

Spring 2024 Mediation Clinic

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Office: 220B Bruton Greer

Office Hours:

Mondays, 12:00 p.m. – 1:00 p.m. (in Bruton Greer 220B)

Fridays, 1:00 p.m. – 2:00 p.m. (virtual)

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Mediation Clinic Spring 2024 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, weekly seminar classes, conducting actual mediations in both Small Claims/County Mediations and EEOC cases, maintenance of journals to help analyze and reflect your experiences, optional observation of custody/visitation and child protection mediations, videotaping of your opening statement, negotiation practicum, community presentation 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 **January 19, 2024** from 8:30 a.m. – 4:30 p.m., **January 20, 2024** from 8:30 a.m. – 4:30 p.m., & **January 21, 2024** from 8:30 a.m. – 4:30 p.m. **The training days will be in Room HH 285A.**

The final role plays which are also mandatory will be held on **February 2, 2024 from 9:00 a.m. to 2:00 p.m.** **We will meet in Room HOL 348** and then split up into three rooms (HOL 348, 350 & 354). **The Basic Mediation Training (including the Role Play Day) 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 Monday afternoons from 1:15 p.m. – 3:15 p.m. in BG 220D for Seminar Classes and Friday mornings from 8:45 a.m. to 1:00 p.m. for County Mediations on Zoom. See schedule below.

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 theory behind mediation and the ADR field and have hopefully lively discussions. 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 two absences will be allowed. 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 will have to find a time for you to make up the session potentially through coordinating with the Court for a different day or during Spring Break.

Pro Bono Hours: If students would like to fulfill their Pro Bono Hours for the graduation requirement, Eric Hope (Assistant ADR Coordinator in Alachua County) has invited students to observe/mediate cases on other days of the week. You can use those extra mediations towards your Pro Bono Hours. You can email Eric Hope directly to find out about his schedule for those cases. His email address is hopee@circuit8.org. Please cc me on those emails to Eric.

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 normally records all classes via Mediasite in case students must miss class for health reasons. The Mediation Clinic Seminars will **not** be recorded as we will be discussing confidential mediations. Clinic discussions of mediation matters likely fall into the category clinical discussions such as patient history, and will 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.

Compliance with UF Honor Code: Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Honor Code located at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>. The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and Harvey, to assist in completing quizzes, exams, papers, or other assessments.

Observance of Religious Holidays: UF Law respects students' observance of religious holidays (UF Policy: <https://archive.catalog.ufl.edu/ugrad/1617/regulations/info/attendance.aspx>)

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.

· Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>

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, January 26, 2024. The expectation is to appear on zoom by 8:45 AM on all Fridays (see schedule below) and it will end by 1:00 PM. You will initially appear in the Court Zoom Room (ID: 977 0317 2123) and then we go to a second zoom room called the ADR Zoom Room when we are referred to mediation (ADR Zoom Room (ID: 959 5469 4501). You must put UF Law, YOUR NAME, so they know who you are when you enter the zoom rooms.**

Patricia Antonucci, ADR Director, will be giving us a short orientation **before our first mediation so you will be expected to join at 8:15 AM on January 26, 2024.**

EEOC Mediation: Judge Macauley, Administrative Judge for the EEOC, will be referring our Clinic federal employment discrimination cases via zoom. Judge Macauley will join us on zoom for one of our Mediation Clinic Seminars to talk about the process. We will be working with the Judge and his clerk (Matthew Pattillo) to schedule cases. At the beginning of the semester, 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 February or early March. We will talk more about the process in early February. 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 to reflect upon your experiences including your readings, your training and role plays and your times mediating or observing sessions in Court. We will have 8 reflections/journals over the course of the semester, approximately 2-5 pages long. One important note, your reflection should reflect both theoretical understanding and application of theory to practice so please refer to the readings and training material. Journals are due on Fridays.

Each reflection has a specific topic that has been assigned. They focus on your assigned readings, mediations in court, stages of mediation and guest lectures that will be joining us over the course of the semester. Please refer to the readings that have been assigned in the journals as you apply theory to practice.

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 the week of February 19. I will coordinate groups of 2-3 students to deliver and record their opening statements. 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 February 23, 2023.** This will replace your journal from that week’s mediation.

E. Inter-School Negotiation Practicum – March 2024

Since 2019, almost 2,800 students from 47 law schools have participated in the South Texas College of Law Inter-School Negotiation Practicum. During the Practicum, students will be assigned an opposing counsel from another law school, and you will do a one-on-one negotiation of an actual pending (or recently settled) lawsuit over the entire month of March. The organizers will send out the court documents and confidential settlement memos along with opposing counsel contact information on March 1st. You have until March 31 to complete the negotiation. Students must communicate with their opposing counsel using email, phone, and video conferencing. You will be provided with the complaint, motion to dismiss or motion for summary judgment, response, discovery documents such as deposition excerpts, and more. Students have full autonomy over the entire negotiation including how many times to communicate with opposing counsel, when to respond, how to respond, which communication formats to re-utilize, negotiation strategy and style, and more. You will be required to complete a post-negotiation questionnaire at the end, and the organizers will synthesize the data which will be provided to us. We will then debrief the exercise in class.

F. Community Presentations

Please develop a proposal for doing a presentation on dispute resolution to a community or other group, elementary, high school, college or law school group. Explore scheduling possibilities for your presentation! You should prepare and upload a plan for the presentation on ADR or mediation and the plan will be due on March 18. The plan should include a date and time, any publicity you will use to get attendees, a timed agenda for the program, any handouts (or other materials) you will use, and your evaluation form. You may work alone or in collaboration with one or two other students in the Mediation Clinic.

G. 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.

H. 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.bluer.com/ufl/>. Summaries of course evaluation results are available to students here.”

III. Course Text

Required:

Alfini, Press & Stulberg, *Mediation Theory and Practice* – 3rd Edition, (“MTP”)
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)

Spring 2024 Schedule

Class Session	Reading and DVD Assignments	Reflection Assignment/Reminder
Clinic Swearing in Ceremony January 16 from 5:30 PM to 7 PM Chesterfield Room 180		
Week 1: Basic Mediation Training Friday, January 19 (8:30 AM – 4:30 PM)(Room HH 285A) Saturday, January 20 (8:30 AM – 4:30 PM)(Room HH 285A) Sunday, January 21 (8:30 AM – 4:30 PM)(Room HH 285A) MANDATORY	GTY	
Class #1: January 22 Review Syllabus Expectations for Practicum	MTP Chapter 1 (p. 1-26) Optional Reading: Middle Voice	BG 220D
Court #1: January 26		LOG ON AT 8:15 AM ON 1/26 FOR ORIENTATION WITH PATRICIA. Court typically begins at 8:45 AM and can last until 1 PM. <i>Reflection #1: Getting To Yes</i> <i>Write a reflection about how an idea, approach or recommended skill from Getting to Yes will impact some negotiation or activity for you in the future.</i>
Class #2: January 29 Mediation Skills	MTP Chapter 3 (p. 103-144) Mediation in Small Claims Court: Achieving Compliance Through Consent (PDF will be in Canvas)	BG 220D
Role Play MANDATORY February 2		Please meet in Room HOL 348 from 9 AM to 2 PM to Role Play and Receive Feedback from practicing mediators/ADR Court Coordinators. We will split into HOL 348, 350 & 354
Class #3: February 5 Introduction to EEOC Cases – Guest Lecture via Zoom by Judge Macauley EEOC Case Referral Based on Student Schedule & Student Pairs Assigned in Class.	Vivian Berger, <i>Employment Mediation in the 21st Century</i> , 5 UNIV. PA. J. OF LABOR AND EMPLOYMENT 487 (2003) at http://www.vberger-mediator.com/mediation/challenges-b.html	BG 220D
Court #2: February 9		Court begins at 8:45 AM and can last until 1 PM at the latest

Class #4: February 12 Mediation Roles, Orientations and Styles Co-Mediation Sign Up for Opening Statement for Next Week	MTP Chapter 4 (p. 147-201) Practice Guidelines for Co-Mediation: Making Certain that 'Two Heads are Better than One' (PDF will be in Canvas)	BG 220D Record Opening Statements Next Week and Sign up in Class.
Court #3: February 16		Court begins at 8:45 AM and can last until 1 PM at the latest Reflection #2: Working as a Team. In light of your reading about co-mediation how do you envision working with a co-mediator? What do you see as your challenges especially in an online environment? What advice from the reading seems particularly important? Since this course focuses on applying theory to practice (and applying skills to your mediations and to your life generally), in this first reflection please demonstrate that you are trying to do that. Identify the theory or skill, explain its relevance and use in a particular situation, and analyze the impact of your using the given theory or skill.
Class #5: February 19 IN LIEU OF CLASS MEET ON ZOOM FOR RECORDING OPENING STATEMENT		Meet on Zoom. Reflection #3/Opening Statement Reflection Due on February 23.
Court #4: February 23		Court begins at 8:45 AM and can last until 1 PM at the latest Reflection #3/Opening Statement Reflection: The B of BADGER. Describe a key lesson(s) you learned about the "B" of BADGER from your clinical experience. In your analysis, compare the recommendations from your reading and training with the realities of practice.
Class #6: February 26 Introduction to Negotiation	MTP Chapter 3 (p. 27-102)	BG 220D
Court #5: March 1		Court begins at 8:45 AM and can last until 1 PM at the latest Reflection# 4: Mediator Approaches. Consider a mediation, or a simulated mediation, in which you have participated. In light of the models

		discussed in MTP , chapter 4 (mediation concepts and models), how would you describe the approach of the mediator? Place yourself (or the mediator you observed) on the Riskin Grid, using specific examples of your/the mediator's approach or conduct to explain your choice.
INTER-SCHOOL NEGOTIATION PRACTICUM BEGINS MARCH 1 AND ENDS MARCH 31		
Class #7: March 4 Representation in Mediation Mid Semester Review	MTP Chapter 10 (p. 533-578)	BG 220D
Court #6: March 8		Court begins at 8:45 AM and can last until 1 PM at the latest <i>Reflection #5: The A of BADGER.</i> Describe a key lesson(s) you learned about the "A" of BADGER from your clinical experience. In your analysis, compare the recommendations from your reading and training with the realities of practice. Take your most recent case and describe the interests, issues, proposals, BATNAs, feelings, principles, values and rules you extracted as you listened.
SPRING BREAK - NO CLASS March 11-March 15		
Class #8: March 18 Ethics	MTP Chapter 8 (p. 413-460)	BG 220D <u>Plan for Community Presentation Due Today</u>
<u>GUEST LECTURE:</u> March 22 <u>Guest Lecture:</u> <u>Emeritus Professor Len Riskin,</u> <u>UF Law</u>		Lecture will be from 12 PM to 1:30 PM on Zoom
Class #9: March 25 Institutionalization of Mediation in the Courts	MTP Chapter 9 (p. 413- 434 & p. 463-514)	BG 220D
Court #7: March 29		Court begins at 8:45 AM and can last until 1 PM at the latest <i>Reflection #6: Free Choice</i> <i>Choose a Topic from the Reading and Connect Theory to Practice</i>
Class #10: April 1 Diversity and Justice	MTP Chapter 7 (p. 353 – 400)	BG 220D

Court #8: April 5		Court begins at 8:45 AM and can last until 1 PM at the latest <i>Reflection #7: Inter School Negotiation Practicum.</i> Reflect on your Inter School Negotiation Practicum. Describe your strategy and its success or lack of success. What were the particular challenges of the online feature of the negotiation? This reflection is due one week after you complete the online negotiation exercise.
Class #11: April 8 Restorative Justice Guest Lecturer(s): Jeffrey Weisberg & Eric Estling River Phoenix Center for Peacebuilding, Gainesville, FL		BG 220D
Court #9: April 12		Court begins at 8:45 AM and can last until 1 PM at the latest
Class #12: April 15 ODR – Tech and Dispute Resolution Guest Lecturer: Noam Ebner, Creighton University		BG 220D
Court #10: April 19		Court begins at 8:45 AM and can last until 1 PM at the latest <i>Reflection #8: Guest Lecture</i> Please write a reflection on lessons you learned or observations from one of the guest lecturers this semester.
Class #13: April 22 Final Class – Careers in Mediation Guest Lecturer: Danielle Shalov, ADR Coordinator, EDNY & Other ADR Professionals		BG 220D