

CERTIFIED CIVIL MEDIATION

Fall 2014

Appalachian School of Law

Prof. Paula Marie Young

Office Phone: 935-4349, ext. 1221

Home Phone: (276) 935-1678; E-mail: pyoung@asl.edu

COURSE MATERIALS:

Required Books:

Douglas N. Frenkel & James H. Stark, *THE PRACTICE OF MEDIATION: A VIDEO-INTEGRATED TEXT* (2d ed. 2012), ISBN 1454802197 (pbk.).

Douglas Stone, Bruce Patton, Sheila Heen, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (2010), ISBN-10: 0143118447; ISBN-13: 978-0143118442 (pbk.).

Supplemental Materials.

Class Handouts

Class discussion will inevitably cover some, but not all, of the material in the readings. If you have questions about the readings, feel free to raise those questions, preferably in class, or with me privately, or on the Extended Class Discussion Tab of TWEN.

STUDENT GRADING:

I will determine your final course grade by your point totals from the activities listed below. I teach this course in a highly collaborative manner, in which you learn directly from each other, provide feedback to each other to improve your mediation skills, and rely on each other to complete exercises and to perform well in the final co-mediation.

I therefore give you the opportunity to decide unanimously whether every student will earn a “B+” grade in the course. The Academic Standards set the mandatory mean for this course at a “B+.”

Implicitly, that mandatory mean suggests that all students earning that grade have satisfied the basic requirements of the course at an expected level of skill. Based on my experience teaching this course for over ten years at ASL, students meet my expectations for their learning and skill development, with one or two exceptions in a few of those years. Thus, in the normal situation, I would give all students a “B+” grade in the course, with the Book Award going to the student who shows exceptional effort in the course. We can talk more about my approach to grading in the first day of class.

Please see the class calendar for the deadlines for the following quizzes, summaries, or evaluations.

Class Participation

- Includes de-briefing of in-class role-plays and discussion of assigned readings 100 points
- Assigned Projects:
 - o Analysis of Agreements to Mediate 50 points
 - o Brochure for Co-Mediation 50 points

Quizzes (6 total at 10 points each – graded liberally) 60 points

Final Co-Mediation 300 points

Total: 560 points

Any student who needs special accommodations based on a legally protected disability must contact me as early as possible before I can make appropriate arrangements.

COURSE OBJECTIVES:

You have already learned a great deal about the nature of conflict, negotiation theory, mediation, and arbitration in the Dispute Resolution course. This class will build on the knowledge you gained in that course, but it will focus more on conflict analysis, diagnosis, and mediation skill building. We will again focus on the nature of conflict, bringing our analysis from the “macro” level we considered in the survey class (Circle of Conflict), more to the intra-personal and inter-personal level.

This course focuses on the process by which mediators assist others in resolving disputes. The course covers mediation theory and techniques that a mediator can use in any kind of conflict. We will focus, however, on an “elicitive,” facilitative, interest-based style, especially because the code of ethics for mediators in Tennessee, Virginia, and most other states precludes a mediator from giving legal advice or adopting strategies that undermine party self-determination. We will discuss the other most recognized

styles of mediation – evaluative, understanding-based, and transformative -- and consider when they may best assist parties in dispute.

The objectives of the course are to: (1) improve your skills in listening, questioning, paraphrasing, reframing, problem-solving, persuasion, negotiation, and professional judgment that are important for both mediation, negotiation and legal representation, (2) increase your understanding of dispute resolution theory and practice, including ethical issues, (3) increase your appreciation of the advantages and disadvantages of mediation and litigation, (4) build the skills needed to mediate disputes, and (5) encourage you to become more deliberate about your professional work and your own approaches to dispute resolution, both as advocates and mediators.

In addition, I have designed this course to enhance students' analytical and diagnostic skills. Good analysis involves identifying problems and different perspectives about the issues. It also involves making sound diagnostic hypotheses based on experience and dispute resolution theory.

Finally, I hope that this course helps you increase your empathy for people facing crisis and conflict in their lives.

Understanding Conflict: The course begins with a focus on the identity-based nature of conflict, its causes, and avenues for dispute/conflict resolution. We will also consider the role of blame and acknowledgment of each person's contribution to the conflict. The first day of class we will consider the four levels of dispute resolution (body, head, heart, and spirit). We will also examine the four stories of mediation and the role they play in developing your own mediation style.

Mediation Skills: The second part of the class focuses on the skills of a mediator. Certification of mediators is not required in Virginia or by most states for persons who want to practice as private mediators who do not take cases referred from courts. However, Virginia, Tennessee, and most other states require certification/registration/rostering of mediators who want the court to place them on the court referral list of mediators.

Later in the syllabus, I have provided references to the state websites that identify the training requirements for mediators seeking court referred mediations in a number of nearby states. For students who will practice outside Virginia, they may receive reciprocal recognition of this class as the basic mediation training required in other states (usually needed to handle small claims cases, or in some states, higher valued cases).

The Virginia Supreme Court has approved this course as the basic mediation training required for court-certified mediators. Tennessee has approved the class as Training for Rule 31 trainers. Tennessee students are required to pay \$100 at the time of training to its ADR Commission. Please let me know if you plan to practice in that state.

Keep your syllabus and class assignments, and your final co-mediation evaluation. You can attach them to your application for reciprocal certification or qualification in another state. So far, I know that students have also received reciprocal recognition in Kentucky. I will be glad to help you get that recognition in other states.

Beginning in 2000, the Virginia Supreme Court established four kinds of certification: General District Court; Circuit Court Civil; Juvenile and Domestic Relations; and Circuit Court Family. Each level or kind of certification has its own requirements. This course, when re-approved, will help you progress towards the General District Court mediator certification. This type of certification requires:

- Professional mediation skills training (20 hours);
- Orientation to the Virginia judicial system (4 hours);
- Observation of two cases or an approved role-play/observation training;
- Co-mediation of three general cases totaling at least 5 hours of mediation time with a certified mentor; and,
- Acting as primary scrivener for at least one mediation settlement agreement.

A student must complete all elements of the requirements within **24 months** of completing this training course.

The course will provide you with the first element of the certification requirements. Your other classes at law school should satisfy the second requirement, especially if you plan to take Virginia Practice and Procedure. After completion of the course, you will still need to complete the last three requirements before you apply for certification. This course will also provide the basic mediation training required for the other types or levels of certification.

Advanced Mediation Skills and Theory: The last module in the course focuses on advanced mediation topics relating to ethics, core values of mediation, co-mediation techniques and uses, and marketing a mediation practice.

CONTENT AND ORGANIZATION:

Mediation requires a diverse set of skills that consider the legal context of the dispute, the interest and psychological needs of the parties, the emotions fueling the dispute, the parties' need for apology and forgiveness, and the techniques for helping parties reach reconciliation. Good mediators are skillful at listening, questioning, paraphrasing, and reframing. While we briefly considered these skills in the DR survey class, this course will give you the ability to develop them further through readings, demonstrations, and role-play exercises. I hope to use graduates who completed the course in previous years and local mediators to observe, provide feedback, and de-brief the role-play exercises.

We will use structured exercises to isolate and emphasize specific analytic points and essential skills. Cases and readings serve to integrate the analytic points as well as to develop your intuition about more complex real-world mediations.

The course will blend theory and practice to help you see and appreciate the relationship between the two. The theoretical research that has come to inform our understanding of mediation is rich and interesting (at least to some of us), and it is my belief that a grasp of that literature will help you become a better mediator in practice, which is the ultimate goal of the course. The course will draw theoretical foundations from several different disciplines – law, psychology, natural sciences, and economics, to name a few. We will have at least one role play or exercise during most class sessions to help apply the principles we have discussed and to gain a more personal sense of the issues they raise as we apply theory to practice. We will de-brief these exercises in class.

Mediation and Other Exercises

Throughout the course, I will assign you a role, paired with one or more counterparts, give you instructions (often including confidential information), and ask you to prepare and carry out an exercise before or during class. These exercises are an essential vehicle for learning in the class. One major requirement, therefore, is that you conscientiously prepare for, carry out, and be ready to share insights from the exercises with the class.

In our class discussions, I am primarily interested in your faithful and creative participation in the quality and originality of your discussion of particular strategies, and in your reflections on how you might have done better. Failure to prepare and carry out these exercises will adversely affect your class participation grade and will harm your assigned mediation/exercise partners, whose learning experience depends on your being available and prepared.

Many of the exercises include confidential instructions. **Do not show these confidential instructions to others.** You may choose to discuss or reveal some of their content -- indeed, communicating your interests clearly is essential to effective negotiation or mediation -- but you must not physically show others your actual confidential instruction sheets. This rule largely mirrors reality since parties rarely reveal all their information in mediation, unless in a private caucus, and then only to the mediator.

Some general rules for role players include the following:

1. Stay in the role. Each role is important and is intended to be a learning experience for the role player, the other participants, and observers.
2. Familiarity breeds comfort! It is easy to become complacent. Try not to do it. Losing interest in the process hurts everyone.

3. If you have difficulty identifying with the role, ask for help and advice.
4. It is okay to be original and add to the four corners of the document -- just don't change the fundamental intent. Remember only you can make it real. Creativity counts for something.
5. Observers should be prepared to comment, raise questions, and provide answers to the various issues that the role play introduces.

Practice Mediations

I have reserved three class periods for practice mediations that you will do in groups of three. You will complete evaluations for the student serving as the mediator. I will provide the role-plays and additional information before those class sessions.

Graded Final Co-Mediation

Students from my Dispute Resolution class or 1L students looking for community service credit will play the parties for this out-of-class mediation. You will be responsible for reserving and preparing the mediation site, making all pre-mediation contacts with the parties, and getting the Agreement to Mediate executed. As a graded assignment, you will develop a pre-mediation brochure for the parties.

You will set up the time for the mediation. I am happy to host them at my house. Otherwise, you can reserve a location on campus or at another facility in Grundy, like a church meeting room

We will video-tape your mediation so you have that additional feedback on your experience.

Quizzes & Assigned Projects

Over the semester, you will take six "quizzes" that will focus on the assigned readings. You will take these quizzes individually. You will also be responsible for providing more in depth analysis of three agreements to mediate.

ATTENDANCE POLICY AND CLASS PARTICIPATION GRADE:

Your thorough preparation of the assigned materials is essential for us to engage in rigorous class discussions and effective simulations. Because time is scarce, it is essential that you read the assigned material prior to class. I realize that the readings will put a burden on you because of the two hour block of time scheduled for the class. So please plan ahead.

The faculty amended the Academic Standards to require that students miss no more than 15 percent of scheduled classes, or four (4) class sections, with no questions

asked. **Be sure to provide an e-mail to me explaining your planned absence so I may forward it to the Associate Dean's secretary for the school's records. In the unlikely event you exceed the allowed absences, the Dean will consider the e-mails in deciding whether you must withdraw from the class.**

CLASS ASSIGNMENTS:

In a separate handout, I will provide the reading and class assignments.

TWEN SITE

You may access the TWEN website through the www.lawschool.westlaw.com home page. I will put this syllabus there and a list of the assignments. **You must register at the site ASAP.**

OTHER CLASSROOM MATTERS:

Use of computers in class: The law school faculty adopted a new provision of the Academic Standards providing that:

Use of computers during class periods for any purpose other than note-taking is prohibited. The instructor may establish a more restrictive computer use policy.

In keeping with this policy, not only will I refer any violator of this rule to the Dean for appropriate disciplinary action, but I will also count any violator as absent for the day. Please note that Article III, B of the Academic Standards provides: "Any student who has reason to believe a violation of the Code of Academic Conduct has occurred must report that belief to the Dean. Failure to do so is a violation of the Code of Academic Conduct."

OFFICE HOURS:

I will hold official office hours on **Monday and Wednesday, 10 a.m. to noon.** Other times by appointment. My door is usually open, so please feel free to talk with me if I am in my office at other times. I am also available by e-mail and home or cell phone.

OTHER RESOURCES

WEBSITES YOU MAY FIND USEFUL:

Quite a few web sites are devoted to ADR. Some examples include:

Virginia:

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/home.html>

(main webpage for court-connected programs)

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/training/home.html> (information about certification requirements in Virginia)

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/forms/home.html> (Virginia related mediation forms)

<http://www.mediate.com/articles/mulfordP2.cfm> (article critical of Virginia's court-sponsored mediation program)

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/resources/resolutions/home.html> (newsletter)

<http://www.nvms.us/> (family mediation training programs)

<http://www.vamediation.org/> (Virginia Mediation Network – state mediator organization)

<http://rjav.org/> (Restorative Justice Association of Virginia)

Tennessee:

<http://www.tncourts.gov/programs/mediation/become-rule-31-mediator> (online “fillable” PDF Rule 31 application form)

<http://www.tsc.state.tn.us/geninfo/Programs/ADR/adrdir.asp> (about court-connected program)

http://www.tsc.state.tn.us/OPINIONS/TSC/RULES/TNRulesOfCourt/06SUPCT25_end.htm#31 (Rule 31 roster requirements)

<http://www.tsc.state.tn.us/GENINFO/Publications/ADR/VORP%20Grantees.pdf> (VOM programs)

<http://www.tsc.state.tn.us/GENINFO/Publications/ADR/2009-2%20SpringAdrNews.pdf> (newsletter)

Kentucky:

<http://courts.ky.gov/stateprograms/mediation/> (main webpage for court-connected programs)

<http://courts.ky.gov/NR/rdonlyres/38AA0854-F6E9-4E3B-BD0B-BCD89ECCF6E7/0/AdminOrder200502.pdf> (supreme Court rules governing mediation)

West Virginia:

<http://www.state.wv.us/wvsca/familyct/cover.htm> (family mediation program)

North Carolina:

<http://www.nccourts.org/Courts/CRS/Councils/DRC/Default.asp> (North Carolina Dispute Resolution Commission main webpage)

<http://www.nccourts.org/Courts/CRS/Councils/DRC/MSC/Rules.asp> (mediation program rules; Rule 8 provides certification requirements)

<http://www.nccourts.org/Courts/CRS/Councils/DRC/Standards/Opinions.asp> (ethics advisory opinions)

South Carolina:

<http://www.sctbar.org/member/adr/training.asp> (training)

<http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=15.0&subRuleID=&ruleType=ADR> (certifications requirements)

Maryland:

<http://www.courts.state.md.us/macro/> (main web page for court-connected mediation programs)

http://www.peoples-law.org/core/mediation/how_do_I_become.htm (information about becoming a mediator)

Georgia:

<http://www.godr.org/odr.html> (main webpage with links to roster requirements, training, and ethics rules)

<http://www.godr.org/forms.html> (roster/registration forms)

Florida:

http://www.flcourts.org/gen_public/adr/index.shtml (main webpage with links to certification requirements and ethics rules)

http://www.flcourts.org/gen_public/adr/MEAC%20Opinions/index%20of%20opinions.shtml (ethics advisory opinions)

Pennsylvania:

<http://www.courts.state.pa.us> (main web page with searchable links to mediation related information)

http://www.divorcenet.com/states/pennsylvania/evolution_of_mediation (article about history of mediation in state)

<http://www.pacode.com/> (Civil Procedure Rules Title 231 sections 1940.1 to 1940.8 governing custody mediation, including mediator qualifications)

<http://www.pacode.com/secure/data/231/chapter1940/s1940.4.html> (mediator qualifications)

<http://www.courts.state.pa.us/index/aopc/pressreleases/prrel06o06.asp> (press release about appellate mediation program)

Ohio:

<http://www.disputeresolution.ohio.gov/resources.htm> (main web page for Ohio Commission on Dispute Resolution & Conflict Management)

National & International Organizations:

<http://www.acresolution.org> (Association for Conflict Resolution (ACR))

<http://www.mediate.com/acrfamily/> (ACR Family Section with links to approved family mediation training programs)
<http://www.abanet.org/dispute/home.html> (ABA Dispute Resolution Section)
<http://www.nafcm.org/> (National Association for Community Mediation (NAFCM))
<http://www.afccnet.org> (Association of Family and Conciliation Courts (AFCC))
<http://www.aaml.org/i4a/pages/index.cfm?pageid=1> (American Academy of Matrimonial Lawyers)
<http://www.iamed.org/index1.cfm> (International Academy of Mediators)
<http://www.iccwbo.org/> (International Chamber of Commerce)
<http://www.voma.org/> (Victim-Offender Mediation Organization)
<http://www.attorney-mediators.org/> (Association of Attorney-Mediators)

Other ADR Resources:

<http://www.cardozo.yu.edu/kukin/ADRResources.asp> (ADR resource list, including graduate ADR programs)
<http://www.apecemaker.net> (National Conference on Peacemaking and Conflict Resolution)
<http://www.igc.apc.org> (Conflict Resolution Center International)
<http://www.mediate.com> (gathering spot for mediators with articles of interest)
<http://www.Colorado.EDU/conflict/> (collecting ADR resources)
<http://www.cpradr.org/> (Center for Public Resources)
<http://www.caadrs.org/index.htm> (source of research about ADR)
<http://www.emu.edu/ctp/contact.html> (Eastern Mennonite peace building program)
<http://www.hamline.edu/law/adr/index.html> (Hamline webpage with links to ethics video clips and mediation case law project)
<http://www.ictj.org/en/index.html> (International Center for Transitional Justice)
<http://www.josseybass.com/WileyCDA/Section/id-131471.html> (publisher's list of ADR books)
<http://www.nccusl.org/Update/> (site for drafts and final version of Uniform Mediation Act; legislative adoption information)
<http://www.ncsconline.org/WC/Publications/ADR/SearchState.asp> (National Center for State Courts database on state court ADR programs – data may not be current)
<http://www.pon.harvard.edu/> (Program on Negotiation – Harvard Law School; has training videos (mostly dated) and role-plays)
<http://www.law.missouri.edu/llm/> (LL.M. program at University of Missouri)

Third-Party Providers:

<http://www.jamsadr.com> (a dispute resolution organization)
<http://www.adr.org/> (American Arbitration Association)
<http://www.arb-forum.com> (National Arbitration Forum)
<http://www.dr.bbb.org/> (Better Business Bureau dispute resolution program)
<http://www.mccammongroup.com/> (The McCammon Group – Virginia)

Collaborative Law:

<http://www.law.missouri.edu/lande/> (publications by Prof. John Lande, a leading scholar in the field)

<http://www.collaborativepractice.com> (International Academy of Collaborative Professionals)

Others:

<http://www.susancartierliebel.typepad.com/> (building a solo practice)

<http://www.myshingle.com/> (building a solo practice)

<http://hiringpartneradvice.blogspot.com/2008/12/small-and-mid-sized-firms.html> (general legal career advice)

<http://blog.larrybodine.com/> (law firm marketing)

<http://www.legalmarketingblog.com/> (legal marketing)

<http://www.law21.ca/> (tracking “extraordinary” changes in legal profession and market)

<http://www.whataboutclients.com/> (client service with links to other sites on same topic)

<http://www.patrickjlamb.com/> (client service)

http://www.abajournal.com/magazine/blawg_100_2008 (list of top law-related blogs)

<http://mobar.mobi/data/SoundBytes/37-byrd.mp3> (audio interview about dealing with a client (when you are representing the party) who has domestic violence issues)

Recommended but Optional Books:

See a comprehensive list at Barbara Brown, A Practical Bibliography of Books for the Mediation Practitioner, <http://www.mediate.com/pfriendly.cfm?id+4738>; and 2010 update at <http://www.mediate.com/articles/brownB2.cfm?nl=277>

Marjorie Corman Aaron, CLIENT SCIENCE: ADVICE FOR LAWYERS ON COUNSELING CLIENTS THROUGH BAD NEWS AND OTHER LEGAL REALITIES (Oxford Univ. Press. 2013).

David Bowling & David Hoffman, BRINGING PEACE INTO THE ROOM: HOW THE PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION (Jossey-Bass 2003).

Madelyn Burley-Allen, LISTENING: THE FORGOTTEN SKILL (John Wiley & Sons 1995).

Nan Waller Burnett, CALM IN THE FACE OF THE STORM: SPIRITUAL DAILY PRACTICE FOR THE PEACEMAKER (DRP Publishers 2010).

Robert A. Baruch Bush & Joseph P. Folger, THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT (Jossey-Bass 2005).

Kenneth Cloke, RESOLVING PERSONAL AND ORGANIZATIONAL CONFLICT (Jossey-Bass 2000).

Kenneth Cloke, THE CROSSROADS OF CONFLICT: A JOURNEY INTO THE HEART OF DISPUTE RESOLUTION (Janis 2006).

Any other book by Ken Cloke (my hero).

Dr. Wayne W. Dyer, THE POWER OF INTENTION: LEARNING TO CO-CREATE YOUR WORLD YOUR WAY (Hay House, Inc. 2004).

William Eddy, HIGH CONFLICT PEOPLE IN LEGAL DISPUTES (Janis Pub. 2006).

Roger Fisher & Daniel Shapiro, BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE (Viking Adult 2005).

Gary Friedman & Jack Himmelstein, CHALLENGING CONFLICT: MEDIATION THROUGH UNDERSTANDING (ABA 2008).

Daniel T. Gilbert, STUMBLING ON HAPPINESS (2007).

Any book by Seth Godin (my new marketing and mindset hero).

Dwight Golann & Jay Folberg, MEDIATION: THE ROLES OF ADVOCATE AND NEUTRAL (Aspen 2006).

Daniel Goleman, EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ (Bantam Books 1997)

Daniel Goleman, DESTRUCTIVE EMOTIONS: HOW CAN WE OVERCOME THEM? (Bantam Books 2003).

Daniel Goleman, HEALING EMOTIONS: CONVERSATIONS WITH THE DALAI LAMA ON MINDFULNESS, EMOTIONS, AND HEALTH (Bantam Books 2003).

Jon Kabat-Zinn, WHEREVER YOU GO THERE YOU ARE (Hyperion1994).

Robert Karen, THE FORGIVING SELF: THE ROAD FROM RESENTMENT TO CONNECTION (Anchor Books 2001).

Ronnie King, DISPUTE RESOLUTION IN THE ENERGY SECTOR (Globe Law and Bus. 2012).

Deborah M. Kolb & Judith Williams, THE SHADOW NEGOTIATION: HOW WOMEN CAN MASTER THE HIDDEN AGENDAS THAT DETERMINE BARGAINING SUCCESS (Simon & Schuster 2000).

J. Kottler, BEYOND BLAME: A NEW WAY OF RESOLVING CONFLICTS IN RELATIONSHIPS (1994).

M. Lang & A. Taylor, *THE MAKING OF A MEDIATOR: DEVELOPING ARTISTRY IN PRACTICE* (Jossey-Bass 2000).

Judith Hanson Lasater & Ike K. Lasater, *WHAT WE SAY MATTERS: PRACTICING NONVIOLENT COMMUNICATION* (Rodmell Press 2009).

Harriet Lerner, *THE DANCE OF ANGER: A WOMAN'S GUIDE TO CHANGING PATTERNS OF INTIMATE RELATIONSHIPS* (2005).

J. Anderson Little, *MAKING MONEY TALK: HOW TO MEDIATE INSURED CLAIMS AND OTHER MONEY DISPUTES* (ABA 2007).

Dr. Fred Luskin, *FORGIVE FOR GOOD: A PROVEN PRESCRIPTION FOR HEALTH AND HAPPINESS* (Harper One 2002).

Catherine A. MacDonagh & Beth M. Cuzzone, *THE LAW FIRM ASSOCIATE'S GUIDE TO PERSONAL MARKETING AND SELLING SKILLS* (2007).

Julie Macfarlane, *THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW* (UBC Press 2008).

Elizabeth P. Manley, ed., *ALTERNATIVE DISPUTE RESOLUTION IN NORTH CAROLINA: A NEW CIVIL PROCEDURE* (N.C. Bar Found. 2012).

Bernard Mayer, *STAYING WITH CONFLICT: A STRATEGIC APPROACH TO ONGOING DISPUTES* (John Wiley & Sons, Inc. 2009).

Bernard Mayer, *THE DYNAMICS OF CONFLICT: A PRACTITIONER'S GUIDE* (Jossey-Bass 2000).

Michael L. Moffit & Robert C. Bordone, *THE HANDBOOK OF DISPUTE RESOLUTION* (Jossey-Bass 2005).

Christopher W. Moore, *THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT* (Jossey-Bass 2d ed. 1996)(creator of the Circle of Conflict).

Forrest S. Mosten, *MEDIATION CAREER GUIDE: STRATEGIC APPROACH TO BUILDING A SUCCESSFUL PRACTICE* (2001), ISBN 0-7879-5703-8 (alk. paper).

Daniel H. Pink, *A WHOLE NEW MIND: WHY RIGHT-BRAINERS WILL RULE THE FUTURE* (Riverhead Books 2006).

Daniel H. Pink, *DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US* (2011).

Tom Rath & James K. Harter, *WELLBEING: THE FIVE ESSENTIAL ELEMENTS* (2010).

Tom Rath, *STRENGTHSFINDER 2.0* (2007).

Nancy Rogers, et al., *DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES* (Aspen Pub. 2013).

Colin Rule, *ONLINE DISPUTE RESOLUTION FOR BUSINESS: B2B, ECOMMERCE, CONSUMER, EMPLOYMENT, INSURANCE, AND OTHER COMMERCIAL CONFLICTS* (Jossey-Bass 2002).

Andrea Schneider & Christopher Honeyman, *THE NEGOTIATOR'S FIELDBOOK* (ABA 2006).

G. Richard Shell, *BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE* (Penguin Books 2000).

Jennifer K. Robbenholt, *PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION, AND DECISION MAKING* (ABA 2013).

Mark S. Umbreit, *THE HANDBOOK OF VICTIM OFFENDER MEDIATION: AN ESSENTIAL GUIDE TO PRACTICE AND RESEARCH* (Jossey-Bass 2001).

William Ury, *GETTING PAST NO: NEGOTIATING YOUR WAY FROM CONFRONTATION TO COOPERATION* (Bantam Book 1993).

William Ury, *THE POWER OF A POSITIVE NO: HOW TO SAY NO AND STILL GET TO YES* (Bantam Books 2007).

Mohamed S. Abdel Wahab, Ethan Katsh, and Daniel Rainey, *ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE: A TREATISE ON TECHNOLOGY AND DISPUTE RESOLUTION* (Eleven Int'l Pub. 2012).

John Winslade & Gerald Monk, *NARRATIVE MEDIATION: A NEW APPROACH TO CONFLICT RESOLUTION* (Jossey-Bass 2000).

J. Kim Wright, *LAWYERS AS PEACEMAKERS: PRACTICING HOLISTIC, PROBLEM-SOLVING LAW* (ABA 2010) (mentions ASL).

Confidentiality Agreement

In an effort to create a safe and open environment for the discussion of sensitive personal information that is part of the curriculum of the course, the following parties agree that what is said in the classroom stays in the classroom.

However, information relating to any alleged violation of the honor code of the Appalachian School of Law will not be subject to this agreement.

Professor Paula Marie Young

MEDIATOR EVALUATION FORM

An important part of the mediation process for the mediator is to hear from the parties about how well the mediator conducted the mediation. Your comments will help me evaluate my skills, techniques, areas of strength, and the areas in which I need to improve. Your feedback is very important to me. Please be as honest and candid as possible.

You may respond confidentially and, in any event, I will keep your evaluation confidential from third parties, unless the Virginia Department of Dispute Resolution Services requests additional information about my competency as a mediator. In that event, I will do my best to keep confidential your names and addresses.

In the agreement to mediate, I asked you to also indicate if I could use your comments in the materials I use to inform other parties about mediation and my practice. Please let me know if you agree to let me use your comments in that way, so long as I do not reveal your name or other identifying information and make only general references to the dispute (i.e. "in a small claims mediation")

Agree _____ Do not agree _____

Case Name (optional): _____

Docket No. (optional) _____

Your Name (optional): _____

____ Time mediation began ____ Time mediation ended

Outcome of Mediation: _____ Signed agreement
 _____ Partial Agreement
 _____ Agreement to continue at later date
 _____ Referred to court or arbitration for resolution
 _____ Other outcome

Please rate my effectiveness as a mediator for each of the categories listed below, using a ranking from 1-5:

Poor (1), Below Average (2), Average (3), Above Average (4), and Excellent (5).

MEDIATION PROCEDURES:

I. Setting the Stage

- Use of seating arrangement to promote communication
- Greeting the parties: introductions to establish supportive non-judgmental and professional atmosphere
- Advising parties of the location of phones, bathrooms, beverages and other amenities

II. Orientation

- Explaining the mediation process and the roles of the parties and mediator
- Establishing rapport with the parties
- Explanation of confidentiality
- Explanation of caucus
- Setting the ground rules, if appropriate
- Response to parties' questions
- Signing the Agreement to Mediate

III. Party Perspectives

- Actively listened to each party
- Clarified parties' stories with questions and summaries
- Reflected feelings back to the parties. Allowed reasonable venting of emotions.
- Made use of notes and/or flip chart
- Asked questions in balanced way
- Reframed attacks and disparaging comments into positive need statements
- Validated disputants' efforts
- Paraphrased stories and checked to see if parties were satisfied with mediator's understanding of their story
- Heard and presented common concerns
- Thanked parties for their contribution
- Suggested the use of a caucus (if appropriate)

IV. Options for Settlement

- Used brainstorming
- Helped disputants to hear each other's perceptions
- Summarized or clarified areas of agreement and disagreement
- Encouraged parties to negotiate
- Suggested the use of a caucus (if appropriate)
- Reframed or restated options or proposals
- Narrowed and summarized options
- Clarified and validated feelings

- Encouraged and aided in risk analysis
- Suggested second session if appropriate to the number of issues

V. Reaching an Agreement

- Encouraged the selection of alternatives which appeared to be workable by both parties
- Checked workability; asked specific details such as who, what, when, where, how?
- Assisted the parties in planning the implementation of the agreement
- Verbally summarized specific terms agreed to by the parties; summarized terms in written form
- Checked notes to be sure that no issues were left out

VI. Conclusion and Closure

- Recognized the parties' effort; commended them for trying to resolve their dispute
- Gave information about any follow-up and referrals (if appropriate)
- Discussed appropriate next step
- Invited parties to use mediation again

VII. Essential Skills

- Maintained balance towards parties
- Did not give own view on the issue(s)
- Respected each person's perspective
- Did not judge right or wrong concerning the issue(s)
- Was sensitive to issues of power and responded appropriately
- Remained patient with all parties
- Used clear language and appropriate word choice
- Generated a climate of cooperation
- Controlled session without domination
- Used appropriate body language and non-verbal cues
- Validated and encouraged the parties throughout the process

Skills mediator may wish to improve:

Other comments:

Thanks again for your feedback.

Certified Civil Mediation
Professor Paula Marie Young

Fall 2014
Class Key

All classes meet in Room 227 unless otherwise indicated or announced.

Make-up Classes: Sept 29, 2014 by webinar. We may have additional webinar make-up classes if I am assigned to an Admissions recruiting trip later in the semester.

Module 1: Understanding Conflict

Class 1: Monday, Aug. 18, 2014

- ***Becoming a Mediator***
- ***Four Stories of ADR***
 - o ***Quiz 1***

Class 2: Thursday, Aug. 21, 2014

- ***The “What Happened” Story***
 - o ***Quiz 2***

Class 3: Monday, Aug. 25, 2014

- ***The “What Happened” Story (cont.)***
 - o ***Quiz 3***

Class 4: Thursday, August 28, 2014

- ***The Feelings Conversation***
 - o ***Quiz 4***

No Class: Monday, Sept. 1, 2014, Labor Day Holiday.

Class 5: Thursday, Sept. 4, 2014

- ***The Feelings Conversation (cont.)***

Class 6: Monday, Sept. 8, 2014

- ***The Identity Conversation***
 - o ***Quiz 5***

Class 7: Thursday, Sept. 11, 2014

- ***Should you have the Conversation?***
- ***Creating a Learning Conversation***
 - o ***Quiz 6***
- ***Discussion of Module 1 Materials (Overview)***

Module 2: Learning to Mediate

-
Class 8: Monday, Sept. 15, 2014:

- ***The How of Mediation: Stages of the Process and Ground Rules***

Class 9: Thursday, Sept. 18, 2014

- ***Revisiting Styles of Mediation***

Class 10: Monday, Sept. <>, 2014

- ***Mediation as a Structured Process***
- ***Preparing to Mediate***
 - ***Opening the Process (more in Class 22)***

Class 11: Thursday, Sept. <>, 2014

- ***Preparing to Mediate***
 - ***Convening-Intake***
 - ***Agreements to Mediate***
 - ***Draft of analysis of agreements to mediate***

Class 12: Monday, Sept. <>, 2014

- ***Communication Skills***
 - ***Active Listening***
 - ***Paraphrasing***
 - ***Note-taking***
 - ***Final analysis of agreements to mediate due (50 points)***

Class 13: Thursday, Oct. 2, 2014

- ***Expanding Information to Aid the Negotiation***
 - ***Organizing the Inquiry***
 - ***Logical Progression***
 - ***Interest Identification***

Class 14: Monday, Oct. 6, 2014

- ***Expanding Information to Aid the Negotiation (cont.)***
 - ***Interest Identification (cont.)***
 - ***Caucus (more in Class 18)***

Class 15: Thursday, Oct. 9, 2014

- ***Identifying and Framing Negotiating Issues***
 - ***Organizing the Agenda***
 - ***Zumeta Issue Reframing Techniques***

Class 16: Monday, Oct. 13, 2014

- ***Generating Movement Through Problem-Solving and Persuasion***
 - ***Brainstorming Options***
 - ***Evaluation in Mediation***

Class 17: Thursday, Oct. 16, 2014

- ***Conducting the Bargaining;***
 - ***Dealing with Impasse with Master Moves***

Class 18: Monday, Oct. 20, 2014

- ***Dealing with Impasse (cont.)***
 - ***Barriers to Settlement***
 - ***Caucusing Protocol***

Class 19: Thursday, Oct. 23, 2014

- ***Concluding the Mediation***
 - ***Reviewing and Drafting Final Agreements***
 - ***Party-Evaluations***
 - ***Self-Evaluations***

Class 20: Monday, Oct. 27, 2014

- ***1st Practice Mediation***

Oct. 27: Final mediations may begin.

Students who served as the mediator in the first practice mediation should schedule their mediations from Oct. 27 to Nov. 2. No exceptions. I will be more lenient in grading your opening orientations (Class 22) and conclusions (Class 20).

Module 3: Special Topics in Mediation

Class 21: Thursday, Oct. 30, 2014

- **Core Values: Party Self-Determination**

Class 22: Monday, Oct. Nov. 3, 2014

- *2d Practice Mediation*

Class 23: Thursday, Nov. 6, 2014

- *3d Practice Mediation*

Class 24: Monday, Nov. 10, 2014

- **Convening-Contracting Stage (aka Opening Orientation)**
 - o *Review YouTube demonstrations before class (2 videos)*
 - o *Practice Opening Orientations*

Class 25: Thursday, Nov. 13, 2014

- **Co-mediation and Multi-party Disputes**

Class 26: Monday, Nov. 17, 2014

- **Core Values: Impartiality**

Class 27: Thursday, Nov. 20, 2014

- **Core Values: Confidentiality**

No Classes: Nov. 24, 2014 to Nov. 28, 2014:- Thanksgiving Break

Class 28: Monday, Dec. 1, 2014

- **Wrap-up**

Dec. 4: All final mediations end.

Practice Mediation Triads:

<insert practice triads>

Persons whose names are highlighted in yellow will be the mediator in the 1st practice mediation.

Persons whose names are highlighted in pink will be the mediator in the 2d practice mediation.

Persons whose names are not highlighted will be the mediator in the 3d practice mediation.

Plan your practice mediations so the co-mediators assigned to weeks Oct. 28 and Nov. 8 have completed a practice mediation before their final co-mediation occurs (Those persons highlighted in yellow).

Final Co-Mediation Pairings

The co-mediation teams set out below will mediate during the week of:

Nov. 3 to Nov. 9:

Nov. 18 to 21 (or the week of Thanksgiving if your parties are all in Grundy):

Dec. 1 to Dec. 4 (or the week of Thanksgiving if your parties are all in Grundy):

Final Mediations

The 1Ls and 2Ls serving as parties will get community service or class fishbowl credit (or both).

You may schedule the final mediations on Saturday or Sunday, and in the evenings, if that time is more convenient for the parties.

Secure the date of your final mediation on a first-come, first-served basis. I will post a sign up sheet on TWEN. Be forewarned, getting all parties to agree on a date is like “herding cats.” Start early and be persistent. Let me know if I need to intervene with uncooperative parties.

For the final mediations, we can use my dining room, reserve one of the conference rooms, reserve one of the classrooms, use the common area outside my office, and use church conference rooms. You can be creative, as long as you don’t make it too hard on parties (and Prof. Young) to get to the location.