

MEDIATION CLINIC
Course No. 502
SPRING 2019

ADJUNCT PROFESSOR

Stephen L. Shields
Office Phone: 754-8001
Cell Phone: 412-6970
Email: sshields@jsyc.com

RULE 31 LISTING

Over the course of the Clinic semester, Professor Shields will administer the 40-hour training as part of the requirement to become a Rule 31 Listed General Civil Mediator in Tennessee. (See Rule 31, Section 17(d) for list of other requirements to be listed.) The training will cover all Rule 31 required topics. Topics covered are set forth in the attachment titled "Rule 31 General Civil Mediation Training Topics." Your other readings and assignments dovetail with these topics. While the training will be administered over the course of the academic semester, approximately 30 hours will be included in a front-loaded series of Clinic orientation sessions spread over the first four weeks and weekends of the semester.

OVERVIEW

This course is designed for students who are interested in learning how to effectively incorporate mediation theory into practice. The course's foundation will be a thorough and detailed examination of the mediation process in preparation for experiential work outside the classroom. Through lecture, discussion, in-class demonstration, role plays and simulations, you will learn the theories and techniques underlying all phases of the facilitative model of mediation including: convening and preparing for mediation, opening the mediation session, defining the issues and creating the agenda, facilitating communication and negotiation, creative problem-solving, and reaching settlement or closure. Particular emphasis will be placed on developing the communication skills essential to effective mediation, such as attending, reflecting, active listening, creating rapport, fostering empathy, using language effectively. In addition, we will examine legal and ethical issues that most often occur during a mediation.

LEARNING OUTCOMES

Through the activities described, students who successfully complete this course will gain an appreciation of the professional and societal value flowing from, and demonstrate their own knowledge and skills in the following subject matters:

1. Mediation Process: by exercises, roles plays, simulations and observing and conducting mediations for real disputants.
2. Ethical Standards: by learning the ethical standards established by Rule 31 and concurrent standards for lawyers as neutrals and by then observing professionals in the application of these standards.
3. Practice Management: by understanding the common practical and ethical issues a mediator faces ranging from deciding whether to accept a case, preparing for mediation, maintaining confidentiality, tracking time and billing, and responding promptly and professionally to mediation participants.
4. Communication Skills: by developing and applying key communication skills essential to effective mediation, including attentive, active and reflective listening.
5. Negotiating Skills: by interacting with real disputants in the exchange of information and facilitating their negotiations.
6. Legal Knowledge and Analysis: by assisting the disputants in realistically understanding their legal claims and damages.
7. Decision Making: by considering available legal and non-legal remedies and assisting the disputants in risk assessment and decision analysis.
8. Legal Writing: by reading and analyzing position statements prepared by disputants and assisting them in memorializing settlement agreements.
9. Lawyer/Client Conflict and Communication Skills: by understanding that the mediator's key communication skills are also key skills for a lawyer in communication with a client or resolving a conflict with a client.
10. Promoting Access To Justice: by understanding and assessing the various ways to resolve disputes, insight will be gained on how access to justice can be achieved by means other than litigation.
11. Life and Leadership Skills: by learning and understanding that a mediator's key communication skills are life and leadership skills that can be used effectively in many personal and professional settings.

CLASS SCHEDULE AND ATTENDANCE POLICY

A. Class Attendance

Students are expected to attend all classes and to participate in all mediation exercises and observe and/or participate in court-annexed mediations or mediations conducted by administrative agencies. Thus, participation is critical for this course. Each student's ability to benefit from this course literally depends upon every classmate's active contribution and commitment. Moreover, in-class exercises will not work if key "parties" are absent or late for class. Therefore, regular and punctual class attendance is required.

Unexcused Absence For each **unexcused absence**, your final grade will be reduced by one-half step (e.g. B to B-).

Excused Absences are limited to religious observances, or to medical or family emergencies.

Prior Notice I expect **prior notice** in the event that you must be absent from class. Notice must be given to me by either email message (sshields@jsyc.com) or by phone (901-412-6970).

B. Class Schedule

Class meets Wednesday from 4:00 p.m. to 7:00 p.m.

First two Saturdays – 8:00 p.m. to 5:00 p.m.

Third Saturday – 8:00 a.m. to Noon

C. Observation/Co-Mediations Schedule

Following the initial Clinic orientation described above, Clinic students will be scheduled to observe and/or co-mediate three mediations each week. I cannot predict how long each mediation session will last. Typically, mediations last from one to six hours.

D. Cell Phones/Computers/Audio and Video Recordings

Cell Phones must be turned off and put away during class sessions. During breaks, you may check your phones for messages.

Computers generally are not required during class and students are discouraged from opening them during class unless they are being used for presentations.

Audio or Video Recording of classroom sessions, conferences with faculty, interviews or other Clinic activities (in or outside of class) is strictly prohibited.

E. Reasonable Accommodation

Reasonable and appropriate accommodations will be provided to students with disabilities. Any law student who requires accommodation based on the impact of a disability should contact the Associate Dean for Academic Affairs.

TEXTS/VIDEOS

Required

- (1) James Alfini, Sharon Press, Joseph Stulberg, Mediation Theory and Practice (3rd ed. 2013)
- (2) Selected articles (and videos) assigned throughout the semester.
- (3) Roger Fisher, William Ury, Bruce Patton, Getting To Yes: Negotiating Agreement Without Giving In (2nd ed. 1991)
- (4) Rule 31 Participant's Resource Book (distributed to each student during the first class). References to this resource will be "RB" and the specific Tab (e.g. RB-Tab 1).

GRADES

Grades will be based on five factors with the following weight:

- 20% Class participation, including preparation and participation in discussion and role-play exercises;
- 15% Written assignments (other than final paper)
- 30% Mediation case reports of real disputants' mediations
- 20% Mediation simulations
- 15% Final paper and class presentation on your research topic

WORK SHEETS (Not Graded)

The worksheets are to help you focus on the critical tasks performed by a mediator and the tools employed by a mediator to accomplish those tasks. Of course, we will be discussing and role playing the tools used by mediators. However, during your observations and other readings, you should create your "toolkit."

SCHEDULE

This course is designed to be interactive and will attempt to respond to class interest. As a result, we may deviate from the following schedule to devote more time to certain topics.

WEEKLY ACTIVITY LOG (TIME RECORD)

The law school requires that you record your time. Completed weekly activity logs must be signed and turned in at the beginning of each Wednesday class. See Time Record.

RULE 31 GENERAL CIVIL MEDIATION TRAINING TOPICS

- Part One - Introduction To ADR And Conflict Resolution Concepts
 - Part Two - Brief Overview Of Mediation And View Mediation Video
 - Part Three - Rule 31 – Alternative Dispute Resolution Commission
 - Part Four - Mediation Standards and Ethical Issues
 - Part Five - Mediation Models
 - Part Six - Understanding Negotiation Dynamics
 - Part Seven - What Makes Negotiations Succeed Or Fail
 - Part Eight - Mediation As A Structured Process
 - Part Nine - Communication Skills For Mediators
 - Part Ten – Pre-Mediation
 - Part Eleven - Opening Session
 - Part Twelve - Facilitating The Negotiations
 - Part Thirteen - Facilitating Closure
 - Part Fourteen - Reducing The Agreement To Writing
 - Part Fifteen - If No Settlement, Mediator Options
 - * • Part Sixteen – “Solo Mediator” Simulations
 - * • Part Seventeen - ADRC Requirements And Reporting Procedures
 - * • Part Eighteen - Access To Justice
 - * • Part Nineteen - Business Of Mediation
- * These sections discussed toward the end of the semester.