

Fall 2022 Mediation Clinic

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Mediation Clinic Fall 2022 Syllabus

Welcome to Mediation Clinic! I hope that you will learn a lot about yourselves and the disputing process over the semester.

I. Goals and Learning Outcomes

The four primary goals of the course are: 1) to improve your ability to represent clients effectively by improving your listening, questioning, persuasion and problem-solving skills through the context of mediation; 2) to provide a solid basis of both mediation skills and ethics for those of you that would like to make mediation a part of your legal practice; 3) by placing you in the role as a neutral rather than advocate, to help foster a collaborative problem-solving orientation to your practice of law; and 4) to help you evaluate the benefits and limitations of mediation and other dispute resolution processes so you can both counsel your clients about their choices and, as potential policy makers, make informed judgments about dispute resolution systems design.

Learning Outcomes: Students should achieve the following:

- An appreciation of the skills necessary to perform effectively as a mediator including: how to begin a mediation, how to gather information, how to develop a helpful conversational agenda, how to generate movement when parties are “stuck”, and how to develop agreements and close a session.
- An understanding of the various attitudes and traits central to the mediator’s job.
- Knowledge of the various “schools” of mediation and how mediation fits into the array of dispute resolution processes.
- Knowledge of the legal framework that undergirds mediation and, particularly, confidentiality in mediation, as well as ethical norms of practice.
- An analysis of policy debates in the mediation field.
- The ability to display mediation attitudes and skills and perform effectively both in the context of real parties and real disputes and complete the requirements for approval as a County Mediator.

II. Course Structure

Throughout the semester, the Clinic has multiple components: mediation skills and training and other classroom work, conducting actual mediations in both County Mediations and EEOC cases, maintenance of journals to help analyze and reflect your experiences, observation of custody/visitation and child protection mediations, videotaping of your opening statement, and regular readings including several foundational articles of the ADR (“Alternative Dispute Resolution”) field.

A. Mediation Skills Training and Other Class Work

Initial Basic Mediation Skills Training will be on **August 15, 2022** from 8:30 a.m. – 6:00 p.m., **August 16, 2022** from 8:30 a.m. – 6:00 p.m., & **August 17, 2022** from 8:30 a.m. – 6:00 p.m.

The training days will be in Room 285A. The Basic Mediation Training is mandatory, no exceptions. The training is front-loaded in order that you may begin observing and co-mediating as soon as possible, in the first weeks of the semester.

Throughout the semester, we will be meeting on Friday mornings and we will be switching between County Mediations on Zoom (8 Sessions Total) and Seminar Classes (4 Classes Total) in the Fall Semester. See schedule below. For the County Mediations, you will be expected to be on zoom from 8:45 a.m. until 1:00 p.m. For Seminar Classes, these will be held in person from 8:30 a.m. – 12:00 p.m. on Fridays in Room MLAC 213.

Talking Circle and Seminar: We will be using a talking circle for the first 30-60 minutes of our seminar class and then we will move on to lectures and exercises. The Circle is a process based upon indigenous practices that has more recently become part of the mainstream restorative justice and conflict resolution movements. From families and communities to the juvenile justice system, schools and other arenas, the Circle aims to not only facilitate dialogue but also heal individuals, repair relationships and promote interconnectedness. Using a “talking piece” as the primary mode of regulating the conversation, each person in the Circle has an equal opportunity to speak; participants engage in a conversation about topics of common interest; the process opens and closes with some form of ceremony; building relationships is treated as equally important as tackling difficult issues. Laptops and cellphones should be put away during the circle process.

As the class progresses, we will focus on the foundational articles of the ADR field and have discussions about the articles and what it means for the field in general. We will continue to work on techniques and skills to help improve your work as mediators. In classes when we don’t mediate for the Court, we will meet in small groups and participate in role plays so you can get more practice. Finally, we also may have guest speakers that will be joining us who are local and national professionals in the field of ADR.

Attendance: Up to one absence will be allowed since it is a considerably long class session that is only once a week. Class attendance is critical for several reasons. Role plays in class can’t be successful if students are late or absent and they are critical to your learning, especially at the beginning of the semester. We will be discussing the mediations and your experiences in class so that you can learn from each other and you will need to be present to participate and share your own observations. The Clinic environment has a tendency to create a safe and comfortable environment for students. But, trust and comfort can only build with consistent attendance. If you have to miss a class, please inform me via email prior to the day the class is scheduled to meet. If you miss a day for mediations in County court, we may be able to find a time for you to make up the session.

Inclusiveness: It is my hope that students from all backgrounds can be well served by this seminar and that students needs can be addressed both inside and outside of class. I believe that the sharing of different perspectives should be viewed as a resource and benefit. I intend to

present materials/role plays/exercises that are respectful of people of different backgrounds: sexuality, gender, disability, age, ethnicity, race and culture. Please provide me feedback (positive or negative) and let me know if you need any accommodation.

Disability and Accommodations: Students with disabilities who experience learning barriers and would like to request academic accommodations should connect with the Disability Resource Center. Please contact the Disability Resource Center. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester.

Class Recording Policy: The Office of Student Affairs will continue to record all classes via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence. Clinic discussions of mediation matters will likely fall into the category clinical discussions such as patient history, and may not be subject to recording.

Clinic Work and Reading Expectations: Students should expect to spend approximately 5 hours per week preparing for class, completing readings and journal assignments, prepping upcoming mediations with pre-mediation calls and other clinic related tasks.

B. Mediation Practicum

Small Claims Mediation: This semester, students will observe and co-mediate small claims monetary disputes at both Alachua County Small Claims Court. Mediation service will be interspersed with seminar classes. Prof. Erez-Navot will accompany clinical students to the practicum on zoom although students may be assigned to other volunteer mediators to observe or co-mediate. The general small claims cases will be varied in subject matter, including contract, tort and property disputes. Cases that are deemed potentially suitable for mediation after a pre-trial conference with the Judge will then be referred for mediation. At this point, all cases are being done on zoom but we will be ready for a return to in person if that happens. **Our first time in Court will be on Friday, August 26, 2022. The expectation is to appear on zoom at 8:45 AM on eight Fridays (see schedule below) and will end by 1:00 PM. Please let me know if the 1:00 PM end time is an issue because of a class conflict on Fridays.**

EEOC Mediation: Judge Macauley, Administrative Judge for the EEOC, will be referring the Clinic federal employment discrimination cases via zoom. We will be working with him and his clerk (Matthew Pattillo) to schedule cases. During class on Friday, September 23, 2022, we will pair off into groups of 2 students and find times that work around your class schedule to mediate. We will be receiving ROIs (Report on Investigation) and the Order to Mediate and ideally schedule the mediations for late October/early November. We will talk more about the process in late September. You are expected to read the ROI and prepare a pre-mediation memo. We will also be calling all the parties and their attorneys for pre-mediation calls before the actual mediation on Zoom/Teams/Online Platform.

NYS Custody/Visitation and Child Protection Mediation: The NYS Family Court will be referring two types of family law disputes to the Clinic: custody and visitation and child protection cases. Custody and Visitation cases is helping two parents negotiate parenting time and legal decision making for their children. Child Protection cases are where mediators issues surrounding placement of children in foster care, including relationships and communication between parties, custody/visitation/guardianship petitions, conditional surrenders and other issues. Students will be invited to observe these cases and also help provide technological and agreement writing support. We will also be de-briefing after the cases.

C. Journals

During the semester, I would like you to write about your experience every time you mediate or observe for the required 8 times (4 observations and 4 co-mediations) in reflections/journals, approximately 2-5 pages long. One important note, your reflection should reflect both theoretical understanding and application of theory to practice.

Feel free to use a format that works for you. When writing about mediations where I have been an observer, please include a brief description, only enough to make your point clear. When writing about mediations or observations where I have not been present, please include a brief description of the issues and what happened but concentrate on your thoughts, feelings and your experience. A possible structure is to briefly set forth the “facts” (positions, interests, agreement, if any), discuss the strategies you employed (or employed by the mediator when you observe) and your view of its success, raise any ethical issues, and give your reactions to the mediation (for e.g. emotional reactions, suitability of the dispute for mediation, neutrality issues, co-mediator issues etc.).

Self-reflection and self-awareness are critical to being an effective mediator. I believe that the combination of journal writing and debriefing after mediations with your co-mediator and mentor, and debriefing in class together will help with that reflection.

D. Videotaping of Opening Statement

Students will be required to deliver an opening statement during class time on September 2, 2022. This will be done on zoom and in the presence of other people in order to make the opening statement feel more realistic.

After you have watched your video, please prepare a self-reflective 2-3 page commentary of your strengths and areas for improvement with respect to the “B” of BADGER. **Please submit your journal by September 9, 2022.** This will replace your journal from that supervision.

E. Grades and Evaluations

At the end of each semester, you will be given a grade for your performance in the Clinic. The Mediation Clinic grading follows the UF Grading Criteria. The grades are Satisfactory and Unsatisfactory (U). The presumption is that most students will receive an S and it is the norm. To receive this grade, the student must meet the expectations of the program, that he or she will provide a high quality work product and excellent effort. U is appropriate for students who blow

off the parties, the program and their assignments or for students who engage in unprofessional and/or unethical conduct towards parties and mentors.

F. Course Evaluations

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click here for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students here.”

III. Course Text

Required:

Hinshaw, Schneider, Cole, *Discussions in Dispute Resolution* (DDR)

Fisher, Ury & Patton, *Getting to Yes: Negotiating Agreements Without Giving In* (GTY)

Selected Articles throughout the Semester

Optional:

Love & Stulberg, *The Middle Voice: Mediating Conflicts Successfully* (2009)

Fall Schedule

Class Session	Reading and DVD Assignments	Assignment/Reminder
Basic Mediation Training August 15 (8:30 AM – 6 PM)(Room 285A) August 16 (8:30 AM – 6 PM)(Room 285A) August 17 (8:30 AM – 6 PM)(Room 285A)	Read GTY before August 15 th	
Week 1: August 26 COURT #1	Mediation in Small Claims Court: Achieving Compliance Through Consent (PDF will be sent by Professor)	Court begins at 8:45 AM and can last until 1 PM at the latest.
Week 2: September 2 CLASS ONE Review Syllabus Record Opening Statement Expectations for Practicum	Discussions in Dispute Resolution (DDR) <i>Introduction to ADR and Styles of Mediation</i> - Varieties of Dispute Processing: p. 321-347 - Riskin Grid Article: p. 174-200	Class begins at 8:30 AM and ends at 12 PM in Room MLAC 213.

Week 3: September 9 COURT #2		Court begins at 8:45 AM and can last until 1 PM at the latest. Opening Statement Journal Due on September 9.
Week 4: September 16 COURT #3		Court begins at 8:45 AM and can last until 1 PM at the latest.
Week 5: September 23 CLASS TWO	Discussions in Dispute Resolution (DDR) <i>Deeper Look into Mediation and Settlement</i> • Mediation – Its Forms and Functions p. 100-125 • Against Settlement: p. 347-365	Class begins at 8:30 AM and ends at 12 PM in Room MLAC 213. EEOC Case Referral This Week and Student Pairs Assigned.
Week 6: September 30 COURT #4		Court begins at 8:45 AM and can last until 1 PM at the latest.
NO CLASS October 7 HOMECOMING		
Week 7: October 14 COURT #5		Court begins at 8:45 AM and can last until 1 PM at the latest.
Week 8: October 21 COURT #6		Court begins at 8:45 AM and can last until 1 PM at the latest.
Week 9: October 28 COURT #7		Court begins at 8:45 AM and can last until 1 PM at the latest.
Week 10: November 4 CLASS THREE	Discussions in Dispute Resolution (DDR) <i>Critiques of Mediation</i> • The Theory and Practice of Mediation: A Reply to Professor Susskind, p.125-145 • Mediation Alternative: Process Dangers for Women: p. 150-174	Class begins at 8:30 AM and ends at 12 PM in Room MLAC 213.
NO CLASS November 11 VETERANS DAY		
Week 11: November 18 COURT #8		Court begins at 8:45 AM and can last until 1 PM at the latest.
Week 12: TUESDAY, November 22 CLASS FOUR	Discussions in Dispute Resolution (DDR) <i>Additional Ideas about Negotiation and Public Policy</i> • Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change: p. 297-319 • Bargaining in the Shadow of the Law: p. 3-22	Class begins at 8:30 AM and ends at 12 PM in Room MLAC 213.

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