

## FAMILY MEDIATION: THEORY AND PRACTICE

Fall 2009

### I. COURSE MATERIALS

Murphy and Rubinson, *Family Mediation: Theory and Practice* (forthcoming Lexis/Nexis; online at course TWEN website: <http://lawschool.westlaw.com>)

### II. CONCEPT AND GOALS

This course will present students with an overview of family law mediation, including:

- A basic grounding in the skills and theories of mediation.
- An understanding of the many variations of how mediation is actually conducted in family law cases.
- Critical judgment as to when family law mediation might or might not be appropriate in individual cases.
- A familiarity with legislation involving family law mediation and critical inquiry as to the efficacy of different legislative initiatives.
- Special issues facing mediators in family law mediation.
- The role lawyers can or should play when representing clients before, during, and after family law mediation.
- Ethical considerations both as a family law mediator and as an attorney in family law mediation.

The course materials draw on policy, cases and statutes from a variety of jurisdictions with special emphasis on Maryland mediation practice and law.

### III. ASSIGNMENTS AND GRADES

- A. Class assignments: Students are expected to complete the reading assignments from the text and supplemental materials, to attend each class on time, and to participate in class discussions of readings and problems. **You are expected to consistently participate in class discussion in order to demonstrate that you have read and reflected on issues raised in the assignments. Consistent with the School of Law's Academic Regulations, students are permitted up to two (excused or unexcused) class absences. If you know you will be absent from class, please provide faculty as much notice as possible.**

Each student will also have a major role in 2 simulations over the course of the semester

as well as minor roles in additional simulations. In accordance with the goals that we have identified, simulations will include: a) family law mediations with two parties, two attorneys, and a mediator; b) counseling sessions during which students will describe and advise clients about mediation; c) mediations without attorneys and d) mediations where only one party is represented.

B. You have two options regarding grading:

**Option 1 (Family Mediation Theory and Practice Seminar)**

- 1) In class exercises including simulations, feedback, and discussion (25%);
- 2) Mediation observation assignment: 25%
- 3) Scholarly Paper (25 pages): (50%)

**Option 2 (Family Mediation Theory and Practice)**

- 1) In class exercises including simulations, feedback, and discussion (25%);
- 2) Mediation observation assignment: 25%
- 3) “Short paper” (8-10 pages): 25%
- 4) Take-home examination (25%)

**IV. SYLLABUS**

**A. FAMILY MEDIATION: HISTORY AND THEORETICAL FOUNDATIONS**

Week I

August 18

**Introduction/Historical Overview**

**Models of Mediation**

1. Facilitative
2. Evaluative
3. Transformative

**B. THE SKILLS OF THE FAMILY MEDIATOR**

Week II

August 25

**The Mediation Process: An Overview and Demonstration**

Simulation: Setting the Stage/Orientation

Week III

September 1

**Child Access Mediation**

Simulation: Gathering Information/Framing Issues

Week IV

September 8

**Divorce Mediation: Financial Issues**

Simulation: Developing Options/Negotiation

Week V

September 15

**Legislative Initiatives**

1. Court-Ordered and Court-Referred Mediation
2. Mediator Qualifications
3. Judicial Enforcement of Mediated Agreements
4. Sources of Ethical Norms in Mediation

Simulation: Formalizing Decisions

Week VI

September 22

**NO CLASS - Individual Meetings on Paper w/ Faculty**

**C. REPRESENTING CLIENTS AND FAMILY MEDIATION**

Week VII

September 29

**Deciding Whether to Mediate: When is Family Mediation Appropriate?**

1. The "Power Critique"
2. Family Violence/Unrepresented Parties

Simulation: Counseling Clients about Dispute Resolution Options

Week VIII

October 6

**Preparing Clients for Mediation**

Simulation: Client Preparation

Week IX

October 13

Attorney's Role in Mediation: Representing Clients in Mediation

Simulation: Representing Clients in a Child Access Mediation

Week X

October 20

**NO CLASS - Mediation Observation**

#### **D. MEDIATION ETHICS**

Week XI

October 27

**Ethical Issues in Family Mediation: Mediators and Attorneys**

1. Sources of Ethics Rules
2. Confidentiality
3. Conflicts of Interest
4. Mediator "Neutrality"

**MEDIATION OBSERVATION DUE IN CLASS**

#### **E. REFINING SKILLS, EXPLORING ISSUES**

WEEK XII

November 3

**Simulations**

Week XIII

November 10

**Paper Presentations**

Week XIV

November 17

**Paper Presentations**

**Establishing a Mediation Practice**