

Mediation Clinic – Law 775
Course Information – Spring 2023

I. Instructors

Professor

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II. Class Meetings

Class will be on Tuesdays and Thursdays from 1:35 - 3:30pm in Room 243. There will also be three days of mandatory training sessions – January 4, 5, and 6. The training sessions will run from 9 am – 5 pm in Room 267. Please make sure to have a copy of the Mediation Clinic Training Manual (available on the class Canvas Page) to be ready to work with on these days.

In weeks 2 - 7 we will be doing mediation simulations in class on Thursdays. Because most of our mediations are expected to be via telephone, we will be simulating telephonic mediations by doing them on Zoom with cameras off. These sessions will be recorded via Zoom for you to review at a later time for short Video-Reflection papers (see Section XIV). During these class periods, there is no need to come to Room 267, you may attend wherever you can find a strong internet connection. If you need to use the law school's Wi-Fi connection, please let me know and we will reserve study rooms for you. For the portions of class that are not simulating phone calls, the expectation is that your camera will be turned on. Feel free to use a background if you like.

Some of you may be logging in to class from locations that are not always quiet, private, or distraction-free. Pets and roommates might wander across the screen, and small children may require your attention during class. If those things happen, please know that we will exhibit flexibility, patience, and good humor. We ask that you show the same to your classmates and to us.

III. Course Philosophy and Goals

This course focuses on the process by which mediators assist others in resolving disputes. You will find that mediation is a maturing field, yet most people fail to understand that mediation is as much an art as it is a science. In this class we focus on both the art and the science of mediation. We will study the theory, strategy, skills and public policy issues involved in the mediation of disputes, and we will put our skills to work by mediating real cases in the Maricopa County Justice Courts and Superior Courts, as well as the EEOC.

Specifically, our goals for you are:

- To improve your skills in listening, questioning, problem solving, persuasion, negotiation, and professional judgment.
- To improve your abilities to work well with clients, to understand client interests, to balance legal and non-legal issues, to advocate for clients in a mediation setting, and to come up with creative solutions for resolving legal problems.
- To increase your understanding of mediation theory and practice (including online mediation), mediation advocacy, and mediation related ethical issues.
- To increase your appreciation of the advantages and disadvantages to mediation and to litigation as dispute resolution mechanisms.
- To encourage you to be more thoughtful about your professional work and your own approaches to dispute resolution, both as advocates and as mediators.

Everything we do in this class, from readings to demonstrations to experiential exercises, is focused on achieving one or more of these goals.

IV. Books

To give you a foundational understanding of the mediation process, the following book is required reading for the first day of our Training Sessions.

Mediation Success: Get It Out, Get It Over, Get Back to Business
by Amy L. Lieberman (Amazon, 2012)

It is only available on Amazon.com.

The required textbook we will use in this course is:

The Practice of Mediation: A Video-Integrated Text,
by Douglas N. Frenkel & James H. Stark, (3rd ed., Wolters Kluwer 2018)

This book is available in the ASU bookstore and online.

Two helpful, but not required books are:

Difficult Conversations: How to Discuss What Matters Most
by Douglas Stone, Bruce Patton, and Sheila Heen (10th Anniversary ed., Viking 2010)

Negotiation and Lawyers
By Art Hinshaw, Alyson Carrel, et al., (West Academic 2021)

The first book is widely available in libraries, bookstores, and online. The second is available at the ASU bookstore and online at West Academic.

V. Clinic Materials

There are two sets of materials you will be using regularly for class. The first is the Mediation Clinic Training Manual, which contains various mediation documents, training materials and court rules regarding mediation. The second is the Mediation Clinic Reader, which consists of reading materials to supplement our readings from the textbook. These materials are posted on the course Canvas site.

VI. Reading Assignments

The reading assignments for our Training Sessions are as follows:

- January 4th – Mediation Success: Get It Out, Get It Over, Get Back to Business by Amy L. Lieberman *en toto* and Chapter 2, Frenkel & Stark textbook.
- January 5th – Chapters 5 and 6, Frenkel & Stark textbook.
- January 6th – Improving Lawyers' Judgment: Is Mediation Training De-Biasing? by Frenkel & Stark (article).

We are unlikely to keep to a strict adherence to the reading schedule in the class syllabus. As a clinical class, we need the flexibility to be able to spend extra time to focus on areas of need and to schedule guest lecturers. While the Syllabus will be posted on Canvas, it will be a tentative reading schedule, and I will announce upcoming reading assignments in class. And, if I add any reading materials, they will be posted on Canvas.

Throughout the semester I may assign discussion leaders for our reading assignments. Discussion leaders are to give a short overview of the piece and then pose 3 questions to the class for discussion.

VII. Attendance, Punctuality and Class Preparation

In many of our classes, you will be teamed with other students to do mediation role-play scenarios. Hence, your timely attendance and participation are crucial in this course. If you are absent, your absence will preclude not only your participation that day, but also that of other

students. The same applies to preparation for class. If you come to class unprepared, not only will you have a lesser experience, but your fellow students will as well.

If you do not expect to be able to attend every class, you should not take this course. Attendance is required, and any absence is presumptively unexcused. That said, emergencies do arise. If you must miss class, or if you are not prepared to participate on a particular day, you must provide me with a note or email, in advance, explaining the reasons why you are requesting an exception from the normal expectation of participation. A phone call or a conversation, while helpful in adjusting mediation groupings, is not sufficient. I will make a final decision as to whether your absence should be excused.

Lack of punctuality and lack of preparation will be considered in calculating class participation grades. I also reserve the right to impose other sanctions permitted by university and law school rules. For example, in the past I have given pop-quizzes on reading assignments when it became clear that no one was reading.

Remember, learning the skills we will be teaching in this course is not something that can be done “to” you or “for” you. You must work on it yourself, and what you learn in this course in large part depends on your effort.

VIII. Mediation Role-Play Exercises

Throughout the course, particularly earlier in the semester, you will be participating in mediation role-play exercises as mediators or as disputing parties. The purpose of these exercises is to prepare you for what you will experience as a mediator, from the mundane to the uncommon. Most of the scenarios present as Justice Court mediation scenarios but these lessons easily extend to other mediation venues. Our overall goal with these simulations is to prepare you for what you may experience in the Justice Courts and our other mediation venues (EEOC and Superior Court).

*PLEASE NOTE: In order to meet our goal, the simulations will cover a wide range of issues that might include topics such as **physical harm, discrimination, and harassment** in addition to involving **various manifestations of interpersonal conflict**. While it is helpful:*

- (a) to experience moments that challenge our neutrality as mediators in a mediation course, and*
- (b) to prepare ourselves for the subject matter of the mediations we will be a part of,*

I recognize that some students may experience distress stemming from these exercises and experiences. If you have any concerns or experience any such difficulties, please see me. It is much better for us to work on it together than to suffer in silence.

From a logistical perspective this is how the scenarios work. The class before each exercise, you will be assigned a role – mediator, party A, or party B. The individuals scheduled to be parties will receive instructions about your role and the facts of the case. The instructions are designed to be self-explanatory, and contain “confidential” information (i.e. information only your

character knows). Do not show or discuss your confidential information to those who have been assigned different roles before the exercise begins. Doing so will undermine the learning opportunities for yourself and your classmates. Mediators get little to no written instructions before the exercise.

The instructors will be sitting in on your mediations and critiquing your performance. We will also video your mediations through Zoom for later review. For more specific instructions about your duties and responsibilities in role-playing, please see “General Instructions for Role-Play Scenarios” in the Training Manual.

IX. Fieldwork Experience and Clinical Hour Requirements

Since this is a clinical class, you are required to do work in the “real world.” To satisfy this requirement, you must complete 180 hours of clinical work during the semester, which I’ve split into 16 mediation fieldwork experiences.

A. Clinic Hours

According to law school policies:

a minimum of 45 hours in total, consisting of time spent in class, preparing for class, and performing clinical work, approximates one credit. Students are required to log and submit hours to determine the number of credits awarded. This standard will be noted in the course description.

This is a 4-credit course; thus, you are required to complete 180 hours of clinical work during the semester. You will be required to keep track of your course related hours – class preparation, class time, mediation / observation time, travel to and from mediations, and time at Justice Court – and turn a timesheet in to the Clinic Administrator Issis Gutierrez every Monday by noon. It is your job to get the information to her, she should not have to chase you down to get your time information.

If you have completed your requisite number of fieldwork experiences (see below), but have not reached 180 hours of clinical work, you will need to do more fieldwork to reach the 180 hours. There are no exceptions to this rule.

B. Fieldwork Experiences

The breakdown of the experiences is as follows:

- Conduct two supervised Justice Court mediations as a co-mediator (with a faculty member, returning clinic veteran, or a designated experienced community mediator).
- Co-mediate a total of ten Justice Court and/or other mediations if the opportunity presents itself.

- Co-mediate three EEOC mediations through the EEOC’s Mediation Program.
- Observe one Maricopa County Superior Court Settlement Conference.

As mentioned above this number of fieldwork experiences may not directly align with 180 hours of required clinical work. We can adjust these requirements to match the hours requirement based upon the availability of mediations. However, we are unable to adjust the 180-hour requirement. For example, it may be that we are unable to reach 10 Justice Court mediations post-pandemic as it seems that more cases settle than during pre-pandemic times. In that case, you can schedule more Settlement Conferences through the Superior Court.

After each mediation experience and each Justice Court “attempt” you are required to complete out a Mediation Fieldwork Report describing the mediation you observed or conducted. A form for the Report is in your Training Manual and a copy is on the class Canvas site. This form is to be completed and turned in **within 7 days of the mediation’s occurrence**.

C. Official Record of Hours and Experiences

Issis Gutierrez will keep the **official record** of your clinical hours and your number of field experiences. Thus, if at the end of the semester your numbers differ from hers, her numbers are what we will go by. Her numbers come from your completed timesheets and your fieldwork reports. And to reiterate, it is your job to get that information to her, not hers to chase you down.

You will also keep track of your *mediation experiences* in the Mediation Log at the back of the Training Manual, and an extra copy will be available on Canvas. This is especially important should your numbers differ from the official tally. You should also keep track of your *mediation attempts* on the Mediation Attempts Log. An “attempt” is when you are at the court to mediate a case (or on Zoom or a call) and the mediation does not go forward because a party fails to show up or the court failed to notify anyone that the mediation was cancelled. At the end of the semester you will turn in both your Mediation Log and your Mediation Attempts Log. A Fieldwork Report should be completed for all mediations and for attempted mediations at the Justice Courts as we are *required* to report this information to the Court. *Note: If there is a supervising instructor in the mediation, please include the supervisor’s name on your Fieldwork Report.*

Once we begin our fieldwork mediations, we will do case rounds where you and your classmates will report on the happenings in the mediations you are observing or conducting. For detailed instructions on presenting your case to the class, please see “Guidelines for Oral Reports on Mediation Experiences” in the Training Manual.

X. Field Trip to Justice Courts

Pre-COVID we would go the Justice Courts for an orientation session. This semester almost all of the Justice Court mediations will occur via phone. That said, the courts prefer us to be at the Court for the call just in case someone shows up in person, although we may be able to appear telephonically in a pinch. It is unlikely for us to schedule a trip there as a group. Rather, on your

first trip to the Justice Courts please arrive earlier than normal so we can walk you through the things you need to know.

XI. Superior Court Observations

You will be observing settlement conferences conducted by Pro Tem Judges for the Maricopa County Superior Court. These observations will be taking place in March and April (with some wiggle room on the back end) and typically take place via Zoom, Microsoft Teams, or Go To Meeting. To schedule your observation with the Superior Court, you will send an email to Emelda Daily who leads the Court's ADR Office, and she will send you the scheduled settlement conferences for the next two weeks. Within a week you will let her know which case(s) you can observe and she will then get approval from the parties and the Judge Pro Tem conducting the settlement conference. You will likely hear from Ms. Daily 2 to 3 days before the conference.

XII. EEOC Co-Mediations

You will be co-mediating 2 EEOC mediations with members of the EEOC's Mediation Team and 1 EEOC co-mediation with your instructors, which will serve as a capstone mediation. After the EEOC mediator come to class, the EEOC will let me know when they have available mediations, and we will place them on our class calendar to distribute them as we do with other calendared mediations. You will find that the EEOC's mediators have differing styles, and before your mediation they will talk with you about how your co-mediation partnership will work. We will do the same with you when you co-mediate with us. The EEOC will ask you to complete an application to be a volunteer before you can co-mediate with them.

XIII. Grading Policy

This class is graded on the law school's letter grading system following the grading curve established for classes for small sized classes (less than 10).

The following factors will go into your final grade:

- A. Attendance, class participation, and professionalism (15%)
- B. Self-Assessment Evaluations (50%)
 - 1. Video Self-Reflection – 10%
 - 2. Mid-Semester Self-Evaluation – 15%
 - 3. Final Self-Evaluation – 25%
- C. Your ability as a mediator (30%)
- D. Class Presentation (5%)

Note that your grade in this class will not be determined by the outcome of the mediations you conduct.

XIV. Self-Assessment Evaluations

You are required to complete three separate kinds of self-evaluations: Video Self- Evaluations (two or three – I will take the top 2 scores), a Mid-Semester Self-Evaluation, and a Final Self-Evaluation. After your in-class mediations are on video, you will write a Video Self-Evaluation centered around the lessons you learned from your mediation and your goals going forward (no more than 3 pages). ***Video Self Evaluations are due 7 days from the day of the mediation is available on video unless otherwise directed.*** The Mid-Semester Self Evaluation will focus on your strengths and opportunities for growth as well as your goals for the rest of the semester. It should be 6-7 pages long. This paper will be part of your mid-semester meeting where we discuss your progress to that time. ***The Mid-Semester Self-Evaluation is due on Monday March 13th at noon.*** The Final Self -Evaluation contains two parts. The first part is similar to the mid-semester assignment with a focus on strengths and opportunities since your Mid-Semester Self-Evaluation; the second will focus on your growth as a mediator. This second part is asking how you view yourself as a mediator and how you made it there over the semester. It should be 7-8 pages long. ***The Final Self-Evaluation is due on Friday April 28th at noon.*** *Note: written assignment sheets with specifics for the Mid-Semester and Final Self Evaluations are in your Training Manual.*

XV. Class Presentations

The class will culminate with 10-15 minute presentations about a specific application of mediation. You are free to pick any mediation context you like, and I am happy to discuss potential topics to get you started. If you are doing a mediation related paper for Independent Study, you may present your paper.

- **Presentation Dates – April 11 and 13**

XVI. Guest Speakers

We will have several guest speakers throughout the semester. Guest speakers are designed to give you important perspectives to assist in your development as a mediator and to introduce you to critical issues related to mediation. You are expected to be courteous with our guests and to be curious about the information they are presenting. *When we have guest speakers, you are required to prepare 2 questions for our guest before class.*

XVII. Laptops

Because we will be doing our simulation work on Zoom, laptops are required for this class. You also need to have headphones and a microphone.

XVIII. Plagiarism

Plagiarism is defined as follows in the law school's Academic Integrity Code, Section III(C).

Plagiarism is representing the words or ideas of another as one's own. Quoting or paraphrasing another's writing without acknowledging the author's identity is a form of plagiarism.

Section III(C) goes on to say:

Plagiarism is a strict liability offense. Ignorance as to the meaning of plagiarism is not a defense. The rules against plagiarism apply equally to drafts and final versions of a document.

The Academic Integrity Code also gives an example of plagiarism.

Student I borrows language from a judicial opinion to use in I's law review note. I does not put the language within quotation marks and does not cite the source. I has plagiarized even though I mistakenly thought that the language could be used freely because judicial opinions are in the public domain. Accordingly, I has violated the AIC.

Student J, writing a paper for a seminar, rephrases a passage from a law review article and fails to cite the source. J has violated the AIC.

Please note that plagiarism is a serious violation of the Honor Code and may result in dismissal from the law school.

XIX. Certificate

All students who successfully complete this course will receive a certificate of completion, which will provide proof of having completed 40 hours of mediation training.

XX. Miscellaneous and Nonetheless Important

A. Classroom Behavior

Respect for the thoughts, ideas, and speech of classmates and faculty is the foundation of the educational process. Threatening behavior in the classroom will be dealt with in accordance with SSM § 104-02, which requires that "all incidents and allegations of violent or threatening conduct by an ASU student (whether on- or off-campus) must be reported to the ASU Police Department and the Office of the Dean of Students."

The use of electronic devices during class is prohibited with the exception of laptops used for class purposes. Recording the class in any manner without the permission of the instructor is prohibited.

B. Disability Accommodations

Per College of Law and university policies,

The College of Law will provide reasonable accommodations for students with documented disabilities. College of Law accommodations can be made after the student requesting accommodations has met with the Disability Resource Center staff and eligibility has been established. Accommodations that fundamentally alter the prescribed course of studies must be approved by the College of Law. Students with disabilities that require accommodation(s) and/or adjustments should contact the College of Law Assistant Dean for Academic Affairs in order to make arrangements for reasonable accommodations.

C. Title IX

Title IX is a federal law that provides that no person be excluded on the basis of sex from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity. Both Title IX and university policy make clear that sexual violence and harassment based on sex is prohibited. An individual who believes they have been subjected to sexual violence or harassed on the basis of sex can seek support, including counseling and academic support, from the university. If you or someone you know has been harassed on the basis of sex or sexually assaulted, you can find information and resources at <https://sexualviolenceprevention.asu.edu/faqs>.

As a mandated reporter, I am obligated to report any information I become aware of regarding alleged acts of sexual discrimination, including sexual violence and dating violence. ASU Counseling Services, <https://eoss.asu.edu/counseling>, is available if you wish discuss any concerns confidentially and privately.

D. Professional Skills Requirement and ABA Standard 304

Since this class satisfies the requirements of ABA Standard 304, it can be used to satisfy the the Professional Skills Requirement (Statement of Student Policies, Section II (J)) for graduation. Standard 304 states as follows:

(a) Experiential courses satisfying Standard 303(a) are simulation courses, law clinics, and field placements that must be primarily experiential in nature and must: (1) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302; (2) develop the concepts underlying the professional skills being taught; (3) provide multiple opportunities for performance; (4) provide opportunities for student performance, self-evaluation, and feedback from a faculty member, or, for a field placement, a site supervisor; (5) provide a classroom instructional component; or, for a field placement, a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and (6) provide direct supervision of the student's performance by the faculty member; or, for a field placement, provide direct supervision of the student's performance by a faculty member or a site supervisor.

E. Copyright Material

Pursuant to § 304-06 of the Academic Affairs Manual, “all contents of the lectures, including written materials distributed to the class, are under copyright protection.”

In accordance with ACD 304-10, students must refrain from uploading to any course shell, discussion board, or website used by the course instructor or other course forum, material that is not the student's original work, unless the students first comply with all applicable copyright laws; faculty members reserve the right to delete materials on the grounds of suspected copyright infringement.

Students may not share class materials outside the class, including uploading, selling or distributing course content or notes taken during the conduct of the course. Any recording of class sessions is authorized only for the use of students enrolled in this course during their enrollment in this course. Recordings and excerpts of recordings may not be distributed to others.

F. Eating / Drinking

No eating is allowed in the classroom. Drinking non-alcoholic beverages is allowed as long as you have non-spillable tops to your drinking container.

G. Face Coverings

Masking is recommended at the law school. When we are at the Maricopa County Courts we will be following the Court's mask requirements, which at last check required masks at all times in court facilities. If court personnel report violations of the Court's mask policy will result in penalties consistent with both court policies and the Student Code of Conduct.

H. Class Recordings

Students may use class recordings for an educational purpose only.

I. Course Information / Syllabus Revisions

Information in the Course Information (this document) other than grading and attendance policies and information in the Syllabus, is subject to change with reasonable notice.

XXII. A Review of Important Dates

- March 13th – Mid-Semester Self Evaluation
- April 11th and 13th – Class Presentations
- April 28th – Final Self Evaluation

XXIII. Syllabus

Note: The Syllabus is merely a framework for the semester as we may spend extra time working on areas in need of more attention. Reading assignments will be announced in class for the next class. Any additional reading assignments will be announced in class and placed on the course Canvas page.

Mediation Training Sessions – Reading Assignment

January 5 – Lieberman, Mediation Success (en toto), Frenkel & Stark, Chapter 2

January 6 – Frenkel & Stark, Chpt. 5 and 6

January 7 – Article 1, Frenkel & Stark, Improving Lawyers' Judgment: Is Mediation Training De-Biasing?

Week 1

January 10 – Orientation and Individuals in Conflict

Article nos. 2 - 4 in the Clinic Reader

2. Bernard S. Mayer, *What People Want in Conflict*, in Beyond Neutrality: Confronting the Crisis in Conflict Resolution (2004).
3. Jill S. Tanz and Martha K. McClintock, *The Physiologic Stress Response During Mediation*, 32 Ohio St. J. Disp. Res. 29, 44-60 (2017)
4. Helaine S. Golann and Dwight Golann, *Why Is It Hard for Lawyers to Deal With Emotional Issues?*, 9 Disp. Res. Mag. 26 (Winter 2003), excerpted in Jay Folberg, et al., Resolving Disputes: Theory, Practice and Law (2005).

January 12 – Mediation Roleplay

No reading assignment

Week 2

January 17 – Individuals in Conflict (cont'd)

Article nos. 5 - 7 in the Clinic Reader

5. Cloke, et al., *The Hidden Meaning of Conflict Stories*, in Resolving Personal and Organizational Conflict (1995).
6. Dwight Golann, *The Death of a Claim: When Clients Won't Accept Good Settlements*, Litigation Journal (forthcoming)
7. Jack Zenger and Joseph Folkman, *What Great Listeners Actually*, Harvard Business Review,

January 19 – Mediation Roleplay

No reading assignment

Week 3

January 24 – The Mediator's Role

Frenkel & Stark, Chpt. 3

January 26 – Mediation Roleplay

No reading assignment

Week 4

January 31 – Co-Mediation

Article no. 8 in the Clinic Reader

8. Lela P. Love & Joseph B. Stulberg, *Practice Guidelines for Co-Mediation: Making Certain that Two Heads Are Better Than One*,

February 2 – Mediation Roleplay

No reading assignment

Week 5

February 7 – Understanding the Problem(s), Power Imbalances, and Organizing the Discussion (cont'd)

Frenkel & Stark, Chpts. 7 and 8, and article no. 9 in the Clinic Reader

9. Jordi Agusti-Panareda, *Power Imbalances in Mediation: Questioning Some Common Assumptions*, Dis. Res. J. 24 (May - June 2004).

February 9 – Mediation Roleplay

No reading assignment

Week 6

February 14 – Debt Collection Cases (guest speakers)

Articles no. 11 and 12 in the Clinic Reader

11. *Schwieger v. China Doll*, 673 P.2d 927 (Az. Ct. App. 1983)

12. *McDowell Mt. Ranch Ass'n v. Simons*, 165 P.3d 667 (Az. Ct. App. 2007)

February 16 – Mediation Roleplay

No reading assignment

Week 7

February 21 – High Stakes Communication (guest speaker)

No reading assignment

February 23 – Case Rounds

No reading assignment

Week 8

February 28 – EEOC Mediators (guest speakers)

March 2 – Bargaining in Mediation

Frenkel & Stark, Chpts. 9 and 10 and article no. 10 in the Clinic Reader

10. J. Anderson Little, *Facilitating Movement* in Making Money Talk (2007).

Spring Break – March 7 and 9 – no class

Week 9

March 14 – Writing Agreements

Frenkel & Stark, Chpt. 11 and Training Manual

March 16 – Attorneys and Mediation

Frenkel & Stark, Chpt. 11 and article nos. 13 and 14 in the Clinic Reader

13. ABA Model Rule of Professional Conduct 4.1

14. ABA Ethics Opinion 06-439, April 12, 2006

Week 10

March 21 - Mediation Ethics

Frenkel & Stark, Chpt. 12 and Appendix B, and article no. 15 in the Clinic Reader

15. Art Hinshaw, *Regulating Mediators*, 21 Harv. Neg. L. Rev. 163 (2016)

March 23 – Case Rounds

Week 11

March 29 – Confidentiality

Article nos. 16 - 19 in the Clinic Reader

16. *Grubaugh v Blomo*, 359 P.3d 1008 (Az. Ct. App. 2015)

17. *Donohoe v. Arpaio*, 2012 BL 135738 (D. Ariz. 2012) (excerpt)

18. *Wilcox v. Arpaio*, 753 F.3d 872 (9th Cir. 2014)

19. Factual and Legal Context of Lawsuit Settlements (Wilcox, Mandell, Schuerman), Maricopa County (2012)

March 31 – Case rounds

Week 12

April 4 – Settlement as Public Policy

Article nos. 20 - 23 in the Clinic Reader

20. Owen Fiss, *Against Settlement*, 93 Yale L.J. 1073 (1984), excerpted in Riskin & Westbrook, Dispute Resolution and Lawyers, 2nd ed. 1998

21. Carrie Menkel-Meadow, *Whose Dispute Is It Anyway?: A Philosophical and Democratic Defense of Settlement (In Some Cases)*, 83 Geo.L.J. 2663, 2663-71, 2692, excerpted in Riskin & Westbrook, Dispute Resolution and Lawyers, 2nd ed. 1998

22. Randall L. Kiser, et al., *Let's Make a Deal: An Empirical Study of Decision Making in Unsuccessful Settlement Negotiations*, 5 J. Empirical Leg. Studies 551 (2008)

23. Michael D. Young, *Mediation Gone Wild: How Three Minutes Put an ADR Party Behind Bars*, 25 Alternatives to the High Cost of Litigation 97 (2007)

April 6 – Judicial Settlement Conferences

Article nos. 24 - 26 in the Clinic Reader

24. *Pitman v. Brinker International, Inc.*, 216 F.R.D. 481 (D. Ariz. 2003) (review)

25. *In Re Fee*, 182 Ariz. 597, 898 P.2d 975 (Ariz. 1995)

26. Inquiry Concerning Judge Carmine Cornelio (Az Comm'n Judicial Conduct, Case No. 12-277)

Week 13

April 11 – Presentations

April 13 – Presentations and Moving Forward