Fall 2013

First Assignment Form

Name	Lynn Duryee
Course	Mediation
Required Text/Reading	*Getting to Yes:* Introduction, Chapter 1. *Mastering Mediation:* Introduction, Chapters 1-4.
1st Assignment	**Written Assignment #1: "What do I bring to the table?" Due in Class 2 (8/27)** Read *Mastering Mediation*, "Introduction" (p. 11), "Self Monitor for Bias" (p. 39), "Know Thyself" (p. 217). Consider the following: Why are you taking this class? What qualities do you possess that you think will make you a good mediator? Which of your qualities might get in the way? What qualities would you like to develop to become effective as a mediator? Why is it important to know yourself to be an effective mediator?
Brief Note to Students	**The class syllabus is available electronically below.** **Laptops and other devices:** The use of laptops, cellphones, or other devices is not permitted in class because most judges do not permit their use in a settlement conference, and most professional mediators dislike the distraction of electronic devices during a mediation.

Mediation: Course goals, requirements, and outline
Fall 2013
Tuesday 6:30-9:30

Professors:

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Purpose of the course:

- Introduce theory, law and process of Mediation
- Practice communication and conflict resolution skills through exercises based on actual cases
- Explore effective representation of clients in mediation
- Study ethical obligations of neutrals and lawyers in mediation
- Apply mediation skills to daily life

Course materials:

- *Mastering Mediation: 50 Essential Tools for the Advanced Practitioner,* Duryee and White (ThompsonReuters Aspatore, 2012)
- *Getting to Yes,* Fisher and Ury (Penguin, 2011)

Additional Recommended Reading:

- *Difficult Conversations: How to Discuss What Matters Most,* Stone, Patton and Heen (Penguin, 1999)

Attendance requirements:

Classroom participation is at the heart of this course, and so attendance is mandatory. Most exercises depend on every student playing a role. If you miss a class, you will miss the experience itself, and you will deprive your esteemed classmates of full participation. If you will be absent for any reason, you must notify your professors as far ahead as possible in advance of class. Only the following absences will be excused: (1) an absence due to an illness that is excused by the professors in advance; and (2) an absence due to a documented medical emergency.

You will not be excused for any other reason. If you miss a class, you will be required to observe a mediation or settlement conference, either with Judge Duryee or with a judge or mediator of your choice. You will be required to turn in a short reflection of your observations, in addition to other written or participation requirements of the course.

NOTE: THERE IS NO CLASS ON TUESDAY September 23. Class instead will be held on Saturday, September 21 from 9:00-11:45.

Observation opportunity:

Judge Duryee conducts settlement conferences every Monday in Department L of the Marin County Superior Court. You are welcome to join her any Monday and observe every caucus. If you choose to do so, you may write a short reflection on your observations and submit that in lieu of any written assignment. Please make arrangements with Judge Duryee in advance of your planned attendance. Please note that Judge Duryee will not be in session on Monday, September 23, 2013.

Laptops and other devices:

The use of laptops, cellphones, or other devices is not permitted. Judges do not permit their use in a settlement conference, and most professional mediators dislike the distraction of electronic devices during a mediation.

Americans with Disabilities Act Accommodations:
USF affords all students with disabilities equal access under the law. If you are in need of accommodation under the Americans with Disabilities Act (ADA) or similar enactment, you must contact the **University Student Disability Services Office** at (415) 422-2613 or sds@usfca.edu to obtain the appropriate accommodation.

Class exercises and role plays:

There will be weekly exercises in mediation requiring your participation. You may serve in the role of mediator, attorney, client, or observer. Students assigned to the role of attorney and client are required to meet before class to discuss their strategy and prepare for the mediation. All students must read the hypo in advance. You may use the parties' briefs and your own notes during the class exercises. Save the hypos as they will be used throughout the semester.

Exit tickets

Instruction will terminate at 9:10 and you will be given an exit ticket to summarize key portions of the class. You are expected to spend 5-10 minutes completing the assignment. When you have thoughtfully completed it, you may leave. The exit tickets will then be compiled and emailed to all students, so that all students will then have the benefit of the learning of the entire class.

Confidentiality:

In some exercises, you will be given confidential instructions. Just as in the practice of law, please do not share confidential information with others. If during the debrief portion of the exercise you are asked to share the confidential information in class, you may do so then.

Most of the class exercises are based on actual cases. In order to protect the privacy of the litigants, full names have been redacted or changed. If you happen to discover the true identity of a litigant, you must respect their confidentiality.

Written assignments:

There are 3 written assignments, 2 pages (double-spaced), 12 point font.

1. **Written Assignment #1: "What do I bring to the table?" Due in Class 2.**

   Read *Mastering Mediation*, "Introduction" (p. 11), "Self Monitor for Bias" (p. 39), "Know Thyself" (p. 217).

   Consider the following: Why are you taking this class? What qualities do you possess that you think will make you a good mediator? Which of your qualities might get in the way? What qualities would you like to develop to become effective as a mediator? Why is it important to know yourself to be an effective mediator?

2. **Written Assignment #2: "Becoming a better listener." Due in Class 6.**

   Read *Mastering Mediation,* "Become a world class listener" (p. 199), "Reflect like a master" (p. 203), "Cultivate curiosity" (p. 231).

   Write a reflection on one or more of the "Practice" questions at the end of each chapter in the assigned readings. Focus on your listening assets and deficits.

3. **Written Assignment #3: "Every Day Mediation Skills." Due in Class 14.**

   Read *Mastering Mediation: Ch. 48, 49, 50, 14.* In this class, we have studied how master mediators continuously strive to become better listeners and communicators; how they are always working on ways to better understand a speaker's emotional content; how they strive be a curious, tolerant, and open-minded person. How can you incorporate these practices into your life now? What skill will you focus on developing? How will you implement your plan for becoming an expert in one of these areas? Will you use a journal, coach, friend? Write a paper describing the skill you wish to develop and describe your plan for developing it. Explain how you think this will help you become a more effective mediator and lawyer.

Course Outline

CLASS NUMBER and DATE	CONTENT	ASSIGNMENT – READINGS TO BE DONE **BEFORE** CLASS
CLASS 1 August 20	INTRODUCTION AND COURSE OVERVIEW What options are available for dispute resolution? What are risks and benefits of each? What is wrong with litigation? Exercise: *Views vs. Trees* – In-class mediation exercise followed by debrief and faculty demonstration	*Getting to Yes:* Introduction, Chapter 1. *Mastering Mediation:* Introduction, Chapters 1-4.
CLASS 2 August 27	MEDIATION BASICS What is the mediation process? When does it occur? Who pays for it? How is it different from arbitration or settlement conferences? What is applicable law? Exercise: *Hark v. Traub* mediation; debrief	**Written Assignment #1 due** CA Rules of Court, Civil Rule 3.854 CA Evidence Code sections 1115-1128 *Getting to Yes*: Chapters 2-3
CLASS 3 September 3	ANATOMY OF A MEDIATION What is the mediator's role? What is an opening statement? What is the purpose of joint sessions? When to break into separate caucus? Exercise: *Estate of Maletta* mediation; debrief	*Mastering Mediation*: Chapter 23; Opening Statement Checklist, p. 248. *Getting to Yes*: Chapter 4

CLASS 4 September 10	COMMUNICATION SKILLS (PART ONE) Listening as a skill. Why is it so hard to listen? What are my listening deficits? How can I become a better listener? Why do good listeners make great advocates and mediators? Exercise: identifying strengths and deficits in listening skills	*Mastering Mediation*: Chapters 6, 42, 43 ***OPTIONAL:*** *Difficult Conversations*: Chapters 1-5 Distribute *ADA Case*
CLASS 5 September 17	COMMUNICATION SKILLS (PART TWO) Interests v. positions; effective use of questions; role of curiosity; intro to reframing; separating the people from the problems. Reflecting back. Exercise: reframing, identifying interests (class handouts). Exercise: *ADA* mediation (gathering information); debrief	*Mastering Mediation:* Chapters 18, 20, 25, 47 *Getting to Yes:* Chapter 7 ***Optional:*** *Difficult Conversations:* Chapter 6 Distribute *Merle v. Regina*
****Next class is on Saturday 9/21. No class on Tuesday 9/22**		
CLASS 6 **Saturday,** September 21	SETTLEMENT CONFERENCE DEMONSTRATION In class demonstration of settlement conference involving real lawyers, mediators and judge, based on a real case. (*Merle v. Regina*) What techniques do the neutrals use? How effective are the lawyers in managing negotiations? What role does the client play in the process? What tools do the neutrals use to bring the parties closer together? What did you learn by watching the demonstration?	**Written Assignment #2 due** Distribute *O'Dell*

CLASS 7 October 1	EFFECTIVE REPRESENTATION OF CLIENTS AT MEDIATION Preparing the client for mediation. How to advocate for the client and still present as reasonable and fair? How to deal with an unreasonable client or adversary? When to concede weakness or share private information? Should client be allowed to speak to the mediator, or to the other side? What is the role of pre-hearing briefing? Exercise: Pre-mediation preparation of client O'Dell; debrief.	*Getting to Yes:* Chapter 5
CLASS 8 October 8	NEGOTIATIONS (PART 1) BATNA/WATNA. Uncovering interest; principled bargaining Exercises: Mediation role plays (in class handouts); individual feedback; debrief	*Mastering Mediation*: Chapters 12-16 *Getting to Yes:* Ch. 1, 2(5)
CLASS 9 October 15	NEGOTIATIONS (PART 2) Do the math; baby steps; role of CCP 998 offers	*Mastering Mediation:* Chapters 21, 22, 24, 26-39 CCP Section 998 ***Optional:*** *Difficult Conversations*: Chapters 7-9

CLASS 10 October 22	NEGOTIATIONS (PART 3) More tools: bracketing; review progress; emphasize agreement; visualize settlement; offer permission. Exercises: Mediation role plays (in class handouts); individual feedback; debrief	Review *Merle v. Regina* for in-class demonstrations next week
CLASS 11 October 29	SEAL THE DEAL What to do when impasse occurs? Self care. Embroilment. Silence. Joint vs. separate caucuses. Ensuring enforceability of settlements (C.CP. section 664.6). Exercise: *Merle v. Regina* stalemate; debrief.	C.C.P. section 664.6 *Getting to Yes*: Chapter 6, Conclusion *Mastering Mediation:* Chapters 31-41 ***Optional:*** *Difficult Conversations*: Chapter 10 In-class handout: "Solving Stalemates"
CLASS 12 November 5	ETHICAL ISSUES IN MEDIATION Incompetent counsel or unequal distribution of information or bargaining power; overlapping positions; confidentiality; coaching negotiation; responding to unethical behavior or negotiations. Exercises: *Landlord v. Tenant.* Ethical issues in mediation; debrief.	*Mastering Mediation:* Chapters 17, 30, 46. JAMS Mediators Ethics Guidelines: http://www.jamsadr.com/mediators-ethics/ In-class handout: *Landlord v. Tenant* Distribute hypo, *Neil v. Martins*

CLASS 13 November 12	HIGH CONFLICT MEDIATIONS Reframing and dealing with strong emotions; the signs and dangers of embroilment. The high conflict litigant: why it helps to recognize personality disorders. Exercise: *Neil v. Martins* – civil harassment restraining order; debrief	*Mastering Mediation:* Chapter 7 *Getting to Yes*: Chapter 8 In-Class Handout: High Conflict Personality Checklist; assign roles *Neil v. Martins* ***Optional:*** *Difficult Conversations*: Chapters 11-12 Distribute and assign roles *Juan v. Maria*
CLASS 14 November 19	CHANGE THE WORLD How mediation makes you a better person; why many lawyers are unhappy; why mediators love their work. Role of kindness in the practice of law. The emerging work on apology and forgiveness. *Exercise:* Juan and Maria mediation; debrief. Students present summary of written assignment #3. Class wrap-up; final questions, comments, observations	**Written assignment #3 due** *Mastering Mediation:* Chapters 8, 10, 44-45, 48-50