

Alternative Dispute Resolution and Writing

Professor Doneff—Spring 2015

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| <u>Contact Information:</u> Office phone: 404.872.3593. x 254 Email address: adoneff@johnmarshall.edu <u>Class time:</u> Monday: 2-3:30 Wednesday: 1-2:30 | <u>Office Hours:</u> Monday : 3:30-5 Wednesday: 2:30-4:00 (except if faculty meeting) I am also happy to meet with you outside of office hours. Please come by or contact me via email to set up an appointment to meet. |
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Required Reading:

Andrea Doneff and Abraham Ordovery, *Alternatives to Litigation* (3d ed. NITA 2014). Note: This book is brand new. The previous edition is very different.

Roger Fisher, Bruce Patton, William Ury, *Getting to Yes* (Penguin Books 2011)

Materials posted to TWEN or handed out in class

Suggested Reading:

William Ury, *Getting Past No: Negotiating in Difficult Situations* (Random House 2007) or William Ury, *Getting Past No: Negotiating With Difficult People* (rev. ed. Bantam Books 1993)

Attendance:

If you complete all 28 hours of mediation training, you will earn a certificate that meets the training requirements to register as a civil mediator with the Georgia Office of Dispute Resolution. In order to complete those hours, you may miss only 3 hours of class in weeks 1-11 to earn the certificate. If you miss the ethics class, even if that is the only class you miss, you will not earn the certificate unless you take that portion of the class the next time it is available.

Per John Marshall policy, you may only miss 5 classes or you will be automatically withdrawn from the class. If you come to class more than 15 minutes late or leave more than 15 minutes

early, you will be marked absent for half a class. Two lates = one absence. If you are consistently late, even if less than 15 minutes, I may count each late as an absence.

Course Description:

ADR and Writing will teach you about various alternatives to litigation, concentrating on mediation and arbitration. If you attend sufficient classes, you will earn a certificate that will help you register as a civil mediator with the Georgia Office of Dispute Resolution. The course will also help you develop legal writing skills in a practical setting—as an attorney representing a client with a dispute or legal problem better served by ADR than litigation.

Learning Objectives:

By the end of this semester, students should:

- 1) Be able to identify and choose between alternative forms of dispute resolution for a given fact scenario;
- 2) Have practice representing clients in mediation and be prepared to advise clients on potential negotiation strategies and outcomes;
- 3) Have experienced the role of mediator in a civil dispute;
- 4) Be able to plan a strategy for a mediation and an arbitration of a given fact scenario and predict the outcome of pursuing that strategy; and
- 5) Recognize significant legal issues that might affect the use of ADR in their legal practice.

Due Dates for Papers (each due at 11:55 p.m. on TWEN):

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| Outline of First Draft of Paper (P/F) | Sunday, February 22 |
| First Draft of Paper (30 %) | Sunday, March 15 |
| Mediation Statement (15%) | Sunday, March 29 |
| Final Paper (45%) | Sunday, April 26 |

Class Participation, including preparedness for and appropriate participation in role plays, will count for 10% of your grade.

Class Overview and Assignments

Week 1 Introduction to Alternative Dispute Resolution

Approaches to Dispute Resolution
Overview of ADR Processes

Reading: *Alternatives*, chs.1, 2, 3, and 6; Start Reading *Getting to Yes*

Week 2 Negotiation Styles and Skills; Preparing for Negotiation

Understanding Conflict
Planning for Negotiation
Issues in and Approaches to Negotiation

Reading: *Alternatives*, ch. 5; Finish reading *Getting to Yes*

Week 3 Communication Skills

Active Listening
Presenting Information

Reading: *Alternatives*, ch. 4

Assignment: Meet with negotiation partner and prepare for role play

Week 4 Negotiation Skills

Interest-Based Negotiation

Reading: Review *Getting to Yes*

Assignment: Meet with negotiation partner and prepare for role play

Week 5 Negotiating Effectively and Intro. To Mediation

Arguing Persuasively
Gaining and Revealing Information
Getting to Mediation
Types of Mediation

Reading: *Alternatives*, ch. 7

Week 6 Beginning the Mediation Process and Role of Attorneys

Mediator's Role
Preparing for an ADR Process
Representing Clients in Negotiation and Mediation

Video of Mediation Demonstration
Mediation Exercise: Opening Statements

Reading: *Alternatives* ch. 9
Assignment: Prepare Opening Statement

Week 7 Mediation Essentials

Questioning Skills
Joint Problem Solving
Confidentiality Issues
Reality Testing

Mediation Role Play

Reading: Check TWEN Course Materials
Assignment: Read role play and meet with attorney/client

Outline of First Draft of Paper Due by 11:55 p.m. Sunday, February 22

Week 8 Overcoming Impasse

Handling Escalating Tensions
Power Imbalances
Techniques for Overcoming Impasse

Mediation Role play

Reading: *Alternatives*, ch. 8
Assignment: Read role play and meet with attorney/client

Week 9 Mediation Agreement Writing and Diversity Issues

Agreement Writing and Diversity Issues
Mediation Role Play

Reading: *Alternatives*, ch. 7.4; TWEN Course Materials and class handouts
Assignment: Read role play and meet with attorney/client

First Draft of Paper Due by 11:55 p.m. Sunday, March 15

Week 10 Ethical Issues in Mediation

Obligations of Attorneys/Mediators
Model Rules and Ethics Guidelines

Mediation Role Play

Reading: *Alternatives*, ch. 12; Appendix C, posted to TWEN, and other materials posted to TWEN
Assignment: Read role play and meet with attorney/client

Week 11 Current Issues in Mediation/Mediation Wrap Up/Fit the Forum to the Fuss

Mediation Role Play

What the Courts are Doing
Mediation Opportunities
How to Register as a Mediator
Other Types of ADR and Choosing the Appropriate Forum

Reading: *Alternatives*, chs. 10, 11, and 13; additional readings posted to TWEN
Assignment: Read role play and meet with attorney/client

Mediation Statement Due by 11:55 p.m. Sunday, March 29

Week 12 Arbitration

Arbitration: What it is; How it works
Rules of Evidence, Discovery, Review, Remedies, Enforceability, etc.

Arbitration Exercise # 1

Reading: *Alternatives*, chs. 14-16; Arbitration Materials Posted to TWEN

Mandatory Conferences this week—bring to your conference two paragraphs on how you will use arbitration for the dispute you are writing about

Week 13 Arbitration, continued

Preparing for and Representing Clients in Arbitration
Relevant Case Law

Arbitration Exercise # 2

Reading: *Alternatives*, ch.19 and Arbitration Materials Posted to TWEN

Week 14 Arbitration Clauses and Dispute Resolution Systems

Drafting and Reviewing ADR Clauses
Designing Dispute Resolution Systems
Wrap Up

Reading: *Alternatives*, chs. 17 and 18
Materials posted to TWEN

Final Paper Due by 11:55 p.m. on Sunday, April 26