

# MEDIATION CLINIC

## Orientation and Procedures Manual

Fall 2019

*< Rev. 9/23/19 – includes updated Appendix  
with 2019 scheduling letter and FAQ >*

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APPENDIX: Sample CHRO Mediation Scheduling Letter

## **1. WELCOME AND LEARNING OUTCOMES**

Welcome to the Mediation Clinic! Founded in 1994, the Clinic is a one-semester, five-credit practicum in which you will mediate actual employment discrimination cases, under faculty supervision, while being trained intensively in the theory and practice of mediation. By the end of the semester you will be able to:

- 1) Demonstrate and deploy generic analytic, listening, questioning, and persuasion skills that are fundamental not only to mediation but also to client representation and the practice of law generally.
- 2) Analyze the merits and conflict dynamics of an employment discrimination case, prepare to mediate it, and conduct the mediation with a partner.
- 3) Demonstrate awareness of your own biases and take the perspective of others, in order to practice law with a more problem-solving orientation and more reliable and dispassionate judgment.
- 4) Reflect on and learn from your experience, by engaging in systematic self-evaluation and –critique, to continuously improve your own performance.
- 5) Articulate the benefits and limitations of mediation, when counseling clients or serving in other professional roles, so that more informed choices about dispute resolution systems can be made.

## **2. OVERVIEW OF THE CLINIC**

The Clinic has two basic components: seminar and fieldwork. The seminar portion is heavily focused on exercises and simulations and requires a much higher degree of preparation and participation than a typical law school seminar. The fieldwork portion consists of the mediations you will conduct in employment discrimination cases pending before the Connecticut Commission on Human Rights and Opportunities (CHRO), as well as your extensive preparation for, and post-mediation reflection on, those mediations.

A detailed syllabus will be provided separately; it is summarized here. The first six weeks of the semester are devoted entirely to seminar meetings. During this “boot camp,” you will be trained intensively in the theory, skills and techniques of mediation. You will also be provided a basic introduction to employment discrimination law and practice. During this six-week period, classes meet twice a week, on Tuesday and Thursday afternoons from 2:00-5:00. These classes typically require extensive preparation, including substantial reading, viewing of video segments, and preparation for in-class exercises. Class meetings are devoted to discussion and role-play exercises, culminating (during Week # 6, the first week in October) in two, full-dress, mock employment discrimination mediations in which each student will play the role of a mediator and a disputant (in separate simulations) before doing any actual mediating.

In Week # 7 (October 9-11), students will engage in detailed planning for their first assigned

mediations. One or both classes that week may be set aside for individually scheduled supervisory meetings in order to help you get ready.

Thereafter, beginning in Week # 8 (October 14-18), students will begin mediating cases pending before the CHRO. All mediations will be conducted at the Law School in library group study rooms that we reserve for the purpose. Students will work in teams of two. All mediations will be observed and supervised by a faculty member. Students will be required to submit detailed planning memos before each mediation to their supervisor for that case (see § 5(c) below) and, afterward, written self-assessments critically reflecting on the team's performance (see § 5(e) below). The self-assessments will serve as the basis for discussion in subsequent feedback meetings with supervisors.

Mediations will be scheduled on Tuesday afternoons (in lieu of class) and Fridays. *Therefore, you should continue to keep Tuesday afternoons, and either Friday mornings or afternoons, or both, open.* (We will ask you to declare your Friday availability at the beginning of the semester.) Teams will not have a mediation every week but will conduct three mediations over the course of the semester. These mediations will be spaced as evenly as possible given the vagaries of scheduling.

During the fieldwork portion of the course (i.e., from Week # 8 on), classes will continue to meet but on Thursdays only. In most of these classes, students will make presentations and lead "rounds" discussions on issues that arose in their mediations. We will also continue to work on mediation skills as well as discuss topics – such as the ethics of mediation and representing clients in mediation – that we won't have had time to cover in the first seven weeks of the semester.

### **3. CLINIC FACULTY AND STAFF**

The Clinic will be taught in Fall 2019 by Professors James Stark and Paul Chill along with Adjunct Professor Matthew Horowitz. Jim is the founder of the Mediation Clinic and has been a faculty member here since 1979. (For more information, see his faculty biography at <http://www.law.uconn.edu/faculty/profiles/james-h-stark>.) Paul, who currently serves as the Law School's Associate Dean for Clinical and Experiential Education, supervised various clinical programs focusing on child protection, civil rights, disability, and mental health law, before teaming up with Jim in 2012. (See <http://www.law.uconn.edu/faculty/profiles/paul-chill>.) Matt is an experienced civil litigator with substantial experience representing clients in commercial mediations. Currently a partner in the Hartford law firm of Wolf, Horowitz & Etlinger (see <http://www.wolfhorowitz.com/attorneys/index.htm>), Matt joins the Mediation Clinic faculty this fall for the fourth time.

Hannah Kalichman, a 3L, will serve as the Clinic's TA. Hannah, who did outstanding work in the Clinic as a student last fall, will primarily be responsible for scheduling mediations but will perform other functions as needed and participate in most classes. Detailed contact information for all Clinic faculty, staff and students will be provided once the semester begins.

## 4. SEMINAR MEETINGS

### (a) Materials

The primary text for the course is Frenkel & Stark, The Practice of Mediation: A Video-Integrated Text (Wolters Kluwer, 3rd ed. 2018). From time to time, additional handouts and short articles will be distributed in class and/or made available via TWEN.

The Frenkel & Stark book comes with a license to access online video – viewing of which is essential Clinic homework -- that expires after one year. The third edition is less than a year old, so there aren't too many used copies available, but if you are considering purchasing one, *make sure it comes with video access that will last through the end of the semester*. Otherwise you risk receiving a copy with expiring video access or no video access at all. (We strongly urge you not to purchase the second edition of the book, because the third edition text and video have been significantly altered and expanded.) Professor Stark donates all proceeds from the sale of his book/video to UConn students to a Law School scholarship fund.

### (b) Times and Location

As previously stated, for the first six or seven weeks of the semester, class will meet on Tuesday and Thursday afternoons from 2:00-5:00. Our classes meet in Library 422. Thereafter, class will meet on Thursday afternoons only, but as previously indicated you should keep Tuesday afternoons, as well as Friday mornings and/or afternoons, open for CHRO mediations.

### (c) Attendance and Participation

*Regular and punctual class attendance and participation are required and are critical to your success in the Clinic.* There are several reasons for this:

- Role-play exercises, which take place in many classes, cannot be conducted successfully if students are late or absent. Thus, showing up late (or not at all) may disadvantage other people and negatively affect the classroom experience as a whole.
- When you miss a class, you may miss a critical opportunity to practice a foundational mediation skill that cannot be replicated by listening to a recording of the class.
- The emphasis in many classes will be on discussing mediation experiences so that everyone can learn from them (see § 4(e), "Case Rounds"). Students need to be present and actively participating for this to happen.
- Showing up, and showing up on time, is an aspect of professionalism, and essential as you begin to make the transition in this Clinic from student to attorney.

We nevertheless recognize that students sometimes cannot avoid missing all or part of a class. *If that happens, please send Paul and Jim an email notifying them of the date of and reason for your expected absence, as far ahead of time as possible.* Occasionally students know that they

will have to miss a class but have some flexibility in terms of days/dates. If that happens, please discuss with Jim and Paul which class would be the least detrimental for you to miss.

#### **(d) Preparation**

As previously stated, classes typically require extensive preparation, including substantial reading, viewing of video segments, and preparation for in-class exercises. Because of the sequencing of material, it often won't be possible to prepare in advance. Therefore, you should be sure to budget sufficient time to prepare for each class, especially during the short window between Tuesday and Thursday afternoon classes.

#### **(e) Case Rounds**

Starting on Thursday, October 17, in addition to whatever substantive topics or skills we are covering, a significant portion of each class will be devoted to "case rounds." These have been described as "the signature pedagogy of clinical legal education." Students will make two different types of rounds presentations. In one, a team will simply provide a brief report (i.e., 5-10 minutes) on a recent mediation of theirs and respond to any questions raised by class members. In the other, a team will seek the class's input on a specific issue with which they are grappling in preparing for a mediation, or that they found difficult or interesting in a recent one. Both types of rounds presentations may occur in the same class. Faculty supervisors will help teams decide which is the most appropriate for a particular mediation and will work with the team to develop the specific content. We expect each team to make multiple rounds presentations over the course of the second half of the semester (although not every mediation will be the subject of one).

A key part of both types of rounds presentations – indeed, the very essence of the first – is a succinct description of the case. Being able to summarize a complex set of facts in 5-10 minutes, to an audience unfamiliar with them, is a critical lawyering skill. It requires significant preparation – you must carefully consider what information your classmates absolutely need, on the one hand, and which of the almost limitless number of details can be omitted, on the other. You must make decisions about the points to be emphasized and the sequencing of information. Fundamentally, *you must put yourself in the shoes of your audience* – which (not coincidentally) may be THE most fundamental lawyering skill.

In the first type of rounds presentation, after the presenters summarize the case, a few minutes of Q&A typically follow. In the second type (i.e., the issue-focused type), the presenters then proceed to "tee up" the specific question(s) to be discussed. The questions can relate to any skill, ethics, role, or other issues that the presenters have found challenging, interesting, or surprising. Anything that would raise fruitful issues for class discussion is fair game. The goal should be to facilitate everyone's learning from the presenters' own experience.

Ideally, this type of rounds presentation addresses issues that are still "live," so that class discussion can actually assist in resolving them. When this is not possible (as is often the case),

presenters should consider depicting the issue *as if it were* still live, by withholding information about what they *actually* did until the end. For topics that are not “live,” the best learning often occurs when discussing things that did NOT go well during a mediation, and the presenters candidly seek the advice of their classmates on how things might have gone better. Frank discussions like these tend to build group morale and aid learning by generating a spirit of open and honest reflection.

Prior to any rounds presentation, the team will be asked to email a draft outline to Jim and Paul (and Matt if he is their supervisor on the case). If possible, this should be done sufficiently ahead of time so that the outline can be revised and refined in response to feedback. The best rounds discussions often result from repeated back-and-forth efforts to hone the presentation.

## **5. CHRO MEDIATIONS**

### **(a) Overview**

Since the clinic's founding in 1994, students have mediated a variety of different kinds of cases in Connecticut courts and administrative agencies, including small claims cases, housing evictions, child custody matters, and consumer disputes. For the past six years, the Clinic has specialized in mediating solely CHRO employment discrimination cases.

There are several reasons why we made this switch. Having all students mediate the same kinds of cases provides a commonality to their experience that enhances class discussions and learning. These cases, moreover, are typically challenging to resolve, involving complex facts, strongly held feelings, and often lawyers (at least on the employer side). They thus require – and provide students an opportunity to practice – a broad range of mediator skills and techniques. At the same time, because the CHRO provides us access to the (often extensive) case file ahead of time, careful planning is both possible and essential. Finally, because the parties are required by statute to attend these mediations (see below) and the CHRO allows us to schedule them when and where we want, we are able to hold them in pleasant surroundings here at the Law School, with ample time to conduct a quality process, and with participants who, however reluctant they may be to engage, do not blame us for the need to be there.

As previously stated, all mediations will be conducted at the Law School in library group study rooms that we reserve for that purpose. Students will work in teams of two under the supervision of Jim, Paul or Matt. Our goal is to have each student team mediate three cases spread out over our seven-week fieldwork schedule. Mediations will be scheduled beginning the week of October 14-18, in three-and-a-half-hour blocks, on Tuesday afternoons and Friday mornings and afternoons.

An overarching goal of the clinic is to foster habits of reflective practice that will be important to you as a lawyer: the habits of planning well for complex lawyering events, and then reflecting deeply and self-critically on your own performance. Therefore, you will be required to carefully plan for and debrief each of your mediations. Before each mediation, you and your partner will

prepare a detailed, joint planning memo after reviewing the file and making preliminary contact with the parties. You will submit your first draft of this memo to your supervisor and subsequently meet with him to review and revise it as necessary and make final plans for the mediation. (Especially in the beginning, these memos often go through two or three or more drafts, so be prepared for that.) After the mediation, each of you will prepare and submit separate, detailed reflective memos that will serve as the basis for a debriefing meeting with your supervisor. At the end of the semester, when you submit your “capstone” memo (see § 6 below), we will ask you to resubmit all your planning and reflective memos – *including all drafts of the former, with supervisory comments* – so be sure to save these.

Finally, you will be required to keep and submit records of all time spent preparing for, conducting, debriefing, and following up on CHRO mediations. We do this in part because ABA accreditation standards (and Law School policy) require us to ensure that students put in at least 42.5 hours of “engagement” for each credit earned. (Don’t worry; we have structured things so that you will easily satisfy this.) But requiring you to keep time records also serves two other purposes. First, it is good preparation for practice, since lawyers in many if not most types of practice must keep detailed time records. Second, it provides us with valuable information about how much time the mediations are demanding of students, and exactly how students are spending that time. We know the Clinic is a lot of work, and having this information enables us to make better decisions from year-to-year about such things as the overall credit allocation, how many mediations to assign, etc.

### **(b) Case Selection, Scheduling and Assignment**

The Mediation Clinic receives the cases it mediates from the Connecticut Commission on Human Rights and Opportunities (CHRO), the state agency that investigates claims of employment discrimination in Connecticut – and to which most such claims must be brought as a prerequisite to filing suit in state or federal court. By law, the CHRO must conduct a mediation conference within 60 days after a discrimination complaint survives an initial screening known as a “case assessment review,” or “CAR.” The CHRO delegates certain of these mandatory mediations to the Clinic each semester it is offered.

Clinic faculty work with the CHRO’s Principal Attorney to select cases appropriate for our program. We generally prefer to mediate cases arising in or near the CHRO’s Hartford region (to minimize the distance parties and their lawyers must travel) and ideally that involve some ongoing relationship between the parties (to broaden the potential mediable issues). But these preferences often must give way to the needs of the agency, which has an overwhelming caseload it must process under strict statutory timelines. Thus, as a practical matter, the cases we wind up with may be whichever ones are in a proper procedural posture for the CHRO to give us at a particular moment. At a minimum, we screen all prospective cases to weed out those that are not truly employment matters (occasionally some aren’t), those which are likely to be unmediable because of some over-arching jurisdictional or other dispute, and those that would present a conflict of interest for the Clinic to handle (a very rare occurrence).

The CHRO provides us with a more-or-less complete electronic copy of its file in each case we mediate. This includes at a minimum the complaint filed by the “complainant” (the CHRO’s term for the plaintiff); the answer filed by the “respondent” (the CHRO’s term for the defendant); the complainant’s reply to the answer, if any; the respondent’s answer to certain standard interrogatories that the CHRO propounds, known as “Schedule A”; all exhibits to the aforementioned documents; any correspondence with, or legal argument directed to, the CHRO; and sometimes other documents as well. (CHRO files are sometimes voluminous, and for that reason they don’t always send us every document in the file; occasionally we find that they have not sent us an important document, and we must scramble to obtain it at the last minute.) All casefile documents received from the CHRO are uploaded to TWEN for easy access by Clinic students and supervisors. In addition, we will print hard copies of files for students upon request.

Scheduling of mediations is handled by the Clinic TA. This has proven in the past to be a surprisingly – and often maddeningly – complex process. Last year, in an effort to streamline the process, we began attempting to schedule all mediations for one of three specific times: as previously indicated, Tuesday afternoons, Friday mornings, and Friday afternoons. We will do the same thing this year. Yet given the busy schedules of most lawyers (and some parties), and the inevitable requests for rescheduling, some flexibility on your part may be required. For example, some mediations may not wind up being firmly scheduled until as little as a week in advance (we will never give you less notice than that). It may even be necessary occasionally to schedule a mediation on other than a Tuesday or a Friday. In all such cases, we will work closely with you to minimize any inconvenience.

The TA will send out initial scheduling letters to the parties or their counsel, over her signature, and will handle email and telephone requests for rescheduling as well as requests from *pro se* parties for information about the mediation process when these occur. Once a team is assigned a given mediation, the TA will forward to the team and its supervisor for that mediation a complete record of the TA’s communications with the parties and their counsel, if any, regarding scheduling and any other preliminary issues that arose. At that point, the responsibility for communicating with the parties shifts to the team handling the mediation. This includes any further scheduling and logistical issues as well as preliminary information gathering. (See following section.)

### **(c) Planning Memos and Meetings**

To prepare for each mediation, you must work out a planning schedule with your supervisor. This will vary greatly depending on how far in advance of the mediation you have been assigned to it, which can range from as little as a week to several weeks. In establishing a planning schedule, the goal is to choose a date for submission to your supervisor of a first draft of your team’s joint planning memo that allows as much time as possible for subsequent feedback and revision. Planning memos have been known to go through as many as 3-4 drafts, especially early in the semester.

After submitting the draft planning memo, the team will meet with their supervisor to go over it. (A date and time for this meeting should also be selected at the outset.) How much lead time supervisors need to review the planning memo will vary by supervisor as well as the exigencies of the moment. Supervisors may or may not provide written feedback on the first draft and any subsequent drafts. (There are three supervisors with three somewhat different supervisory styles.) How many such drafts, and/or additional supervisory meetings, are required will be determined by the complexity of the case and the quality of the drafts, among other factors. *(Note: all drafts, including drafts containing your supervisor's comments, should be preserved until the end of the course; see § 6 below.)*

To develop a mediation plan, start by carefully reviewing the pleadings, exhibits and other documents contained in the electronic CHRO file on TWEN. *(Important note: if you suspect that we are missing any exhibits, please notify your supervisor and co-mediator immediately so that we can obtain them from CHRO.)* Then do whatever case-related legal research you deem necessary, starting with the Mediation Clinic Employment Discrimination Handbook and doing any additional research that may be required.

Planning memos should be written jointly and submitted to your supervisor. (The means of submission, typically email or Google Docs, should be worked out in advance with your supervisor). Planning memos are typically 5-6 pages in length double-spaced (3-4 pages single-spaced), although they may be longer in particular cases. There is no prescribed form for planning memos, except that they should clearly delineate and address each of the categories below.<sup>1</sup>

Planning memos should:

- 1) Summarize the essential facts of the case.
- 2) Analyze the legal merits. In setting forth your legal analysis, avoid a lengthy explication of the McDonnell-Douglas test and the general legal framework (whether it be Title VII, the ADA, etc.). Focus instead on the *specific* claims and defenses, and especially the *evidence* that exists, or may exist, to support them (or not).
- 3) Develop a list of possible topics to explore and an order for exploring them. Indicate which topics you believe should be explored in joint session and which might be better reserved for caucus. Consider both party-centered and mediator-driven topics. Remember that although it is desirable to begin with party-centered questions, time is limited, and lawyers will be looking to you to inquire about legally salient topics – and you will enhance your credibility as mediators by moving fairly quickly into them.

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1. Samples of some effective planning memos from previous years will be posted on TWEN. They are provided as examples of good *content* but need not necessarily guide you in terms of form.

- 4) Formulate actual questions, and lines of questions, to ask within each topic. Be sure to include questions for both parties within each topic, to ensure that you appear fair and balanced.
- 5) Anticipate possible barriers to resolution, both related and unrelated to the merits of the dispute, and consider what steps you might take in the mediation to overcome them.
- 6) Anticipate as best you can what the negotiation issues will be and, if more than one, consider an agenda for exploring them.
- 7) Develop a list of possible persuasive interventions that offer hope of moving the parties off their stances, and a proposed order for attempting them.
- 8) Consider, to the extent you can, how much of the mediation will be conducted in joint session and caucus, and why.
- 9) Plan for co-mediation, tentatively deciding which of you is going to take primary responsibility for which tasks.
- 10) Address what specific information will be conveyed, and what will be sought, in pre-mediation contacts with the parties and/or counsel (see § 5(d) below).

Don't assume that equal amounts of time or space need be devoted to each of these topics. For example, analyzing the merits of the dispute will usually take you a considerable amount of time, and conveying the results of your analysis may easily take a page or more. Conversely, in many employment discrimination cases, there are only one or two negotiation issues and, although you should think expansively about these and plan creatively, this topic will usually require considerably less time and space.

#### **(d) Pre-Mediation Contacts**

At the initial planning meeting, a specific plan for making contact with the parties or their counsel should be established. Such contacts should take place, if possible, at least a week before the mediation. (Sometimes this may not be possible because of the timing or difficulty reaching a party or lawyer.)

At the very least, these contacts should be used for *process* purposes to:

- 1) Verify that the parties have transportation and are planning to attend the mediation on the date and time indicated in the scheduling letter.
- 2) Ensure that the parties know what a mediation is, how you tentatively plan to conduct it, and what documents if any they should bring for purposes of proving (or refuting) liability or damages.
- 3) Discuss what other persons, if any, might be attending the mediation with the person contacted.

- 4) Remind the parties of the information in the scheduling letter about what to do when they get to the Law School, to wit: proceed to the library; inform the employee at the front desk that they are here for a mediation; and then take a seat in the adjacent lounge area or the cafeteria. *Also remind them to review the parking information they received with the scheduling letter.*

In addition, you are encouraged to use these pre-mediation contacts for *diagnostic and negotiation* purposes to:

- 5) Probe for the parties' general attitudes about early settlement efforts.
- 6) Get a sense of what barriers, beyond merits-based barriers, each side anticipates to resolution.
- 7) Seek a preliminary sense of what each wants to achieve in mediation and what their bargaining range may be for the process. For complainants, this will almost always entail discussing facts relating to damages alleged to result from the employer's claimed discriminatory conduct: whether and when the complainant secured another job; what income has been earned from that position; whether the complainant has received unemployment benefits and, if so, for how many weeks; etc. This information is never part of the file, and it is difficult to plan for the bargaining stage of the process without knowing the complainant's actual damages.

In general, consider these conversations a kind of pre-mediation caucus with each party, designed to make your in-person discussions more efficient and fruitful. You should reassure the parties that any information they provide to you in these conversations will be kept completely confidential, unless they give you explicit permission to disclose it to the other side.

### **(e) Mediation-Day Logistics**

On the day your mediation is scheduled, logistics can get quite complicated, with the various parties and lawyers arriving at different times, in various states of readiness and/or confusion, etc. In order to facilitate a smooth transition and minimize anxiety for all involved, we have established the following standard procedure that should be followed unless explicitly agreed otherwise with your supervisor:

- 1) Plan to arrive at the library early enough to ensure that both the main mediation and caucus rooms are fully set up at least 15 minutes before the scheduled mediation start time. (People sometimes arrive early.) Proper set-up includes: arranging the furniture as you deem appropriate; setting out water bottles and snacks (which we provide for participants); and posting room signs. You should arrange beforehand with your supervisor who will pick up the water and snacks from Jim's or Paul's office; a form for room signs is posted on TWEN.
- 2) At least 30 minutes before the scheduled start-time, inform the library employee at the front desk that people will be arriving shortly for a mediation. Ask the employee to

direct all participants to the lounge area or cafeteria. (Be sure to treat the employee with appropriate courtesy and professionalism; they are doing us a favor, not vice versa.)

- 3) If you like, one of the mediators can give their cell phone number to the front-desk employee and ask to be called or texted when the first participants arrive. Alternatively, one of the mediators can simply come downstairs periodically to check and see if anyone has arrived.
- 4) Escort the first side that arrives to the caucus room and allow them to get settled there. If a party and their lawyer do not arrive together, you can escort the first person upstairs and later the other, or have the first person wait downstairs until the other arrives.
- 5) When the other side has arrived (and all participants are present in the building), escort them to the main mediation room and allow them to get seated and comfortable before bringing in the other side.
- 6) Avoid bringing any participants into the main mediation room before you are ready to start the joint session, unless you specifically wish to caucus with them first – since this will in effect be a caucus, and it will feel awkward unless you have specific business to transact.

**(f) Reflection and Debriefing**

Following the conclusion of each mediation, each STUDENT must submit a reflective memo of about 4-5 pages in length (double-spaced; 2-3 pages if you single-space) analyzing the mediation and proposing topics you'd like to discuss with your co-mediator and supervisor. *Unless explicitly agreed otherwise with your supervisor, this reflective memo should be emailed to your co-mediator and supervisor, as well as to Jim and to Paul (even if they were not your supervisor), within 48 hours of the conclusion of the mediation.*

Think of this memo as an “invitation to a conversation” in which you:

- 1) Analyze what went well and didn't go well in the mediation. Start with the positives. Be as specific and concrete as you can.
- 2) Discuss the choices you made, why you made them, and what different choices you might have made given the benefit of hindsight.
- 3) Consider important tactical, role or ethical issues that arose during the mediation or are raised by it; and invite the comments and reactions of your co-mediator and supervisor on these questions.
- 4) Evaluate your overall performance, challenges and growth in light of the evaluation criteria listed in Part 7, below.

Do not feel obliged to address each of the topics above or give them equal time and space. Your comments may address any topics in the course or the book that you think were important in that week's mediation, from planning and diagnostic challenges, to teaming problems, to anything else (mediator openings, process control, information development, persuasion and problem-solving, maintaining impartiality and neutrality, etc.) that pertains to your skill and role development as a mediator. The main point is to identify the topics each week that are most important to *you* to discuss in the limited time we will have together. Some thoughtful examples from last year will also be posted on TWEN.

Once you have submitted your memo (see submission mechanics below), you and your co-mediator should meet or otherwise communicate with each other and come up with a composite agenda of topics you wish to discuss with us when we meet. (To increase the pool of ideas for discussion, we ask you to complete your reflective memo on your own first.) When we meet, like good mediators we will explore all the issues you want to raise in an "interviewee-centered" way first before addressing any ("mediator-centered") topics of our own, if we do that at all. Because we have the freedom to watch you and take lots of notes, we may be able to comment on small matters of language and execution of which you might be unaware (e.g., *"Don't forget to ask each party what information you can share or not share at the end of each caucus."*) But, as valuable as that kind of instructor-generated feedback may be, the main purpose of these meetings is to encourage you to generate your own thoughtful critique of your own work.

Occasions may arise when we will excuse you from writing a reflective memo about a particular mediation. For example, if a disputant storms out, insisting on having her case investigated by a CHRO investigator after only 20-30 minutes of mediating, it may well be more efficient to meet then and there and bat around ideas about whether there was anything we could have done differently to prevent that outcome. At the end of most mediations, however, we will try to make a time certain to meet with you within the week to discuss your reflections and ours.

### **(g) External Telephone and Email Protocols**

Before (and often after) conducting a mediation, you will have occasion to communicate with parties, lawyers, and others by telephone and/or email. This section outlines our Clinic protocols with respect to such contacts. When you communicate with people outside the Law School, you are representing not only yourself and the Clinic, but also the Law School and indeed the University. Thus we expect you to exercise the utmost professionalism in both the form and content of all oral and written communications.

#### **Telephone Protocol**

- 1) Some of your telephone contacts with persons outside the clinic will be supervised; many will be conducted with your partner or on your own. Before contacting a party or lawyer, *you should reach an explicit understanding with your partner and your supervisor as to how phone contacts in a particular case will be handled.*

- 2) If you are comfortable giving your personal phone number to a party or lawyer, you may do so. If you use your own phone to make a call and do not want the other person to have your number, you can block it by dialing \*67 before the other person's number.
- 3) If you do not want to give your phone number to a party or lawyer, you may give him or her the Mediation Clinic number (860-570-5115). The clinic TA monitors the voicemail box for that line and will contact you promptly when a message comes in for you. If you are expecting a particular call and it is urgent that you be notified quickly when it does, you should send the TA an email to that effect.
- 4) Jim and Paul have speakerphones in their offices. Certain other speakerphones on campus may be used with sufficient notice to Jim or Paul.
- 5) All non-trivial phone contacts should be documented by an email to your partner and supervisor.

### Email Protocol

All non-trivial emails addressed to persons outside the Clinic must:

- 1) Be reviewed and approved by your supervisor, unless explicitly agreed otherwise.
- 2) Copy or blind-copy your partner and supervisor, unless explicitly agreed otherwise.
- 3) Be sent from your uconn.edu account, not a personal email account.
- 4) Include a signature block in the following format:

Jane Smith (jane.smith@uconn.edu)  
John Brown (john.brown@uconn.edu)  
*Certified Legal Interns*

James Stark (james.stark@uconn.edu)  
*Supervising Attorney*

UConn Law School Mediation Clinic  
65 Elizabeth Street  
Hartford, CT 06105  
Tel. (860) 570-5115  
Fax (860) 570-5242  
UConnLawMediationClinic@gmail.com

In addition, you are strongly encouraged to follow the proscriptions of the article posted on TWEN on how to "E-Mail Like a Lawyer."

## 6. CAPSTONE MEMOS

At the end of the semester, you will be required to submit a capstone memo of about 5-6 pages in length double-spaced (3-4 pages single-spaced) reflecting upon your overall experience in the clinic. As previously stated, included with this memo should be a cumulative, paginated, hard-copy document containing in chronological order all your planning and reflective memos (*including drafts of the former with instructor comments*). These documents are due by no later than Thursday, Dec. 19 (i.e., the last day of exams). Further information about how to approach writing the capstone memo, as well as submission mechanics, will be forthcoming later in the semester.

## 7. GRADING AND EVALUATION

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

- 1) Skills Development (50%): To what extent have you developed the basic diagnostic, communication, organizational, and problem-solving/persuasion skills necessary to be an effective mediator? This includes all the mediation skills and techniques laid out in the text, including effective listening and questioning; diagnosing conflict effectively so as to be able to intervene appropriately; recognizing and neutrally framing negotiation issues and formulating a workable agenda; effective persuasion, including clear and appropriate legal evaluation; and assisting parties effectively with problem-solving, negotiation and resolving impasses.
- 2) Educational Responsibility (30%): To what extent have you taken advantage of the learning opportunities offered by the clinic? This includes mastering employment discrimination law and procedure sufficient to be effective in your mediations; developing effective methods of self-critique; applying the theoretical readings to analysis of your own mediations; working effectively with your co-mediator, supervisor, and other classmates; being present, on time, and well prepared for all classes, role-plays and simulations; participating actively and thoughtfully as a seminar participant; and planning and leading effective rounds discussions.
- 3) Professional Responsibility (20%): How well have you demonstrated professional responsibility in the course? This includes planning well for your mediations; working effectively with your co-mediator on allocation of responsibilities; being alert to, and initiating discussions of, ethical issues as they arose in your mediations; maintaining appropriate relationships with disputants and agency officials and staff; and showing initiative and being punctual with regard to mediations, appointments and assignments.

# APPENDIX: Sample CHRO Mediation Scheduling Letter



SCHOOL OF LAW  
MEDIATION CLINIC

September 17, 2019

[REDACTED]  
[REDACTED]  
Waterbury, CT 06708

[REDACTED]@icloud.com

[REDACTED]  
[REDACTED]  
[REDACTED]  
Hartford, CT 06105

(860) [REDACTED]  
[REDACTED]@ct.edu

Re: [REDACTED]  
CHRO Case # [REDACTED]

Dear Parties:

You were recently notified by the CHRO that this case has been retained for further processing based on the agency's initial Case Assessment Review (CAR). **By law, a mandatory mediation must be scheduled within 60 days of that decision.** The CHRO has designated the UConn Law School Mediation Clinic to conduct the mandatory mediation in this case. We have scheduled the mediation as follows:

Date: **Tuesday, November 5, 2019**

Time: **1:30pm-5:00pm**

Place: UConn Law School Library, 39 Elizabeth Street, Hartford, CT 06105

If it is impossible for you to be present on that day and time due to an important prior commitment, **your alternative date is Friday, November 8, 2019 from 9:30am-1:00pm.** *You must immediately contact the Mediation Clinic, at the phone number or (preferably) the email address below, to confirm your availability, or indicate your unavailability, on the listed dates.* That will expedite rescheduling in the event it becomes necessary.

Answers to some frequently asked questions are attached, along with directions to UConn Law School and parking instructions. If you have any questions after reviewing those attachments, please don't hesitate to contact me.

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Notice of Mandatory Mediation  
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Thank you for your prompt attention to this matter.

Sincerely,

Hannah Kalichman

*Certified Legal Intern*

Mediation Clinic Program Assistant

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University of Connecticut School of Law  
Mediation Clinic

### CHRO Mandatory Mediations: Frequently Asked Questions

#### 1. What is Mediation?

Mediation is an informal process in which a neutral person(s) – the mediator – tries to help parties to a dispute reach agreement. Mediations occur in many different contexts, and there are many different kinds of mediators and mediations. Their main common feature is that *mediators do not decide anything* – the parties are free to reach an agreement or not, and if so, on whatever terms they choose.

#### 2. Why Is This Mediation "Mandatory"?

It's mandatory because of a law passed by the Connecticut legislature in 2011. That law says the CHRO must schedule a mediation within 60 days of completing its Case Assessment Review, or "CAR."

#### 3. What Does It Mean That The CHRO Has Decided To "Retain This Case For Further Processing" Based on the CAR?

You should have already received a letter from the CHRO about the CAR. The CAR is a process in which the CHRO decides whether a case says enough *on paper* to allow it to proceed. If the CHRO allows a case to proceed, that does not mean the CHRO thinks the case will win. It is not a high bar; all it means is that the CHRO has decided there is enough on paper for the case not to be thrown out at the very beginning.

#### 4. Who Must Attend The Mediation? Who Can Attend?

Both the Complainant and the Respondent must attend. (The Complainant is the person who filed the complaint; the Respondent is the person against whom the complaint was filed.) If the Respondent is a company or other organization, someone who knows about the case and has the authority to settle it must attend. Both sides may bring their lawyers, if they have one. (You don't have to have a lawyer.) No one else is automatically allowed to attend. If there is someone else you want to bring to the mediation, you should talk to the mediators about this when they contact you (see Question # 13 below).

#### 5. What Will Happen If I Don't Attend The Mediation?

If the Complainant fails to attend the mediation without a very good reason, the CHRO can dismiss (throw out) the case. If the Respondent fails to attend without a very good reason, the CHRO can grant a default judgment for the Complainant, which means the Complainant wins.

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### 6. Who Are The Mediators?

The CHRO has designated the UConn Law School Mediation Clinic to conduct this mediation. Your mediators will be specially trained second- and third-year law students ("Certified Legal Interns") who are part of the Mediation Clinic. They will be supervised by a professor, who is an experienced lawyer-mediator. The mediators are *neutral* – they are not for or against either party. They are there to help you try to settle your case and thereby avoid further litigation, inconvenience and expense.

### 7. How Long Will The Mediation Last?

Your mediation has been scheduled for three-and-a-half hours. It may not take that long, but it frequently does, and sometimes longer if the parties are available to stay.

### 8. What Will Happen At The Mediation?

At the mediation, the mediators will introduce themselves and those present. They will then explain how the mediation process works and what is going to happen. Each side will then be given a few minutes to tell their side of the story, without interruption. After that, the mediators will start asking questions. (The mediators will have read the entire CHRO file carefully and will be very familiar with the case.) At some point, the mediators may step out of the room to discuss something among themselves. This is very common in mediations, and you should not be alarmed or upset if and when it happens. Also, at some point the mediators will probably meet separately with each side. This is called a "caucus" and again is very common in mediations.

### 9. Is What I Say At The Mediation Conference Confidential?

The mediators won't tell the CHRO (or anyone else) what anyone said before, during, or after the mediation conference unless ordered to do so by a judge, which is almost unheard of. And when the mediators meet with you in "caucus," as explained above, they won't tell the other side anything you say to them privately without your permission. There is nothing preventing the *parties* from later on telling other people about what happened at the mediation conference. However, sometimes as part of a settlement, the parties agree not to tell anyone about the terms of the settlement or to say bad things about the other side.

### 10. What Will Happen If I Do Reach A Settlement?

If a settlement is reached, the mediators will help you write up a summary of the essential terms of your agreement. (This is to ensure there are no disagreements going forward about what you have agreed to.) It's up to the parties what to do after that. Usually one or both sides want to write up a more formal and detailed agreement. Often money and/or other things are exchanged and, as part of the settlement, the Complainant agrees to withdraw the CHRO

## APPENDIX: Sample CHRO Mediation Scheduling Letter

complaint and not file it again. If you reach a settlement and need the mediators' help in finalizing your agreement, they will be glad to assist in this process.

### 11. What Will Happen If I Don't Reach A Settlement?

If no settlement is reached, the case will be sent back to the CHRO. We will tell the CHRO only that the mediation did not result in a settlement. We won't tell the CHRO (or anyone else) why the case didn't settle. We also won't tell anyone, as stated earlier, what was said before, during, or after the mediation. The case will then most likely proceed to the next stage of the CHRO process, which is the "investigation" or "fact-finding" stage. That process can take a very long time, sometimes as much as a year or more. That is one of the reasons why the Connecticut legislature decided to make early mediation mandatory in CHRO cases.

### 12. How Should I Prepare For The Mediation?

You should first review all the documents in your case that you have submitted to the CHRO. You should also review any other documents that are relevant to your case. (If they are important, and you have not already provided them to the CHRO, you should bring copies to the mediation conference.) Then you should think about what you want to say to the other side about your case. You should also think about what it would take for you to agree to a settlement. You should think very practically about this, but also creatively.

If you are the Complainant, a good starting point is to figure out as best you can what your monetary damages are. That means how much money you have lost due to the discrimination that you claim occurred. This includes any lost wages and other out-of-pocket losses and expenses. If you have received unemployment compensation or income from other sources that partially made up for your losses, you should subtract those sums. *It is especially important that you bring any documentation you have of your losses to the mediation conference.*

Sometimes it may also be possible to get damages in the CHRO for the "emotional harm" caused by unlawful discrimination. But this is disputed, and most such awards that are given in the CHRO process are fairly small. In addition, employers typically take the position that no unlawful discrimination occurred. If the CHRO agrees with this position (which it often does), the employer is not responsible for ANY damages.

The point is, both sides have to compromise in order to settle a CHRO case. But there are many reasons why people often do compromise. Some of the reasons are: the risk of losing if the case continues; the time, cost and aggravation of further litigation; and the certainty and closure that settlement can bring. Over the last six years, the UConn Law School Mediation Clinic has achieved an excellent record of successfully resolving discrimination cases through mediation.

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### 13. What Will Happen Next?

After both sides have confirmed their availability for the scheduled mediation date or one of the alternate dates, you will be contacted by the mediators who will mediate your case. They will give you further information about the mediation process, and you may ask them any questions you have. They may also have some questions for you. Those questions will be designed to help them understand the situation better and to make the mediation as productive as possible. Anything you say to the mediators during this conversation will be kept confidential, unless you give them permission to share it.

### 14. What Should I Do When I Arrive On The Day of The Mediation?

As stated in the letter you received with these FAQs, the mediation will take place at the UConn Law School library, which is located at 39 Elizabeth Street in Hartford. To avoid being ticketed, be sure to follow the parking instructions that were also sent to you. Follow signs to the library building (and/or consult the campus map we also provided). When you get to the library, tell the person at the front desk that you are here for a mediation, and they will direct you to the waiting area. One of your mediators will meet you shortly and escort you to the room where the mediation will be conducted.

### 15. What If I Have Questions Now?

If you have questions to which you would like answers, you may contact the Mediation Clinic Program Assistant, Hannah Kalichman (who sent you this email). You can leave a message for her by calling 860-570-5115 or emailing [UConnLawMediationClinic@gmail.com](mailto:UConnLawMediationClinic@gmail.com).



Maps & Directions

Address

55 Elizabeth Street  
Hartford, CT 06105

**Directions from I-84:**

Take Exit 46  
Turn right onto Sisson Avenue  
Continue straight through the light at Farmington Avenue, onto Sherman Street  
The Starr Hall parking lot is directly ahead

**For events in Starr Hall the best GPS address is:**

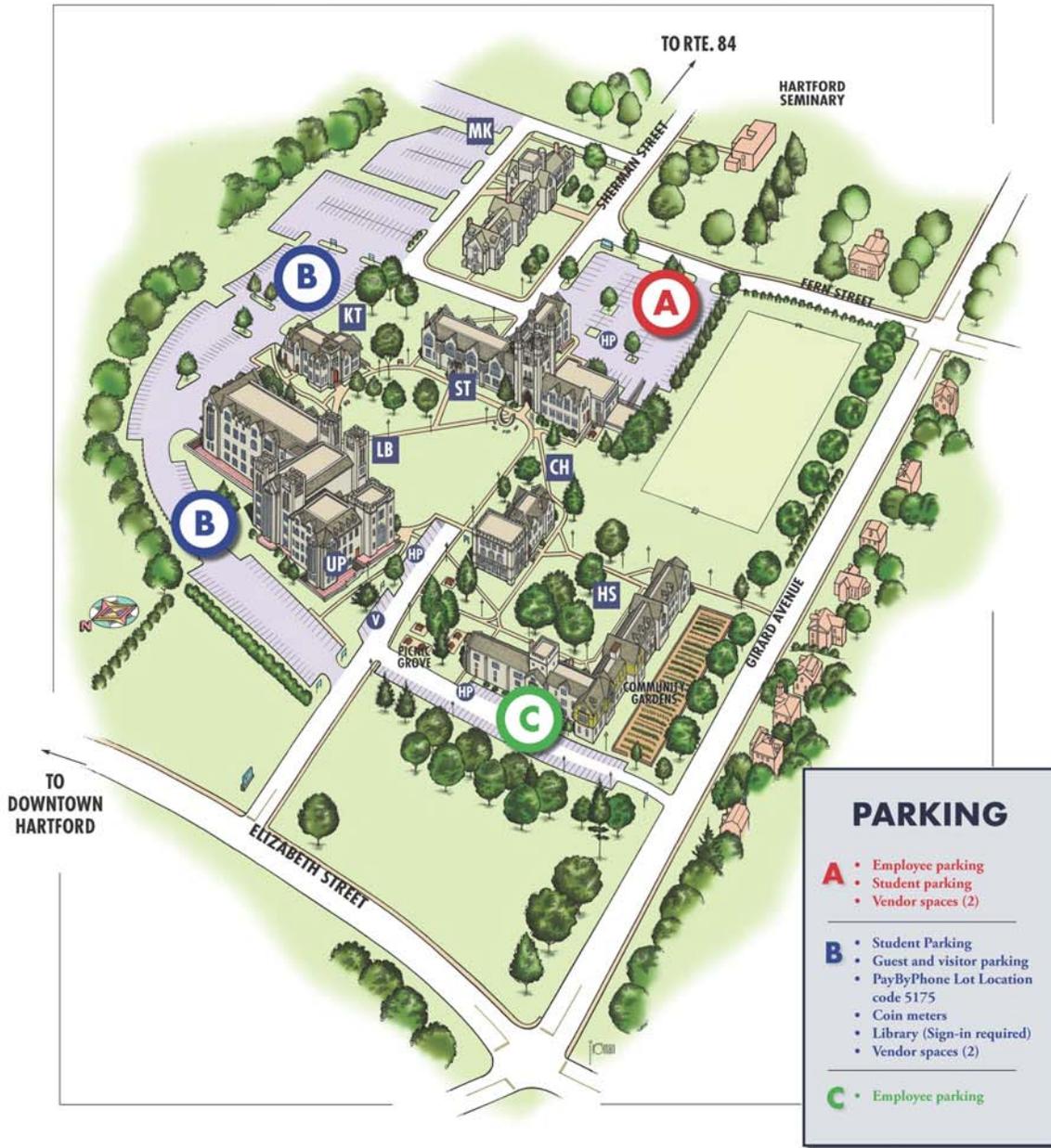
110 Sherman Street  
Hartford, CT 06105

*Note: This is the Connecticut Attorney General's office. Continue past the building and directly into the parking lot at the end of the street.*

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# UConn

SCHOOL OF LAW



**PARKING**

- A** • Employee parking
- Student parking
- Vendor spaces (2)

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- B** • Student Parking
- Guest and visitor parking
- PayByPhone Lot Location code 5175
- Coin meters
- Library (Sign-in required)
- Vendor spaces (2)

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- C** • Employee parking

ST William F. Starr Hall CH Cheryl A. Chase Hall

HS Hosmer Hall LB Library KT Knight Hall

MK MacKenzie Hall, Connecticut State Attorney General's Office

UP UConn Police Department V Visitor Parking HP Handicapped Parking

Area Map

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Driving Directions: Route I-84 to Exit 46.

Turn right onto Sisson Avenue. At the second traffic light, turn right onto Farmington Avenue and then immediately left onto Sherman Street. The Law School is directly ahead, where Sherman Street meets Fern Street.

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### Visitor Parking

Visitors to UConn School of Law who park on campus between 7 a.m. and 5 p.m. on weekdays must use designated spaces. The parking options are:

- **Metered spaces.** Parking spaces with coin-operated meters can be found in Parking Lot B, in the area behind Knight Hall.
- **Pay-by-phone.** Visitors may use their mobile phones to pay for parking anywhere in Lot B. Instructions on how to pay by phone are available on the UConn Parking Services website.
- **Accessible parking.** Spaces reserved for visitors with state-issued handicap placards or plates are available near the designated visitor spaces in Lot B and near entrances to other buildings.
- **On-street parking.** Visitors may choose to park on the city streets surrounding campus at no charge.

All other parking on campus between 7 a.m. and 5 p.m. on weekday is by permit only. The parking restrictions do not apply on nights and weekends, except that the rules for accessible parking are enforced at all times.

More information about parking for students, faculty and staff is available from UConn Parking Services.

Any questions about this policy, or about any tickets received, can be addressed to Parking Services at [parkingservices@uconn.edu](mailto:parkingservices@uconn.edu), or by calling 860-486-4930.

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