

**MEDIATION CLINIC**  
**FALL 2014**  
**Professor Deborah Thompson Eisenberg**  
**Professor Toby Treem Guerin**

Welcome to the Mediation Clinic! In this year-long clinic, you will develop mediation and conflict resolution skills by working with both court-based mediation programs and public school conflict resolution programs. During the fall semester, we will focus on training you to be neutrals, both in mediations and “restorative justice” circles. You will then put those skills into practice. During the spring semester, while continuing to develop your skills as a neutral, we will focus many of our class sessions on the attorney’s role in selecting dispute resolution options and representing clients in mediation.

**I. Goals:**

The Mediation Clinic has four main goals:

- 1) to place you in the role of the neutral mediator rather than the partisan advocate, and to foster non-adversarial ways of resolving disputes;
- 2) to develop an appreciation of how our society and legal system approaches conflict and reflect on the impact that those approaches may have on individuals, the community, and social justice;
- 3) to develop your mediation skills and improve professional skills that are critical in the legal profession and everyday life, including active listening, effective questioning, persuasion and negotiation skills, and problem-solving approaches that are fundamental to the practice of law and resolution of conflict;
- 4) to help you evaluate the benefits and limitations of mediation, litigation, and other dispute resolution techniques so that you can both responsibly counsel clients about their options and, as potential policy makers, make informed choices about dispute resolution systems.

**II. Basic Logistical Info**

**Class Seminars:**

Monday and Wednesday  
9:50-11:50 a.m.  
Room 300A/B

### **Faculty Information:**

Professor Deborah Thompson Eisenberg  
Law School, Room 333  
Office: 410-706-5995  
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Professor Toby Treem Guerin  
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You will also work with two additional instructors who are staff members at the law school's Center for Dispute Resolution (C-DRUM). Stacy Smith oversees a variety of C-DRUM projects, particularly in the areas of public policy, healthcare, and attendance mediation. Ms. Smith will be attending and supervising mediations with students and managing and monitoring the maintenance of the clinic's files in Time Matters. Barbara Grochal supervises C-DRUM's School Conflict Resolution Education Program and will be working with you in conjunction with our conflict resolution education work with public schools.

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### **Team Meetings and Office Hours:**

Each of you will sign up for a weekly "Team Meeting" time with Professor Eisenberg, which will be a small group meeting of three students in Professor Eisenberg's office (Room 333). This will be an opportunity for you to debrief your clinical work, ask questions about what you're learning, review the status of your pre-trial case files and schools work, and sometimes practice skills in a smaller setting.

If you need to reschedule your Team Meeting time during a particular week (because of illness, job interviews, or other unexpected events), please review the Team Meeting schedule posted on Blackboard to determine which other Team Meeting you can attend that week and send Professor Eisenberg an e-mail letting her know that you will be joining another group that week. All Team Meetings will be held in Professor Eisenberg's office, Room 333. You will sign up for a regular Team Meeting time during our first training session.

Outside of Team Meetings, Professors Eisenberg and Guerin (as well as Barbara Grochal and Stacy Smith) are more than willing to schedule a time to meet with you individually to discuss any clinic matters. Please send an email to schedule a mutually convenient time. In addition, Professor Eisenberg has an "open door" policy and you are invited to stop by any time to talk about clinic or anything else on your mind!

### **Required Texts:**

ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN

DOUGLAS N. FRENKEL AND JAMES H. STARK, THE PRACTICE OF MEDIATION, A VIDEO-INTEGRATED TEXT (SECOND EDITION)

This is a video-integrated text, which means that your assignments may include both reading and watching mediation videos in preparation for class. Note that this is the Second Edition, which is different from the book previously used for this clinic. The bookstore should have the Second Edition. In addition, if you don't want to carry a book around, the text is available as a digital multimedia format called a SMARTe edition. The standalone SMARTe edition is 80% of the print book's list price. The SMARTe edition can also be bought in a bundle with the print book for 110% of the print book's list price. At this point in time, the SMARTe edition (either standalone or in a bundle format) is available only at the Wolters Kluwer (formerly Aspen Law) website at <http://www.aspenlaw.com/smarte/>. This is due to prohibitions by other retailers (Amazon, B&N, etc.) as they currently sell their own ebook platforms. For more information about SMARTe editions and a demo, go here: <http://www.aspenlaw.com/smarte/>.

### **III. Course Overview**

This clinic has four components: 1) mediation skills training and other classroom work; 2) conducting and observing actual mediations; 3) working with and developing conflict resolution and mediation programs in public schools; and 4) analyzing and reflecting on your field experiences and classroom learning through weekly journals/reflection memos and team meetings.

This course will demand different things from you than your other law school classes. In addition to learning about conflict resolution and negotiation theory, you will connect that theory to live practice as mediators at the courthouse—in “day of trial” mediations at the small claims district court—and here at the law school—in pre-trial mediations of small claims, employment discrimination, and other cases referred to the clinic. All of you will be thoroughly trained in the various skills in the mediator's “tool kit” that can help to facilitate the resolution of conflict. You will have the opportunity to learn and test mediation theory and techniques in the classroom, practice those skills in simulation exercises, observe faculty and other professionals in mediation settings, and then – once trained – co-mediate cases with another student under the supervision of faculty.

The Mediation Clinic has developed relationships with the law school's Center for Dispute Resolution (C-DRUM), the U.S. District Court, the Circuit Court for Baltimore City, and other groups to give you additional opportunities to observe the use of mediation in a variety of different contexts: in the community (at public schools, for example), in different types of courts, and at different types of agencies and institutions.

The clinic requires a significant commitment of your time and energy. The four credits you receive for the Mediation Clinic each semester mandate that you perform 224 hours of work per semester, which amounts to an average of 17.23 hours of clinic activities each week. These hours include your class time, class preparation time, all court/mediation time (including observations and travel), all time spent in team meetings and meetings with faculty, and any other clinic-related activities. This may fluctuate over the semester and throughout the year – in some weeks you may not reach that minimum and in other weeks you may exceed it. In the first month of the fall semester, you will be spending most of your time in training and observation hours. Later in the fall semester and next spring, most of your hours will be “practice” hours.

Note that the Mediation Clinic Manual (which will be posted on Blackboard) provides more detailed information about the work that you will be doing and the Time Matters Manual provides an overview of the case management system you will be using. You should study the manuals prior to our first training session and refer to them throughout the year. There is quite a lot of information to absorb, and it may seem overwhelming at first, but it should make sense as you gradually dive into the work.

#### **IV. Expectations**

##### **A. Class Seminars**

Regular and timely class attendance in this course is critical, for several reasons: 1) in-class simulations cannot be carried out successfully if you are late or absent, so failure to show up on time will disadvantage many people besides yourself; 2) the emphasis in many classes will be on discussing mediation and observation experiences so that everyone can learn from them; you need to be in class to contribute your own experiences; and 3) it is impossible to create the trust that makes this kind of learning effective with a rotating group of students in attendance. Please notify Professor Eisenberg in advance if there is an emergency that requires you to miss any class. The first part of class is often reserved for announcements and clarification of assignments. Late arrival to class may result in missing important information relevant to the clinic and is highly distracting in our small-class setting.

The table below lists the anticipated subject matter and assignments for each seminar. In addition, please check Assignments on our Blackboard page at least one week prior to any seminar. We sometimes post additional reading assignments. Although the syllabus lays out our plan for the semester, we may need to change the order of events in some circumstances.

We have purposely allowed for flexibility in the course seminar plan to allow the semester to build on the work you are actually doing. We may find it to be a more effective learning tool to debrief an event from a recent mediation or work through an ethical issue that has arisen than what we had planned to do on a given class day. In addition, you will notice that not all of you will mediate the same number of cases or do the same amount of work on each project. Your individual clinic work will vary according to case and project needs, just as individuals within any law or mediation firm would vary their weeks according to availability of work and needs of clients.

Clinic presents a unique opportunity to combine theory and practice. Seminars and assignments supplement and enhance your practical learning experience. Class time will be devoted to further exploration of topics relevant to you as mediators and provides a safe environment to practice skills and discuss your experiences. Therefore, **it is critical that you come to class on time and prepared to engage in discussion and activities. That means reading all assigned readings and watching any assigned video clips prior to class.**

“Case Rounds” classes will be opportunities for us to debrief our field work as a group. Come to each of these classes prepared to talk about mediations that you have co-mediated or observed. You should also come to class prepared to give an update on the pre-trial cases that have been assigned to you and to describe the status of your work with your assigned school and any other clinic-related activities. Our discussions during Case Rounds will also be guided by the reflection journals that each of you will be submitting every Friday afternoon (see below).

### READINGS AND ASSIGNMENTS

**(Note: Remember to check Blackboard a week before class as well; additional readings and assignments may be posted)**

Class	Topic	Reading and DVD Assignments
August 20 9:00 am – 4:30 p.m.  Room TBD	Mediation Clinic Orientation; Introduction to conflict, ADR, and the mediation process	<b>Readings:</b> <ul style="list-style-type: none"> <li>• Frenkel &amp; Stark (F&amp;S) – Chapter 1;</li> <li>• Mediation Clinic Manual (on Blackboard)</li> <li>• Eisenberg, Wohl &amp; Guerin, <i>Alternative Dispute Resolution and Public Confidence in the Judiciary: Chief Judge Bell’s “Culture of Conflict Resolution,”</i> 72 MD. L. REV. 1112 (2013) (on Blackboard)</li> </ul>

		<p>Watch the Mediation Clinic Video at this link:  <a href="http://www.law.umaryland.edu/programs/cdrum/index.html">http://www.law.umaryland.edu/programs/cdrum/index.html</a></p> <p>Watch “Resolutionary People: A Portrait of Five Mediators in Different Contexts” at this link:  <a href="http://www.courts.state.md.us/macro/publicationsmedia.html">http://www.courts.state.md.us/macro/publicationsmedia.html</a>  (Scroll down to Videos – third item)</p>
August 21-22	General Clinic Training	
August 25	Introducing and Explaining the Mediation Process – focus on hallway talks and opening statements	<p>Prepare an Mediation Opening Statement to practice in class</p> <p>Review the Mediation Clinic Manual and attachments posted on Blackboard before class</p>
August 27	District Court Pre-trials – Focus on Intake and Case Handling (Guest: Shannon Baker, Baltimore City District Court ADR Program Director)	Review the “District Court” Appendix to the Mediation Clinic Manual on Blackboard
September 1	Labor Day – No Class	
September 3	Pre-trial Case Management and Time Matters Training	<p>First Pre-trial Cases Distributed in Class</p> <p>Review the Time Matters Manual posted on Blackboard before class</p>
September 8	Simulation Practice: Focus on Explaining the	<p><b>Readings:</b>  F&amp;S Chapters 4-6; watch the 45 minutes of video clips in Chapter 6</p>

<b>Team Meetings will start this week</b>	Process; Opening; Listening and Reflecting	
September 10	The Role of the Mediator and Differing Approaches to the Process; Preparing for Mediation	<p><b>Readings:</b> F&amp;S – Chapter 3; Additional readings about “Riskin’s Grid” will be posted on Blackboard</p> <p><b>Video Assignment:</b> Watch the first mediation of <u>Wilson v. DiLorenzo</u>, mediated by Lord (“Play All”) and THEN watch the mediation of <u>Wilson v. DiLorenzo</u>, mediated by Cutrona (“Play All”).</p> <p><b>Allow at least two hours to watch the video.</b> We recommend watching the videos less than a week before class so that the content stays fresh in your mind for discussion.</p> <p>Note that the actors portraying the disputants were instructed to take their cues from the mediator and to act in each mediation as realistically as possible, without regard to what happened in previous simulations – as good actors are trained to do.</p> <p>Consider the following questions as you watch the videos:</p> <ol style="list-style-type: none"> <li>1. What mediation orientation or style did each mediator exhibit?</li> <li>2. How did each mediator define the problem?</li> <li>3. How did the differences in personal style and orientation/philosophy affect the process and outcome of each case?</li> <li>4. What was your reaction to each mediator? What would your reaction have been in the shoes of the participants?</li> <li>5. What might you have done similarly or differently, if you were mediating this case?</li> </ol>
September	School Conflict	<b>Readings Posted on Blackboard</b>

15	Resolution Education Program – Introduction to Restorative Practices	
September 17	Restorative Practices and Using Circles Effectively	<b>Readings Posted on Blackboard</b>
September 22	Expanding Information: T-funneling; Caucus; Effective Questions	<b>Readings:</b> F&S Chapters 7-8 (plus the video clips) Additional Readings on Blackboard
September 24	The Power of Reflections: Distinguishing Positions, Interests, Values, Emotions, and Issues	<b>Readings Posted on Blackboard</b>
<b>Week of September 29</b>		<b>Each of you must schedule a time to meet with Stacy Smith this week to close your first pre-trial case and review any case management or TM questions you have</b>
September 29	Basics of Negotiation; Understanding Barriers to Settlement	<b>Readings:</b> F&S – Chapter 2; Read GETTING TO YES by this class  <b>Class Preparation:</b> As you read, think about negotiations in which you have been involved. What strategies did you and your negotiating partner use? Would you do anything differently next time?
October 1	Concluding the Mediation; Agreement Writing	<b>Readings:</b> F&S Chapter 11
October 6	Mediation Ethics	<b>Readings:</b>  ❖ F&S Chapter 12; watch all accompanying video segments.  ❖ Read the Model Standards of Conduct for Mediators



		<ul style="list-style-type: none"> <li>❖ Review The MPME Standards of Conduct for Mediators</li> <li>❖ Review Title 17 of the Maryland Rules.</li> <li>❖ Review Maryland Rules of Professional Conduct, Rules 1.12 and 2.4.</li> </ul> <p><b>Written Assignment, <u>DUE by 10 am, Sunday, October 5</u></b></p> <p>Consider problems three through six and ten through twelve in the shaded boxes throughout Chapter 12 of the text. Email your responses to these problems to Professor Eisenberg no later than 10 am on October 5.</p>
October 8	Mediation Ethics Continued – Focus on Confidentiality	Readings posted on Blackboard
October 13	Focus on Co-Mediation; Case Rounds and In-Class Simulation	Readings Posted on Blackboard
October 15	Mediation and Implicit Bias	Readings on Blackboard
October 20	Problem-solving and Dealing with Impasse	<b>Readings:</b> F&S Chapters 9 & 10 (plus video clips) Check Blackboard for additional readings
October 22	Skills Practice	
October 27	Review of Final Mediation Simulation Assignment and End-of-Semester Responsibilities	Read end-of-semester memoranda posted on Blackboard
October 29	Simulation Practice	
November 3	<b>No Class</b> – Time Reserved for End-of-Semester Mediation Simulations or Pre-	

	trial Mediations	
November 5	School Conflict Resolution – Reflections on our work this semester	Readings on Blackboard
November 10	<b>No Class</b> – Time Reserved for End-of-Semester Mediation Simulations or Pre-trial Mediations	
November 12	Hot Topics in Mediation	
November 14	<b>FINAL PROJECT MEMORANDUM AND SELF-EVALUATIONS DUE</b>	
<b>Week of November 17</b>	End-of-Semester Meetings with Faculty will be held this week	
November 17 & 19	Last Classes – Debrief of End-of-Semester Simulations and first semester	Come to class prepared to show a short clip from your final mediation project that exhibits a mediator intervention you used that you think worked well (or did not go as planned). Be prepared to do the following in <b>5 minutes or less</b> : <ul style="list-style-type: none"> <li>- Show the clip to the class (must be no longer than 3 minutes)</li> <li>- Explain the strategy you used and why you used it</li> <li>- Evaluate the effectiveness of the strategy and, time permitting, get comments or reactions from the class</li> </ul>
November 24	<b>No Class</b>	<b>All pre-trial cases must be closed by this date</b>

**B. Weekly Case Summaries and Reflection Memos:**

No later than 12:00 noon every Friday (starting September 5 through November 7, 2014), please e-mail a memorandum to Professors Eisenberg and Guerin that has the following:

- 1) an itemized listing of all assigned pre-trial cases assigned to you that have not been approved to be closed by Stacy Smith; what you did in the previous week in each case; and what you will be doing in the upcoming week for each case;
- 2) a very short summary or listing of all of your clinic activities for the previous week (all mediations, schools work, any observations, client activities, etc);
- 3) a list of any topics that you would like to discuss in Case Rounds the following week (i.e., work through a problem you're having with a pre-trial case or your school; debrief something that happened in a mediation you conducted or observed);
- 4) your aggregate total clinic hours for the previous week;
- 5) a 3-4 page reflection/journal that synthesizes and reflects on one or more activities from the previous week. **The reflection portion should not simply be a factual recitation of what happened.** It should reflect deeper thought about how your clinical observations and experiences connect, for example, to the theory we've learned in class, to social justice issues, or to your own personal or professional development. We are most interested in the quality rather than quantity of your reflections.

Your weekly reflection memo/journal is one of the most important components of the course. The journal requirement is designed to help foster habits of critical reflection and self-analysis that we hope will be of use to you throughout your professional careers. Journals are also a very important tool to help us monitor your educational experience and development as mediators as the semester progresses. **The failure to submit timely weekly reflection journals will adversely affect your grade.**

We will treat all journal entries as confidential, although if you write something especially interesting or provocative, we may seek your permission to share it with the class. Your journal entries will often form the basis of our Team Meeting discussions.

### **C. Live Clinic Activities**

Throughout the course of the semester, students will have a variety of opportunities to engage in mediation and mediation-related activities in a variety of venues. The *minimum* student requirements are listed below; however, students are encouraged to take advantage of additional opportunities as they are available. Indeed, you will have to sign up for more than the minimum requirements to satisfy your clinical hours requirements.

- All students must sign up to staff the District Court Day of Trial Mediation Program at least seven times each semester (these must be spread out throughout the semester—about every other week you should be going to court).

- All students must work with at least one school in conjunction with the Maryland School Conflict Resolution Program (this may involve, for example, mediating student disputes, leading restorative classroom circles, or providing training or support for peer mediation programs).
- Each student must sign up to observe a mediation by a federal magistrate judge or circuit court mediator at least once throughout the academic year (preferably, each of you will observe one federal mediation and one circuit court mediation, but the minimum requirement is one given that we cannot control observation opportunities).
- Each student process intake, scheduling and mediation of District Court pre-day of trial cases as they become available as well as to mediate other cases that are referred to the clinic. It is anticipated that each of you will mediate a minimum of two pre-trial cases throughout the year (and most of you will mediate more pre-trials than that).

## V. Grading:

The Mediation Clinic is a letter-graded, eight credit course. Grades will be based upon comprehensive evaluation and assessment of all of your work during the entire academic year, particularly your seminar and simulation activities, your initiative in taking advantage of field work opportunities and developing your skills, your weekly reflection memos and team meeting participation, your work on assigned projects, and your professionalism, time management, and conscientiousness.

Although we will be grading your effort, professionalism, and preparation, we will not be grading your actual skills and performance as mediators. This policy is based on a few fundamental principles. First, we have observed that the actual mediation portion of the clinic is the one in which students are most engaged, and we want to encourage you to develop as a mediator without worrying about how your performance will affect your grade. Second, we want our debriefing sessions with you to be candid, no-holds-barred analyses of what worked and didn't work in the mediation (i.e., it is part of the learning process to identify potential mistakes or "wrong turns" and reflect on other potential approaches). Third, our broader and most important goal is your development as a responsible, professional, and reflective practitioner (whether that ultimately turns out to be as a legal advocate, a neutral mediator, a policymaker, some combination of the above, or none of the above).

The general components of your grade—the criteria for which are defined in more detail in the Evaluation Rubric which will be posted separately on Blackboard—include:

Educational Responsibility  
Professional Responsibility

Time and Case Management  
Self-Evaluation and Reflection

Note that because this is a full-year clinic, you will receive one, 8-credit grade at the end of the academic year. Your transcript will reflect an “incomplete” for the Mediation Clinic for the fall semester. At the end of the fall semester, you will meet individually with Professors Eisenberg and Guerin for a mid-year assessment of your work in the clinic.

**End of semester projects:**

At the end of the Fall semester, you will be assigned a Mediation Simulation project in which you will recruit people to play the participants/parties in the simulated mediation. You will play the role of mediator. You will record the mediation and write a reflection memo about the mediation. Additional details about the video project will be distributed in late October. You will have a different Mediation Simulation Project, as well as a short essay writing assignment and class presentation, at the end of the Spring semester.