

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW
SPRING 2009**

Course: ADR Seminar 3
LAW 850 512 2393

Instructor: Professor Rachel Wohl
Executive Director
Maryland Mediation and Conflict Resolution Office (MACRO)
903 Commerce Road
Annapolis, Maryland 21401
Work Phone: 410-260-3540, Cell: 410-935-0434
FAX: 410-260-3541
Email: Rachel.wohl@mdcourts.gov
Website: www.marylandmacro.org

Days/Time: Wednesdays 4:45 PM to 7:30 PM

Location: Law Center Room 212

Course Description: This seminar is a philosophical and practical examination of the use of alternative (or appropriate) dispute resolution (ADR) processes to resolve legal disputes. After analysis of the limitations of adjudication, emphasis will be placed on the techniques of interest-based negotiations, mediation, arbitration, early neutral evaluation, community conferencing, consensus building and collaborative law. Students will learn about: various schools of thought with regard to mediation practice, the practical application of mediation in various settings, ADR ethical standards and how attorneys can best represent clients using ADR processes. Students will have the opportunity to understand their own responses to conflict, to develop their awareness skills, to practice skills in interactive exercises and to write a scholarly paper on an aspect of ADR of interest to them.

Course Materials: Required Text - **Dispute Resolution and Lawyers, 4th ed.**, (hardback 2009 edition), by Riskin, Westbrook, Guthrie, Reuben, Robbennolt & Welsh, Professor Wohl will provide copies of some Journal and other articles for students to read

Course Concepts and Goals:

1. The students should understand that the lawyer's principal job is to help the client solve the client's problems. The idea of the lawyer as a problem-solver means that advocacy, inside or outside of litigation, is merely one of the lawyer's tools. The lawyer's mission should be to help the client select the best method for dealing with a problem. Sometimes that is litigation, but a lawyer should not assume off-handedly that litigation is invariably the most appropriate method.
2. Students should develop self-awareness about their own reactions and responses to conflict. They should understand how to use awareness tools to gain a measure of freedom from their stress, biases, negative emotions and habitual reactions, so that these

internal states will not serve as barriers to providing clients with high quality problem solving assistance.

3. Students should understand the differences and relationships between adversarial and problem-solving orientations toward dealing with disputes and transactions. Adversarial approaches emphasize how to divide a scarce resource; whatever one party wins, the other loses. Problem-solving approaches stress underlying interests (the needs or goals that motivate the parties to assert specific claims or positions) and seek to reach agreements that are as satisfactory as possible for all concerned parties. A lawyer should learn to manage the tension between adversarial and problem-solving approaches.

4. The students should understand the principal characteristics and the advantages and disadvantages of the various dispute-resolution processes and develop a sense of the circumstances in which each method might be most appropriate. This enables them to use ADR as “appropriate” dispute resolution.

Grades: There will be three components to the grading for this course: scholarly paper (40%); class participation (40%); paper presentation (20%). The following describes each of these components in greater detail.

Scholarly Paper (40%)

This course, as a seminar, fulfills the School of Law’s upper level research and writing requirement. Each student will be required to: 1) submit a proposed topic for approval by the instructor; 2) submit an outline of the paper; 3) meet with the instructor after submission of a first draft; 4) submit a final paper. The following provides more detail on each of these steps:

The topic proposal: The topic proposal should be one typewritten page in length and lay out what students propose to write about. Students should perform some research before submitting a topic to discover whether the topic allows for sufficient creativity and students must attach an additional page with at least five sources, apart from readings from the course, that students believe most relevant the proposed topic. A seminar paper is not a report or a review, but an original piece of work, reflecting students’ own theses about and analysis of a topic. Accordingly, students’ proposals should set forth an anticipated thesis, even though the thesis may change as research progresses.

The paper can be on any subject relating to ADR. Students should feel free, if they so desire, to choose an interdisciplinary topic that relates to ADR. A list of websites related to ADR will be posted on TWEN. These sites are solely to provide students with a means to begin brainstorming about possible topics. There are many issues related to ADR that we will not have time to discuss in this course, but which would make interesting and important contributions to this class. Students are encouraged to consider topics that will require some independent factual investigation and/or interviews, as well

as legal analysis. The instructor will review the proposed topic in order to assess whether it is too narrow, broad, or appropriate.

The outline: The outline should be in full sentence format and should include all portions of the paper, from introduction to conclusion. It should contain headings for each section and subsection in a logical order. Key research sources should be noted in the outline where appropriate.

First draft: The first draft should be an attempt at the entire paper, including footnotes even if they are not yet in proper citation form. The more complete the first draft and the greater the effort put into it, the more useful the feedback students will receive. In addition, it will make the final draft much easier to complete in a timely fashion.

Final draft: The final draft should be in law review format; that is, it must be polished, proofread, and properly footnoted in ALWD or Bluebook form. The paper is to be students' own work, prepared solely for this seminar, involve significant research and analysis, and contain students' own perspectives on the issue or issues discussed. The paper must be at least 25 pages and no more than 30 pages, including footnotes. The paper must be double-spaced with one-inch margins and use Times New Roman 12 point font. The footnotes should be single spaced. The paper will be evaluated according to the following criteria: thoroughness and complexity of research (30%); analysis and synthesis (30%); soundness of the thesis (10%); writing, which includes organization, style, brevity, clarity, grammar, spelling, punctuation, and citation (30%).

Presentation: Each student will present his or her topic to the class. Each classroom presentation and the questioning that follows will be approximately 25 minutes. The presenter is responsible for having a copy of the presentation outline to give to the class one week in advance so that all students may be prepared to question the presenter. The presenter may also hand out a reading assignment related to the topic of no more than seven pages.

Due Dates:

Topic Proposal: February 3

Outline: March 3

First Draft: March 31

Final Draft: April 24

Class Participation (40%)

Class participation will be evaluated on the basis of the following criteria, each of which will be accorded equal weight: 1) thoughtful and consistent involvement in class discussion that display familiarity with readings; 2) performance in role-plays and activities that display preparation and commitment. In terms of class discussion, the course policy is to first recognize students who have participated least up to that point. As noted below, class attendance may be taken into account in grading.

Paper Presentations (20%)

The last three classes of the seminar will involve primarily presentation of papers by students. Details and a schedule of presentations will be distributed later in class.

Attendance: Attendance is critical. The instructor will distribute an attendance sheet each class. Only the listed student may sign the attendance sheet. Apart from exceptional circumstances, the instructor will deem all absences as unexcused unless receipt of notice by email, telephone, or other means prior to or within twenty-four hours after an absence. The instructor retains discretion to reduce students' grade by one-half step in light of an unexcused absence and/or excessive tardiness. This is separate and apart from other consequences recommended or mandated by School of Law attendance policies. Attendance Policy:

<http://law.ubalt.edu/template.cfm?page=267>

Guest Lecturers/Critiquers: There will, from time to time, be guest lecturers participating in the teaching of the course. The exigencies of scheduling these guests might necessitate revision of this syllabus.

Course Web Page: This course will have a TWEN site through Westlaw. The site will include this syllabus with updates as necessary, each week's seminar assignment, and additional reading or other materials. The site will also facilitate e-mail communications.

Assignments/Participation: Assignments for each class, including readings, will be posted on the course TWEN site about one week prior to each seminar. The assignments in the Course Outline below are subject to change. Students are expected to complete all reading assignments and to consistently participate in class discussion to share their reflections, questions, concerns and feelings about the issues raised in the assignments.

Computers: Students may use laptop computers for limited class related purposes only. Inappropriate use of laptops may change this policy.

Class Cancellation

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web page or call the University's Snow Closing Line at (410) 837-4201. If the

University is not closed, students should presume that classes are running on the normal schedule.

OUTLINE OF THE COURSE

(assignments subject to change one week prior to seminar session)

I. Introduction to ADR

1/13 Nature of Conflict, Processes, Settlement Debate,

Reading: Riskin, Westbrook pp. 1 - 56

1/20 Mindful Dispute Resolution, Relationship between ADR and Lawyer

Reading: (Posted on TWEN) The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients, 7 Harvard Negotiation Law Review 1-66 (2002); Leonard L. Riskin, Knowing Yourself: Mindfulness, in The Negotiator's Fieldbook 239-50 (Christopher Honeyman & Andrea K. Schneider, eds., American Bar Association 2006)

Riskin, Westbrook pp. 56-84

II. Negotiation

1/27 Approaches to Negotiation, Adversarial and Problem Solving

Reading: Riskin, Westbrook pp. 168-190, 197-203, 206-235

2/3 Negotiation Ethics, Culture, Gender & Race in Negotiations

Reading: Riskin, Westbrook pp 253-274, 274-302

III. Mediation

2/10 Introduction to Mediation, Skills, Role-Plays

Reading: Riskin, Westbrook pp. 309-333, 362-395

2/17 Mediation Skills, Role-Plays

Reading: Riskin, Westbrook pp 410-428

2/24 Mediation Advocacy, Confidentiality

Reading: Riskin, Westbrook pp. 429-472, 482-511

Maryland Rules Title 17-109

3/3 Mediation Ethics and Critiques

Reading: MPME Standards of Practice for Mediators

Riskin, Westbrook pp. 511-548

IV. Arbitration

3/10 Introduction to Arbitration, Arbitrability, Challenges and Judicial Review

Reading: Riskin, Westbrook pp. 553-600

3/17 (NO CLASS - SPRING BREAK)

3/24 Challenges to Arbitration and Judicial Review (see 3/24 below –Other Processes)

Reading: Riskin, Westbrook pp. 627-635, 648-673

V. Other Processes and Considerations

3/24 Consensus Building, Early Neutral Evaluation, Community Conferencing, and Collaborative Law

Reading: TBD

3/31 Choosing a Dispute Resolution Process, National and International Contexts

Reading: Riskin, Westbrook pp. 923-949

VII. Paper Presentations

4/7 Paper Presentations

4/14 Paper Presentations

4/21 Paper Presentations/Conclusion

Academic Integrity: School of Law Honor Code <http://law.ubalt.edu/template.cfm?page=477>]

Disability Policy

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Interim Director of Disability Support Services at 410-837-4141 or via email at kschulz@ubalt.edu.
