

SYLLABUS

Mediation 461A -- Fall 2017

Wednesdays from 6:40 pm – 9:50 pm

Commencing September 20, 2017 through November 22, 2017

No Holidays

Professor Bart J. Carey

Required textbook: Abramson, *Mediation Representation – Advocating as a Problem Solver*, Third Edition, Wolters Kluwer, Aspen Casebook Series

Required text: Straus Institute, Pepperdine University School of Law: *Mediation – the Art of Settlement*

Students will be expected to be familiar with the assigned reading. In addition to the assigned reading there will be outside research, projects, case briefing and opportunities for extra-credit. It is expected outside preparation will consume a minimum of two hours for every one hour in class.

In this skills course, your professor will not lecture directly from the text, but will instead bring the text to life by using guest speakers, demonstrations, thought problems and specific exercises. Students are expected to draw on the reading materials to navigate through the obstacles presented and to contribute to class exercises.

Learning Objectives:

- a. Students will demonstrate the development of mediation practice skills for both mediator's and client representatives in the areas set forth under the weekly CLASS TOPICS, below.
- b. Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and, as mediator, to appropriately fashion process strategies and, as client representatives, to fashion appropriate client representation strategies.
- c. Students will demonstrate the ability to locate relevant legal authority and case law regarding mediation process confidentiality, ethics and evidentiary privileges using a variety of book and electronic resources, and to properly cite to such legal authority.
- d. Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate for a mediator to effectively convey the client or speaker's ideas in a mediation session. 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).

- positional or evaluative approach
- integrative or facilitative approach
- application of approaches to Family Law vs. Business Law
- focus on role of “advocate” in mediation as well as the mediator’s role

Week #2 READING: Abramson, Chapter 1 (continued)
 Pepperdine Materials Section 3
 Handouts from other texts / sources as provided in class

CLASS TOPICS: Negotiation as the core skill in mediation

Stages of mediation:

- preparing (listening, gathering information)
- exchanging information, creating options, identifying “interests”
- overcoming impasse
- reaching closure, documenting deal

Week #3 READING: Abramson, Chapter 2 & Chapter 8
 Pepperdine Materials Sections 4 and 5 and 11
 Handouts from other texts/sources as provided in class

CLASS TOPICS: Techniques of mediators

- convening the parties
- using joint sessions vs. separate caucuses
- reframing sensitive issues
- dealing with parties’ emotions
- responding to inequities of power
- getting initial reasonable demand and offer
- closing the gap; mediator’s proposal
- Breaking impasse
- ethical issues in mediation

SPRING BREAK WEEK: March 7 – 11, 2016

Week #4 READING: Abramson, Chapter 3
 Pepperdine Materials Section 6
 Handouts from other texts/sources as provided in class

CLASS TOPICS: Counseling client about mediation (exercise, role playing)

- interviewing techniques
- ripeness of case for mediation
- select the mediator
 - training in mediation process
 - subject matter expertise
 - neutrality
- use of narrative or storytelling techniques

Week # 5 READING: Abramson, Chapter 4
 Pepperdine Materials Section 7
 Handouts from other texts/sources as provided in class

CLASS TOPICS: Preparing for Mediation

- decide on location
- agree on terms of payment to mediator
- assure confidentiality
- build consensus; illustration from film
- refine client's narrative
- decide who is "audience"
- enlist mediator's assistance

Week #6 READING: Abramson, Chapter 5
 Pepperdine Materials Section 8
 Handouts from other texts/sources as provided in class

CLASS TOPICS: Formulate and implement strategy

- decide on client's role (to present opening?) vs. attorney/advocate
- determine "interests" of both parties
- divide responsibilities
- who should be present?
- what visual aids?

Week # 7 READING: Abramson, Chapter 6
 Pepperdine Materials Section 9
 Handouts from other texts/sources as provided in class

CLASS TOPICS: Prepare client for mediation

- explain process
- explain his/her role
- use checklist to cover all points

Week #8 READING: Abramson, Chapter 7
 Pepperdine Materials Section 10
 Handouts from other texts/sources as provided in class

CLASS TOPICS: Appear at mediation session

- deliver opening statements (role play) in joint session
- enlist mediator's support

Week #9 NO READING:

CLASS TOPICS: Mock Mediations

Week #10 NO READING.

CLASS TOPICS: Mock Mediations.

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 119. 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 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."**

ARGOSY UNIVERSITY INSTITUTIONAL LEARNING OUTCOMES:

1. Analytical Reasoning

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

2. Effective Communication

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

3. Information Competency

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

4. Interpersonal Effectiveness

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

5. Personal and Professional Integrity and Ethical Behavior

Demonstrate a multi-dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

6. Professional Competence

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

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:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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).

(6) 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.

(7) 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.

(8) Legal Ethics

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