

MEDIATION CLINIC

Fall 2014

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Course Overview and Syllabus

1. Introduction and Goals

Welcome to the Mediation Clinic. The clinic is a one-semester, four-credit program in which students receive intensive training in the theory, techniques and ethics of mediation, and mediate actual employment discrimination cases pending in the Connecticut Commission on Human Rights and Opportunities (CHRO) under faculty supervision. The clinic has five primary goals:

- 1) to provide students with the basic tools necessary to be effective mediators;
- 2) to improve students' ability to represent clients generally by teaching, in the context of mediation, generic listening, communication and persuasion skills that are fundamental to the practice of law;
- 3) to foster an integrative, problem-solving orientation to the practice of law, by placing students in the role of neutrals rather than partisans;
- 4) to develop students' ability to learn from their own experience, by encouraging a process of regular, structured and systematic self-evaluation and -critique;
- 5) to help students evaluate the benefits and limitations of mediation and other dispute resolution techniques so that they can both responsibly counsel clients and, as potential policy makers, make informed choices about dispute resolution systems.

2. Materials

The primary text for the course is FRENKEL & STARK, *THE PRACTICE OF MEDIATION: A VIDEO-INTEGRATED TEXT* (Aspen Law and Business 2d ed. 2012). From time to time, additional handouts and short articles will be distributed in class and/or made available via TWEN.

3. Structure of the Semester

The first six weeks are devoted to intensive training in the theory, skills and techniques of mediation, with one three hour-session near the end of the training devoted to basic substantive employment discrimination law and practice. During this six-week period, classes meet twice a week, on Wednesday and Friday mornings from 9:00-noon, and typically require extensive preparation, including substantial reading, viewing of video segments, and preparation for in-class exercises. Class meetings are devoted to discussion and role-play exercises, culminating in full-dress mock mediations in which each student will play the role of a mediator and a disputant (in separate simulations) before doing any actual mediating.

In the seventh week of the semester (the week of October 6-10), students will engage in detailed planning for their first assigned mediations. The regular Wednesday and Friday class sessions will be set aside for peer and supervisory meetings in order to get you ready to mediate.

Thereafter, beginning the week of October 13-17, students will begin mediating cases pending before the CHRO. All mediations will be conducted at the Law School in library group study rooms that we reserve for the purpose. Students will work in teams of two. All mediations will be observed and supervised by a faculty member. Students will be required to submit planning memos before each mediation (see § 5 below) and, afterward, written self-assessments critically reflecting on the team's performance (see § 6 below). The self-assessments will serve as the basis for discussion in subsequent feedback meetings with supervisors.

During the fieldwork portion of the course (i.e., beginning the week of October 13-17), classes will continue to meet but on Friday mornings only, from 10:00-noon. In most of these classes, students will make presentations and lead discussions on issues that arise in their actual mediations. We will also continue to work on mediation skills issues, honing and expanding on skills practiced during the first six weeks of the semester. A portion of two of these classes will be devoted to Chapters 12 (the ethics of mediation) and 13 (representing clients in mediation)—neither of which we will have time to cover in the first seven weeks of the semester. Additional ethics, policy and law topics may also be introduced. Except where indicated on the syllabus (see § 10 below), class assignments for the fieldwork portion of the course will be announced on a week-to-week basis. This is to ensure that our class time is spent discussing issues that are relevant to your experiences in the field.

4. Class Meeting Logistics & Attendance

As previously stated, for the first six weeks of the semester, class will meet on Wednesday and Friday mornings from 9:00-noon. Our classes meet in Library 422. Thereafter, class will meet on Friday mornings only, from 10:00-noon. We will frequently use break-out rooms for role-playing exercises and simulations.

Regular and punctual class attendance in this course is critical for several reasons. First, role-play exercises cannot be conducted successfully if students are late or absent, and thus a student's failure to show up on time (or at all) may disadvantage several other people. Second, the emphasis in many classes will be on discussing mediation experiences so that everyone can learn from them; students need to be in class to contribute their own experiences. Third, it is impossible to create the trust that makes this kind of learning effective with a rotating cast of students in attendance. Please notify Jim and Paul in advance if there is an emergency that requires you to miss or be late for any class.

This is an intimate course, in which we will get to know each other well. To expedite that process, in our first class, you will be asked to give a three-minute introduction of yourself to other students and instructors. Please be prepared to describe, in as interesting and self-revelatory way as possible, your personal background and education, what you would like to do with your degree in law after graduation (if you know), whether you have any prior experience with mediation, and at least three personal or professional goals you hope to achieve in taking this course. Also be prepared to discuss something personal about yourself that no one else is likely to know. To keep these self-introductions from becoming dull and repetitive, we ask – but do not require – that you deliver yours, at least in part, in verse!

5. CHRO Mediations

Since the clinic's founding in 1994, students have mediated a variety of different kinds of cases in Connecticut courts and administrative agencies, including small claims cases, housing eviction cases, child custody cases, and consumer disputes. This semester, for the second consecutive year, plans have been made to specialize in mediating CHRO employment discrimination cases only.

One advantage of having all students do the same kind of work is that it provides a commonality to students' experiences that should enhance class discussions and learning. Another advantage is that these are complex cases, whose mediation typically takes at least 3-4 hours and for which high quality planning is both possible and essential. Most cases have lawyers, at least on the employer side. Most cases involve strongly held feelings. The CHRO cases provide students an opportunity to practice all of the skills and techniques that are discussed in the readings, in pleasant surroundings, and with ample time to conduct a quality process.

Mediations will be scheduled at the Law School on days mutually convenient to the parties, their lawyers, clinic students, and faculty. Students are expected to carefully study the pleadings and supporting documents in each case, perform all required legal

research tasks, and produce a planning memo, diagnosing the dispute and suggesting general topics to explore and specific questions to ask, before conducting the mediation. A detailed memo on planning and reflective memos (see § 6 below) will be distributed during the first week of classes.

Again, we will begin mediating cases starting the week of October 17. Our goal is have each student team mediate four cases, spread out over our seven-week fieldwork schedule. You will be provided an employment discrimination handbook with whose contents you will be expected to thoroughly familiarize yourself before you begin mediating.

6. Written Self-Assessments

Following each mediation, each student will be expected to prepare and submit a detailed, critical reflection about what occurred. These self-assessment memos – designed to promote habits of self-critique and active learning that should be useful to you throughout your professional career – will form the basis for debriefing sessions with your co-mediator and supervisor that will be scheduled at mutually convenient times following each mediation. To ensure that your memory is still fresh when you prepare these memoranda, they must be submitted within 48 hours of completing each mediation.

Again, a separate memo will be distributed next week suggesting possible topics for self-assessment. At a minimum you should analyze: (a) one or two things that you and/or your partner did that you think went well, and what it is that made it effective; (b) one or two things that you and/or your partner did that you think did not go well, and what might have been done differently or more effectively; (c) any significant ethical or role questions that arose during the mediation; and (d) difficult or important choice points or surprising moments in the mediation.

Once you have prepared your self-assessment, you should share it with your co-mediator, and together you should decide on an agenda for your supervisory meeting. Your supervisors will undoubtedly have their own reactions to the mediation and will be pleased to share them, but only after your own topics have been fully explored and analyzed.

7. Case Rounds

Starting on Friday October 17, in addition to whatever “official” topic we are talking about in class, you will be encouraged to present to the class as a whole some of the most interesting and difficult issues discussed in your supervisory meetings. Working in teams, all students will be expected to make at least two such "case rounds" presentations during the course of the semester. You will be asked to make a five- or ten-minute presentation to the class laying out the factual background of the case, the conflict dynamics between the parties, and then presenting any skills, ethics or role questions that you encountered in the mediation and the

context in which the question or problem arose. The object here is for everyone to learn from situations that each of you may have found challenging, interesting or surprising.

Anything that you think would raise fruitful issues for class discussion is fair game. Treat this as a learning opportunity, and keep in mind that generally the best learning often occurs when you don't think that you (or your co-mediator, or your mediation supervisor) handled a situation well and you candidly seek the advice of your classmates on how things might have gone better. Consider yourself the instructor in these presentations, responsible for asking good questions and facilitating an interesting and productive class discussion.

Please email Jim and Paul at least 24 hours in advance of class if you want to present a case issue in class, providing the basic facts of the case and the specific questions you would like to raise. This will enable us to work with you if necessary to tweak and deepen your questions, as well as to construct an overall agenda for the class session.

8. Grading and Evaluation

The clinic is a graded, four-credit course. The criteria we will use for grading and evaluation are as follows:

- a) Skills Development: To what extent have you developed the basic diagnostic, communication, organizational and problem-solving/persuasion skills necessary to be an effective mediator? This includes all the mediation skills and techniques laid out in the text, including effective listening and questioning; diagnosing conflict effectively so as to be able to intervene appropriately; recognizing and neutrally framing negotiation issues and formulating a workable agenda; and assisting parties effectively with problem-solving, negotiation and resolving impasses.
- b) Educational Responsibility: To what extent have you taken advantage of the learning opportunities offered by the clinic? This includes developing effective methods of self-critique; applying the theoretical readings to analysis of your own mediations; working effectively with your co-mediators, supervisors, and other classmates; being present, on time, and well prepared for all classes, role-plays and simulations; participating actively and thoughtfully as a seminar participant; and planning and leading effective rounds discussions.
- c) Professional Responsibility: How well have you responded to ethical and professional issues in your mediations? This includes planning well for your mediations; working effectively with your co-mediator on allocation of responsibilities; being alert to, and initiating discussions of, ethical issues as they arose in your mediations; maintaining appropriate relationships with disputants and agency officials and staff; and showing initiative and being punctual with regard to mediations, appointments and assignments.

9. Office Procedures

Our clinic secretary is Lindsay Booth (860-570-5182; lindsay.booth@uconn.edu). Our TA, Laura Richardson, will bear primary responsibility for helping to schedule CHRO mediations. Details will follow.

During the first class meeting, we will ask each of you to fill out a "Where I Can Be Found Form" listing your class schedule, work schedule, home, work and cell phone numbers, and e-mail addresses. This form must be completed and submitted by Friday's class. There may be occasions when events require us to find each other and convene quickly; it is therefore important that we always know how to reach you. Once we have your forms, a registry of student and supervisor addresses and phone numbers will be distributed to all clinic members.

Once fieldwork begins, you may have occasion to correspond with parties to CHRO mediations, their counsel, and potentially others. At that time we will provide you with a set of protocols for such correspondence.

10. Syllabus

Class	Date	Topic	Reading & Other Assignments	In-Class Exercises
1	Wednesday August 27	<ul style="list-style-type: none"> ➤ Introduction to the Clinic ➤ Introduction to Disputing and Dispute Resolution 	Clinic Overview and Partial Syllabus Frenkel & Stark ("F&S"), pp. 1-20	Service Station Role-Play
2	Friday August 29	<ul style="list-style-type: none"> ➤ Strategic, Psychological and Cognitive Barriers to Settlement 	F&S, pp. 21-61 Prepare for conflict visualization exercise "Where I Can Be Found" forms due before class	Cognitive bias exercises Conflict visualization exercise Analyze barriers to resolution in a negotiation video
3	Wednesday September 3	<ul style="list-style-type: none"> ➤ The Forms of Mediation 	F&S, pp. 63-92 Watch Video Clips 3-A & 3-B (takes about two hours), prepare to answer question on pp. 91-92 Conflict management survey responses due by 12:00 noon on Thursday, Sept. 4	Discussion of assigned video clips Facilitative vs. evaluative mediation

Class	Date	Topic	Reading & Other Assignments	In-Class Exercises
4	Friday September 5	<ul style="list-style-type: none"> ➤ Mediation Structure ➤ Mediator Opening Statements ➤ Beginning the Information-Gathering Process: Note-Taking, Active Listening, Productive Reframing 	<p>F&S, pp. 93-115, 123-155 (omit Video Clips 6-J and 6-N)</p> <p>Prepare mediator's opening statement for <i>Rosa Lopez-Texitron</i> mediation (F&S, p. 4)</p>	<p>Mediator's opening statement exercise</p> <p>Active-listening exercise</p>
5	Wednesday September 10	<ul style="list-style-type: none"> ➤ Expanding Information ➤ Managing Strong Feelings 	<p>F&S, pp. 156-206</p> <p>Prepare for Satellite-Dish Role Play</p>	<p>T-funneling Exercise</p> <p>Satellite-Dish Role Play and preliminary debrief</p>
6	Friday September 12	<ul style="list-style-type: none"> ➤ Identifying & Framing Issues ➤ Organizing an Agenda ➤ Persuasion & Problem-Solving 	<p>F&S, pp. 207-246</p>	<p>Continue debriefing Satellite Dish Role-Play</p>
7	Wednesday September 17	<ul style="list-style-type: none"> ➤ Conducting the Bargaining, Dealing with Impasse ➤ Concluding the Mediation 	<p>F&S, pp. 255-301</p>	<p>Orchestrating bargaining exercise</p>
8	Friday September 19	<ul style="list-style-type: none"> ➤ Putting It All Together 	<p>Prepare for <i>Ad-Vision</i> Role Play</p>	<p><i>Ad Vision</i> Role Play and debrief</p>
9	Wednesday September 24	<ul style="list-style-type: none"> ➤ Introduction to Employment Discrimination Law & Practice 	<p>CHRO Employment Discrimination Handbook</p>	
10	Friday September 26	<ul style="list-style-type: none"> ➤ Mediation Planning 	<p>F&S, pp. 115-122</p> <p>Additional reading TBA</p>	<p>Planning exercise</p>
11	Wednesday October 1	<ul style="list-style-type: none"> ➤ Final Simulation: <i>Carr v. Southbury Dental Care</i> 		<p>Simulations, followed by debriefing</p>
12	Friday October 3	<ul style="list-style-type: none"> ➤ Final Simulation: <i>Gibson v. Frank's Restaurant</i> 		<p>Simulations, followed by debriefing</p>

Class	Date	Topic	Reading & Other Assignments	In-Class Exercises
13	Wednesday October 8		Team planning meetings in lieu of class	
14	Friday October 10		Team planning meetings in lieu of class	
15	Friday October 17	TBA		
16	Friday October 24	TBA		
17	Friday October 31	TBA		
18	Friday November 7	➤ Ethics of Mediating	F&S, pp. 303-336 Chapter 12 Tally Sheets due by 12:00 noon on Thursday, Nov. 6	
19	Friday November 14	TBA		
	Friday November 21		No class – Official make-up day	
	Friday November 28		No class – Thanksgiving break	
20	Tuesday December 2	➤ Representing Clients in Mediation	F&S, pp. 337-367	
21	Friday December 5		Clinic party – time and location TBA	