain two parts. The first is similar to the Mid-Semester Self Evaluation with a focus on strengths and opportunities since your Mid-Semester Self Evaluation; the second will focus on your growth as a mediator. This second part is asking how you view yourself as a mediator and how you made it there over the semester. It should be no longer than 10 pages. ***The Final Self Evaluation will be due on Monday April 20th at 4pm.***

XII. Research Papers and Class Presentations

In addition to learning mediation skills, you will be writing a research paper that will help you learn in depth about a discreet area of mediation. The paper topic will be one of your choosing (with my approval). As described in Section XI above, you will turn in two versions of the Research Paper - the First Submission and the Final Paper. Both versions will be graded on the quality of research and analysis, incorporation of concepts and themes from class, and organization and writing (including typos and grammatical errors).

Length of Papers

The First Submission should be at least 12 pages long and the Final Paper should be at least 25 pages long (anything over 30 pages it too long). Page lengths include footnotes, double-spacing, 12 pt. font, and 1 inch margins.

Interim Due Dates

To keep you from getting overwhelmed by the paper at the end of the semester, we will have several interim due dates. Items to be turned in during class should be handed in at the beginning of class; no electronic copies please.

- **Topic Selection Memorandum: February 2, 2015** – This will be a short description of your paper topic, your thesis and at least three sources of support that are not required readings. This document need not be more than one page long and will be turned in at the beginning of class. It is possible to change your topic after this date, but you must have my approval.
- **Research Paper Outline: February 16, 2015** – Your outline should show that you have spent time doing background reading and thinking about the topic.
- **First Submission of Paper Due Date: March 16, 2015** – This paper should reflect your best effort at this stage.
- **Final Paper Due Date: April 22, 2015** – Your papers are due to Suzanne Lynn in Room 265 at 4pm. She will accept either hard copies or electronic copies.

Class Presentation

In our last three classes you will be presenting your research paper to the class. The presentations should be between 10-15 minutes and will be followed by a question and answer session. You are free to organize your presentation however you like and you are free to choose whether to use power point (or an equivalent) to aide in your presentation.

- **Presentation Dates – April 13th, 15th, and 20th.**

XIII. Professional Skills and Writing Requirements

Since this class is a part of the law school's clinical offerings, it can be used to satisfy the the Professional Skills Requirement (Statement of Student Policies, Section II (J)) for graduation. The Research Paper qualifies this class to satisfy either the Graduate Writing Requirement (Statement of Student Policies, Section II (H)) or the Flexible Writing Requirement ((Statement of Student Policies, Section II (I)). Students must select one of the three requirements the course will satisfy; the class cannot be used to satisfy more than one of these three graduation requirements.

XIV. Plagiarism

Plagiarism unfortunately occurs with regularity in seminar classes at the law school. Plagiarism is defined as follows in the law school's Statement of Student Policies, Section XIII (C)(3).

Plagiarism is representing the words or ideas of another as one's own. Quoting or paraphrasing another's writing without acknowledging the author's identity is a form of plagiarism.

The Statement of Student Policies also gives an example of plagiarism.

Example: Student A, writing a paper for a seminar, rephrases a passage from a law review article and fails to cite the source. A has [plagiarized from the source and] violated this provision.

Please note that plagiarism is a serious violation of the Honor Code and may result in dismissal from the law school.

XV. Laptops

Because so many students who use laptops during class use them for non-school purposes and because those students who don't are often distracted by those who do, no laptop usage is allowed during class except when expressly stated. This policy will be strictly enforced. Since this class is largely simulation and discussion driven, this requirement should not affect your note taking ability.

XVI. Certificate

All students who successfully complete this course will receive a certificate of completion, which will provide proof of having completed 40 hours of mediation training.

XVII. Video Capabilities

We will be videotaping our in-class mediations (See Section XI above). The best way to learn and improve your mediation skills is to watch yourself on video. While many laptops and tablets have excellent video technology, they are not always compatible with various forms of playback technology. To make things easier for everyone we will be

using the law school's video recording equipment and posting them on a secure website for viewing.

XVIII. A Review of Important Dates

- February 2 – Topic Selection Memo
- February 16 – Outline
- March 2 – Mid-Semester Self Evaluation
- March 16 – First Submission of Paper
- April 13, 15, and 20 - Presentations
- April 20 – Final Self Evaluation
- April 22 – Final Research Paper

XIX. Time Keeping

Each of you will be responsible for keeping track of how many hours you spend working on Mediation Clinic related tasks. That includes everything you do for class, except for working on your research paper. For example, things that you should count include: preparing for class (class reading and preparing for simulations), class time, reviewing your mediation videos, writing your self-evaluation pieces, driving for mediations, time spent at the courthouse. I ask that you complete your timesheets, which will be provided to you, to Suzy on Sunday evenings.

XX. Conflicts

We are in the process of creating a conflict protocol for those of you who have the opportunity to take another clinic while a student at the law school. Once it is set (before we are mediating in the Justice Court), we will discuss it in detail.

XXI. Syllabus

The reading assignments for the semester are below. Sometimes we run behind on the syllabus because we think it important to focus on certain skills. However, we will eventually catch up. If you keep to the syllabus, you should be in good shape. At the end of class (or via email shortly thereafter) we will confirm which reading assignments we will be discussing in the next class.

Mediation Training Sessions – Reading Assignment

- August 19th - Frenkel & Stark, Chpt. 1, Sections 2 and 4-6; Frenkel & Stark, *Improving Lawyers Judgment: Is Mediation Training De-Biasing?*, Section II
- August 20th – Frenkel & Stark Chpt. 5
- August 23rd – Frenkel & Stark, Chpt. 6

Week 1

January 12 – Orientation and Individuals in Conflict

Lieberman, Mediation Success (en toto); article nos. 1 and 2 in the Clinic Reader

1. Bernard S. Mayer, “What People Want in Conflict,” in Beyond Neutrality: Confronting the Crisis in Conflict Resolution (2004).
2. Helaine S. Golann and Dwight Golann, *Why Is It Hard for Lawyers to Deal With Emotional Issues?*, 9 Disp. Res. Mag. 26 (Winter 2003), excerpted in Folberg, et al., Resolving Disputes: Theory, Practice and Law (2005).

January 14 – Individuals in Conflict (cont’d)

Article no. 3 in the Clinic Reader

3. Cloke, et al., *The Hidden Meaning of Conflict Stories*, in Resolving Personal and Organizational Conflict (1995).

Week 2

January 19 – MLK day, no class

January 21 – Understanding the Problem(s), Power Imbalances, and Organizing the Discussion

Frenkel & Stark, Chpts. 7 and 8, and article no. 4 in the Clinic Reader

4. Jordi Agusti-Panareda, *Power Imbalances in Mediation: Questioning Some Common Assumptions*, Dis. Res. J. 24 (May - June 2004).

Week 3

January 26 – The Mediator’s Role

Read – Frenkel & Stark, Chpt. 3

January 28 – Meet at NE Justice Courts

No reading assignment

Week 4

February 2 – Mediation Roleplay (Topic Selection Memo due)

No reading assignment

February 4 – Negotiation

Frenkel & Stark, Chpt. 2 and article no. 5 in the Clinic Reader

5. Jay Folberg, et al., “Identifying Interests and Developing Options,” in Resolving Disputes: Theory, Practice and Law (2005).

Week 5

February 9 – Mediation Roleplay

No reading assignment

February 11 – Writing Agreements

Frenkel & Stark, Chpt. 11

Week 6

February 16 – Mediation Roleplay (Research Paper Outline due)

No reading assignment

February 18 – Bargaining in Mediation

Frenkel & Stark, Chpts. 9 and 10 and article no. 6 in the Clinic Reader

6. J. Anderson Little, *Facilitating Movement* in Making Money Talk (2007).

Week 7

February 23 – Mediation Roleplay

No reading assignment

February 25 – Attorneys and Mediation

Frenkel & Stark, Chpt. 11 and article nos. 7 and 8 in the Clinic Reader

7. ABA Model Rule of Professional Conduct 4.1
8. ABA Ethics Opinion 06-439, April 12, 2006

Week 8

March 2 – Mediation Roleplay

No reading assignment

March 4 – Mediation Ethics

Frenkel & Stark, Chpt. 12 and Appendix A, and article no. 9 in the Clinic Reader

9. Paul Rubin, *Dr. Buzzard: Mediator Gary Karpin Preyed on Vulnerable Divorcees*, Phoenix New Times (January 27, 2005).

Spring Break – March 9 and 11 – no class

Week 9

March 16 – Mediation Ethics (cont'd)

Frenkel & Stark, Appendices B and C

March 18 – Case Rounds

No reading assignment

Week 10

March 23 – Confidentiality

Article nos. 10 – 13 in the Clinic Reader

10. *Cassel v. Superior Court*, 244 P.3d 1080 (Calif. 2011)
11. *Wilcox v. Arpaio*, 753 F.3d 872 (9th Cir. 2014)
12. *Donohoe v. Arpaio*, 2012 BL 135738 (D. Ariz. 2012) (excerpt)
13. Michael D. Young, *Mediation Gone Wild: How Three Minutes Put an ADR Party Behind Bars*, 25 Alternatives to the High Cost of Litigation 97 (2007)

March 25 – Case Rounds

No reading assignment

Week 11

March 30 – Settlement

Article nos. 14 - 16 in the Clinic Reader

14. Owen Fiss, *Against Settlement*, 93 Yale L.J. 1073 (1984), excerpted in Riskin & Westbrook, Dispute Resolution and Lawyers, 2nd ed. 1998

15. Carrie Menkel-Meadow, *Whose Dispute Is It Anyway?: A Philosophical and Democratic Defense of Settlement (In Some Cases)*, 83 Geo.L.J. 2663, 2663-71, 2692, excerpted in Riskin & Westbrook, Dispute Resolution and Lawyers, 2nd ed. 1998
16. Factual and Legal Context of Lawsuit Settlements (Wilcox, Mandell, Schuerman), Maricopa County (2012)

April 1 – Case Rounds

Week 12

April 6 – Judicial Settlement Conferences

Article nos. 17 – 20 in the Clinic Reader

17. Nancy Welsh, Donna Stienstra, and Barbara McAdoo, *The Application of Procedural Justice Research to Judicial Actions and Techniques in Settlement Sessions* in The Multi-Tasking Judge: Comparative Judicial Dispute Resolution (2013) (pgs. 57-69 of article).
18. *Pitman v. Brinker International, Inc.*, 216 F.R.D. 481 (D. Ariz. 2003)
19. *In Re Fee*, 182 Ariz. 597, 898 P.2d 975 (Ariz. 1995)
20. Inquiry Concerning Judge Carmine Cornelio (Az Comm’n Judicial Conduct, Case No. 12-277)

April 8 – Case Rounds

Week 13

April 13 – Presentations

April 15 – Presentations

Week 14

April 20 – Presentations and Moving Forward

Article nos. 21 and 22 in the Clinic Reader

21. Margaret Shaw and Stephen B. Goldberg, “Who Wants to Be a Mediator?” 16 Disp. Res. Mag. 24 (2010)
22. Betsy A. Miller & David G. Seibel, “Untapped Potential: Creating a Systemic Model for Mediation Preparation,” May-July Disp. Res. J. 50 (2009)