

UNIVERSITY OF OREGON SCHOOL OF LAW
CONFLICT AND DISPUTE RESOLUTION MASTER'S PROGRAM
JD PROGRAM

LAW 725: MEDIATION

Spring 2020

Class Meetings: Wednesdays 9-11:50am
Location: 241
Instructor: Jeslyn Everitt
Office Hours: by appointment
Email: jeveritt@uoregon.edu

COURSE DESCRIPTION

This course introduces students to the theory and practice of mediation. Mediators enter as third parties into the relationship of those in conflict. Through a combination of lecture, observation, small group exercises, and role-play simulation and debriefing, students will investigate the stages of a mediation process and experience what it is like to take on the responsibility of the mediator role, exploring their own relationship with the practice and addressing such issues as neutrality and impartiality, confidentiality, communication facilitation, problem solving, and power dynamics from both the theoretical and practical perspectives. At the conclusion of the course, students will have fulfilled the current training requirements for community mediators in Oregon. These requirements may be transferable to jurisdictions outside Oregon; check your state's rules for details.

LEARNING OBJECTIVES

As a result of taking this course, students will:

- Learn about different mediation types and mediator styles.
- Gain better understanding of conflict resolution and mediation theory.
- Practice creating a safe, comfortable, and respectful mediation environment.
- Apply basic interest-based negotiation knowledge and skills in mediation context (e.g. identifying issues and interests, listening effectively, building relationships, navigating difficult conversations, generating and evaluating options, and managing the tension between assertiveness and empathy).
- Become more aware of mediator requirements for confidentiality, impartiality, and other ethical standards of practice.
- Practice communication skills, including active listening, empathy, validation, open-ended questioning, paraphrasing, and reframing.
- Learn to memorialize agreements.
- Practice giving and receiving feedback.

COURSE TEXTS

- Suzanne McCorkle & Melanie Rose, *MEDIATION THEORY AND PRACTICE* (2019, 3rd ed.)
- Chris Voss, *NEVER SPLIT THE DIFFERENCE: NEGOTIATING AS IF YOUR LIFE DEPENDED ON IT* (2016)
- *Optional*: Douglas Stone, Bruce Patton, Sheila Heen, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (1999)
- Supplemental materials posted on Canvas. Please do not make additional copies or distribute those materials to anyone not enrolled in this class.

COURSE POLICIES

Accessible Education for All Students: The University of Oregon works to ensure inclusive learning environments for all students. We recognize that students bring a variety of learning styles to the course, and that some learning styles may require adjustment to course structure. We are happy to talk with you about such adjustments. Please be in touch with the professor if there are aspects of the instruction or design of this course that result in barriers to your participation as a result of learning style or diagnosed disability. If this course involves anonymous grading, please contact Assistant Dean of Student Affairs, Nicole Commissiong, nrc@uoregon.edu, for information on accommodations. For more information, you are also encouraged to contact the Accessible Education Center (formerly Disability Services) in 164 Oregon Hall at 346-1155 or uoac@uoregon.edu.

Inclusion and Collegiality: Our community values inclusion. We are committed to equal opportunities for all faculty, staff, and students to develop individually, professionally, and academically regardless of ethnicity, heritage, gender, sexual orientation, ability, socio-economic standing, cultural beliefs and traditions. We are dedicated to an environment that is inclusive and fosters awareness, understanding, and respect for diversity. If you feel excluded or threatened or want to consult on related issues, please contact Chris Esparza, Director of Diversity, Inclusion, and Leadership Development at cesparza@uoregon.edu or 541-346-1565. You may also contact Jennifer Espinola, Law Dean of Students, at espinola@uoregon.edu or 541-346-1557.

Academic Integrity: Students are expected to demonstrate high levels of academic integrity and professionalism, and are prohibited from committing or attempting to commit any act that constitutes academic misconduct. Plagiarism and other forms of academic dishonesty will be grounds for automatic failure in the course. If you have questions about conduct please ask your instructor or review the University Student Conduct Code or the UO Policy.

Attendance: Attendance is required for all sessions of this course. Furthermore, you must be at class *on time*. In an exercise-driven class like this one, everyone's involvement is important. You will often be assigned a partner or a team for a given exercise, and if you or your partner is not there, then neither of you receives the educational benefit of the exercise and it will cause considerable logistical difficulties. If you must be late or absent because of illness, religious obligation, or a family

emergency, please leave me a message in advance and I will structure a makeup assignment for you. I will excuse absences only for illness, religious obligation, or a family emergency. Any unexcused absence will have a serious adverse impact on your grade. Also, more than two excused absences may affect your grade negatively. Note that you may not be able to complete the state requirements for community mediators if you miss any of the scheduled class time.

Participation: Many of the classes will be highly interactive as we build answers to questions we ask together. You will be expected to engage actively in these opportunities for joint inquiry and exploration. Your participation will contribute to the learning of your fellow classmates. Part of your grade will be determined by your participation.

Computer Use: No computers, tablets, phones and/or other electronic devices are permitted during course time.

Late Assignments: You are expected to turn in any assignments on time. If you are unable to turn in an assignment on time, please contact me to discuss whether an extension is possible (it may not be).

Pronouns: Note that most of the materials we will read, as well as much of our discussion in class about those materials, will use the pronouns “he/him/his” or “she/her/hers.” Gender is not binary, and some people prefer to use “they/them/their” or “ze/hir” for individuals. In writing, using pronouns that match their antecedent in number can be important for clarity. However, I respect the choice to use plural pronouns to avoid gendered pronouns; if you choose to use a plural pronoun to replace a singular antecedent (“a person... they”), please include a footnote in your paper indicating that it is a conscious choice. For more information on gender identity, please visit the LGBTQA3 office, <https://dos.uoregon.edu/lgbt>.

Instructor’s Reporting Obligations: As assistant general counsel at the University of Oregon, I am a designated reporter. For information about my reporting obligations, please see <https://investigations.uoregon.edu/employee-responsibilities>. Students experiencing any form of prohibited discrimination or harassment, including sex or gender based violence, may seek information at safe.uoregon.edu, respect.uoregon.edu, or investigations.uoregon.edu, or may contact the non-confidential Title IX office/Office of Civil Rights Compliance (541-346-3123), or Dean of Students offices (541-346-3216), or call the confidential 24-7 hotline 541-346-SAFE for help. I am also a mandatory reporter of child abuse.

Privacy: Over the semester, we want to cultivate an atmosphere of trust and openness among all participants. Accordingly, please use discretion when discussing anything that happens or is said in class (or in outside-of-class exercises). I will do the same.

Throughout the course, you will receive confidential instructions for various exercises. You should, of course, keep these away from those with other instructions until after the mediation is over (at which time you can both share your confidential instructions, if you like). In addition, please do not share the contents of these confidential instructions with people outside of class. If the content of a case become widely known, then the case becomes less valuable.

GRADING

The bulk of your grade will consist of written assignments that you will turn in periodically throughout the course. These assignments provide opportunities for reflective practice and analysis. Some assignments will be group projects; others you will complete on your own. Whatever the format, please turn in edited, well-written pieces. I will hand out the instructions for each assignment in class. Your grade is also based on attendance and participation.

A note about participation: During the simulated mediations and class exercises, I invite you to take risks, to try different negotiation and mediation styles, and to find your voice as a mediator. To encourage this, I will not factor the results from any simulated mediation or class exercise into your final grade, with the exception that I may consider inadequate preparation to the extent it affects your ability to effectively participate in an exercise.

Assignment	Percentage of Grade
Reflection 1	10%
Reflection 2	10%
Representation Plan & Analysis	25%
Mediation Plan & Analysis	25%
Participation	30%

COURSE ORGANIZATION AND ASSIGNED READINGS

(subject to change)

CLASS 1: January 15, 2020

Introduction to Mediation and Interests

- Introduction to mediation
- Understanding interests
- Thomas Kilmann Conflict Resolution Model

Assignment for Next Class:

- Read *Mediation Theory and Practice*, Chapters 1 and 3
 - Canvas reading on active listening and negotiation strategy
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CLASS 2: January 22, 2020

Fundamentals of Dispute Resolution

- Active Listening
- Leverage
- Understanding Your Bottom Line (BATNA/WATNA)
- Relationships

Assignment for Next Class:

- Read *Mediation Theory and Practice*, Chapter 2
 - Complete Reflection No.1, to be handed in at start of Class 4.
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CLASS 3: January 29, 2020

Types of Mediation

- Common Variations of Mediation
- Facilitative v. Evaluative v. Restorative Models
- The Role of the Mediator

Assignment for Next Class:

- Read *Mediation Theory and Practice*, Chapters 4 and 8
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CLASS 4: February 5, 2020

The Mediation Process

- Intake, Ground Rules, Agenda Setting, Caucuses
- Representation Plans

- Client and Attorney Responsibilities

Assignment for Next Class:

- Read *Mediation Theory and Practice*, Chapters 6-7
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CLASS 5: February 12, 2020

Opening Statements

- Workshop on Opening Statements

Assignment for Next Class:

- Come prepared to do a full mediation for Fact Pattern #1
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CLASS 6: February 19, 2020

Mediation Experience 1

- Mediate Fact Pattern #1 (70 minutes, videotaped)
- Feedback

Assignment for Next Class:

- Read *Mediation Theory and Practice*, Chapter 5
 - Read American Bar Association, *Model Standards of Conduct for Mediators* (2005), available at https://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.authcheckdam.pdf
 - Canvas reading on model standards
 - Review videotaped mediation and prepare Mediation Plan & Analysis (if you were serving in role of mediator) or Representation Plan & Analysis (if you were serving as advocate) for Fact Pattern #1. Hand in assignment at the start of Class 7.
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CLASS 7: February 26, 2020

Mediation Confidentiality and Standards

- Impartiality
- Conflicts of Interest
- Confidentiality

Assignment for Next Class:

- Read *Mediation Theory and Practice*, Chapter 9
- Read *Never Split the Difference*, Chapters 1-3
- Canvas readings on advanced communications and cultural conflict

CLASS 8: March 4, 2020

Advanced Mediator Skills

- Impasse Strategies
- Communication Skills
- Triggers
- De-escalating conflict
- Cultural and power based identity conflicts

Assignment for Next Class:

- Read *Mediation Theory and Practice*, Chapter 10
 - Read *Never Split the Difference*, Chapters 4-6
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CLASS 9: March 11, 2020

Settlement Agreements and Mediation Strategy

- Revisit opening statements
- Drafting settlement agreements
- Ending the mediation

Assignment for Next Class:

- Read *Mediation Theory and Practice*, Chapter 11
 - Prepare at least one question for the panel discussion
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CLASS 10: March 18, 2020

Real World Mediation

- Panel discussion with mediation professionals

Assignment for Next Class:

- Come prepared to do a full mediation for Fact Pattern #2
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CLASS 11: April 1 2020

Mediation Experience 2

- Mediate Fact Pattern #2 (70 minutes, videotaped)
- Feedback

Assignment for Next Class:

- Canvas reading on transformative mediation, evaluative mediation, and restorative justice

- Review videotaped mediation and prepare Mediation Plan & Analysis (if you were serving in role of mediator) or Representation Plan & Analysis (if you were serving as advocate) for Fact Pattern #2. Hand in assignment at the start of Class 12.
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CLASS 12: April 8, 2020

Other Forms of Mediation

- Evaluative mediation
- Transformative mediation
- Restorative Justice

Assignment for Next Class:

- Read *Never Split the Difference*, Chapters 7-8
 - Canvas reading on mediation ethics
 - Complete Reflection No.2, to be handed in at start of Class 14.
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CLASS 13: April 15, 2020

Mediator Ethics

- Model Rules of Professional Conduct
- Mediator Ethics and Liability
- Mediator Privileges

Assignment for Next Class:

- Canvas reading on mediation critiques
 - Read *Never Split the Difference*, Chapters 9-10
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CLASS 14: April 22, 2020

The Limits of Mediation

- When to Mediate
- Critiques of Mediation

APPENDIX – GRADING RUBRICS

Rubric for Classroom Participation:

	Will not pass	Needs revision	Good	Excellent
Peer Interaction	Virtually no interaction with peers	Limited interaction with peers	Makes a sincere effort to interact with peers (ongoing)	Actively Supports, engages and listens to peers throughout term
Participation	Comments vague if given at all; frequently demonstrates a lack of interest	Sometimes participates constructively in group work and class discussions, sometimes goes on auto-pilot	Participates constructively in group work and class discussion throughout the term	Plays an active, dynamic role in discussions and group work throughout the term
Contributions to Class	Demonstrates a noticeable lack of interest on occasion	Comments are sometimes irrelevant and do not advance level and depth of class dialogue	Comments in class discussions are relevant and based on assigned material, and generally help the dialogue along	Comments consistently advance level and depth of dialogue in class discussions
Group Dynamics	Group dynamic and level of discussion are often notably disrupted by student's presence	Group dynamic and level of discussion are sometimes disrupted by student's presence	Group dynamic and level of discussion are often enhanced, but never made less effective because of student's presence and contributions	Group dynamic and productivity are always enhanced by student's presence and contributions

Rubric for Written Work:

<p>Excellent. Written work is presented at a mature level, organized well and carefully edited, with correct grammar, good vocabulary, and high quality of careful and informed thinking. Meets all course expectations timely and completely. Shows thorough and active grasp of concepts and demonstrates exceptional ability to synthesize course lectures and materials. Demonstrates capacity for self-reflection and self-analysis, along with an ability to propose alternative approaches for the future.</p>
<p>Good. Written work is presented at the graduate level, with good grammar, vocabulary, and thought, with command of content and organization and only a few minor flaws. Meets course expectations timely and completely. Shows good grasp of concepts and ability to synthesize course lectures and materials, but does not rise to the level of being exceptional.</p>
<p>Needs Revision. Written work is presented at graduate level with adequate grammar, vocabulary, and thought, but with frequent flaws, problems with organization, weak or minimal grasp of concepts, and limited ability to synthesize the course lectures and materials.</p>
<p>Poor. Written work is marred by serious problems of grammar, vocabulary, disorganization or unclear expression. Fails to meet basic minimum course expectations in a timely way. Grasp of concepts is incomplete or uncertain, and student does not adequately synthesize lecture and course materials.</p>
<p>Far Below Standard Expectations. Written work does not achieve college level grammar, vocabulary, organization, and thought. Does not master concepts and lacks the ability to synthesize the lecture and course materials.</p>