

SYLLABUS FOR MEDIATION 910

SUMMER 2013

July 22 - 26, 2013
8:00 A.M. – 1:10 P.M.

Professor Scot Dewhirst

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OVERVIEW OF THE MEDIATION COURSE

The goals of this course are to have you:

- **Understand mediation** and the legal and ethical issues involved in its use;
- Learn basic mediation skills from **the perspective of being a mediator**;
- Make informed decisions about **representing clients in mediation**;
- Make informed decisions about **referring your future clients to mediation**;
- Assess the effectiveness of mediators who might provide **services for your future clients**;
- Understand **how mediation is used in a variety of settings**.

A brief introduction to Mediation in Ohio...

In 2005 Ohio enacted ORC §2710 ... referred to as the Uniform Mediation Act (UMA). The UMA provides mediation participants and mediators with a limited privilege regarding communications made during a mediation or made for the purpose of considering, conducting, participating in, initiating, continuing or reconvening a mediation. It provides that communications will be confidential to the extent agreed upon by the parties. The UMA, effective October 29, 2005, is codified in the Ohio Revised Code (ORC), §§2710.01 – 2710.10.

As used in sections 2710.01 to 2710.10 of the Ohio Revised Code:

(A) "Mediation" means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

§ 2710.03. *Privilege against disclosure.*

(A) Except as otherwise provided in section 2710.05 of the Revised Code, a mediation communication is privileged as provided in division (B) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided in section 2710.04 of the Revised Code.

§ 2710.06. *Prohibited mediator reports.*

(A) Except as provided in division (B) of this section and section 3109.052 [3109.05.2] of the Revised Code, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, department, agency, or officer of this state or its political subdivisions that may make a ruling on the dispute that is the subject of the mediation.

OHIO RULES OF PROFESSIONAL CONDUCT

RULE 2.4: LAWYER SERVING AS ARBITRATOR, MEDIATOR, OR THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer *knows* or *reasonably should know* that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Comment

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator, or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator, or decision-maker depends on the particular process that is either selected by the parties or mandated by a court.

[2] In the role of a third-party neutral, the lawyer may be subject to statutes, court rules, or other laws that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, including but not limited to the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, division (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this division will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of *Professional Conduct*. When the dispute-resolution process takes place before a tribunal, as in binding arbitration [see Rule 1.0(o)], the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

A Comment on the separate "Mediation Clinic Course" ...

NOTE: Mediation is a pre-requisite for taking the **Mediation Clinic** which is a separate course offered during *Fall, Spring and Summer* semesters. It is a **3 hour clinical course** that combines some classroom work with the conducting of the actual mediation of court cases. An "organizational" class is listed on the schedule for the first Wednesday evening of the semester at 5:30 p.m. for approximately one-half hour ... but this class is normally permanently cancelled...so you do not need to be available during that time. A separate Mediation Clinic Orientation is scheduled in consultation with the input of all students. After this first class orientation, 2 or 3 other "classroom" sessions will be scheduled during the semester at agreed upon dates and times based on the availability of the student's schedules. The balance of the Mediation Clinic is comprised of appearances at different court locations in order to conduct actual mediations. These appearances could involve daytime and/or evening attendance at different mediation venues, and the scheduling of mediations can be flexible to accommodate other events in your life. Please see Professor Dewhirst for questions about the Mediation Clinic. Enrollment in the class is limited.

CLASS ATTENDANCE

This is an intensive course with only 5 days of classes. There will be a number of in-class exercises, so attendance at every class is mandatory. The professor may subtract up to a maximum of ten (10) points from each student's grade for each class absence. The professor in his sole discretion may also subtract points from a student's grade for chronic tardiness or partial absence(s).

If an emergency situation arises, a student may request in writing an excused absence. An approved excused absence will allow the student an opportunity to submit additional work that could receive from zero (0) to ten (10) points of make-up credit.

The professor reserves the right to grant excuses from class in special circumstances. A student who must request an excused absence must provide the professor with a signed written request in advance of the absence. **All requests from students relating to attendance issues must be submitted in writing to Scot Dewhirst.** If an emergency prevents an advance request, the student shall contact the professor via telephone or email as soon as possible to explain the reason for the absence and shall present a signed written explanation for the absence at the next class or as soon as possible. The professor may allow a student who is granted an excused absence to complete additional course work. The professor does not consider previously scheduled work commitments to be acceptable reasons for an excused absence.

Laptop computers may be used during class. As a demonstration of professionalism, students should not access the internet for non-class purposes, use e-mail or play computer games during instructional time.

CLASS PREPARATION AND PARTICIPATION

Each student is expected to prepare for and participate in every class. Although the nature of preparation may vary from class to class, the important element is for a student to be actively engaged in the class. Missing class will create a problem because you will be given assignments to prepare for in-class exercises, and you will be assigned partners. Students are expected to participate in good faith in all mock mediations and classroom activities.

GRADING

50% Take Home Examination

- Distributed July 26, 2013 during class;
- Due back Monday, July 29, 2013 from 5-6:00 pm in Room 524
- Alternate arrangements for return of exam will be distributed in class

40% Class Assignments

10% Class Attendance and Participation

NOTE: As previously stated in the syllabus, the professor may subtract up to a maximum of ten (10) points from each student's grade for each class absence. This is due to the fact that each class is equal to 2 to 3 weeks of class in a normal 14 week syllabus. Also, this is a skills based course, and absences will result in the student not being able to participate in class exercises or to complete class assignments about those exercises.

NOTE: Please make sure that you know your examination number prior to the first class. Always use the “same” number for all assignments and for the examination.

EXAMINATION

A take home examination is scheduled to be distributed on Friday, July 26, 2013. The examination will cover the readings, in-class discussion and exercises, as well as lecture material. Much of the information presented by the professor in class will be information that will not be covered in your readings.

INFORMATION FOR STUDENTS:

Academic Support Services in Center for Excellence in Learning & Teaching:

The Center for Excellence in Learning and Teaching’s tutoring, study strategies counseling, and other academic support services are valuable resources for students as they study and work to complete assignments. The CELT Peer Tutors are experienced students who are trained to help other students develop appropriate strategies and gain the knowledge they need to succeed academically. Regularly scheduled math and writing tutoring begins the second week of spring semester. Drop-in math and writing tutoring is also available during regularly scheduled hours, but it is best to schedule an appointment ahead of time by calling the Center at 236-6327, e-mailing celt@capital.edu, or stopping by LC 100. Independently arranged one-on-one tutorials are also available in a wide range of subjects, including ASL, biology, business, chemistry, computer science, economics, education, English, environmental science, French, German, health and sport sciences, Latin, mathematics, nursing, physics, political science, psychology, social sciences, Spanish, and selected University Core courses. The Tutor Yellow Pages, a complete listing of all the CELT Peer Tutors, their contact information and the courses they are qualified to tutor, will be available in the CELT office starting the second week of spring semester. Students can also contact Academic Services Coordinator Bruce Epps at 236-6461 or tutor@capital.edu to schedule an initial consultation for individualized study strategies counseling, or for additional information about CELT’s academic support services.

Disability Services in the Center for Excellence in Learning and Teaching:

Students with disabilities who need accommodations should contact the Office of Disability Services (ODS) at the beginning of the semester. The ODS offers a range of accommodations and support services to ensure equal educational opportunities for eligible students with disabilities. Students may request accommodations by providing documentation of their disability to the Disability Services Coordinator. Faculty, students, and the ODS work as a team to facilitate appropriate services for students with disabilities. The ODS is located in the Center for Excellence in Learning and Teaching (CELT) in LC 100. Contact Disability Services Coordinator Dr. Jennifer Speakman at 236-6327 or disabilityservices@capital.edu for additional information.

SYLLABUS - MEDIATION PRACTICUM – SUMMER 2013

CLASS SCHEDULE AND ASSIGNMENTS

Below is a list of reading assignments that will be discussed in each class. Additional readings may be added to the syllabus during the week. In addition to readings, students will be required to prepare for classes, mediations and assignments.

2 books for the course:

MEDIATION: **MEDIATION: The Roles of Advocate and Neutral**
by Dwight Golann and Jay Folberg Second Edition 2011
Aspen Publishers ISBN 978-0-7355-9968-0
(purchased in the bookstore)

THE MEDIATOR HANDBOOK

(\$20.00 - go to clinic on 1st floor to purchase ... after June 1, 2013)

READING ASSIGNMENTS:

Class 1:	Monday, July 22, 2013	<i>The Mediator Handbook</i> (Read all) <i>Mediation</i> Chapters 1-4
Class 2:	Tuesday, July 23, 2013	<i>Mediation</i> Chapters 5-9
Class 3:	Wednesday, July 24, 2013	<i>Mediation</i> Chapters 10-11
Class 4:	Thursday, July 25, 2013	<i>Mediation</i> Chapters 14, 15
Class 5:	Friday, July 26, 2013	<i>Mediation</i> Chapters 12, 13, 16