

MEDIATION



*There is no intractable problem.
-Desmond Tutu*

FALL 2010
MONDAY 2:30 – 4:30 PM
ROOM 307

Professor Anna Spain
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Course Description

This two-credit course introduces the practice and theory of mediation as a dispute resolution tool for private and public cases. The course teaches students how to mediate and how to serve as an effective advocate during the mediation process. The course focuses on the theory and practice of mediation as well as its legal, ethical and policy implications. Topics covered include conflict theory, effective communication skills, the mediation process, the practice of mediation in different contexts, dealing with impasse, international aspects and critiques. We will also consider the evolution of the mediation field and its institutionalization in courts and in the private sector.

This is an experiential learning course that integrates theory with application. Students will learn through a combination of discussions, in-class simulations and exercises that build upon the course readings. Regular attendance is expected. The four in-class simulations are mandatory and students will prepare a 1-2 page response paper following each simulation. There are no make-up assignments for missed simulations. Please plan your schedules accordingly.

Class Sessions

This course meets on Monday from 2:30-4:30 PM in Wolf Law Building Room 307. Certain classes will meet in Room 300 as indicated on the syllabus. There are 14 class sessions. There are no classes on Labor Day (September 6) or during Fall Break (November 22).

Course Materials

The casebook for this course is *Mediation: Practice, Policy and Ethics* by Menkel-Meadow, Love and Schneider (2006). Supplemental course readings are available on TWEN or, where indicated, online. I may distribute additional readings in class or by email if current events warrant.

The course outline below serves to orient the readings. Reading assignments are to be completed before class in order to prepare you to participate fully in class exercises and discussions. This is an interactive course. If you have a serious difficulty with speaking in class please notify me at the beginning of the semester.

Office Hours

Office hours are on Monday from 2:00-2:30 and on Wednesday afternoons by appointment.

Course Expectations, Final Paper & Grading

Course grades are based on the following:

1. Regular attendance and constructive class participation that demonstrates you have completed the assigned readings. (10%)
2. Participation in the four simulations. Grading is based on demonstrated improvement in skill development and your response papers. (20%)
3. Final Paper: There is a final paper in lieu of the final exam. The length requirement is 16-20 double-spaced pages using Times New Roman, 12 pt. font. You will receive separate instructions regarding the requirements for the final paper the week of September 20th. The final paper is due to the Registrar's Office by 5pm on **December 10, 2010**. (70%)
4. Grading: The CU Law School grading curve applies to this course. Grading will be blind.

Course Outline & Reading Assignments**Session 1: Introduction to Conflict Theory (Aug. 23)**

- Conflict Theory
- Effective Communication Skills
- Course Overview and Expectations

MMLS: pp. 3-11

SUPP: Holly Weeks, *Failure to Communicate: How Conversations Go Wrong and What You Can Do to Right Them* (2008) pp. 1-37.

Session 2: Understanding Disputes (Aug. 30)

**This session meets in Room 300*

- **SIMULATION (Materials will be distributed in class.)**
- Introduction to Negotiation Theory
- **Response Paper Due at the Beginning of the Next Class**

MMLS: pp. 43 (beginning with Note 2.4) -53, 57-60, 66-71, 74-76, 161-163

SUPP: Roger Fisher, William Ury and Bruce Patton, *Getting to Yes* (1991) pp. 152-187.

Session 3: The Mediation Process I (Sept. 13)

- Definitions, History, Purpose
- Good Faith Participation
- Steps in the Process
- Case Study: “Fly on the Wall”

MMLS: pp. 91-99, 301-303, 143-147, 631-637 (Appendix F)

SUPP: Ken Cloke, *Mediation Manual*.

Session 4: The Mediation Process II (Sept. 20)

- Mediation Styles
- Neutrality
- Confidentiality and Privilege
- Closing the Process
- Enforceability
- *Guest Lecture: J. Kim Wright, Esq., CuttingEdge Law*

MMLS: pp. 113-117, 343-352, 317-330, 339-340, 312-314

Session 5: Becoming a Mediator (Sept. 27)

**This session meets in Room 300*

- **SIMULATION (Materials will be distributed in class.)**
- **Response Paper Due at the Beginning of the Next Class**

MMLS: pp. 244 (See Pie Chart)

Session 6: Mediation Practice I (Oct. 4)

- Workplace Disputes
- Discrimination Disputes
- Diversity, Gender and Culture

MMLS: pp. 253-255, 290-300

Session 7: Mediation Practice II (Oct. 11)

**This session meets in Room 300*

- **SIMULATION (Materials will be distributed in class.)**
- Multi-Party Disputes
- Dealing with the Public
- **Response Paper Due at the Beginning of the Next Class**

MMLS: pp. 444-452, 465-470

Session 8: Mediation Practice III (Oct. 18)

- *Guest Lecture: Christine Coates, Esq.*
- Family Cases: Divorce and Child Custody

MMLS: pp. 276-279

SUPP: Model Standards of Practice for Family and Divorce Mediators

Session 9: Advanced Mediation Skills (Oct. 25)

- Ethics
- Co-mediation
- Making Mistakes

MMLS: pp. 353-63, 256-264, 208-211, 368-369

Review MMLS: pp. 593 (Model Standards of Conduct for Mediators, Appendix B), 599 (Model Rule of Professional Conduct for the Lawyer as Third Party Neutral, Appendix C), 628-629 (ADA Mediation Guidelines, Appendix E).

Session 10: The Lawyer as Advocate During Mediation (Nov. 1)

**This session meets in Room 300*

- **SIMULATION (Materials will be distributed in class.)**
- Counseling Your Client(s)
- **Response Paper Due at the Beginning of the Next Class**

MMLS: pp. 427-432

Session 11: Difficult Cases (Nov. 8)

- *Guest Lecture: Nan Waller Burnett, M.A.*
- Dealing with Impasse
- Heart-Based Techniques
- Apology

MMLS: pp. 188-191, 534-537

SUPP: Ken Cloke, *Mediation Dangerously: The Frontiers of Conflict Resolution* (2001) pp. 3-14.

Session 12: The Internationalization of Mediation (Nov. 15)

- *Guest Lecture: CDR Associates*
- Case Study: “Two Paths to Peace”

MMLS: pp. 511-515, 521-532

Session 13: Critiques and Criticisms (Nov. 29)

- Reviewing Empirical Data
- Arguments For and Against Mediation

MMLS: pp. 569-579

SUPP: Owen Fiss, *Against Settlement*, 93 Yale Law Journal 1073 (1984) and Michael Moffitt, *Three Things to Be Against (“Settlement” Not Included)*, 78 Ford. L. Rev. 1203 (2009).

Session 14: The Future of Mediation (Dec. 6)

- The Institutionalization of Mediation
- Future Trends
- Course Review

SUPP: William Ury, *The Third Side* (2000) pp. xv-xx, 30-56.

FINAL PAPERS DUE: December 10, 2010 by 5pm