

SYLLABUS

Mediation 461A - Fall 2020

Tuesday 4:30 p.m. to 6:30 p.m.

Professor Lisa Risner

Required Textbooks:

Paul J. Zwier/Thomas F. Guernsey, *Advanced Negotiation and Mediation Theory and Practice – A Realistic Integrated Approach*, Second Edition, National Institute for Trial Advocacy, 2016.

Harold I. Abramson, *Mediation Representation, Advocating as a Problem-Solver*, Third Edition, Wolters Kluwer, 2013.

There will be additional reading and various handouts/materials provided by the professor throughout the semester.

Course Objectives:

1. Attain understanding of the mediation process, the role and ethical demands of the mediator, and the importance of mediation in the world of dispute resolution.
2. Become mindful and effective communicators, negotiators and facilitators with emphasis on audience sensitivity (developing a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience) and proficiency in both oral and written communication (use of appropriate grammar, spelling, punctuation, and diction to convey ideas).
3. Develop both the art and skill of mediation through observation, role play and reflection/analysis through both oral and written exercises.
4. Demonstrate the ability to locate relevant legal authority (including codes and case law) regarding the mediation process as it relates to confidentiality, ethics, and evidentiary privileges.

Grades:

This is an advanced professional skills course with an emphasis on demonstrating knowledge and application of mediation principles. You will be graded on participation (50% of grade) and a take-home final exam (50% of grade). Attendance comprises a percentage of the participation portion of your grade. Even one class absence may significantly affect your participation grade. **For every hour in class, it is anticipated and expected that you will spend a minimum of two hours outside of class.**

Mediation and conflict resolution courses require students to allocate study time for introspection and analyzing the multiple dimensions of social interactions. As this is an experiential course, students will need to devote substantial time outside of class devoted to this participatory approach to learning. Specifically, students will be required to complete assignments geared toward observation of professional mediation in real time, completing various writing assignments derived from reading materials and handouts (in addition to the required textbook assignments), and reflecting on same. Preparation for the in-class mock mediation and role-play exercises will also demand out of class time. Ideally students will also have time outside of class to observe video recordings of mediation techniques and devote time to analyze and complete writing assignments on the comparison and contrast of different styles and approaches to conflict resolution learned by their observation. Assignments are designed to encourage students to develop their conceptual skills. Such assignments will include research papers on specific topics relating to mediation, graded simulations, mediator memoranda, journal-keeping, and detailed analysis of all types of mediation.

Class time will be devoted to learning both the theory and application of mediation principles through the following:

- Lectures
- Student discussion and analysis of reading material
- In-class exercises and role plays
- Mock mediation exercises
- Panel discussion with professional mediators

<u>WEEK #</u>	<u>REQUIRED READING:</u>
Week 1	Chapter 1 <i>Advanced Negotiation and Mediation Theory and Practice – A Realistic Integrated Approach</i>
	Chapter 1 <i>Mediation Representation, Advocating as a Problem-Solver</i>
Week 2	Chapter 2 <i>Advanced Negotiation and Mediation Theory and Practice – A Realistic Integrated Approach</i>
	Chapter 2 <i>Mediation Representation, Advocating as a Problem-Solver</i>
Week 3	Chapter 3 <i>Advanced Negotiation and Mediation Theory and Practice – A Realistic Integrated Approach</i>
Week 4	Chapter 3-4 <i>Mediation Representation, Advocating as a Problem-Solver</i>
Weeks 5 & 6	Chapter 4-5 <i>Advanced Negotiation and Mediation Theory and Practice – A Realistic Integrated Approach</i>
	Chapter 5-6 <i>Mediation Representation, Advocating as a Problem-Solver</i>

<u>WEEK #</u>	<u>REQUIRED READING:</u>
Week 7	Chapter 6-7 <i>Advanced Negotiation and Mediation Theory and Practice – A Realistic Integrated Approach</i> Chapter 7 <i>Mediation Representation, Advocating as a Problem-Solver</i>
Weeks 8 & 9	Chapter 8-9 <i>Advanced Negotiation and Mediation Theory and Practice – A Realistic Integrated Approach</i> Chapter 8 <i>Mediation Representation, Advocating as a Problem-Solver</i>
Week 10	Chapter 10 <i>Advanced Negotiation and Mediation Theory and Practice – A Realistic Integrated Approach</i>
Week 11	Chapter 11 <i>Advanced Negotiation and Mediation Theory and Practice – A Realistic Integrated Approach</i>
Week 12	Chapter 12 <i>Advanced Negotiation and Mediation Theory and Practice – A Realistic Integrated Approach</i>
Week 13	NO READING - MOCK MEDIATIONS IN CLASS
Week 14	NO READING - MOCK MEDIATIONS IN CLASS

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

- **Doctrinal Knowledge**

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real

Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

- **Practice Skills**

Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

- **Legal Analysis**

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

- **Legal Research**

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

- **Communication**

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas.

This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

- **Advocacy of Legal Argument**

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

- **Client Sensitivity and Cultural Competency**

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

- **Legal Ethics**

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

Disability Services Statement:

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 111. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her

or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for the accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

Requirements for Students in Zoom Sessions:

- Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.
- Arrive to class early and dressed as you would to attend an in-person class.
- Your camera must be turned on for the duration of the class. If desired, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.
- Come prepared, as you would for an in-person class. Participation in Zoom classes is as important as it is during an in-person class session.
- Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.
- If you have to miss a Zoom session, or arrive late or leave early, notify the professor in advance, as you would for an in-person class.
- If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify your professor so other accommodations can be explored.
- Do not post screen shots or recordings of any Zoom classes on social media. Such actions would constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact your professor.
- Sign into Zoom with the name under which you are registered for class. If you prefer to

be called by a different name or nickname, please notify your professor in advance so you are not marked absent.

- Unless your professor instructs you otherwise, mute your microphone when you are not speaking. Unmute to speak or to ask or answer questions.
- Zoom classes are not YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.
- If you are using your computer to take notes and/or using an e-casebook, remember that you may not be able to easily switch between those apps and the Zoom session. This could undermine your ability to pay attention to the class discussion. Figure out how you will resolve that technological issue before your first class session and consider possible modifications to your normal note taking style (e.g., handwritten notes) or using a two-screen set-up.
- Zoom has a number of tools available to you as a student: yes/no symbols, raise hand and thumb icons, share screen (with permission of the professor), chat windows, etc. Please familiarize yourself with those tools before class so that you can use them as requested by the professor. Your professor will inform you about the ways in which you should use these tools in that particular class.
- Professors may use a number of interactive functions in Zoom to engage with students, e.g., polling questions, breakout rooms, as well as asking you to share your screen, type in the chat window. Like being called on in a live classroom, you are expected to participate fully in these activities and functions, i.e., answer polling questions, speak with your classmates in breakout groups, share your screen as requested, etc.

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Office Hours: By appointment (and likely via Zoom this semester).