

Mediation Advocacy

Tuesday 6-8 PM
Room 307

Law 649-01
Fall 2014
Frank Laney

Mediation and other dispute resolution (DR) processes are established for the purpose resolving disputed issues differently than would be expected in a court trial. As the outcome – the process and experience – is expected and intended to be different, so too should the input by the clients and attorneys be different. Preparing a case for mediation is substantially different from preparing the same case for litigation. This course will start with the process and procedures used in various dispute resolution venues in the North Carolina courts. We will focus on how to best prepare a case to utilize the assets available to us in the DR setting. As the core of mediation is negotiation, the first problem will be a negotiation one, followed by a series of mediation problems where students gain experience as attorneys, litigants and mediators.

Grading – There will be no final exam. Two case preparation memos and long term negotiation written assignments will be expected. Students will also select a topic of interest to present to the class. Grading will be descriptive grading. All writing assignments must be passed to pass the class.

Attendance – Class participation and preparation count toward your grade. You cannot learn if you are not in class. You cannot miss more than two classes and pass the course. After a second absence, I will expect to meet with you after class. Please let me know in advance if you are going to miss or be late.

As the teacher is an adjunct, he does not keep any office hours at the school, but is generally available before and after class and at other times by appointment. He can be reached most of the time at his office, 919-469-2853 or frank_laney@ca4.uscourts.gov

All work is to be submitted by email to this address. Do NOT send to the Campbell address as it is not checked.

Please contact Associate Dean Tim Zinnecker (or Director of Academic Support Sha Hinds-Glick) if you believe you need an accommodation in the class for an impairment.

Class 1 – Aug 19 – Introduction and Chapter 1 of *Mediation Representation* by Abramson

Introduction to Class

Meet my friend

FCL bio

ADR experience of students?

What do you want out of this class?

Abramson textbook

Getting to Yes, Ury and Fisher

Alternative Dispute Resolution in North Carolina (Green book)– need to order on line

Class overview

no exam – grading pass/fail

main grades will be writings – all writings must be passed to pass the class
quality of writing counts
negotiation preparation memo
mediation preparation memo – in class mediation with other class
items that are to be turned in to professor are to be turned in by 5:00 on the day of
the class unless otherwise stated and emailed to **frank_laney@ca4.uscourts.gov**
class participation counts, you cannot learn if you are not in class, please let
me know in advance if you are going to miss
use of laptops is fine

Sign up for topic presentations

Introduction to Negotiation Exercise – Clinton Center Contract with Ravel

Assign teams

Distribute fact pattern

Negotiation memo – 2000 words or less

Fact summary – neutral, should not contain argument, needs or positions

Case Analysis

Your Client's

- Goals – specifically what they want from the deal
- Strengths
- Weaknesses

Other Party's – this part is probably shorter as you will have

- Goals less information about this
- Strengths
- Weaknesses

Needed information

From Client

From Other Party

Innovative Ideas

High value to client but low cost to other side

Negotiation strategy

Starting point – in \$ if appropriate

Moves and trades - in \$ if appropriate

Bottom line - in \$ if appropriate

Tone

Alternate outline – see page 343 et seq of Abramson

Narrative and Discussion of Negotiation

What happened in negotiation, including offers, moves and rationale

Self-evaluation and evaluation of other participants

Agreement or statement of last offers

ADR Rainbow

Long term negotiation problem

Class 2 – Aug 26 – Chapter 2

Chapter 1 of *ADR in NC* (Green book)

After class – meet with Clinton Center

Basics of Mediation

What would you expect?

4 word definition

6 stages - BADGER

Diamonds

Styles of mediation settlement v relationship / facilitative v directive

Video of mediation – Bongo Joe

Mediation as a settlement tool

Mediation from the parties' perspective

Comparison of use of mediation, arbitration, litigation

Mediation Demo – Brick Patio

Dealing with Conflict

Explain Thomas-Kilman grid – self v other, relationship v goals, cooperate v assertive
Accommodate, compete, avoid, collaborate, compromise

Demo with student – go out to dinner

Divide into 4 groups – no compromise

List biggest advantages and disadvantages of being in this group

Dos and Don'ts – how should the rest of the world behave if we want to be successful in negotiating with you?

Class 3 – Sept 2 – Appendix A

Getting to Yes, by Roger Fisher and William Ury

After class – meet with Ravel

Litigation Risk Analysis and Decision Trees – with other class

Negotiation and *Getting to Yes*

Positions v Interests

Class 4 – Sept 9 – class will be 3 hours, from 6:00 – 9:00

Negotiation Fact Summary and Case Analysis Due – 1700 words

Guest lecturer – J. Anderson Little – Author of Making Money Talk: How to Mediate Insured Claims and Other Monetary Disputes

Positional bargaining and decision-tree analysis

Class 5 – Sept 16 – Chapters 12 and 18 of *ADR in NC* (Green book)

Completed Negotiation memo – 2000 words due

Assign 3 small mediations – no memos

Do Negotiation in class and debrief

Agreement and Negotiation Evaluation is due Friday Sept 19 at 10:00 PM

Class 6 – Sept 23 – Chapter 3

Know Your Case

Advising Your Client

BATNA

In class mediation 1 – *Barking Dog*

Assignment of Mediation Problem

Mediation memo – 2500 words

Fact summary

Case Analysis

Your Client's

- Goals

- External Factors – things that limit your client beyond their control

- Strengths

- Weaknesses

Other Party's – this part is probably shorter as you will have

- Goals less information about this

- External Factors

- Strengths

- Weaknesses

Needed information

From Client

From other Party

Innovative Ideas

High value to client but low cost to other side

Risk analysis

Negotiation strategy

Starting point - in \$ if appropriate

Moves and trades - in \$ if appropriate

Bottom line - in \$ if appropriate

Tone

Mediator

Selection

Timing of the mediation

Strategies for using the mediator

Narrative and Discussion of Mediation

What happened in mediation, including offers, moves and rationale

Self-evaluation and evaluation of other participants

Agreement

Sample Mediation memo – The Glen

Class 7 – Sept 30– Chapter 4.2, 4.3

Meet Employee attorneys after class

Selecting a Mediator

Pre-mediation Matters

In class mediation 2 – *Simple Assault*

Class 8 – Oct 7 – Chapter 5

Mediation Fact Summary due – 500 words

Meet Employer attorneys after class

Opening Statement

Conducting the Mediation

In class mediation 3 – *Concrete Cadillac*

Debrief Concrete Cadillac, legal analysis

Class 9 – Oct 14 – Chapter 6

Diplomacy overview memo due

Guest lecturer – Christopher Nichols, Plaintiff's attorney

Presenting plaintiff's attorney's perspective from meeting client, preparing client, readying for mediation, selecting a mediator, valuation of cases, settlement packages/demand letters, mediation conference, and settlement agreements or impasse

Class 10 – Oct 21 – Chapter 11 of *ADR in NC* (Green book)

Mediation Fact Summary and Case Analysis due – 1700 words

Drafting a Mediation Settlement

Enforcing a Mediated Agreement

Class 11 – Oct 28 Chapter 7

Guest lecturer – Jennifer Ruiz, Defense attorney

Presenting defense attorney's perspective from file transferred from client, opening file and gathering information, readying for mediation, selecting a mediator, evaluation letter, seeking demand from plaintiff's attorney, mediation conference, and settlement agreements or impasse

Class 12 – Nov 4 – Chapter 8

Completed Mediation memo due – 2500 words

Ethics

Mediation Programs in NC

Class 13 – Nov 11

All groups will conduct Mediation 1 in class – Laney class will do employment problem

Debrief Mediation 1

Mediation Agreement and Evaluation 1 due by Friday 8:00 PM

Class 14 – Nov 18

All groups will conduct Mediation 2 in class – Clare class will do the Hoghouses problem

Debrief Mediation 2

Mediation Agreement and Evaluation 2 due by Friday 8:00 PM

Frank C. Laney is Circuit Mediator for the US Court of Appeals for the Fourth Circuit, has taught at the Campbell School of Law and an ex-officio member of the NC Dispute Resolution Commission. He also serves as a Chair of the ADR Committee of the NC State Judicial Council. He is the former Mediation Coordinator for the NC Industrial Commission, a former partner in Mediation Inc. and in the early 1990's limited his private practice in Raleigh to mediation. He has been a member of the NC Bar Association Dispute Resolution Committee/Section since its inception, and is a past Section Chair. He was a consultant with the NC Bar Association's Mediated Settlement Conference and District Court Arbitration Pilot Programs. Mr. Laney is certified as a Superior Court and Family Financial mediator by the NC Dispute Resolution Commission and as a practitioner member of the Academy of Family Mediators. Born and raised in North Carolina, Mr. Laney attended NC State University and UNC Law School. His wife, Anne Whaley Laney, is Principle Flutist with the North Carolina Symphony. They have two children.