

ALTERNATIVE DISPUTE RESOLUTION
Fall Semester, 2014

Professor Tom Patrick

WVU College of Law

Syllabus

Text

GOLDBERG, Stephen B., Frank E.A. SANDER, Nancy H. ROGERS, and Sarah Rudolph COLE (2012)
Dispute Resolution: Negotiation, Mediation, and Other Processes, (6th Ed.). New York: Aspen Publishers. ISBN
978-0-7355-0710-4

Course Overview

I have placed an “ADR Overview” at the TWEN under “Course Materials.” That document generally describes the course and the evaluation components. Other information will be posted to TWEN as the semester develops. Often, the files are posted in Adobe PDF format. If you do not have Adobe Acrobat Reader it may be downloaded free from www.adobe.com.

In addition, we will employ the “Forums” feature of TWEN for discussion of the course materials. Each week or so, I will post a question for your review and reflection. For each question, students should post their own reflection and post a substantive response to the views expressed by at least one other student’s post.

August 19 Adjudication: Objectives and Constraints

GOLDBERG, 1-13; 551-566

August 21 Case Study: Commuter Airlines and Lee Daniels

In lieu of class, students will meet in assigned groups and design a dispute resolution process to best suit the case presented. The group report will be due by noon on Monday, August 25. It may be submitted by email to tom.patrick@mail.wvu.edu. It should contain the steps of the dispute resolution process and an explanation of the what, when, where, how, and why of each step. Designers are writing on a clean slate; Commuter Airlines does not have any dispute resolution process in place now. The design team has been retained to propose a dispute resolution process that will be efficient in terms of time and money; effective in terms of benefit to the company and to its employees; and just in terms of the interests of both those involved directly in the dispute and also those who may be affected by its resolution.

August 26 Adjudication: Objectives and Constraints

Stacey Keare. “Reducing the Costs of Civil Litigation” [posted to TWEN]

ADR—The Client’s Perspective

Deeva, Steven. “A Client's Perspective” [91-JAN A.B.A. J. 76](#)

“Restorative Justice Mediation” [posted to TWEN]

August 28 **Adjudication: Objectives and Constraints**

Patrick, Tom. "Fitting the Forum to the Fuss" [posted to TWEN]

September 2 **Negotiation I**

GOLDBERG, pp. 15-40; Questions 2.2, 2.6, and 2.8.

September 4 **Negotiation II**

GOLDBERG, pp. 40-66; Questions 2.9, 2.11, and 2.12.

Case Study: *James Doyle v. Nita Power and Northern Electric* [posted to TWEN]

Select a side—either plaintiff or defendants—and complete the Pre-Negotiation Worksheet [available on TWEN] for James Doyle's case.

September 9 **Negotiation III**

Locate and read a bar journal article or web article discussing the skills of negotiation within a particular dispute setting; be prepared to present a synopsis of the article to the class—what negotiation skills will be important for the negotiator in that particular setting? Why?

Class observation: *James Doyle v. Nita Power and Northern Electric*

September 11 **Negotiation IV**

GOLDBERG, pp. 67-99; Questions 2.14, 2.15, and 2.19.

Following this class, students will be grouped to complete a negotiation using Exercise 2.2, Goldberg, pp.100-01. Students should complete the Pre-Negotiation Worksheet, complete the negotiation, and then complete the Post-Negotiation Worksheet [available on TWEN] before class on September 18. Student should submit a copy of the pre- and post-negotiation worksheets, along with a copy of the negotiated agreement. If no agreement is reached, then each side must report their progress on each of the issues negotiated and assess the reasons that the negotiation ended in impasse.

This negotiation must be video-recorded. Defendant's counsel will schedule the negotiation and arrange with Lewis Mackley to borrow one of the school's video cameras. When the negotiation has been completed, return the camera to Lewis and he will post the video to the web.

September 16 **Negotiation—Practical Exercise**

This class is canceled to allow time for students to complete the practical exercise.

September 18

Negotiation V

Submit post-mediation documents in class.

“Cracking the Negotiation Barrier” [posted to TWEN]

“Learning from Other Cultures” [posted to TWEN]

September 23

Mediation I

GOLDBERG, pp. 121-157; Questions 3.2, 3.3, 3.5, and 3.6. These questions relate directly to the reading assignment; review the questions and keep them in mind as you complete the reading.

September 25

Mediation II

PATRICK, “Mediation—An Overview” [posted to TWEN]

GOLDBERG, pp. 157-169; Questions 3.8, 3.12, and 3.13.

September 30

Mediation III

GOLDBERG, pp. 185-215; Questions 4.1, 4.4, 4.5, and 4.6.

October 2

Mediation IV

GOLDBERG pp. 215-242; Questions 4.10, 4.15, and 4.18.

October 7

Mediation V

GOLDBERG, 247-277; Questions 5.3, 5.6, 5.15, 5.16, and 5.19.

October 9

Mediation VI

GOLDBERG, 281-301; Questions 6.2, 6.4, 6.6, 6.8, and 6.11.

Locate and read a bar journal article or web article discussing the lawyering employed in a mediation within a particular dispute setting; be prepared to present a synopsis of the article to the class—what lawyering skills will be important for the lawyer representing a client in that particular setting? Why?

Also, read COLEMAN, “West Virginia as a Model—The Value of Mediation Training” [posted to TWEN]

Following this class, students will be grouped to complete a mediation using *Jeanne and Dan*, a family dispute that will be posted to TWEN. Lawyers and clients should complete the Pre-Negotiation Worksheet, participate in the mediation, and then complete the Post-Negotiation Worksheet before class on October 16. Lawyers and clients should submit a copy of the pre- and post-negotiation worksheets, along with a copy of the mediated agreement. If no agreement is reached, then each side must report their progress on each of the issues negotiated and assess the reasons that the negotiation ended in impasse. The mediator will prepare to conduct the mediation, schedule and conduct the mediation [the mediation must be recorded—please arrange with Lewis Mackley for the use of a school video camera], prepare the mediated agreement (if the parties reach an agreement), and then submit the post-mediation mediator’s

report. When the mediation has been completed, return the camera to Lewis and he will post the video to the web.

October 14 Mediation—Practical Exercise

This class is canceled to allow time for students to complete the practical exercise.

October 16 Mediation VII

Submit post-mediation documents in class.

“Family Disputes” [posted to TWEN]

Class Observation: *Jeanne and Dan*

October 21 Arbitration I

GOLDBERG, pp. 303-226; Questions 7.1, 7.4, 7.8, and 7.10.

October 23 Arbitration II

GOLDBERG, pp. 327-357; Questions 7.11, 7.13, 7.19, and 7.22.

October 28 Arbitration III

GOLDBERG, 357-365.

Arbitration Application--Employment

Case study: *Proof of the Matter* [posted to TWEN]

Class Observation: *Proof of the Matter*

October 30 Arbitration IV

GOLDBERG, pp. 366-413; Questions 7.26, 7.31, 7.32, 7.33, and 7.41.

November 4 Dispute Resolution and the Courts

GOLDBERG, 505-525; Questions 9.1, 9.2, and 9.4.

November 6 Dispute Resolution and Private Providers

GOLDBERG, 526-548; Questions 9.6, 9.10, 9.12, 9.13, and 9.17.

November 11 Designing Dispute Resolution Systems I

GOLDBERG, 417-436; Questions 8.1 and 8.7.

