Mastering Mediation: Theory and Practice for Resolving Business Conflicts

Schedule

Classes will be on the following Tuesdays: October 5, 12, 19, 26; November 2, 9, 16, 30. There is no class on November 23.

Class time: 12:00 – 1:50 pm Pacific Time.

Contact Information

Instructors
Name: Stephanie Chow and Tony Piazza
Office Hours: By appointment.
Response Policy: I will be responding to messages or emails within 24 hours.

Grade Options and Requirements:

- No Grade Requested (NGR)
  - This is the default option. No work will be required; no credit shall be received; no proof of attendance can be provided.
- Credit/No Credit (CR/NC)
  - Students must attend and/or watch at least 5 class sessions and complete in-person/virtual role plays.
- Letter Grade (A, B, C, D, No Pass)
  - Students must attend and/or watch at least 6 of 8 class sessions and complete in-person/virtual role plays.

Course Overview

This course will provide students with theory, research, and practice to effectively use mediation skills in a wide variety of contexts. Conflicts are inevitable; letting it wreck your business is not. There will be deals that you will risk losing because negotiations hit a snag. There will also be disputes that, unmanaged, can deteriorate into serious expensive distractions or missed opportunities. In this course, we will discuss the obstacles that typically get in the way of direct negotiations between the parties to a dispute and how these dynamics change during mediation.
This course is designed to give students the opportunity to develop their problem-solving and conflict-resolution skills and to examine the circumstances in which mediation is an appropriate form of dispute resolution. Each class moves back and forth between theory and skills practice, using theory to improve real world effectiveness, and using experience to improve understanding of theory. Students will participate in multiple mediation simulations designed to enhance skills, demonstrate concepts, and provide opportunities to experiment. When role playing, students are strategically grouped based on experience level to maximize learning for everyone, from complete novices to experienced conflict management professionals. Each student receives individual feedback and develops skills that will be useful in client development, interviewing, counseling, fact development and legal analysis, negotiation, and a variety of contexts beyond mediation.

In this course, students will be introduced to mediation philosophies, approaches, application, and skills through readings, reflections, and role-plays. This course will provide a deeper understanding of problem-solving and evaluative mediation.

**Learning Objectives**

1. Gain proficiency over the process of mediation both as an independent mechanism for resolving disputes and as a strategic tool to help resolve disputes in litigate or better manage disputes in business.
2. Recommend viability of mediation to conflict situations based on considerations such as the core values of mediation, the relationship between the parties and their desired goals and outcomes, the preservation of resources, and the viability of alternatives to mediation.
3. Assess different mediation styles and goals in the context of the conflict situation.
4. Conduct mediations by using communication skills such as probing, paraphrasing, effect of reframing, and summarizing back.
5. Examine ethical dilemmas that may arise in mediation.

**Readings**

**Textbooks:**

**Articles (will be made available to students on course Canvas page):**
• Settle, J. Tips and Techniques: Helping Parties Move Ahead and Overcome Roadblocks. (Article will be distributed to the class).
- Wing, L. Mediation and inequality reconsidered: Bringing the discussion to the table. In Conflict Resolution Quarterly, Volume 26, Number 4, Summer 2009.

## Course Schedule

<table>
<thead>
<tr>
<th>Week/Module</th>
<th>Topic</th>
<th>Readings</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 5</td>
<td>What is Mediation? Exploring evaluative mediation - the process of evaluative mediation in theory and in practice including the utility of a joint session and the purpose of confidential caucuses.</td>
<td>- Fiss, O.M. Against Settlement. Yale Law Journal, Volume 93, 1984. <a href="https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2206&amp;context=fss_papers">https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2206&amp;context=fss_papers</a></td>
</tr>
<tr>
<td></td>
<td><strong>Managing Conflict by Redesigning Dialectic into Dialogue</strong></td>
<td>- Piazza, T. (2020) Managing Conflict by Redesigning Dialectic into Dialogue (Article will be distributed to the class via Canvas).</td>
</tr>
</tbody>
</table>
| Module 3: October 19 | **The Mediation Process: Techniques of Mediators** including setting the mediation up for success, utility of a joint session, confidential caucus, reframing sensitive issues, dealing with parties' emotions, responding to inequities of power, the use and limitation of position bargaining and closing the gap through a mediator's proposal. | Litigation Committee, Global Private Litigation Bulletin, Issue 9 (February 2017). (Article will be distributed to the class via Canvas).

- **We will do an in-class role play.** Instructions and supplemental materials for the role play will be distributed one week before this class. You are responsible for reading the instructions and supplemental materials before this class commences.  
  - **Watch Social Network Film before class commences.** |
| --- | --- | --- |

- **We will do an in-class role play.** Instructions and supplemental materials for the role play will be distributed one week before this class. You are responsible for reading the instructions and supplemental materials before this class commences. |
<p>| Module 5: November 2 | <strong>Advocacy in Mediation: Preparation,</strong> | Charkoudian, L. and Wayne, E.K. Fairness, Understanding, and Satisfaction: Impact of Mediator and Participant Race |</p>
<table>
<thead>
<tr>
<th>Module 6: November 9</th>
<th>Class 6: Mediation: Innovating Options</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mediation Brief, and the Process</strong></td>
<td>How advocates can better prepare for and be a more effective participant in the mediation process, relate to your counterpart through information exchange, trust, reputation, and power.</td>
</tr>
<tr>
<td></td>
<td>and Gender on Participants’ Perception of Mediation. In Conflict Resolution Quarterly, Volume 28, Number 1, Fall 2010.</td>
</tr>
<tr>
<td></td>
<td>- Wing, L. Mediation and inequality reconsidered: Bringing the discussion to the table. In Conflict Resolution Quarterly, Volume 26, Number 4, Summer 2009.</td>
</tr>
<tr>
<td></td>
<td>- <strong>We will do an in-class role play.</strong></td>
</tr>
<tr>
<td></td>
<td>- <strong>We will do an in-class role play.</strong> Instructions and supplemental materials for the role play will be distributed one week before this class. You are responsible for reading the instructions and supplemental materials before this class commences.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Module 7: November 16</th>
<th>Class 7: Mediation: Closing the Deal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bargaining and dealing with impasse and the mediator's proposal as a tool.</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Settle, J. Tips and Techniques: Helping Parties Move Ahead and Overcome Roadblocks. (Article will be distributed to the class).</td>
</tr>
<tr>
<td></td>
<td>- <strong>We will do an in-class role play.</strong> Instructions and supplemental materials for the role play will be distributed one week before this class. You are responsible for reading the instructions and supplemental materials before this class commences.</td>
</tr>
</tbody>
</table>
| Module 8: November 30 | **Multiparty Mediations**  
From class actions to multiple defendants to insurance carriers, multiparty mediations are common. Mediating multiparty disputes involves many of the same issues and techniques encountered in a typical two-party proceeding but often exponentially expanded due to the number of parties, issues, and perspectives involved. This increased complexity is the result of not only the number of participants but also inherent differences in negotiating styles, participants' relative authorities, divergent viewpoints, and unequal access to information. | • Pederson, P. (2014). Multicultural conflict resolution. In Deutsch, M., Coleman, P. T. and Marcus, E. (Eds.). The handbook of conflict resolution: Theory and practice, 3rd edition. San Francisco: Jossey-Bass. |

These class sessions will be recorded.

Live participation is required in order for students to receive the full benefit of the course. Class recordings are not intended to be a replacement or substitute for class attendance.