

Jill A. Womble

womble@law.ufl.edu

jill.womble@gmail.com (preferred)

(352)317-1970 (cell-preferred) or (352)273-2739 (office)

Room 132-34 Bruton-Geer

Office Hours: Thursday 10-12N or Other Times as Mutually Arranged

Carlos Alvarez

ca.alvarez@embarqmail.com

(850)878-4033

SYLLABUS

MEDIATION ADVOCACY—SPRING 2015

Welcome to this exploration and frequent practice of important tasks lawyers perform when representing clients before and during mediations.

- I. **Textbook: Abramson, *Mediation Representation: Advocating as a Problem-solver in Any Country or Culture*, Third Edition (2013) [MR].**

Recommended but not required: **MEDIATING LEGAL DISPUTES: Effective Strategies for Neutrals and Advocates**, by Dwight Golann; and **SHARING A MEDIATOR'S POWER EFFECTIVE ADVOCACY**, by Dwight Golann Copies are on reserve in the library.

Please purchase **MR** as soon as possible and read assignments from this textbook and supplemental TWEN posts. Although effective lawyers integrate the action theories presented in these readings seamlessly, individual class assignments reflect necessary, yet artificial, separations. Please read the assigned sections of **MR** and the TWEN posts promptly and review them appropriately to prepare later performance exercises. *Course participation also requires use of a small, self-provided digital recorder or smartphone app to record and then review your mediation advocacy performances.*



II. Course Goals

1. Share knowledge about action theories to allow you to prepare, conduct, and

- evaluate mediation advocacy tasks effectively;
2. Provide information about ethical dimensions of effective mediation advocacy task performance;
 3. Create opportunities to practice fundamental actions to allow you to improve existing competencies and develop new skills performing mediation advocacy tasks;
 4. Overall, become more sophisticated problem-solvers.

III. General Course Requirements

1. Attendance and Preparation. Attendance and preparation are critical in this course. It features nine mediations involving mediator and disputant roles, five of which also include lawyers representing their clients at these sessions. Attendance at these five Digital Feedback Classes (DFC) is mandatory because all of them are observed and assessed by instructors. There is a make-up assignment for preapproved absences. Many other classes pair you with a classmate to perform pre-mediation interviewing, counseling, negotiation, mediation and preparation sessions. Virtually all other classes include role play learning opportunities. Missing classes involving role plays lessens learning opportunities for assigned counterparts or partners as well as diminishing your chances to learn from doing. Similarly, not preparing for performance assignments squanders valuable learning opportunities. ***Please plan to attend class consistently and prepare for it diligently.*** There will be a bonus of 2 points added to the grade of any person who attends all classes. The ABA Standards for Approving Law Schools require “regular and punctual class attendance.” I interpret this standard as requiring attendance at 90% or more of the following classes, monitor attendance, and reduce class points for participation that falls below this level.
2. Effort. Learning and improving mediation advocacy skills is not something that can be “done to” you. It is self-inflicted, and requires steady, thoughtful work. This course spends little time explaining assigned reading materials and instead focuses class discussions on applying these action theories to video demonstrations and actual experiences. While others can, and frequently will, share thoughtful feedback about your actions, what you learn from this course largely depends on your efforts reading, planning, preparing, reflecting on, and evaluating decisions and actions. The more effort made, the more learned.
3. Helpfulness to Fellow Students. Usually the best sources of helpful feedback on your actions are the persons with whom you just interacted. Consequently, providing frequent constructive feedback to each other supplies a critical

component of this course. This course employs both oral and written feedback. Students playing mediator and client roles in the role-plays that feature advocacy opportunities to provide oral feedback after these sessions end. The more you help everyone learn in this course, the richer your course experiences will be.

4. Participation. Because dialogue requires more engaged learning than lectures, this course unfolds primarily through discussion. Please participate actively in these conversations. Everyone learns from and by sharing ideas. Ideas and suggestions about how to explore these action theories and applications in better, more valuable ways are always welcome. There will be a bonus of up to 5 points added to the grade of any person who effectively furthers class discussion.
5. Accommodation for Students with Disabilities. Students requesting classroom accommodations must first register with the Office of Disability Resources. The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.

IV. Course Written Requirements

1. Self-Critique Papers. This course requires two short papers analyzing performances in digital feedback classes where you play mediation advocate role representing clients. These papers must include completed action-choices charts (made while listening to the audio recording made of performances before and during these mediations), and brief analysis of selected portions of your performances. This analysis must identify and assess one effective and one ineffective behavioral sequence from mediation session and include a transcript of these interactions along with descriptions that place these back and forth communication occurrences in context. These papers must also discuss strategies for improving behavioral challenges discerned when analyzing ineffective sequences. These papers should not exceed six double-spaced pages [not counting the action-choices charts], and they can be shorter.
2. Short outline/overview. This course requires one short outline/overview on your proposed final project or paper. This outline/overview should not exceed four double-spaced pages and they can be shorter.
3. Pre-mediation submissions (briefing paper). This course requires two pre-mediation submissions prepared when playing an advocate role and submitted before the mediations in which you play this role. These double-spaced submissions may not exceed four pages, and they can be shorter.
4. Representation plans (or some times referred to as Advocacy plans). This course

requires two representation plans prepared when playing an advocate role and submitted before the mediations in which you play this role. These double-spaced submissions may not exceed four pages, and they can be shorter.

5. A Final Essay or Project. This course ends with a eight to fifteen double-spaced page submission which either: (1) evaluates in depth some actual conflict in light of what was learned in this course, or (2) develops in detail a practical project for future course use. This paper is due no later than 4 p.m. on Monday, April 21, the last day of classes this term.

V. Course Grading

Pursuant to faculty policy, this course is graded. **It has no final exam.** Grading is based on observed class performances in pre-mediation conferences [as both advocates and clients] and in mediations [as advocates]; pre-mediation submissions; action analysis papers; and the final essay or project. Everything except the final essay or project is graded using a system designed to provide normative feedback which also awards small point totals. This system reflects assessments as GVE [generally very effective], GE [generally effective], METI [more effective than ineffective] MITE [more ineffective than effective] and GI [generally ineffective]. All or portions of your performances as advocates and clients are watched, and instructors use this marking scheme to assess actions they observe. **Your course marks are not based upon exercise outcomes.** They are based solely on the effectiveness of preparation and decisions discerned from pre-mediation submissions; observed actions; written self-assessments; and the final paper or project.

Information on UF Law grading policies

Grade	Points
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Good)	3.0
B-	2.67
C +	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at:
<http://www.law.ufl.edu/students/policies.shtml#9>.

VI. Information Technology

Most course slides are posted on TWEN shortly after the class in which they are analyzed. Information technology, including laptops, may be used for note-taking and other pedagogic purposes during classes. Non-pedagogic use of information technology in classes is not permitted and violates the University's conduct code. Non-pedagogic in-class use of information technology includes, but is not limited to, activities such as reading, writing, or sending e-mail, engaging in e-commerce, reading non-course related materials, Internet surfing, playing games, social networking sites, twitter accounts, and text messaging.

VII. Course Schedule

The following detailed schedule of classes reflects student suggestions to emphasize performance opportunities more than action theory discussions. It balances practice opportunities in deal-making and dispute resolving mediation advocacy. Please direct any questions you have about any of these assignments using the email and phone information provided here. Staff colleagues in the entrance office to the Clinic Suite 105, Bruton-Geer, usually can respond if I cannot be reached.

VIII. Notices; Duty to Check E-mail

Students will receive simulation instructions and other notices through the email accounts registered through their TWEN accounts or preferred provided email accounts. Students should check these email accounts for such emails at least once every business day (i.e., excluding weekends and holidays)

Tuesday, January 6 (50MIN.): INTRODUCING MEDIATION ADVOCACY and THIS COURSE: Read pages 1-18 of **MR**. We will introduce ourselves and review course-learning (Deep Practice) approaches.

NEGOTIATION

Thursday, January 8 (100MIN.): NEGOTIATION THEORIES: COMPARISON AND CRITIQUE OF TWO THEORIES-POSITIONAL(VALUE CLAIMING OR ADVERSIAL) AND PROBLEM- SOLVING (VALUE CREATING) Read pages 19-53,89-92 of **MR. POSITIONAL BARGAINING**

- We will discuss and evaluate video clips from the TV show Parks and Recreation.
- First offer strategy
- Negotiation #1 The Pasta Wars exercise

- The Thomas-Killman Management of Differences Exercise [MODE], a valuable source of insights regarding action tendencies relating to core negotiations and mediation tasks, will be distributed for taking and self-scoring at home, and **submit its third page at the next class.**

Tuesday, January 13 (100 MIN.): PROBLEM-SOLVING and POWER: Read pages 53-89,92-102 of **MR** and the TWEN post, the short piece entitled “Address the Concern, Not the Emotion.” We will discuss and evaluate video clips based on the TV show Scandal.

- Negotiation #2 Rainforest Resourceful or The Dam Energy Problem

- Beyond Reason audio clip and discussion

- We will review and explain the theories underlying the MODE instrument, share aggregate class data, and analyze how this information may help improve negotiating and mediating skills

Thursday, January 15 (50 MIN.): NEGOTIATOR’S DILEMMA-CREATING/CLAIMING VALUE and SHARING/WITHHOLDING INFORMATION: Read pages 67-69,100-102 of **MR.**

- We will discuss and evaluate video demonstration based on **Catching ZZZ in Carbondale**

Tuesday, January 20 (100 MIN.): ACQUIRING INFORMATION WITH APPROPRIATE COMMUNICATION SKILLS: EFFECTIVE LISTENING and QUESTION: Read Chapter 7, Interpersonal Communications, of *Psychology For Lawyers* by Robbennolt and Sternlight is posted on our TWEN site.

- Buzz listening exercise
- Electronically distribute Negotiation #3 (Little & McNulty Partnership or School's Out Forever)
- Electronically distribute Human Awareness Book

Thursday, January 22 (50 MIN.): APPLY WHAT WE LEARNED-NEGOTIATING INTEGRATIVE AND DISTRIBUTIVE DISPUTES:

- Negotiation #3 (Little & McNulty Partnership or School's Out Forever) exercise
- Electronically distribute Negotiation #4 (Justice in Jeopardy?)

Tuesday, January 27 (100 MIN.): BARRIERS to SETTLEMENT, TECHNIQUES to OVERCOME THEM and EMOTIONS in NEGOTIATIONS: Read pages 157-165 of MR and Chapter 3, Emotions, of *Psychology For Lawyers* by Robbennolt and Sternlight is posted on our TWEN site.

- Core Concerns Preparation Form
- Difficult Conversation exercise
- Emotion Literacy assessment
- Negotiation #4 (Justice in Jeopardy?) exercise
- Electronically distribute Negotiation #5 (Mixing Business and Pleasure)

Thursday, January 29 (50MIN.): STAGES of NEGOTIATIONS and MEDIATION: Read Appendix A, pages 89-102 of MR.

- Negotiation #5 Mixing Business and Pleasure exercise

Tuesday, February 3 (100 MIN.): MEDIATIONS and NEGOTIATIONS: KEY ELEMENTS to DOING THEM SUCCESSFULLY and ETHICALLY by ADJUNCT PROFESSOR Carlos Alvarez: Read pages 319-337 of MR.

- Electronically distribute Mediation #1 (Hard Times in Hogtown or TBA)

MEDIATION

Thursday, February 5 (50 MIN.): INTRODUCTION to MEDIATION and MEDIATION STAGES: Read Chapter 2, 5.7(e), 5.11-5.12, and 6 of MR.

- Mediation #1 (Hard Times in Hogtown or TBA) exercise

- Electronically distribute Mediation #2 (Swamp Cracker or Trust, Justice, Power & The Big Town Way)

MEDIATION ADVOCACY

Tuesday, February 10 (100 MIN.): MEDIATION STAGES CONTINUED, BRACKETING and INTRODUCTION TO MEDIATION REPRESENTATION and ATTORNEY ROLES IN MEDIATION: Read Chapter 3 of **MR**. We will discuss and evaluate video demonstration based on mediator's opening statement when advocates are present.

- Bracketing exercise
- Mediations #2 (Swamp Cracker or Trust, Justice, Power, & the Big Town Way) exercise
- Electronically distribute Mediation #3 (A Toad of a Problem)

Thursday, February 12 (50 MIN.): APPROACHING OPPOSING COUNSEL to DRAFTING AGREEMENT to MEDIATE, and SELECTING a MEDIATOR: Read Chapter 2.3-2.8 and Chapter 4 of **MR**.

- Mediation #3 (A Toad of a Problem) exercise
- Electronically distribute Mediation #4 (A Horror of a Publishing Problem, Trade Secrets in Silicon Valley or Brothers in Arms)

Tuesday, February 17 (100 MIN.): REPRESENTATION PLAN (Advocacy Plan), PRE-MEDIATION CONFERENCE, MEDIATION SESSION and POST SESSION and PREPARE YOUR CASE FOR MEDIATION: Read Chapter 1.1-2, Chapter 5.21, and Chapter 7 of **MR**.

- Mediation #4 (A Horror of a Publishing Problem, Trade Secrets in Silicon Valley or Brothers in Arms) exercise

Thursday, February 19 (50MIN.): CONTINUE PREPARING FOR MEDIATION INCLUDING PREPARING YOUR CLIENT FOR MEDIATION: Read Chapters 5.7(b), 5.8-5.10, 5.13, 5.16, and 6 of **MR**. Short outline/overview of final project or paper due at the beginning of class.

- Electronically distribute counseling exercises (A Pain in the Rear)
- Electronically distribute client role instructions

Tuesday, February 24 (100 MIN.): PREPARE a REPRESENTATION PLAN: Read Chapter 5.1-5.5, 5.19 and 5.21 of MR.

- Counseling exercises (A Pain in the Rear)
- Electronically distribute Focused Caucusing exercises
- James Mills' take home exercise

Thursday, February 26 (50 MIN.): Sharing a Mediator's Powers: discuss Mediation Advocacy video clips; Discuss James Mills' take home exercise; and **practice mediation protocol dry run and Rodent Roommates exercise**

Spring Break March 2-6, 2015, Be Safe and Enjoy!

Tuesday, March 10 (50): Caucus Advocacy: Review Chapter 5.4 of MR

- Focused Caucusing exercises
- Electronically distribute Cycling through Emotions [1st DFC]
- We will discuss the format for Digital Feedback Classes (DFC)

Thursday, March 12 (100): The Art and Science of Presenting the Legal Case: Read Chapter 5.7(a-c), 5.11-5.12 of MR

- Advocates provide Pre-mediation submissions (briefing paper) to mediators and professor for Cycling through Emotion [1st DFC]
- Mediators review Pre-mediation submissions for Cycling through Emotions [1st DFC]
- Advocates counsel clients for Cycling through Emotions [1st DFC]

Tuesday, March 17 (100): FIRST DIGITAL FEEDBACK CLASS [Cycling through Emotion]:

- Electronically distribute Master of Augusta and Adultery or Engaged in Difficulties [2nd DFC]
- Advocates provide Representation plans (Advocacy plans) for Cycling through Emotion in second hour of DFC

Thursday, March 19 (70): PLAN, PREPARE, and BE FLEXIBLE:

- Advocates provide Pre-mediation submissions to mediators and professor for Master of Augusta and Adultery or Engaged in Difficulties [2nd DFC]
- Mediators review Pre-mediation submissions (briefing paper) for Master of Augusta and Adultery or Engaged in Difficulties [2nd DFC]

- Advocates counsel clients for Master of Augusta and Adultery or Engaged in Difficulties [2nd DFC]

Tuesday, March 24 (100): SECOND DIGITAL FEEDBACK CLASS [Master of Augusta and Adultery or Engaged in Difficulties]

- Electronically distribute Cuckoo for CoCoo-Bluffs[3rd DFC]
- Advocates for Cycling through Emotion submit your Self-critique Papers [1st DFC]
- Advocates provide Representation plans (Advocacy plans) for Master of Augusta and Adultery or Engaged in Difficulties in second hour of DFC

Thursday, March 26 (70): PLAN, PREPARE, and BE FLEXIBLE; BREAKING IMPASSE WITH ALTERNATIVES TO MEDIATION (ATM): Look over Chapter 8

- Advocates provide Pre-mediation submissions (briefing paper) to mediators and professor for Cuckoo for CoCoo-Bluffs[3rd DFC]
- Mediators review Pre-mediation submissions for Cuckoo for CoCoo-Bluffs [3rd DFC]
- Advocates counsel clients for Cuckoo for CoCoo-Bluffs [3rd DFC]

Tuesday, March 31 (100): THIRD DIGITAL FEEDBACK CLASS [Cuckoo for CoCoo-Bluffs]

- Electronically distribute Mergers&Executions or The Day Spide-y and Mickey Met [4th DFC]
- Advocates for Master of Augusta and Adultery or Engaged in Difficulties submit your Self-critique Papers [2nd DFC]
- Advocates provide Representation plans (Advocacy plans) for Cuckoo for CoCooBluffs in second hour of DFC

Thursday, April 2 (70): PLAN, PREPARE, and BE FLEXIBLE:

- Advocates provide Pre-mediation submissions (briefing paper) to mediators and professor for Mergers &Executions or The Day Spide-y and Mickey Met[4th DFC]
- Mediators review Pre-mediation submissions for Mergers &Executions or The Day Spide-y and Mickey Met[4th DFC]
- Advocates counsel clients for Mergers & Executions or The Day Spide-y and Mickey Met[4th DFC]

Tuesday, April 7 (100): FOURTH DIGITAL FEEDBACK CLASS [Mergers & Executions or The Day Spide-y and Mickey Met]

- Electronically distribute Jones v. Cutting Edge or Fast Time at F.B.-High[5th DFC]
- Advocates for Cuckoo for CoCoa-Bluffs submit your Self-critique Papers [3rd DFC]
- Advocates provide Representation plans (Advocacy plans) for Mergers & Executions or The Day Spide-y and Mickey Met in second hour of DFC

Thursday, April 9 (70): PLAN, PREPARE, and BE FLEXIBLE:

- Advocates provide Pre-mediation submissions (briefing paper) to mediators and professor for Jones v. Cutting Edge or Fast Times at F.B.-High[5th DFC]
- Mediators review Pre-mediation submissions for Jones v. Cutting Edge or Fast Times at F.B.-High [5th DFC]
- Advocates counsel clients for Jones v. Cutting Edge or Fast Times at F.B.-High [5th DFC]

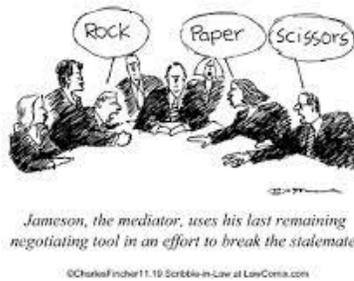
Tuesday, April 14 (100): FIFTH DIGITAL FEEDBACK CLASS [Jones v. Cutting Edge or Fast Times at F.B.-High]

- Advocates for Mergers & Executions or The Day Spide-y and Mickey Met submit your Self-critique Papers [4th DFC]
- Advocates provide Representation plans (Advocacy plans) for Jones v. Cutting Edge or Fast Times at F.B.-High in second hour of DFC

Thursday, April 16 (50): TEAMWORK, DIVERSITY, and LOOKING to the FUTURE

NOTE: Advocates for Jones v. Cutting Edge or Fast Times at F.B.-High submit your Self-critique Papers [5th DFC] no later than 4 p.m. on Monday, April 20

Your final project or paper is due no later than 4 p.m. on Monday, April 20.



VIII. DESCRIPTION AND SCHEDULE OF WRITTEN ASSIGNMENTS

1. All papers should be double-spaced and either word-processed or written legibly. Please submit hard copies and ensure that your name appears on all pre-mediation submissions, representation plans, self-critique papers, action choices charts, and final project or paper.
2. All written assignments should be turned in at beginning of class.
3. Please honor these Syllabus deadlines. Papers submitted late without compelling justification receive reduced marks.
4. **PRE-MEDIATION SUBMISSIONS (Briefing paper):** This course requires two pre-mediation submissions when you play advocate roles. As indicated, these submissions may not exceed four double-spaced pages in length, and they can be shorter. Pre-mediation submissions should not simply summarize, outline, or organize common facts or information learned during pre-mediation preparation sessions. While learning and organizing this information is critically important, submissions should reflect strategic thinking rather than simple presentations of distributed data. No formula exists for good pre-mediation submissions. Please choose workable formats so that these documents help you advocate and enable you to encourage mediators to help you negotiate. This assignment's primary goal is to practice preparing before advocating and negotiating during mediations by thinking through, and writing about, important issues likely to arise.

The four-page limit prevents covering all of these topics and forces selecting points that promote accomplishing precise negotiation objectives. **Review pages 312 of MR.**

5. **REPRESENTATION PLANS (Advocacy plans):** This course requires two representation plans when you play advocate roles. As indicated, these plans may not exceed four double-spaced pages in length, and they can be shorter. Representation Plan should not simply summarize, outline, or organize common facts or information learned during pre-mediation preparation sessions. While learning and organizing this

information is critically important, submissions should reflect strategic thinking rather than simple presentations of distributed data. No formula exists for good Representation Plan. Please choose workable formats so that these documents help you advocate and enable you to encourage mediators to help you negotiate. This assignment's primary goal is to practice preparing before advocating and negotiating during mediations by thinking through, and writing about, important issues likely to arise.

The four-page limit prevents covering all of these topics and forces selecting points that promote accomplishing precise negotiation objectives. **Review pages 364-370 of MR.**

6. **SELF-CRITIQUE PAPERS:** Two self-critique papers are required in this course. These papers must include:

- A. Action charts, made by copying the posted preparation and advocacy charts and, while listening to the recording made of your mediations and completing them appropriately. Chart actions by:
- (1) Cumulatively marking actions by using a vertical line, followed by a diagonal slash, system. Use these marked counts rather than summaries such as "some," "few," "many," etc.
 - (2) Recording only your actions, not those made by clients, mediation counterparts, or mediators
 - (3) Seeking accuracy to help identify behavioral patterns, because identifying actions is the first step on the road to improving them and developing competence, skill, and mastery using effective and avoiding ineffective behaviors]
 - (5) Remembering that the same action can be charted in several categories, i.e. a question may be either open, closed, compound, or leading, and also serve as a block, a reframing attempt, or a process comment
 - (6) Realizing that actions that are difficult to chart are probably not effective, and learning from that understanding
- B. An self-critique paper written after listening to your mediation performance recordings and comparing them to feedback received from colleagues and instructors. This analysis should emphasize performance and not summarize or chronologically narrate what occurred. It also should specifically identify and analyze one of the most effective action sequences you performed and one of your least effective behavioral sequences, analyzing one example of effective and ineffective interactions from both preparation sessions and mediations. It should not exceed six double-spaced pages in length [not counting the action choices charts], and may be shorter.

This self-critique analysis should include a verbatim transcription, created from listening to your tape, of the effective and ineffective action sequences. Enough

of the interaction should be included so that the analysis clearly presents context and provides support for effective and ineffective assessments. The analysis should explain why these specific actions were assessed as effective and ineffective. Regarding the ineffective action example, your analysis should additionally address why it happened, and what strategies you contemplate using to help avoid similar mistakes in future interactions.

7. **FINAL ESSAY OR PRACTICAL PROJECT:** This should be either an in depth evaluation of an actual dispute you have experienced or a practical project developed in detail is due no later than 4 p.m. on Monday, April 20. This paper should be between eight to fifteen pages double-spaced pages in length and reflect substantial thought and effort. *Think about this assignment broadly, creatively, and early so that it does not become an end-of-the-term/course stressor.*

A. For analyzing a specific dispute, choose either: (1) a conflict in which you were involved personally in an actual personal, social, or professional context; (2) a conflict that you observed closely as a friend, relative, or co-worker of one of the disputing parties; or (3) a conflict that you have read or heard about, including disputes that are the focus of litigation, appellate opinions, or other matters reported in newspapers, internet sources, or other media. This assignment asks you to do the following although not necessarily in this order:

- Describe the manifestations of the conflict and the disputing behaviors by everyone involved
- Using ideas learned in this course, analyze the conflict and disputing behaviors including how the persons involved understood and dealt with the dispute and resulting actions
- In light of what you have learned in this course, speculate how the dispute might have been handled differently or better, emphasizing behaviors and sequences that might have made a difference
- Indicate what you have learned in analyzing and writing this study about conflict resolution and, if relevant, yourself

B. For a practical project, please do not view the following potential topic categories as limiting, restricting, or mandatory. These suggestions are offered only to help you conceptualize and complete this option if chosen:

- Specific examples from current media or popular culture that provide additional and valuable insights about course action theories including:
 - (1) Vignettes from movies or television shows in a digital format via a flash drive (i.e. not just links to You Tube or other sites], and how you recommend using and analyzing them
 - (2) Newspaper articles, scholarly journals, web sources, and other

- content that provide similar demonstrative value, and how you recommend using and analyzing them
- (3) Drafts of recommended, introductory and explanatory power point slides to use introducing and analyzing these sources
 - (4) An outline of relevant discussion points
- Detailed scenarios for new class role plays that would work better than those used,
 - (1) Explaining why they are superior
 - (2) Providing detailed descriptions and confidential participant information
 - (3) Providing a brief research summary of applicable legal sources [cases, statutes, rules, etc]
 - (4) Providing an outline of relevant discussion points
 - Specifically explained ideas for teaching course segments, with methods that you feel would work better than those that were used
 - (1) Explaining why they are superior
 - (2) Providing introductory and explanatory power point slides, and, if possible, thematically appropriate cartoons
 - (3) Providing a brief research summary of applicable legal sources [cases, statutes, rules, etc]
 - (4) Providing an outline of relevant discussion and power points

IX. COURSE ETHICS

Real-world and simulated mediations are laden with ethical dilemmas for advocates, and we will discuss them as they arise in our exercises. The nature of simulated mediations create potential for additional difficulties discussed here.

The mediations involve situations where participants receive written instructions. Please do not share these written instructions with classmates. Do not either read from or show them to others during counseling exercises. Finally, take care when acquiring information before assignments to ensure getting the correct set of instructions. Please notify me immediately after discovering that the wrong information was acquired so that steps can be taken to preserve the integrity of the exercise. Reading more than one set of confidential instructions per exercise is prohibited, until exercises end. Gaining access to and using confidential instructions, outcome summaries, or any other information regarding exercises from other classes or earlier semesters is prohibited. Violating any of these rules transgresses this law school's regulations and applicable Honor Code provisions regarding academic honesty.

In addition to these rules, the ethical constraints generally applicable to lawyers govern this course. Thus, the Florida Rules of Professional Conduct govern counseling, negotiation and mediation ethics in this class. I may initiate proceedings to investigate apparent violations that I observe or learn about. If you think that another member of this

class has breached rules of course ethics or the Florida Rules of Professional Conduct, you may file a formal, written complaint with me. If I find the complaint is non-frivolous after investigating, I will attempt to resolve the matter informally. If I find a violation, I will consider sanctions, including a downward modification of the evaluation in that negotiation; a reduction in course grade, a failing grade for the course; and other academic dishonesty remedies.

ROLE-PLAYING SUGGESTIONS

Everyone's learning depends upon skilled role playing to create realistic pre-mediation preparation and mediation experiences. Please frequently review and follow these general suggestions when playing the various roles this course assigns:

SUGGESTIONS FOR PLAYING CLIENT ROLES

1. Plan. Prepare. Be Flexible. Do not do an exercise without having read and thought carefully about the role information provided
2. Read your role information, including general data your lawyer already knows and your specific instructions, carefully and thoughtfully. Then implant the general scenario in your mind, and visualize yourself as this person. Play your role largely as you personally would act while following specific instructions that may occasionally require you to act inconsistently with how you normally behave
3. Skilled role-playing requires some but not extensive memorizing so learn confidential information generally. Learn it well enough so that you respond to anticipated questions without checking or reading from written information documents while playing these roles. Do not review or read from these documents during role plays
4. Even focused simulation exercises like these inevitably create factual gaps by recreating only parts of situations. Ad lib [i.e. make up] things consistent with the rest of your instructions when asked about information that was not provided or that escapes your memory. When possible, cut off inquiry that goes beyond the basic facts created because provided details are designed to focus role plays on manageably sized mediation preparation and advocacy issues. In other words, prevent your advocate from re-interviewing you about things provided in general information documents

5. Limit ad-libbing to facts you forget, background gaps, minor inconsistencies, and responses to surprising, spontaneous developments. Do not make up significant facts that create stronger or weaker situations and substantially influence legal analysis
6. Disconnect your keen analytic mind and put your impressive persuasion skills on hold when playing client roles unless you are cast as a lawyer or an otherwise commercially savvy person
7. When consistent with your instructions or role conceptualizations, give your lawyers robust but reasonable challenges. This enhances learning. Do not behave in impossibly difficult or unrealistically cooperative ways. This undercuts learning
8. Avoid exaggerating and overacting. This undermines learning because everyone, and particularly colleagues playing advocate roles, experience it as phony and manipulative
9. Avoid common errors such as narrating large amounts of information in organized, detailed ways that lay people seldom use. Also avoid using legal terms and phrases that your character would neither use nor understand
10. Try to replicate the emotional dimensions created in or implied by your role to help everyone develop and improve critical empathy skills required to discern and acknowledge feelings
11. Stay in role at all times and resist requests efforts to pull you out of role.
12. De-emphasize the manipulative potential that working from scripted scenarios generate. For example, try to replicate normal human dynamics that inhibit communicating about topics your script suggests not revealing unless asked about specifically. Avoid doing or saying things that subtly suggest you are playing games by withholding this information.
13. Responding to questions about creative solutions presents challenges. Some documents say nothing about this leaving you free to respond or initiate consistent with how you conceive this client would respond [and not as a law student seeking to display problem-solving creativity]. Other documents describe how you should respond if others suggest them, and often prohibit you from initiating. Remember our goal is to generate realistic learning opportunities, not turn role-plays into rote searches for creative solutions authors might have hidden in confidential information documents
14. Clients attend entire mediations and participate consistent with their role

conception and lawyer's instructions

15. When given the opportunity, usually shortly after mediation role-plays end, share feedback comments in role as the client by capturing how specific behaviors the lawyer used impacted you as this client. Using the SBI [situation, behavior, impact] feedback model explained early in the course, describe the situation to set the context for your feedback, and then the specific behavior that your lawyer used. Finally, using "I messages," share its impact on you. Unavoidable time limits may require postponing preparation session feedback until the mediation ends
16. Your assignment extends to assessing your lawyer's performance in both the preparation and mediation segments orally. They do not factor into your advocate's grading assessment, however, so please feel free to share specific, balanced feedback consistent with this course's goal of enhancing learning for everyone
17. Finally, stay calm, enjoy the process and have fun with role playing assignments. You can learn a great deal about effective mediation advocacy, negotiation, and counseling from insights derived from experiencing these processes from client perspectives

SUGGESTIONS FOR PLAYING ADVOCATE ROLES

1. Plan. Prepare. Be Flexible. Do not begin pre-mediation preparation sessions or mediations without having read and thought carefully about the general information provided to everyone
2. Class time is allotted for you to meet with your client to prepare him/her for the mediation. Please use this limited time wisely. You may initiate additional time if your client is agreeable and available. Ordinarily face-to-face, in person meetings should occur, and you should audio record them [you are required to audio record your in class sessions]. Limited focus e-mail or telephonic follow-up conversations are permissible. It is not permissible to ask clients to type long, general information transfers for e-mail, text, or fax transmissions
3. Start preparation session focused on necessary tasks and do not spend time developing initial rapport. Please assume familiarity with your client stemming from previous interactions creating the general information provided to everyone which is designed to focus the role play
4. Do not spend limited time re-interviewing clients about information already

provided unless it directly relates to mediation objectives and approaches. Limited time frames simply do not permit extensive re-interviewing. Unlike trial practice courses where squeezing informational inferences from provided facts often works, these role plays ask everyone to assume given facts and work within them to accomplish client's mediation objectives. Do not create new inquiry lines that require clients to make up reams of new information, add new issues for resolution, and ensure that the limited time allowed for mediating will not suffice. Do not pursue creating new facts, issues, and client motivations. Do not spend time sharing lengthy explanations of substantive law and mediation alternatives, particularly litigation, even though doing this is often required in actual practice

5. Stay in advocate role during all pre-mediation and mediation interactions with clients. Do not ask to see your client's confidential information. Do not phrase questions that reference this document

SUGGESTIONS FOR PLAYING MEDIATOR ROLES

1. Plan. Prepare. Be Flexible. Although you receive only the general information known by everyone, and the pre-mediation submissions shortly before mediations, do what you can to think about how to effectively assist and enhance the negotiations that will occur between these advocates and their clients. This preparation also involves pre-mediation planning and you are encouraged to use the class time devoted to advocate-client pre-mediation preparation for this purpose
2. Stay in mediator role during all mediation interactions with advocates and clients. Do not phrase questions that reference the clients' confidential information documents
3. When given the opportunity, usually shortly after mediation role-plays end, share feedback comments in role as a mediator by capturing how specific behaviors the lawyer used impacted you and your efforts to enhance and assist this negotiation. Using the SBI [situation, behavior, impact] feedback model, describe the situation to set the context for your feedback, and then the specific behavior that the advocate used. Finally, using "I messages," share its impact on you
4. Your assignment extends to assessing the advocates' performances in the mediation orally. They do not factor into the advocates' grading assessment, however, so please feel free to share specific, balanced feedback consistent with this course's goal of enhancing learning for everyone



“Please explain this mediation advocacy again”

The design enhancements and many of the exercises are suggestions by prior class participants. (Aren't you lucky!)