

SYLLABUS

MEDIATION

6383

3 CREDIT HOURS

FALL 2018

LOCATION: 283 HOLLAND HALL

THURSDAYS 2:30 P.M. – 5:00 P.M.

The weekly readings and writing assignments will separate the seamless web of effective mediation into individual components and describe critical action theories that facilitate analysis and skills practice that will be utilized during the course.

THE SYLLABUS AND OTHER EXTRA READINGS WILL BE POSTED ON CANVAS

INSTRUCTOR: PROF. ROBIN DAVIS

105-h Bruton Geer Hall, Virgil Hawkins Clinic
davisr@law.ufl.edu for communications and questions
352-273-0807 Phone; 352-392-0414 Fax

OFFICE HOURS: Tuesdays 9:30 a.m. – 11:30 a.m. and 1:30 p.m. – 3:30 p.m. – *Other Times as Mutually Arranged*

REQUIRED TEXTS: *Getting to Yes: Negotiating Agreement Without Giving In* by Fisher, Ury, and Patton (Read in full by first day of class), and *Mediation Theory and Practice* (Third Edition) by Alfini, Press, and Stulberg

ADDITIONAL RESOURCES: Florida Statutes, Chapter 44; Florida Rules for Certified & Court-Appointed Mediators; Various supplemental materials that will either be provided to you or posted on Canvas.

PURPOSE OF COURSE: The dispute resolution method of mediation is utilized in the majority of civil cases today. This course will analyze the components of mediation and teach students to implement them into a skillful, effective, and ethical process from the neutral mediator's perspective.

COURSE GOALS AND/OR OBJECTIVES: *By the end of this course, students will:*

1. *Identify and differentiate the following methods of dispute resolution: negotiation, mediation, arbitration, and litigation.*

2. *Recognize the mediator's obligations regarding impartiality, including methods for handling conflicts of interest.*
3. *Identify and use the components of a mediation in an effective manner.*
4. *Identify essential elements for effective listening and responding, note-taking, questioning, and verbal and non-verbal communication.*
5. *Identify ethical dilemmas and apply appropriate courses of action when confronted with them.*
6. *Identify acts specifically required and acts specifically prohibited by the Florida Rules for Certified and Court-Appointed Mediators.*
7. *Recognize personal biases which may impact the mediation and develop an awareness of and techniques for addressing cultural, racial, ethnic, age, gender, religious, sexual orientation, socio-economic and disability issues that may arise in mediation.*
8. *Be aware of when domestic violence may compromise safety, self-determination or the mediation process and demonstrate techniques to either safely continue or terminate the mediation.*
9. *Understand the route and manner by which a case is referred to mediation and identify the state rules, state statutes, forms, and procedures governing mediation in Florida.*
10. *Understand the confidentiality requirements of mediation and the statutory exceptions.*
11. *Identify and demonstrate techniques that may assist parties in considering mutual interests and to help resolve conflicting issues.*
12. *Identify and demonstrate techniques to conclude a mediation, including memorializing an agreement appropriately.*

UF POLICIES:

U MATTER

Your well-being is important to the University of Florida. The U Matter, We Care initiative is committed to creating a culture of care on our campus by encouraging members of our community to look out for one another and to reach out for help if a member of our community is in need. If you or a friend is in distress, please contact umatter@ufl.edu so that the U Matter, We Care Team can reach out to the student in distress. A nighttime and weekend crisis counselor is available by phone at 352-392-1575. The U Matter, We Care Team can help connect students to the many other helping resources available including, but not limited to, Victim Advocates, Housing staff, and the Counseling and Wellness Center. Please remember that asking for help is a sign of strength. In case of emergency, call 9-1-1.

UNIVERSITY POLICY ON ACCOMMODATING STUDENTS WITH DISABILITIES: Students requesting accommodation for disabilities must first register with Dean Inman in the law school's Student Affairs Office. She will provide documentation to the student who must then provide this documentation to the instructor when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.

UNIVERSITY POLICY ON ACADEMIC MISCONDUCT: 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>.

GETTING HELP:

Resources available-

- Counseling and Wellness resources
- Disability resources
- Resources for handling student concerns and complaints
- Library Help Desk support

Should you have any complaints with your experience in this course please visit <http://www.distance.ufl.edu/student-complaints> to submit a complaint.

COURSE POLICIES:

GRADING: Please read the following section carefully. Grading in this class will be based on the following percentages:

In-class and homework assignments, and quizzes. Students should expect in-class assignments/quizzes based on their syllabus reading assignments. All homework should be double-spaced typed. **30%**

Each student will observe 1 mediation and will write a Reflection Paper about the observation experience. Students may observe circuit civil, family, dependency, county, small claims, workers compensation or other types of mediations. Students are responsible for obtaining their own observation opportunities, however, Professor Davis will provide information in class as to some available options, including video options. The Reflection Paper should be 3 double-spaced typed 8 ½ x 11 inch pages, and a **hard copy** is due to me at **2:30 p.m. the last day of class.** Further information about the Reflection Paper is included in this syllabus and will be covered during class. **10%**

Each student will be responsible for researching and making a presentation to the class on a substantive topic related to our syllabus, text, or class discussions. Other ADR-related topics may be selected (and are encouraged) so long as cleared with Professor Davis in advance. Oral Presentations must be 10 – 12 minutes. Further information about the presentations is included in this syllabus and will be covered during class. The topics will also be the subject of students' final papers. **30%**

As a Final Paper, each student will turn in a written paper on the topic they researched and presented to the class. The papers should be 8 double-spaced typed 8 ½ x 11 inch pages.* Creativity is encouraged. The Final Paper will be in lieu of a Final Examination and a hard copy is due at **2:30 p.m. the last day of class.** Further information about the papers is included in this syllabus and will be covered during class. **30%**

*** Exception for Boskey Essay Competition Entries which must be 15 – 25 pages and will be weighted accordingly**

GRADING SCALE

| Letter Grade | Point Equivalent |
|---|------------------|
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0 |
| <p>** Note –Final grade averages will be curved on a mandated 3.25 maximum distribution scale.</p> <p>For more information see: http://www.isis.ufl.edu/minusgrades.html</p> | |

GRADING CRITERIA FOR WRITTEN ASSIGNMENTS

A **4.0** paper addresses the assignment carefully and thoughtfully, and then goes beyond it to say something original and scholarly. It demonstrates critical thinking and analysis that is clearly outstanding. It is grammatically and structurally strong and utilizes noteworthy authority with appropriate citations.

A **3.0** paper addresses the assignment and shows a good approach to the topic as well as some critical thinking and analysis. This paper is above average from the typical paper because it demonstrates complete understanding of the topic as well as the purpose of the assignment. The paper adheres to good writing principles both grammatically and structurally and utilizes substantial authority with appropriate citations.

A **2.0** paper addresses the assignment but does not go beyond it in any significant way. It represents a minimum amount of effort that still completes the work. It may lack clear structure and critical thinking. There may be some grammatical and structural problems with the writing style and only adequate utilization of authority and citations.

A **1.0** paper may somewhat address the assignment but seems to miss its essential point or go off on tangents. The paper lacks clear structure, critical thinking, and an organized format and is difficult for the reader to understand the writer's key points. References and citations are less than satisfactory.

A **0** paper does not address the assignment in a satisfactory manner. It reveals a lack of understanding and critical analysis and will usually be poorly organized and have numerous grammatical and structural problems. References and citations are inadequate.

The above grading scale will also be adjusted, as appropriate, with pluses and minuses.

CLASS ATTENDANCE/PARTICIPATION AND GRADE EFFECT: Standard 304 d of the ABA Standards for the Approval of Law Schools, which requires "regular and punctual class attendance" governs. This should not be in excess of 15% absences to receive credit for the course. You should view class participation as an important part of your learning experience. Volunteered answers in class are always welcome. Students will also be expected to be prepared if randomly selected to participate in class discussions and exercises. Both regular attendance and participation in class discussions and exercises is expected. Please plan to attend every class; missing class may affect your grade. Class participation will be taken into account, and I have the option of giving extra credit for excellent participation (quality, not mere quantity). In the alternative, lack of quality class participation, preparation, or attendance may result in a diminution of your grade. All assignments are due at the beginning of class (2:30 p.m.) unless expressly noted otherwise, and late assignments will be penalized. Students may email the assignment to the professor before they are due if they are absent. With the instructor's prior approval, a student may have an extension to make up assignments in the event of extreme, documented circumstances, in which case they are due by 2:30 p.m. the following class.

<http://www.registrar.ufl.edu/catalog/policies/regulationgrades.html> for University of Florida grading policies as well as the law school's mean and mandatory distributions posted on the College's website. The course adheres to the College's posted grading policy.

USE OF PERSONAL TECHNOLOGY IN THE CLASSROOM: This skills class is a very interactive one, and your absolute attention and participation is essential. Furthermore, the classroom environment must support learning for all students, and technological devices may be distracting to individuals in the class and thus undermine that goal. Accordingly, in addition to other professional conduct and courtesies, there are to be no laptops nor cell phones nor any other electronic or communication devices allowed in class unless otherwise directed (*Exception - student presenters may use a laptop, power point, and other technology for their final presentations*).

COURSE SCHEDULE*:

**Subject to Modification*

Week 1

Thursday **August 16** First Day Class Meeting - Room 283

Assignment Due: Read: *Getting to Yes (entire book)*; Chapter 44 Fl. Statutes; Alfini 1-26 ; Read the Time Magazine article on Canvas authored by Haley Sweetland Edwards and write a 1 ½ page maximum double-spaced response to: Do you think the outcome of Sister Morissette's dispute would have differed if addressed in a civil trial? Why or why not?

Negotiation Exercise/Modes of Negotiation

Introduction to the Principles of Conflict Resolution

Continuum of Dispute Resolution Processes

Introductions

Overview of course

Review Course Syllabus

Observation and Reflection Paper

Oral Presentations and Final Paper Assignment (Sign up for topic anytime during the semester)

Other Assignments and quizzes

Confidentiality

Assignment Due Next Class: Alfini 103 – 145; 175-177; 183-191; Write an Opening Statement; Write 1-page maximum response to: “Some claim that anyone can be a good mediator if suitably trained.” Do you agree or disagree? Support your position.

Week 2

Thursday August 23

Assignment Due: Alfini 103 – 145; 175-177; 183-191; Write an Opening Statement; Write 1 page maximum response to: “Some claim that anyone can be a good mediator if suitably trained.” Do you agree or disagree? Support your position.

In-Class Quiz

Review Guidelines for Observing Mediations

Characteristics and Functions of a Mediator

Types of Mediators

Opening Statement

Assignment Due Next Class: Read Articles Page: 37 – 49 and Write a Response to Question 1 p.48 (all posted on CANVAS)

(1 page Maximum – double spaced)

Week 3

Thursday August 30

Assignment Due: Read Articles Page: 37 – 49 and Write a Response to Question 1 p.48 (all posted on CANVAS)

(1 page Maximum – double spaced)

Opening Statement (Cont.)

Components of a Mediation Conference - BADGE

County Mediation Video Simulation

Handling Non-Parties

Assignment Due Next Class: Alfini 305-326; Written response to “Is there a Good Faith Requirement for Mediating Parties in Florida?” This is a research, not opinion, assignment. I expect you to do research and cite as many authorities as you can find to support your answer. (1 ½ page maximum – double spaced)

Week 4

Thursday September 6

Assignment Due Next Class: Alfini 305-326; Written response to “Is there a Good Faith Requirement for Mediating Parties in Florida?” This is a research, not opinion, assignment. I expect you to do research and cite as many authorities as you can find to support your answer. (1 ½ page maximum – double spaced)

Agenda Development; Accumulating Information; Issue Development; Cultural Competence;

Listening and Communication Skills; Note Taking

Assignment Due Next Class: Read Alfini 365-389 and Respond to Question 3 on page 384. (1 page maximum)

Week 5

Thursday September 13

Assignment Due: Read Alfini 365-389 and Respond to Question 3 on page 384. (1 page maximum)

Diversity, Power, and Justice

Family Mediation

Final Paper Examples

Role Plays

Assignment Due Next Week: Written response of your opinion as to how to best promote competence,

cultural, ethnic, and racial diversity of mediators, including whether or not you think certification or licensing is beneficial? (1 page maximum); Read *Evolution of the Mediation Profession – Cultural Diversity* posted on Canvas; Alfini 124-133; 463-486 (top); 515-517; Fl. Rules Civil Procedure Rules Common to Mediation and Arbitration Rule 1.700-1.750; Rules for Certified and Court Appointed Mediators Chapter 44 Fl. Statutes; you may bring laptops to next class.

Week 6

Thursday **September 20**

Assignment Due: Written response of your opinion as to how to best promote competence, cultural, ethnic, and racial diversity of mediators, including whether or not you think certification or licensing is beneficial? (1 ½ page maximum); Read *Evolution of the Mediation Profession – Cultural Diversity* posted on Canvas; Alfini 124-133; 463-486 (top); 515-517; Fl. Rules Civil Procedure Rules Common to Mediation and Arbitration Rule 1.700-1.750; Rules for Certified and Court Appointed Mediators Chapter 44 Fl. Statutes; you may bring laptops to next class.

In-Class Court Process Exercise

Family Mediation

Assignment Due Next Class : Assignment Due: Read and be familiar with Rules for Certified and Court Appointed Mediators – Part I Mediator Qualifications, Part II Standards of Professional Conduct and Part III Discipline 10.100 – 10.900; Alfini: 413-461; Respond in writing to any 2 of the following *Notes and Questions* or *Mediation Dilemmas for Discussion*: Page 416 - 1; Page 419 - 1, 2; Page 457 - 2 Written responses should be 1/2 page per question (total 1 page - double spaced); you may use laptops next class; Final paper topics due next week.

Week 7

Thursday **September 27**

Assignment Due: Read and be familiar with Rules for Certified and Court Appointed Mediators – Part I Mediator Qualifications, Part II Standards of Professional Conduct and Part III Discipline 10.100 – 10.900; Alfini: 413-461; Respond in writing to any 2 of the following *Notes and Questions* or *Mediation Dilemmas*

for Discussion: Page 416 - 1; Page 419 - 1, 2; Page 457 - 2 Written responses should be 1/2 page per question (total 1 page - double spaced); you may use laptops next class; Final paper topics due next week.

Ethical Dilemmas

Assignment Due Next Class: Be familiar with Breaking Impasse and Generating Settlement techniques; Read Alfini 124-133.

Week 8

Thursday **October 4**

Assignment Due: Be familiar with Breaking Impasse and Generating Settlement techniques; Read Alfini 124-133.

Generating Movement

Caucus

BATNA/WATNA

Assignment Due Next Class: Alfini: 133-136; 326 bottom – 327 top; 346-350; Review Opening Statement and All Elements of a Mediation.

Week 9

Thursday **October 11**

Assignment Due: Alfini: 133-136; 326 bottom – 327 top; 346-350; Review Opening Statement and All Elements of a Mediation

Concluding the Mediation; Writing the Agreement

Final Mediation Role Plays including Writing Agreements

Assignment Due Next Week: Have several questions prepared for guest speaker, Prof. Carl Schwait about his career as a defense attorney attending mediations (now a mediator); Alfini Chapter 10; Respond in writing to any 2 of the following *Notes and Questions*: Page 540 – 1 or 2; Page 541 – 4; Page 548 – 3; Page

553 – 2 or 3; p.575 – 2 or 3. Written responses should be ½ page per question (total 1 page – double spaced).

Week 10

Thursday **October 18**

Assignment Due: Have several questions prepared for guest speaker, Prof. Carl Schwait about his career as a defense attorney attending mediations (now a mediator); Alfini Chapter 10; Respond in writing to any 2 of the following *Notes and Questions*: Page 540 – 1 or 2; Page 541 – 4; Page 548 – 3; Page 553 – 2 or 3; p.575 – 2 or 3. Written responses should be ½ page per question (total 1 page – double spaced).

Guest Lecturer – Prof. Carl Schwait, Esq. - Representing Clients in Mediation: The Attorney’s Role

Assignment Due Next Class: Assignment Due: Assignment Due Next Week: Alfini: Chapter 11; Read Worker’s Comp Articles on Canvas; Have several questions prepared for guest speaker, Stuart Suskin about his work as a Worker’s Comp Mediator; Written Response to the following question: If you decide to pursue a career in Alternative Dispute Resolution, how would you go about gaining entry into this competitive field, and what factors would be most important in your quest? (1 page maximum)

Week 11

Thursday **October 25**

Assignment Due Next Class: Assignment Due: Assignment Due Next Week: Alfini: Chapter 11; Read Worker’s Comp Articles on Canvas; Have several questions prepared for guest speaker, Stuart Suskin about his work as a Worker’s Comp Mediator; Written Response to the following question: If you decide to pursue a career in Alternative Dispute Resolution, how would you go about gaining entry into this competitive field, and what factors would be most important in your quest? (1 page maximum)

Guest Lecturer - Stuart Suskin, Esq. – State Worker’s Compensation Mediator

Assignment Due Next Class: Oral Presentations (1/3 class)

Week 12

Thursday November 1

Assignment Due: Oral Presentations (1/3 class)

Assignment Due Next Class: Oral Presentations (1/3 class); Evaluations (Bring Laptops)

Week 13

Thursday November 8

Assignment Due: Oral Presentations (1/3 class)

Evaluations on Laptops

Assignment Due Next Class 2:30 pm: Oral Presentations (1/3 class); Hard copies of Reflection Papers and Final Papers

Week 14

Thursday November 15 (Last Day of Class)

Assignments Due 2:30 pm: Oral Presentations (1/3 class); Hard copies of Reflection Papers and Final Papers

GOOD LUCK ON FINALS!

STUDENT OBSERVATIONS AND REFLECTION PAPERS

Observe a mediation and document your experience with a Reflection Paper. **Reflection Papers are due to me on the last day of class at 2:30 pm.**

Each student will observe a court ordered or other mediation during the semester and will write a Reflection Paper about the observation experience. These papers should be 3 - 4 double spaced pages.

Generally, your Reflection Papers should give specific examples of and reflections about the experience you had observing. They should describe what happened that was significant, why it was important, and what you think about it. Your paper should start with a brief summary of the basic “facts” of the case (what happened, parties’ positions, underlying interests), but I am most interested in learning about your reaction to, concerns about, and analysis of the mediation process. Be sure to maintain confidentiality by not revealing any names or other identifying information about the parties.

Your Reflection Papers should focus primarily on 2 things:

A. The Parties’ Behaviors and Motivations, such as:

1. Did the parties seem to have “equal” bargaining power?
2. If the parties were represented, how did the attorney(s) affect the mediation?
3. Did any issue “cloud” or “taint” the parties’ objectivity during the mediation?
4. What were the parties’ positions?
5. What were the parties’ interests?
6. Any cultural considerations or gender-related issues that arose during the mediation.
7. What type of negotiation(s) took place - Distributive? Integrative? Principled?
8. How satisfied, or not satisfied, was each party at the end of the mediation? Why or why not?

B. The Mediator’s Action Choices, such as:

1. What the mediator did that was effective and why it was effective.
2. What the mediator did that was not effective and why it was not successful.
3. How ineffective action choices could have been improved and why these suggestions are likely to prove

more effective in similar future situations.

4. Were any “ethical dilemmas” encountered in the mediation, and if so, how did the mediator deal with them?
5. What were the decisive or turning points in the mediation, and why were they critical.
6. What the mediator did that impressed you most.
7. What the mediator did that bothered you most.
8. What surprised you during the mediation.
9. Note that mediators differ widely in their approaches. What were the pluses and/or minuses of your mediator’s “style?”

It is usually instructive to engage in a post-mediation discussion with your mediator. While you should be careful not to criticize the mediator in any way, it is appropriate to ask questions that you may have.

TO SCHEDULE A FAMILY OR DEPENDENCY OBSERVATION AT THE ALACHUA COUNTY CIVIL JUSTICE CENTER, CONTACT:

Charmaine Lee: LeeC@circuit8.org 352-491-4417 Fax: 352-381-0109 (Note – Office cannot return long distance calls) ADR Office, 201 E. University Ave., Ste. 203, Gainesville, FL 32601.

TO OBSERVE A WORKERS COMP OBSERVATION, CONTACT:

STUART SUSKIN, ESQ. Email: flwcmmediator@gmail.com

Professor Davis will offer other options for observations, including video, in class.

Hard copies of all Reflection Papers are due at 2:30 p.m. the last day of class.

STUDENT ORAL PRESENTATIONS AND FINAL PAPERS

Each student will be responsible for researching and presenting to the class on a substantive topic from our syllabus, text, or class discussions. Other ADR-related topics in areas of interest to you may be selected (and are even encouraged) so long as cleared with Professor Davis in advance. The papers should not be mere “reports” which summarize others’ ideas; students should develop an original thesis which is supported by research and analysis. Oral Presentations should be 10 – 12 minutes, and an additional 5 minutes reserved for questions. They will be graded on both substantive content and presentation and should include cited authority. Obviously you will have to skillfully edit presentations to communicate your thesis and main points in the allotted time.

As a Final Paper, each student will turn in a written paper on the topic they researched and presented to the class. The papers should be a maximum of 8 double spaced typed pages*, including footnotes. Critical thinking, scholarliness, and originality are paramount, and creativity is encouraged. Please see Grading Criteria for Written Assignments below and on previous pages in this Syllabus. The Final Presentation and Paper are in lieu of a Final Examination.

Highest quality papers and exercises may be shared with other classes, individuals, or submitted for publication. ***I will assume I have permission to do so unless you notify me in writing otherwise during the semester.***

*** Exception for Boskey Essay Competition Entries which must be 15 – 25 pages and will be weighted accordingly**

FINAL PAPERS

THE FOLLOWING ARE IMPORTANT ASPECTS I WILL CONSIDER:

- A. Originality, critical thinking, and scholarliness
- B. Significance of the topic to the field of conflict resolution
- C. Quality of analysis

- D. Quality of research and authority provided
- E. Clarity of the thesis presented and supported
- F. Organization
- G. Grammar, syntax, and form

RESEARCH AND AUTHORITY SHOULD INCLUDE THE FOLLOWING (if relevant):

- A. Common Law
- B. Statutes & Rules
- C. Case Law
- D. Mediation or ADR Context
 - 1. Legal issues
 - 2. Psychological issues
 - 3. Practical applications
- E. Authority such as articles, journals, law reviews and other sources

Please use footnotes at the bottom of each page rather than endnotes

Hard copies of all Final Papers are due at 2:30 pm on the last day of class.