

# Dispute Resolution Clinic

Fall 2004

Clinical Instructor: Maara Fink

## **I. Prefatory Notions**

The obligation of our profession is, or has long been thought to be, to serve as healers of conflicts. To fulfill our traditional obligation means that we should provide mechanisms that can produce an acceptable result in the shortest possible time, with the least possible expense, and with a minimum of stress on the participants. That is what justice is all about. Chief Justice Warren E. Burger, *Isn't There a Better Way?* 68 A.B.A.J. 274 (March 1982).

Persuade neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser - in fees, expenses, and a waste of time. As a peacemaker the lawyer has a superior opportunity of becoming a good [person]. Abraham Lincoln, Notes for a Law Lecture, July 1, 1850, from F. Hill, Lincoln the Lawyer (1906).

"The future of mediation in this country rests heavily upon the attitudes and involvement of the legal profession. If society is to use mediation to its fullest advantage - properly employing it in minor disputes and extending its application to more major ones - and protect against the dangers of its a legal character, lawyers must be involved..." Leonard Riskin, *Mediation and Lawyers*, 43 Ohio St. L.J. 29, 41 (1982).

"Mediation is the intervention into a dispute or negotiation by an acceptable, impartial and [balanced] third-party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own acceptable settlement of issues in dispute." Christopher W. Moore, The Mediation Process, p. 6 (1986).

## **II. Course Description**

### A. Introduction

"In all cultures most disputes are resolved through negotiations which take place between the disputing parties or their representatives. In the United States, when negotiations fail to remedy the dispute, the socially sanctioned method of obtaining a resolution is to resort to adjudication." Eileen Pruett, Mediation Practicum Syllabus 1, Fall 1993.

Mediation is a voluntary process in which a third party facilitates and coordinates the negotiations of disputing parties. The mediator provides a forum and a structure, which enable the parties to negotiate both more effectively and more efficiently. Unlike a judge, the mediator does not have the authority to impose a decision upon the disputants. Instead, the mediator guides the disputants through a discussion of their problem, the issues that need to be resolved, and the alternative solutions for the resolution of the dispute. The disputants decide whether and how to resolve the dispute. Id.

Parent-child mediation can help resolve family conflicts by allowing parties to construct concrete agreements about the management of daily family life. S. Merry and A. Rocheleau, *Mediation in Families: A Study of the Children's Hearings Project* 71 (1985). Parent-child mediation also teaches family members continuing, positive, problem-solving approaches for resolving post-mediation conflicts.

Dispute Resolution Clinic instruction in court-annexed mediation contributes to the solution of family conflicts in Lucas County while teaching law students mediation skills useful in clinical experience and transferable to other conflict contexts.

#### B. Classroom Component

Mediation is a process that society will encounter more frequently in the future. To prepare you as future lawyers for the coming trend, this course will introduce you to mediation through supervised practice, readings, and class sessions. Class time will examine legal and ethical issues (e.g., confidentiality, conflicts of interest, mediator liability), psychosocial principles (e.g., psychosocial dynamics of mediation, adolescent development, family dynamics), and skills (e.g., five-stage model, non-judgmental listening) used in the mediation process. Role-plays will provide experience in party and mediator roles.

#### C. Fieldwork Component

Professor David Harris analogizes the law student in a clinical program to a high-wire artist "working with a net." Like the artist, the clinic student's steps are her own. The artist's and student's first steps are cautious, sometimes laden with fear and trembling. Progressing across the wire, the artist develops more confidence, choosing each step with greater understanding and judgment, and enlarging her repertoire for future performances. A fall could be serious without the net. Clinical faculty supervision is the net. In the event of a fall, the clinic faculty catch and support the artist, providing corrective information and encouragement for successive tries. Faculty reinforce the steps to successful completion.

A Chinese proverb reflects the value of this approach to learning: "Tell me and I forget; show me and I remember; involve me and I understand."

During the semester each student will mediate actual unruly child disputes at the Lucas County Juvenile Court located at the Juvenile Justice Center, 1801 Spielbusch Avenue in downtown Toledo. Students will also mediate small claims cases in the Citizens Dispute Settlement Program at the Toledo Municipal Court, 444 N. Erie Street.

Each student will be required to be available for **four or eight hours** of fieldwork per week, depending on the number of credit hours for which the student has enrolled. This work will include actual mediations, reminder and/or follow-up calls, and related paperwork for the court.

### III. The Grade

The grade in the course is based upon A) faculty evaluations of mediations (40%), B) student written analyses (30%), C) exam (20%), D) professionalism (10%). Each component of the grade is discussed in detail below.

#### A. Faculty Evaluations of Mediations (40%)

Forty percent of a student's grade will be based upon court staff and faculty evaluation of student performances in mediations. This will include skills and techniques demonstrated throughout the course of the semester and any additional work undertaken at the court.

B. Student Written Analyses (30%)

To meet the requirements of this component of the grade, each student shall prepare:

1. Four (4) Mediation Critiques:

Students should select one mediation for each 2-3 page critique, which includes the following:

- a. A **brief** explanation of the nature of the problem;
- b. A statement of the resolution; and
- c. An emphasis on the identification and discussion of a mediation process issue or a legal/moral/ethical issue presented by the mediation and how you dealt with it as the mediator or co-mediator. This written reflection need not necessarily be self-praising. Candor will be rewarded. You should strive to be honestly self-reflective.

2. One Comprehensive Evaluation:

At the end of the semester, each student shall write one 3-5 page Comprehensive Analysis, which evaluates your overall experience in the course and includes a discussion of the following topics:

- a. The Basic Training;
- b. The Classroom Component, including Readings, Class Discussions, etc;
- c. Interaction in the Court Setting; and
- d. Your Experience in the Role of Mediator

Once again, this should be an honest appraisal and your candor will be appreciated.

C. Exam (20%)

Twenty percent (20%) of your grade is based on an in-class examination. The exam will cover assigned reading materials, in-class discussions and practical mediation skills.

D. Professionalism (10%)

The lawyer develops a reputation that follows her throughout his or her professional life. The all-encompassing term that describes the basis of the reputation is professionalism.

Professionalism is a mix of such things as courtesy displayed to others in the profession, timeliness in meeting deadlines and other obligations, thorough preparation for professional tasks, production of work of quality, and promptness in arriving at court and other appearances.

Because law school itself is an anticipatory rehearsal for the practice of law and because this course in particular involves assuming professional roles and obligations, ten percent (10%) of this grade is based on the professionalism you demonstrate in this course.

**Attendance Policy Reminder:**

The American Bar Association, the College of Law and I require regular and punctual class attendance. At the beginning of each class meeting I will circulate an attendance sheet for you to sign. It is your responsibility to ensure that you have signed the sheet. **I WILL WITHDRAW YOU FROM THIS COURSE IF YOU ACCUMULATE MORE THAN TWO ABSENCES.**