

Mediation Advocacy

Spring, 2024 Joan Stearns Johnsen

Mondays: 3:30 – 5:30
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Class Syllabus and Policies

Required Course Materials:

Text: Golann and Folberg, *Mediation* (3d ed. Aspen Publishers 2016) and Fisher, Ury, Patton, *Getting to Yes* (3d Edition 2011).

Description of the Course and Course Objective and Learning Outcomes: This course is two credit hours. Please note that ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in class instruction. Accordingly, in addition to the assigned reading, you will also prepare plans and complete reflections. It is expected that you will spend two hours preparing for every hour of in class instruction each week. You will be expected to put sufficient time in preparing for your simulations/role plays and to come to class with familiarity with the facts, some of which are quite complex. You will often be asked to work with a partner in attorney/client as well as the mediator in either 3 or 5 party exercises. You may also need to do some research to prepare for your mediations. You may be asked to prepare and work in your pairs (attorney/client) outside of class. Remember that you are required to spend four hours a week on out of class preparatory work.

Mediation is a facilitated negotiation so in addition to covering mediation advocacy skills, we will also cover negotiation skills. At the conclusion of this course, you should be able to appropriately use integrative and distributive negotiation skills; understand how negotiation and mediation fit into the continuum of dispute resolution processes; have an appreciation of the ethical considerations for lawyers and mediators; and manage the emotional, psychological, and cultural aspects of mediation. You will learn to understand how to manage negotiating with your client, with the mediator, and with your adversary indirectly through the mediator.

Simulated Mediation Exercises: Much of our class time will be spent engaged in simulated role play exercises. You will receive facts and confidential instructions for your role electronically. You will also be matched randomly. You are not to share your confidential role play instructions although you may decide to disclose information contained within those instructions as part of your negotiation strategy. Please come to class having carefully read the materials that have been handed out in advance of class and having prepared as directed.

Guidelines for participation in roleplays:

1. Take the roleplay seriously; what you (and other participants) get from the roleplay is directly related to the effort you put into it.

2. As a party, do not deviate from the facts that are in either the general or your confidential instructions. You may, however, “fill in the blanks” in playing your role.
3. Play the role as a party the way you think the person in the situation would play it – not necessarily as you personally would respond.
4. If you are representing a party, take time to confer with your client before the mediation to be sure you understand what they desire from the mediation and what they want as an outcome.
5. Feel free to experiment and try different approaches to being a mediator or an attorney in the mediation.
6. Do not share your confidential information with the other participants until after the roleplay is completed.
7. Enjoy the roleplay experience. No one says you can’t have fun playing roles.

Instructions for Observers: Instructions for Observers: From time to time, you may be asked to play the role of observer. This is an excellent opportunity to learn. As an observer you are not immersed in the exercise as a participant and can have perspective of both sides. Take full advantage of this opportunity. Additionally:

1. Please help get exercise started on time and stop them on time.
2. Don’t interrupt role play unless to remind participants to stay in roles.
3. Observe non-verbal, as well as verbal, communications. Take notes on what you see and hear so you can make specific reference to what transpired, i.e., active listening examples.
4. At conclusion of the exercise distribute comparative factual summaries, if available, or ask participants to exchange confidential facts.
5. Lead discussion following exercise. Ask questions of participants to clarify their goals and strategies. Ask if they considered the mediation successful and why or why not. Ask what additional information is needed to complete the mediation and how it can be obtained.
6. Share your observations with the participants but be sure to point out positive behaviors as well as negative.
7. Be prepared to report on what you observed and the outcome, if any, in class and succinctly state any outcome determinative or significant factors.

Again, regardless of the role you will play in the exercise, you must come to class having carefully read the materials that have been handed out in advance of class and having prepared as directed.

Course Grading: Your grade for the course will be based on the following:

Attendance and Participation. (40% of grade.) You are expected to read the assigned material before class, prepare for and participate in class discussion and in class exercises and role plays. Because this is a participatory class with assigned roleplays, your classmates and I depend on your attendance each class. If you must miss a class or are late, please communicate to me and to your teammates your likely absence or tardiness before class. **You must also email me the reason with as much notice as possible so arrangements can be made to accommodate your absence or tardiness.** If you have an unexcused absence, are late, or are unprepared, it will be noted. I will be observing your mediations randomly. If it appears to me that you are unprepared, your lack of preparation will negatively impact you participation grade and your final grade for the course.

Most weeks, you will be paired with another student or group of students. If you are absent from class, you will disrupt the exercise for your partners and classmates. For this reason, regular and *punctual* attendance at classes is mandatory. I do take attendance. Classes will begin promptly at the scheduled time. Students arriving late will receive partial credit for attendance for that day. Anything in excess of 15% unexcused absences may render a student ineligible to receive credit for the course. Excused absences are consistent with University policies (<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>) and may require appropriate documentation.

2) Final Examination. (60% of grade.) There will be a three hour, fixed date, open book exam. For questions about delays in submitting works, please refer to the law school's policy, available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/currentstudents/formsapplications/exam-delays-accommodations-form>.

The grading scale for the course is:

<u>Grade</u>	<u>Point</u>	<u>Grade</u>	<u>Point</u>	<u>Grade</u>	<u>Point</u>
A (Excellent)	4.0 0.67	C+	2.33	D-	
A-	3.67 0.0	C (Satisfactory)	2.00	E (Failure)	
B+	3.33	C-	1.67		
B (Good)	3.00	D+	1.33		
B-	2.67	D (Poor)	1.00		

Information on current UF grading policies for assigning grade points may be found at <https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx>.

UF Student Honor Code: Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Accommodations: Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

Preferred Name and Pronouns

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. I would like to acknowledge your preferred name, and pronouns that reflect your identity. Please let me know how you would like to be addressed in class if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

When class is on Zoom- you may also change your “Display Name” in Canvas. Canvas uses the “Display Name” as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as “Ally” instead of “Allison.” To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select “Directory Profile.” Click “Edit” on the right of the name panel, uncheck “Use my legal name” under “Display Name,” update how you wish your name to be displayed, and click “Submit” at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records

Discourse, Inclusion, and the Classroom Ethos

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

- commit to self-examination of our values and assumptions

- speak honestly, thoughtfully, and respectfully
- listen carefully and respectfully
- reserve the right to change our mind and allow for others to do the same
- allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution.

Class Schedule: We will meet once each week. Monday’s class will be from 3:30 until 5:30. Class will be in-person- although there will be a few classes held on Zoom. You will be given notice in advance of classes that will be conducted on Zoom. When this is the case, you will find the link posted to Canvas.

Office Hours: My regular Office Hours are Mondays 1:00-2:00 pm for in-person Office Hours and Tuesdays from 8:30 to 9:30 am for Zoom meetings. Additionally, I am always available for meetings by appointment. The Zoom Office Hour Link will be a recurring link. (Use the same link each week.) It will be posted to an “Announcement” on Canvas prior to the first online office hour meeting.

Recordings of Class:

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student’s responsibility to contact the Office of Student Affairs as soon as possible after an absence.

Online Course Evaluations: Students are expected to provide feedback on the quality of the instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

Canvas: Please check Canvas regularly for new postings. Make certain that your Canvas Account is set to receive emails, **and that you have not disabled the email forwarding feature.** Canvas is my primary method of communication, and you put yourself at a serious disadvantage if you cannot access the emails and announcements I post on Canvas. You will also access the role play instructions and private facts as well as the Pairs and Teams on Canvas. I also regularly post supplemental materials to the Modules. If you have difficulty accessing or working with Canvas, please reach out to the Help Desk.

Attendance and Preparation: Your attendance and preparation are critical in this class. In most classes, you will be paired with another student or group of students. If you are absent from class, you will disrupt the exercise for you and for your partners and classmates. Further, your

attendance is essential to your ability to apply the theory discussed to the exercises. For this reason, regular and punctual attendance at classes is mandatory. I do take attendance.

If you do not adequately prepare, you will lose credit! You are expected to spend 4 hours each week on this class. Much of that time should be spent preparing for the role plays. In addition to compromising your own learning, you disadvantage those you are working with if you do not prepare. Classes will begin promptly at the scheduled time. Students arriving late will receive partial credit for attendance for that day. Anything in excess of 15% unexcused absences may render a student ineligible to receive credit for the course. Excused absences are consistent with University policies (<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>) and may require appropriate documentation. We are in a pandemic. If you are ill, your absence will be excused. Please notify me and your teammates in advance.

Reading Assignments and Exercises

Please note, this list of exercises and role plays will likely change as the semester progresses! A role play may extend over two classes for example. I greatly appreciate your flexibility and patience. We may not get to all these role plays. Changes to this chart will be posted on Canvas in an announcement. Or I will tell you in class. Generally, role play general facts and confidential information will be posted on Canvas or handed out in class.

<u>Date</u>	<u>Topic</u>	<u>Class Activity</u>	<u>Assigned to Read Prior to Class</u>
Class 1	Disputing and Conceptual Framework	Introductions Mini-arbitration and mediation exercise Al & Sandy Split	Chapter 1
Class 2	Introduction to Negotiation	Sunflower roleplay	Chapter 2
Class 3	Negotiation Step-by-Step	Negotiation roleplay and discussion When the Chips are Down	Chapter 3
Class 4	Negotiation Psychology and Barriers to Settlement	Negotiation/Mediation roleplay Termination Tempest	Chapter 4
Class 5	An Overview of Mediation	Mediation roleplay and discussion Broken Benches case	Chapter 5
Class 6	Processes of Mediation	Mediation roleplay and discussion Culture Bubble	Chapter 6
Class 7	Process Skills	Mediation roleplay and discussion Waltham Construction	Chapter 7

Class 8	Emotional Issues and Cognitive Forces	Mediation roleplay and discussion Ceiling Collapse	Chapter 8
Class 9	Merits-Based Barriers	Mediation roleplay and discussion Tillen v. US	Chapter 9
Class 10	Representing Clients in Mediation	Mediation roleplay and discussion TBD Prosando v. Med Pro or Mumbai Partners Preparation	Chapter 10
Class 11	Professional Mediators	Mediation roleplay On Zoom	Chapter 11
Class 12	Putting it together	Debrief of mediation	Chapters 15
Class 13	Final Comments and Review		Review