

**University of Oklahoma
College of Liberal Studies
Advanced Interdisciplinary Seminar
Mediation: History, Theory, and Practice
LSTD 4673-803
Session I: April 18, 19, and 20, 2008
Session II: May 2, 3, and 4, 2008
Friday: 5:30-9:30 pm; Saturday: 8:30 am – 4:30 pm; Sunday: 1:00-5:00 pm
McCarter Hall—CLS 1st Floor Classroom**

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Course Description:

This course provides an overview of the history of mediation as well as an introduction to substantive mediation theories and models. The practice of mediation will be introduced by examining its origins in both the court-focused and community-focused movements. Mediation programs resulting from these movements will be explored: state civil and criminal court programs, federal government mediation programs, neighborhood mediation centers, peer mediation programs in public and private secondary schools, college campus mediation centers, volunteer mediation centers and workplace/union mediation programs. Contemporary applications and trends in mediation will be examined, giving students insight as to how mediation is applicable to a variety of circumstances ranging from international and political conflicts to local neighborhood disagreements.

Session/weekend one will consist of an introduction to the topic of mediation and various mediation theories, practice models, and perspectives in resolving disputes.

Session/weekend two will concentrate on the process of mediation and how the mediator(s) and disputants work through the stages of the mediation process in an effort to increase communication, improve relationships, uncover hidden issues, and formulate solutions to problem(s).

Course Objectives:

Upon completion of this course, students will be able to do the following:

- Demonstrate an understanding of the history of mediation.
- Describe and distinguish among substantive mediation theories and models.
- Delineate the phases of the mediation process.
- Explain ethical concerns and standards of practice in mediation.
- Understand the impact of mediation from an economical, managerial, psychological, legal and educational perspective.
- Describe contemporary practices, programs, applications and trends in mediation.

Course Format:

A combination of lectures, case studies, videos, discussions and group projects will be utilized in this course.

Required Textbooks:

McCorkle, Suzanne and Melanie J. Reese (2004). *Mediation Theory and Practice*. Boston, MA: Pearson-Allyn & Bacon. ISBN: 0-205-36108-0.

Bush, Robert A.B. and Joseph P. Folger (2004). *The Promise of Mediation: The Transformative Approach to Conflict*. Revised Edition. San Francisco, CA: Jossey-Bass. ISBN: 0-7879-7483-8.

Seminar Assignments:

Session/Weekend I Pre-Seminar Assignments

Reading Assignments

- Mediation Theory and Practice: Chapters 1-9, pp. 1-161. Case Study—Case of the Broken Saw, pp.186-188. Case Study—Case of the Ad Agency, pp.189-191. Case Study—Case of Waves at Surf & Turf, pp.193-195.
- The Promise of Mediation: Chapters 1-3, pp. 1-130.

Writing Assignment

- Write a 3-5 page essay discussing mediation concepts presented in the assigned reading. The essay should be double-spaced, Times New Roman font, 12 point text, and 1" page margins. In-text citations should be used when referencing the textbooks; a reference/bibliography page should follow the essay. APA citation format should be used throughout the essay. See www.ou.edu/cls/reference for essay guidelines. The college provides a helpful checklist of items that should be contained within an essay. **This assignment is due at the beginning of class on Friday, April 18, 2008. (The assignment should be posted to your dropbox at learn.ou.edu. In addition, bring a hard copy of this assignment to class.)**
- In writing your essay, here are a few aspects to consider:
 - Critically analyze the assigned case studies with regard to mediation concepts, e.g., would the parties in the case studies benefit from mediation? Discuss the specific facts of each case study that indicate a mediation might be a viable method of conflict resolution for the disputing parties. Examples include, but should not be limited to, the following: Do the parties have an ongoing personal or business relationship, concern for reputation, or interest in resolving the dispute outside of the court system? What common ground, if any, exists between the parties? What

might happen if the dispute continues? What aspects of mediation would (or would not) aid the parties in resolving their dispute?

Session/Weekend II Pre-Seminar Assignments

Reading Assignments

- Mediation Theory and Practice: Chapters 10-11, pp. 162-183. Case Study—Case of the Daycare Dilemma, pp. 196-200. Case Study—Case of Wood.com, p. 201-204.
- The Promise of Mediation: Chapters 4-7, pp. 131-266.

Post-Seminar Assignment

The post-seminar writing assignment will consist of a 5-7 page, double-spaced final paper discussing a topic or issue related to mediation history, theory, and/or practice. The paper should be double-spaced, Times New Roman font, 12 point text, 1" page margins. It should reference 4-6 resources and contain in-text citations and a reference/bibliography page. APA citation format should be used throughout the paper. See www.ou.edu/cls/reference for examples of APA formatted papers. **The post-seminar paper is due one week following the final day of class. (The due date is Sunday, May 11, 2008.)**

Group Project—Presentations & Case Study

The group project will consist of creating a mediation case study. Groups will formulate a scenario based upon an historical/current event or situation occurring in everyday life that would be appropriate for mediation. Each group will present its case study to the class. The presentation should be 20-25 minutes in length. Presentations will occur on Saturday, May 3 and Sunday, May 4, 2008. (Additional requirements regarding the case study will be further discussed in class.)

Grading Information:

There will be a total of 1000 available points for this course. Points are allocated as follows:

Pre-Seminar Writing Assignment	150
Post-Seminar Writing Assignment	250
Final Examination	250
Group Project	250
Written Case Study (150 points)	
Presentation of Case Study (100 points)	
Attendance/Participation	100
 Total Points for Course	 1000

Grading Scale:

900 – 1000 points	A
800 – 899 points	B
700 – 799 points	C
600 – 699 points	D
0 – 599 points	F

Attendance:

All students must attend both Session I and Session II to complete the seminar successfully. Because our contact time is so limited, we expect all students to attend every session. Exceptions will only be made if there are sufficient extenuating circumstances. Verification will be required for absences. Timely submission of assignments and participation in class discussions, both as individuals and members of assigned groups, is expected.

Course Outline:

Topic 1: The History of Mediation

Overview:

The introductory material presented in the course will examine the historical roots of mediation and early mediation programs. The historical evolution of mediation in the United States began in the mid-1930's. During this time period, mediation was used extensively to resolve labor disputes, but it was non-existent elsewhere until the 1960's. Two distinct mediation movements emerged in the 1960's: court-focused movement and community-focused movement. Each movement gave rise to a variety of mediation programs in state and federal courts, government agencies, communities and institutions, many of which are still in existence today.

Topic 1 Objectives:

- Understand the historical background of mediation.
- Identify and discuss two distinct historical roots from which mediation evolved in the United States.
- Describe the history and purpose of various mediation programs.
- Explain three perspectives from which conflict management approaches can be viewed and how mediation relates to each of the perspectives.
- Distinguish mediation from other forms of alternative dispute resolution processes.

Guiding Questions:

What is mediation? How does mediation benefit disputing parties? What issues does mediation address that cannot be addressed in the legal system? How would mediation benefit the disputing parties in Case 1.1, p. 3 Mediation Theory and Practice?

What group(s) utilized mediation to resolve their disputes prior to the 1960's? What events caused the furtherance of mediation in the 1960's? What two mediation movements evolved as a result of these events?

In what ways do the "Four Stories of the Mediation Process" demonstrate the diversity of approaches, goals and rationales in mediation practice?

Topic 2: Mediation Theories, Models and Ethical Standards

Overview:

This portion of the course will discuss two deviating philosophical theories of mediation: conciliation theory and problem-solving theory. Our study will then turn to the three basic models of mediation that are derived from these theories: transformative model, settlement-oriented model and balanced model. Unit 2 will conclude with addressing the topic of mediation ethics. A reading of the Model Standards of Conduct for Mediators will highlight areas of importance regarding ethical practices.

Topic 2 Objectives:

- Differentiate among mediation theories and models.
- Compare and contrast the goals and purposes of mediation models.
- Describe the role of the mediator.
- Discuss ethical considerations and standards.

Guiding Questions:

What is the purpose of mediation according to the conciliation theory? What is the purpose of mediation as stated by the problem-solving theory?

What are the three substantive mediation models and the overriding purposes of each?

How do the roles of the mediator differ among the three substantive mediation models? What roles do the parties play during the mediation process according to each model?

What is party empowerment and recognition?

What are the phases in the balanced mediation model? Why does the transformative model avoid using a structured, phased approach during the mediation process?

What ethical issues must a mediator consider?

Topic 3: Fundamental Elements of the Mediation Process

Overview:

The fundamental elements of the mediation process differ based upon the theoretical approach and model used by the mediator. Unlike the settlement-oriented and balanced mediation models, the transformative model does not use a phased or structured process. Mediators using the transformative model focus upon supporting

empowerment and recognition shifts and allow the parties to freely discuss facts, issues and possible resolutions.

We will explore the components that comprise the transformative and balanced models. The phases of the settlement-oriented model are not comprehensively discussed in the texts, but are often identical to those of the balanced approach with a focus upon settlement rather than elements of party empowerment and recognition.

Topic 3 Objectives:

- Understand the phased process of the settlement-oriented and balanced models.
- Explain the non-structured elements of the transformative model.
- Identify the importance of party empowerment and recognition.
- Explain the structured phases of the balanced model.
- Distinguish among types of mediation agreements.

Guiding Questions:

What are the advantages and disadvantages of using a model employing a phased approach?

Why are the elements of empowerment and recognition important elements in the transformative model?

What non-phased activities do the parties engage in during the transformative process? What is the role of the mediator during the transformative process?

Who determines what issues are to be negotiated when using the balanced model? Who determines what issues are to be negotiated when using the transformative model?

Topic 4: Contemporary Applications and Movements in Mediation

Overview:

What is the future of the practice of mediation? What is the best theoretical approach and model to utilize? Should mediators be required to sit for a professional board examination? Should states pass laws that stringently regulate the practice of mediation? These pressing questions have yet to be resolved in the mediation field.

Mediation is a relatively new profession and means of resolving conflict in many arenas. The future and regulation of mediation serve as topics of much debate among scholars, lobbying groups, professional organizations and practitioners. With such diversified opinions regarding the goals, purposes and values inherent in mediation, it is likely that mediation will continually evolve for years to come. Interestingly, in recent years, many spin-offs of the three basic models have emerged, e.g., narrative and shuttle models, as well as various alternative mediums for conducting mediation, e.g., online-dispute resolution/online mediation.

Topic 4 Objectives:

- Describe pertinent issues and debates within the mediation practice.

- Understand the social need and demand for different models of mediation and how this affects the future of the mediation practice.
- Discuss evolving mediation programs and trends in the mediation practice.
- Understand the utility of mediation skills in everyday life.

Guiding Questions:

Should practice guidelines and standards be drafted to accommodate for the differences in the mediation models?

What is co-mediation? When is co-mediation useful? Could co-mediation, panel mediation and/or online mediation have been used in the “Purple House” mediation case (The Promise of Mediation, p. 131)? The mediator in this case used a transformative model of mediation in a face-to-face setting. What model of mediation and medium do you think would best suit this case and why?

Is online mediation a legitimate medium for which to conduct a mediation session? What groups are suitable for online mediation?

In what ways can the acquisition of mediation skills and information benefit individuals in their careers and everyday life?

Incomplete (“I”) Policy:

For sufficiently extenuating circumstances a student may receive a grade of “I” and receive an extension to complete. To receive a grade of “I” the student must satisfactorily complete a minimum of one-half of the course work, have a legitimate reason for not being able to complete the work during the normal time frame, request from the instructor a desire to receive an Incomplete grade via submitting a request for an “I” and a plan to the instructor about how and when the work will be completed. If the student receives a grade of “I” the instructor will indicate to the student, and to the Office of Academic Records via the official OU grade sheet, what must be done to complete the course and set a time limit appropriate to the circumstances, however, the time allowed may not exceed one calendar year. If by the end of the year, no change in grade has been submitted, the grade of “I” will become permanent on the student’s record. If the student wants to re-enroll in the course they may, and they will need to pay full tuition and fees for the enrollment.

If you have submitted no work, or less than half of the course assignments, you should not expect to receive a grade of “I” You will receive either an “AW” or a failing grade. Students will make arrangements with the instructor to complete coursework. Work submitted within four weeks of the final course date will be accepted without negative consequences to the grade; work submitted to remove the “I” after four weeks will have consequences to be determined by the professor. Grades of “I” must be completed within one academic year.

Academic Misconduct:

Any act which improperly affects the evaluation of a student's academic performance or achievement, including but not limited to the following:

- (a) Cheating: the use of unauthorized materials, methods, or information in any academic exercise, including improper collaboration;
- (b) Plagiarism: the representation of the words or ideas of another as one's own, including:
 - (1) direct quotation without both attribution and indication that the material is being directly quoted, e.g. quotation marks;
 - (2) paraphrase without attribution;
 - (3) paraphrase with or without attribution where the wording of the original remains substantially intact and is represented as the author's own;
 - (4) expression in one's own words, but without attribution, of ideas, arguments, lines of reasoning, facts, processes, or other products of the intellect where such material is learned from the work of another and is not part of the general fund of common academic knowledge;
- (c) Fabrication: the falsification or invention of any information or citation in an academic exercise;
- (d) Fraud: the falsification, forgery, or misrepresentation of academic work, including the resubmission of work performed for one class for credit in another class without the informed permission of the second instructor; or the falsification, forgery or misrepresentation of other academic records or documents, including admissions materials and transcripts; or the communication of false or misleading statements to obtain academic advantage or to avoid academic penalty;
- (e) Destruction, misappropriation or unauthorized possession of University property or the property of another;
- (f) Bribery or intimidation;
- (g) Assisting others in any act proscribed by this Code; or
- (h) Attempting to engage in such acts.

Penalties are listed in the Academic Code. For further information on academic misconduct please refer to the following link: <http://www.ou.edu/provost/integrity/>

Disability Issues: Any student in this course who has a disability that may prevent her or him from fully demonstrating his or her academic abilities should contact Frank Rodriquez (405-325-1061) as soon as possible to discuss the accommodations necessary to ensure full participation and to facilitate your educational opportunities. For further information on disability issues please refer to the following link: <http://www.dsa.ou.edu/ods/index.html>

BASIC PRINCIPLE OF HONESTY

Honesty is a fundamental precept in all academic activities, and those privileged to be members of a university community have a special obligation to observe the highest standards of honesty and a right to expect the same standards of all others. Academic misconduct in any form is inimical to the purposes and functions of the university and therefore is unacceptable and rigorously proscribed.