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Mediation Clinic

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Law 772-1001

PART I. COURSE OVERVIEW

This clinical experience will introduce you to the process of mediation, the neutral facilitation of negotiated agreements between disputing or transacting parties. You will study theories of conflict, mediation, and negotiation and learn the skills used in the mediation process, from the perspective of mediators, parties, and their representatives. You will also be mediating live disputes at Clark County's Family Court and the Neighborhood Justice Center (NJC). There you will hone your skills as a mediator. The theory part of this course includes seminar readings, short exercises, role-plays, and simulations. You will be required to demonstrate your proficiency as a mediator, in live mediations and in a video of a simulated dispute. In addition, you will need to do a public presentation on mediation to a local group or student peers. Students earn six credits for this course and, after completing a mandatory pre-semester mediation training, are expected to commit an average of 15 hours per week on seminar and Clinic-related activity. There is no final exam.

COURSE MATERIALS

Required Text:

Douglas N. Frenkel & James H. Stark, THE PRACTICE OF MEDIATION, A VIDEO-INTEGRATED TEXT (2012, 2d ed.).

**The videos for this text are essential and available via an online account with the publisher.

Access expires 6 months after activating the account and there is no guarantee that you will be able to view the videos if you rent or purchase a used text.**

REQUIREMENTS

Pre-semester Orientation and Mediation training (January 13th – 17th)

Prior to the beginning of the semester, you will participate in a half-day orientation and an obligatory 4-day training program in mediation theory and practice provided by Saltman Center faculty and trainers from the NJC. The half-day orientation will be on Monday, January 13th from 9 a.m. – noon in the Thomas & Mack Legal Clinic conference room (first floor of BSL). The pre-semester training will be on Tuesday, January 14 – Friday, January 17, from 8:30 a.m. to 5:00 p.m. at the NJC.

Casework and Clinic Projects

During the course of the semester, besides attending the weekly 2-hour seminar, you are assigned to a Tuesday or Wednesday family court placement for four hours a week (12:30 p.m. to approximately 4:30 p.m.) where you will mediate live disputes under the supervision of mentors. A schedule with court dates will be distributed prior to the start of the semester. Also, once a week you will also mediate small claims cases, protective order cases, and community referred cases with mediators from the NJC. The NJC mediations run for 2 hours and are scheduled at 8:30 a.m., 11:00 a.m., and 2:00 p.m., Monday – Friday. You will make your own arrangements for the weekly NJC mediations, depending on your schedule.

After each mediated case, you are responsible for scheduling an opportunity to have structured feedback with your co-mediator and faculty supervisor.

Seminar: Monday 2:35 – 5:35 p.m. in BSL 101 (first class meeting is Monday, January 27th)

Seminar classes are of two basic types: topical and case round. Topical classes focus on particular aspects of substantive law, procedure, or policy issues for mediator and lawyer ethics, and will generally encompass discussion of assigned reading and/or in-class exercises designed to highlight the designated issue. In preparation for topical classes, you are expected to complete any assigned reading and may be asked to complete short written assignments. You may also be asked to take the lead in presenting the reading material and leading class discussion. Expect the order, and to a lesser extent the content, of seminar classes to shift as our casework unfolds through the semester. *The list of seminar topics and assignments can be found below in Part II.*

Case round classes are less structured, but no less important. They are an opportunity to respond to legal, ethical or policy issues that are arising in your casework. Case rounds may focus on a single aspect of a mediation that raises a particularly interesting or troubling issue, or they may focus on many issues. In preparation for case round classes, you may be asked to share some of your journaling material or to present on a particular issue that has arisen in your casework.

Written Assignments – due Sundays by 5 p.m.

You will submit a written assignment every week in the form of an analytical journal entry. These written assignments are called “journals” because they are informal, first person reflections on your Clinic experiences. I expect you to accumulate at least 40 pages of written material over the life of the course (including the pre-semester training days)—the equivalent of about four pages per week. This is not a daunting requirement if you keep up with it. *A more detailed discussion of the journaling process and topics ideas for journal entries can be found below in Part III.*

Mid-semester Videotaped Mediation

During the last two weeks of February, you and a clinic partner will schedule a time to be videotaped mediating a role-play scenario. It should run no longer than 45 minutes. You will identify individuals outside of the clinic to play the role of parties and a set of simulation instructions will be provided to them. You will meet to review the video with clinic faculty. The purpose of the video is to allow you to see yourself mediating and to create an opportunity for evaluating your skills as a mediator.

Community Presentation

You will be required to make a short (15-20 minute) presentation to either a local community group on the topic “What Is Mediation and How Might It Be Beneficial to You?” or to one of our legal writing classes. Volunteering to do a mock mediation for a class will fulfill this requirement, too.

You may do this at any time after March 15. (It will take you until around then to feel comfortable talking about what mediation is!) More information will be given to you as the semester progresses.

EVALUATION

Preparation for and Performance in Live and Simulated Mediation Sessions and Preparation for and Performance on Projects and Team Activities: 50%

Prepared for mediation session thoughtfully and thoroughly, including necessary coordination with co-mediator; prepared and delivered appropriate opening remarks in mediation; utilized a range of mediation techniques; demonstrated ability to engage participants and draw out their interests; was attentive to ethical issues in mediation; maintained neutrality during mediation sessions; engaged in appropriate follow-up and communication with participants; sought feedback and engaged in appropriate post-mediation evaluation; demonstrated ability to identify and address ethical, ideological, or personal considerations bearing on Clinic work.

Demonstrated initiative and creativity in moving activities forward; interacted consistently and effectively with others engaged in activities; considered and/or proposed related topics and initiatives; provided roadmap for further work on projects at conclusion of the semester, if applicable.

Written Assignments: 30%

Submitted all written assignments on time; used journal entries to engage in careful mediation planning and thoughtful post-mediation analysis and self-critique; identified individual strengths and areas for improvement; reflected on dispute and disputant dynamics, ethical issues encountered, and feelings elicited from working with individuals in conflict within the legal system.

Attendance and class participation: 20%

Attended all court placements and seminar meetings; came to class prepared to demonstrate that assignments had been completed; paid attention and engaged with other students in class and made quality contributions to class discussion.

STUDENT HOURS

As with any professional work environment, you can expect that your workload over the term will fluctuate. The general formula for expected hours outside class is three hours per week per credit hour. For this six-credit-hour Clinic, factoring in the 32-hour pre-semester training, that computes to approximately 15 hours per week. In the Clinic, this number should be viewed as a weekly average over the course of the term, and not as a requirement that you must meet every week. You will be expected to keep and submit time sheets every week and to submit your total hours to administration every other week. Timesheets can be submitted on Sundays along with journal entries. You are allowed to count hours of clinic work that you do outside the clinic building. It is important that your schedule, including classes and other commitments, affords you the flexibility to meet your professional responsibilities.

CONFIDENTIALITY & PROFESSIONALISM

Remember that you are working as mediator professionals while in the Clinic. That means that the cloak of confidentiality, both as a contractual obligation between you and the parties and a legal

privilege protected by the law, covers everything we do with regard to mediation participants and their cases.

DO NOT place Clinic work on computers or disks to which others have access. **DO NOT** discuss client or case materials with anyone outside the Clinic. When you discuss cases with appropriate people, do it in a manner that minimizes the chances of you being overheard. You must be especially cautious not to disclose confidential participant information and always to talk about mediation participants in a professional and respectful manner.

DISABILITY STATEMENT

Disability Resource Center (DRC) - The UNLV Disability Resource Center (SSC-A 143, <http://drc.unlv.edu/>, 702-895-0866) provides resources for students with disabilities. If you feel that you have a disability, please make an appointment with a Disabilities Specialist at the DRC to discuss what options may be available to you. If you are registered with the UNLV Disability Resource Center, bring your Academic Accommodation Plan from the DRC to the law school Registrar's office to develop strategies for implementing the accommodations to meet both your needs and the requirements of the course.

PART II. SEMINAR TOPICS

The following chart lists Clinic activities by week and identified seminar topics and assignments by week. Assignments are subject to change according to the casework of the Clinic; any changes to assignments will be posted at least one week in advance.

<p>Week 1 Jan. 13</p>	<p><i>Monday:</i> Clinic Orientation and Mini-Workshop on Family Law and Procedure, Thomas & Mack Legal Clinic (BSL), 9 a.m. – noon <i>Tuesday – Friday:</i> Pre-semester Mediation Training @ NJC, 8:30 a.m. – 5:00 p.m.</p> <p>Assignment</p> <ul style="list-style-type: none"> • Read Chapters 1 & 5 (<i>Introduction to the Processes of Mediation and the Skills of Effective Mediators; Mediation as a Structured Process</i>) • Create Box.com account
<p>Week 2 Jan. 20</p>	<p><i>Monday:</i> King’s birthday observed – NO CLASS – but journals due by 5 p.m. <i>Tuesday:</i> Everyone to Clark County Family Division for court orientation, meet in atrium behind security at 12:30 p.m. <i>NJC:</i> Mediation observation, scheduled individually</p> <p>Assignment</p> <ul style="list-style-type: none"> • Read Chapter 3 (<i>The Role of the Mediator: Differing Approaches, Fundamental Norms</i>) and Chapter 6, pgs. 133-137 with video extracts (<i>Opening the Process</i>). • Journal entry and draft Mediator Opening Statement due Sunday, Jan. 27 by 5 p.m.
<p>Week 3 Jan. 27</p>	<p><i>Monday:</i> seminar class – Workshop on Mediator’s Introduction Statement, the Co-mediation model, and the Role of Legal Norms in Mediation <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. <i>NJC:</i> Mediation observation, scheduled individually</p> <p>Assignment for class</p> <ul style="list-style-type: none"> • Read Chapter 4 (<i>Preparing to Mediate</i>) and view Chapter 3 video extracts. • Read excerpts from Ellen A. Waldman, <i>Identifying the Role of Social Norms in Mediation: A Multiple Model Approach</i>, 48 <i>Hastings L.J.</i> 703 (1997) [pgs. 703-710; 723-732; 738-746; 753-769]
<p>Week 4 Feb. 3</p>	<p><i>Monday:</i> seminar class – Information Gathering and Caucus <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. <i>NJC:</i> Mediation</p> <p>Assignment for class</p> <ul style="list-style-type: none"> • Read pgs. 138-163 of Chapter 6 (<i>Opening the Process, Developing Information</i>) and pgs. 178-182, 190-193, 199-206 of Chapter 7 (<i>Expanding Information</i>). • Simulation, role play instructions to be circulated

<p>Week 5 Feb. 10</p>	<p><i>Monday:</i> seminar class – Negotiation theory and identifying negotiable issues <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. <i>NJC:</i> Mediation</p> <p>Assignment for class</p> <ul style="list-style-type: none"> • Read Chapter 2 (<i>Basics of Negotiation Theory and Why Negotiations Fail</i>); skim pgs. 209-216 of Chapter 8 (<i>Identifying and Framing Negotiating Issues, Organizing an Agenda</i>) • Case rounds
<p>Week 6 Feb. 17</p>	<p><i>Monday:</i> Washington and Lincoln’s birthdays observed – NO CLASS – but journals due by 5 p.m. <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. <i>NJC:</i> Mediation</p> <p>Assignment</p> <ul style="list-style-type: none"> • Complete Mediation Simulation Videos, schedule time for feed-back meeting
<p>Week 7 Feb. 24</p>	<p><i>Monday:</i> seminar class – Bargaining, Impasse, and Power Imbalance <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. <i>NJC:</i> Mediation</p> <p>Assignment for class</p> <ul style="list-style-type: none"> • Read pgs. 255-260, 262-284 of Chapter 10 (<i>Conducting the Bargaining, Dealing with Impasse</i>)
<p>Week 8 Mar. 3</p>	<p><i>Monday:</i> seminar class – When is Mediation Appropriate? A case study of domestic violence <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. <i>NJC:</i> Mediation</p> <p>Assignment for class</p> <ul style="list-style-type: none"> • Read Nancy Ver Steegh, <i>Yes, No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence</i>, 9 Wm. & Mary J. Women & L. 145 (2003), and appendix F (pgs. 515-516). • Case rounds
<p>Week 9 Mar. 10</p>	<p><i>Monday:</i> seminar class – Mediation Agreements <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. <i>NJC:</i> Mediation</p> <p>Assignment for class</p> <ul style="list-style-type: none"> • Read pgs. 287-301 of Chapter 11 (<i>Concluding the Mediation</i>) • Excerpt from Penelope Eileen Bryan, <i>Reclaiming Professionalism: The Lawyer’s Role in Divorce Mediation</i>, 28 Fam. L.Q. 177 (1994) [pgs. 177-189; 207-222]
<p>Week 10 Mar. 17</p>	<p>SPRING BREAK – NO CLASS, NO COURT, NO NJC</p>
<p>Week 11 Mar. 24</p>	<p><i>Monday:</i> seminar class – Guest Speaker Prof. Eleissa Lavelle <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. <i>NJC:</i> Mediation</p>

<p>Week 12 Mar. 31</p>	<p><i>Monday:</i> seminar class – Mediator Ethics, Neutrality, Confidentiality & Fairness <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. <i>NJC:</i> Mediation</p> <p>Assignment for class</p> <ul style="list-style-type: none"> • Read pgs. 309-336 of Chapter 12 (<i>The Ethics of Mediating</i>). • Read Joseph B. Stulberg, <i>Mediation and Justice: What Standards Govern?</i>, 6 Cardozo J. Conflict Resol. 213 (2005). • http://www.courts.ca.gov/1189.htm
<p>Week 13 Apr. 7</p>	<p><i>Monday:</i> seminar class – Regulating Mediation and Mediators <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. <i>NJC:</i> Mediation</p> <p>Assignment for class</p> <ul style="list-style-type: none"> • Read pgs. 303-308 of Chapter 12 (<i>The Ethics of Mediating</i>), and excerpts from appendices B – E (pgs. 483 – 513) as assigned.
<p>Week 14 Apr. 14</p>	<p><i>Monday:</i> Attorneys in Mediation; how mediation skills foster client-centered approach <i>Tuesday & Wednesday:</i> Clark County Family Division @ 12:15 p.m. **Mediation simulation for Prof. Lavelle’s Negotiation class, Tuesday 2-5 p.m.** <i>NJC:</i> Mediation</p> <p>Assignment for class</p> <ul style="list-style-type: none"> • Read Chapter 13 (<i>Representing Clients in Mediation</i>)
<p>Week 15 Apr. 21</p>	<p><i>Monday:</i> Last class – evaluations and wrap-up <i>Tuesday & Wednesday:</i> no mediations <i>NJC:</i> no mediations</p> <p>Assignment for class</p> <ul style="list-style-type: none"> • Case rounds • Prepare for Mediation Simulations in Legal Writing Classes • Compose thank you letter for Judges
<p>Week 16 Apr. 28</p>	<p><i>Monday:</i> End-of-semester party</p>

PART III. WRITTEN ASSIGNMENTS

The written journal requirement is one of the most important components of the clinic. As the practice of law has become more and more bottom line-oriented, there are fewer opportunities than ever for beginning lawyers to be mentored by experienced ones. The main purpose of the journal is to contribute to your ability to learn from your own experience, by engaging you in a process of careful mediation planning and thoughtful post-mediation self-criticism and analysis. The journal is also a means to help me monitor your experiences when you are working with others, to maximize your learning throughout the semester.

Journal entries should be submitted every week. **Journal entries should be emailed to me no later than 5 p.m. on Sunday following each week when you have either mediated or observed a case. Your first submission will be due Monday, January 20 because of the MLK holiday and should focus on your goals and expectations for the Clinic.** I expect you to accumulate at least 40 pages of journal entries over the life of the course (including the first five training days of the semester)—the equivalent of about four pages per week. This is not a daunting requirement if you keep up with it.

Journal entries may include analytical or subjective reactions to the readings and to topics raised in class; observations about observed role plays in class in which you are not involved; observations regarding observed mediations and other dispute resolution processes in the field; and—especially—reflections about your own mediations (both real and simulated), including dispute and disputant dynamics, ethical issues encountered, feelings elicited and the like; and, perhaps most importantly, your own self-critique of your skills and development. Focus both on what you did well and what you would do differently if you could do the mediation again. If you think you've learned something about yourself or the mediation process as the result of a particular experience, say so. The best journals involve significant personal introspection and growth.

Journal entries should be a blend of the descriptive and the analytic. Do not simply describe events without reflecting on them. By the same token, do not make conclusory comments about events without providing enough detail so that your reflections are meaningful to the reader. **Put differently, in describing the mediations you have conducted, it may be helpful if you briefly set forth the "facts" (positions, interests, concession patterns, agreement, if any, etc.) of the dispute so that the reader has a context to understand your reflections. But your entries should be primarily analytical, focusing on particular themes that capture your interest, not descriptive.** All journal entries are treated as confidential (although if you write something especially interesting or provocative, I may seek your permission to share it with the class).

Possible Journal Topics

Listed below is a (non-exclusive) list of both general and specific topics that you may wish to address in your journals. These are provided as a *suggestion* of things you may want to write about, but any other topics that interest you are also fair game. ***You cannot possibly cover all, or even many, of these topics in a single journal entry!*** I would much prefer an in-depth analysis of a few issues in each journal entry, rather than a discussion that is a "mile wide and an inch deep."

- *Preparation.* Where planning for the mediation was possible, did I ("I" means "we" where appropriate) prepare adequately? Did I take time to review the pleadings and anticipate the legal issues? Did I correctly predict the conflict dynamics? What came up in the mediation

that surprised me? Could it have been anticipated with better planning? Was this case appropriate for mediation? Was I competent to mediate it? Was enough time allocated for the mediation? If not, what effect did time constraints have on the process or result?

- *Opening the Mediation.* Did I make good decisions about who should attend the mediation? Was my opening statement fluent? Reasonably complete? Understandable? Were the parties initially comfortable with the process? Did I take steps to make them comfortable? Did I answer their questions effectively? In retrospect, what should I have done differently?
- *Initial Party Openings.* How well did I manage initial party narratives? What impediments got in the way? Did I give the parties space to tell their stories? Did I use open-ended questioning, active listening and summarization to make them feel heard? Did I deal effectively with any difficult behaviors, from the parties or their lawyers, effectively? Did I utilize a process of exchange? In retrospect, what should I have done differently?
- *Information Expansion.* How well did I develop the information base of the dispute? What impediments got in the way? How broadly or narrowly was the "problem" defined? Why? Did I effectively flesh out missing or difficult-to-understand parts of the disputants' stories? Did I make effective choices about how much time to spend on exploring the past versus the future? Did I use topical and chronological questions effectively to probe other aspects of the dispute that the parties did not mention? Are there mediation topics that I am more or less comfortable pursuing? Why? In retrospect, was there any further information that it would have been useful to get out on the table? Did I make effective choices about whether to caucus for information or not, when, and with whom to begin? How did my information expanding efforts affect the process or the outcome?
- *Listening and Note-taking.* Throughout the mediation, did I listen well? If not, what got in the way? What can I do to improve my listening? Was my note-taking effective? What kinds of notes do I need to take in order to be effective as a mediator?
- *Framing Issues and Creating a Negotiation Agenda.* Did I identify all the negotiating issues in the case? Did time constraints or party dynamics cause me to "rule" certain issues out of bounds? Did I frame issues neutrally? Did I make good choices as to the ordering of the issues? What impact, if any, did these things have on the mediation process and/or outcome?
- *Persuasion.* Of the various persuasion devices discussed in Chapter Nine, which am I comfortable/not comfortable using? Why? How did this play out in this mediation? How can I work to increase my repertoire of persuasive interventions? Do I want to?
- *The Bargaining Process.* What positions did the parties take? What specific offers and counter-offers were made? What were the parties' underlying interests and did I identify

them effectively? What were the main barriers to resolution in this case? What persuasive devices did I try to use to generate movement, and were these effective? Did I manage the actual bargaining process effectively? In retrospect, what if anything might have I done differently to assist the bargaining process and generate movement?

- *Joint Session Versus Caucusing.* What format(s) was/were used for information expansion and bargaining? Were the choices I made appropriate and effective in this case? Were caucuses managed effectively?
- *Impasse and Closing.* Did we reach impasse or settle? Either way, was the result surprising? Why? Was the closing stage of the process handled effectively? Did any issues, including drafting issues, arise?
- *Emotional Barriers.* Was this a mediation in which a lot of strong feelings were expressed? Am I comfortable dealing with strong emotions? Was I successful in thawing relationships and lowering the temperature of the dispute? What did I do to encourage the productive expression of emotions and discourage the destructive expression of emotions? In retrospect, should I have done anything differently?
- *Cognitive Barriers.* Did any cognitive barriers arise in this negotiation? How did they manifest themselves? How did I address them? In retrospect, should I have done anything differently?
- *Strategic Barriers.* Did any strategic barriers arise in this negotiation? How did they manifest themselves? How did I address them? In retrospect, should I have done anything differently?
- *Cultural Issues/Barriers.* Did any issues of race, culture or ethnicity arise in this mediation? How did I address them? In retrospect, should I have done anything differently?
- *Gender Issues.* Did any gender issues arise in this mediation? How did they manifest themselves? How did I address them? In retrospect, should I have done anything differently?
- *Conflict Management Styles.* Did the parties in this case, or their representatives, have contrasting conflict management styles? Conflict management styles different from my own? "Big picture" versus "little picture" focus? How did these dynamics affect the negotiations? How did I address them? Did my own conflict management style influence my management of the mediation? If so, how?

- *Lawyer Issues.* Were there lawyers in this case? In what ways were they a help? A hindrance? What can I learn about effective and ineffective mediation representation skills from their example? Did I deal with the lawyers in this case confidently? Effectively? In retrospect, should I have done anything differently? Were I to be sitting in the attorney chair, what would be similar or different about my approach?
- *Power Imbalances and Fairness.* Were there any significant power imbalances in this case? How did they manifest themselves? Did I take any steps to "balance" power? If so, what steps? Was the process "fair"? Was the result? In retrospect, should I have done anything differently?
- *Impartiality and Neutrality.* Did I *feel* impartial towards all parties and neutral about the outcome in this case? If not, why not? Did I *demonstrate* impartiality and neutrality at all times? If not, how might this have manifested itself? Did I favor one side over another? Did I steer one or both of the parties towards an outcome I preferred? In retrospect, should I have done anything differently?
- *Intimacy, Authoritativeness and Trust.* Throughout the mediation, was I effective in building intimacy and gaining the parties' confidence and trust? Was I authoritative? Warm? In retrospect, should I have done anything differently?
- *Other Ethical and Role Issues.* Did any other ethical or role questions arise in this mediation? What issues? How did I handle it/them? Is there anything I should have done differently?
- *Co-Mediation and Partnership Issues.* If I am co-mediating, is my co-mediation team working together effectively? How are we dividing up responsibilities? Are there other ways of dividing tasks that might be more effective? Is co-mediation advancing my progress as a mediator or impeding it? Are there any tensions in my partnership? If so, what steps have I taken or should I take to address them?
- *Overall Learning and Growth.* Am I making good progress as a mediator? What are my strengths and weaknesses? Are they the same I imagined they would be when I began the course? What steps can I take to improve in any areas of weakness and maximize my potential? Will the skills I am learning help me as a future lawyer? How?
- *Perspectives on Mediation, Adjudication, Lawyering and Justice.* Based on my experience in the clinic, what are my views about the place of mediation and adjudication as processes for resolving legal disputes? Have they changed since I began the course? Do I approve of or am I disappointed with mediation as it is practiced? With courts as they are managed and run? Based on what I have observed, what feelings do I have at this point about the quality of justice achieved in American courts? The quality of advocacy provided by lawyers? What values will I take away from my experience in this course?