

+LEGAL NEGOTIATIONS
Law 7106
Fall 2014

Professor Joseph B. Stulberg

With

Professor David W. Hardymon

Professor Marya Kolman

Professor Stephen L. McIntosh

Contact Information:

Professor Stulberg:

Office:	Room 312
Telephone:	292-8638
E-Mail:	stulberg.2@osu.edu
Office Hours:	MondayTuesday: 10:00 a.m. - 12:00 noon or by appointment

Professor Hardymon	dwhardymon@vorys.com
Professor Kolman	maryakolman@gmail.com
Professor Stephen McIntosh	stephen_mcintosh@fccourts.org

Class Meetings: Mondays – 4:20 – 7:00 p.m.

Class meeting room: Room 244

Section meeting rooms:

Section A -	Professor Hardymon -	Room 244
Section B -	Professor Kolman–	Room 246
Section C -	Professor McIntosh	Room 347
Section D -	Professor Stulberg -	Room 348

Required Texts:

1. Fisher, Ury & Patton. Getting to Yes (3rd edition) (F)
2. Mnookin, et al. Beyond Winning (M)
3. Wiggins, et al. Negotiation and Settlement Advocacy (2nd edition) (W)

COURSE DESCRIPTION

Disputes arise in multiple settings and they vary in both intensity and complexity. We transform some disputes into lawsuits and attempt to resolve them; we treat others from “different angles of vision” and respond to them accordingly. Lawyers play a crucial role in helping persons frame and resolve disputes in ways that are effective, responsive to participant interests and consistent with conceptions of fairness and dignity central to living in a robust democratic society.

Lawyering skills include effective advocacy; critical among those advocacy skills is the capacity to articulate a client’s concerns, communicate priorities and engage imaginatively in problem-solving efforts. In short, lawyering skills include effective negotiation skills.

This course examines the theory, professional obligations and performance skills that influence and govern participant efforts to resolve – “settle” – a controversy.

ASSIGNMENTS

All reading assignments are to texts and readings noted above or to materials that will be distributed. Submission dates for writing assignments are noted.

CLASS/WEEK	TOPIC	ASSIGNMENT
August 25	Introduction (M-Z on call)	W: Ch. 15 Negotiation Simulation Role: Rocky & Star
September 1	No class scheduled – Labor Day	
September 8	Theory of Principled Bargaining: (A-L on call)	F: Chs. 1-5
September 15	Theory of Principled Bargaining: (M-Z on call) Analytical Paper I due – Monday, September 15, 2014 by 4:20 p.m.	F: Chs. 6-end W: Ch. 4
	Protocol Analysis I due - Friday, September 19, 2014 By 12:00 noon	
September 22	Theory of Competitive Bargaining (A-L on call)	W: Ch. 3 Assigned reading

September 29	<p>Theory of Competitive Bargaining Assigned Reading Analytical Paper II due Monday, September 29, 2014 By 4:20 p.m. (Open call)</p> <p>Lawrence Competition Speaker (optional) Grand Lum, Director Community Relations Service, U.S. Dept of Justice Lunch presentation: Tuesday, September 30 – 12:00 noon</p>
October 6	<p>Lawrence Negotiation Competition. No class scheduled. See description below of class activities for this week.</p> <p>Protocol Analysis II due – Monday, October 13, 2014 By 12:00 noon</p>
October 13	<p>Constraints on Bargaining Behavior: W: Chs. 6, 7, 8, 12 Psychological, cultural & gender (M-Z on call)</p>
October 20	<p>Gathering Information: W: Ch. 13, 14 Interviewing & Counseling Advocacy in DR Form (A-L on call)</p>
October 27	<p>Blended Theories of Negotiation M: Chs 1-6 (M-Z on call)</p>
November 3	<p>Dynamics of Multiparty Negotiation M: Chs. 7-10 (A-L on call) Assigned materials</p> <p>Protocol analysis III due – Friday, November 7, 2014 by 5:00 p.m</p>
November 10	<p>Ethical Elements in Lawyer Negotiations M: Ch. 11 (M-Z on call) W: Chs. 14, 16</p>
November 17	<p>Using Third Parties to Facilitate Negotiation To be assigned (A-L on call)</p>
November 24	<p>Blended Theories Revisited: Values in Negotiation Lawyers, Clients and Negotiations</p>
December 1	<p>Final Simulation</p>

Reflections & Analysis of Negotiation Simulation-
Due date: Friday, December 19, 2014 by 5:00 p.m.

CLASS FORMAT

Class meetings shall normally consist of two components: a general session and a section meeting. For most class meetings, we will convene in a general session beginning at 4:20 pm and meet for approximately 75 minutes. Professor Stulberg will lead the class, focusing on an analysis and discussion of assigned reading materials for the week. **The general class session will meet in Room 244.** Following a short break, we will then meet in Sections. Each section has approximately 12 students assigned to it. The dominant focus of section work is for the Section Professor to engage students in performing and analyzing simulated negotiating exercises that reflect the various themes and challenges presented in the assigned readings. A copy of the Section assignment is attached.

GRADING

The student's course grade will be based on the following elements with the designated weights:

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| 1. | Analytical Papers - | 30% |
| 2. | Protocol Analyses - | 15% |
| 3. | Reflections and Analysis – | 40% |
| 4. | Class Participation | 15% |

An explanation of each component follows:

1. Analytical Papers
The analytical paper consists of the writer's critical assessment of a selected aspect of the reading assigned for the designated time period and topic. Among other things, the writer could examine the plausibility of the author's assumptions, the consistency of his or her arguments, or the persuasiveness of the argument's consequences.
Maximum length per paper: 3 pages
2. Protocol Analysis
Targeted reflection on selected aspect of participant's negotiating strategy, behavior or locutions; the analysis should identify strengths, unanticipated developments or areas needing improvement, linking those insights to relevant theories.
Recommended length: 1-2 pages
3. Reflections and Analysis
Each student shall participate in a final simulated negotiation in which s/he acts as legal counsel. This simulation shall take place during class session on Monday, December 1, 2014; materials for the final assignment shall be distributed in class on Monday, November 17, 2014 and you must be in class to

receive the materials. Preparation of negotiating positions and any pre-meeting written communications shall occur outside of class.

We will schedule each negotiating simulation to occur in 30-minute segments; you need to be present at this class only during your assigned negotiation simulation. Each simulation will be observed by a professor. The reflections and analysis will include structured guidelines requiring you to compare negotiating outcomes with bargaining plans, bargaining behaviors that contributed positively or negatively to negotiating dynamics, ethical challenges that arose, etc, and the application of relevant theoretical or policy materials to aspects of the negotiation simulation. The required guidelines and questions for the reflection and analysis will be distributed in class on Monday, December 1, 2014 following the simulation. Due date: Friday, December 19, 2014 at 5:00 p.m.

Recommended length: 6-8 pages.

4. Class participation

One goal of the class is to foster sustained interaction and dialogue among students. Various exercises and applied problems require the active participation of all class members, particularly when meeting in small sections. While it is understood that unanticipated developments sometimes compel a student to miss class, class attendance and preparation is expected. The “Class Attendance Policy” announced in accordance with College Rule 9-08 governs this course.

In an attempt to facilitate exchange among faculty and students in the course, students are required to register for the TWEN site for the course (<http://www.lawschool.westlaw.com>).

ACCOMMODATIONS

Any student who knows that s/he will have a conflict in completing assignments as scheduled or otherwise participating in scheduled class activities due to celebration of religious holidays or other significant events should contact Professor Stulberg in advance of the required activity to discuss making appropriate accommodations. Moritz Law is committed to providing an environment that insures that no individual is discriminated against on the basis her/his disability. Students with disabilities, as defined under the American with Disabilities Act of 1990 (ADA), and who need special academic accommodations, should notify Assistant Dean Monte Smith as soon as possible. The Assistant Dean will work with the student and the course instructors to coordinate and monitor the provision of reasonable academic accommodations.

NEGOTIATION COMPETITION

All students enrolled in Legal Negotiations are required to participate in at least the “preliminary rounds” of the Lawrence Negotiation Competition sponsored by the Moritz College of Law. Competition dates are scheduled as follows: Monday, October 6 - Friday, October 10, 2014. The Monday/Tuesday sessions, referred to as “preliminary rounds” are scheduled to take place between 6:00 p.m. – 10:00 p.m.

When you register for the competition, you will be given one of the following choices: a) compete **only** in the preliminary rounds (Monday and Tuesday) (the minimum classroom

requirement) or b) compete in all rounds, if successful. The winning team in the Lawrence represents the College in the ABA Regional Competition, normally conducted in early November.

On the first day of class, we will discuss these dates to make certain that students in Legal Negotiation do not have a conflict with participation; if we proceed with these dates, then class will not meet in normal class session during the week of October 6, 2014.

The Competition format calls for 2-person negotiating teams to negotiate with one another. Each team negotiates one 75 minute round on both Monday and Tuesday evenings. If you select Option (b) above and your team emerges as a semi-finalist, you would participate in subsequent rounds scheduled later that week. The final four teams compete in the final round. Any upper-class law student at Moritz can compete in the Competition (so your partner, if you so chose, could be someone not registered in the Legal Negotiation class), and all sessions, including the finals, are open to the public.

All written assignments must be typed. Page lengths are calculated at double-spaced, standard font (12) type on 8 ½ x 11” paper. Given the nature of the written assignments and their integration into course materials and discussion, grades for any paper submitted after the designated due date shall be reduced by one full letter grade.

ADJUNCT PROFESSORS

LEGAL NEGOTIATION Fall, 2014

David W. Hardymon
Vorys, Sater, Seymour and Pease, LLP

Mr. Hardymon is a retired partner in the Vorys Columbus office where he was a member of its litigation group. His practice focused on commercial litigation, particularly in energy-related fields, such as oil and gas contract disputes, royalty litigation, landfill controversies, and environmental contamination claims. He is admitted to practice before state and federal courts in Ohio, Kentucky and West Virginia as well as before the United States Supreme Court. From 1976-81, Mr. Hardymon served as Senior Assistant Prosecuting Attorney for Franklin County, Ohio. Active as a mentor in the “Lawyer to Lawyer” mentoring program of the Supreme Court of Ohio, he is also a Fellow of both the Ohio State Bar Foundation and the Columbus Bar Foundation. Mr. Hardymon earned his B.A. degree from Bowling Green State University and his J.D. degree from Capital University Law School, where he has also serves as a member of its Board of Counselors as well as an adjunct faculty member.

Marya C. Kolman
Director, of Mediation Services for the Franklin County Domestic Relations and Juvenile Court

Ms. Kolman earned her J.D. from Yale Law School and her B.A. in Social Welfare from Pennsylvania State University. She is currently the Director of Mediation Services for the Franklin County Ohio Domestic Relations and Juvenile Court and serves as an adjunct professor with the Moritz College of Law for the Interprofessional Care Seminar as well as for the Legal Negotiations class. Previously, Ms. Kolman practiced as a mediator and attorney in private practice, served as a law clerk for Justice Craig Wright of the Ohio Supreme Court, was a supervising attorney in the Clinical Programs at the Moritz College of Law and served as a staff attorney for the Legal Aid Society of Columbus. For the past nine years, Ms. Kolman has served as faculty advisor for the Moritz student teams participating in the ABA’s Representation-in-Mediation Competition. She is the Immediate Past President of the Association for Conflict Resolution (ACR), an international organization of conflict resolution professionals.

Judge Stephen L. McIntosh

Judge McIntosh has been a Judge of the Franklin County Ohio Court of Common Pleas since 2007, where he manages a monthly docket of approximately 750-850 cases per month involving jury trials, court trials, motion hearings, and, in criminal cases, sentencing decisions. Mr. McIntosh earned his J.D. degree from Moritz Law in 1983, where he received the Judge Joseph Harter Trial Advocacy Award and was President of the Black American Law Students Association. After leaving law school, Mr. McIntosh served as an Assistant City Prosecutor in the Columbus City Attorney Office and then as Deputy Director of the Uniform Commercial Code Section of the Ohio Secretary of State Office. After spending 6 years in private practice with Crabbe, Brown and James, he returned to public service as Chief Prosecutor for the City of Columbus in the Columbus City Attorney’s office where he was responsible for managing a staff of more than 100 full and part-time employees in prosecuting all misdemeanor cases within Franklin County and litigating jury trials, court trials and motion hearings. Mr. McIntosh served as President of the Columbus Bar Association during the 2010-11 term.