ALTERNATIVE DISPUTE RESOLUTION – LAW 640
Spring 2016

Adjunct Professor: Tom Margolis
Adjunct Contact Information: margolislaw1@aol.com or 618-924-0988
Course Administrative Assistant: Carol Manis -- 618-453-8719
Office Hours: Please call, text or e-mail to schedule appointment
Class Meeting Information: Monday & Wednesday, 5:00-6:15 p.m. – Room 202

COURSE SYNOPSIS:
No matter what area of law you ultimately decide to focus on following your graduation from law school, there is no doubt that you will be called upon to use one form or another of Alternative Dispute Resolution (ADR). Although years ago, the thought of using “alternative” forums for resolving disputes was not well received by many in the legal field, today, ADR is ubiquitous within the American and international landscape.

Negotiation is probably the most heavily utilized method of ADR, yet few attorneys have actually mastered the fundamental skills needed to unleash the full power of this oft used but rarely understood form of dispute resolution. Mandatory mediation in divorce cases is now commonplace. Judges recognize the benefits of ADR in all types of civil cases including small claims matters. If you are involved in a civil case in federal court, you are guaranteed to have a “mandatory” settlement conference, which is for all practical purposes, a very intensive quasi-mediation process. If you take the time to read the fine print in the documents you receive with any of your credit cards, there is undoubtedly an arbitration clause buried deep within the terms. Even in non-violent criminal cases, many prosecutors are now looking to Restorative Justice as a means to relieve congested court dockets, reduce recidivism, and, utilize various sectors of the community to help promote meaningful rehabilitation of the wrongdoer.

In addition to understanding the theory behind the various forms of ADR, you must also develop the practical skills necessary to harness the power of dispute resolution to its fullest extent. You already possess some of these skills. For example, you have been learning to “negotiate” since you were old enough to speak. This skill has been used often throughout your life, although you probably never associated this with a substantive skill that you could effectively use in the real world practice of law. Since less than five percent of litigated claims in this country actually proceed to trial, being well versed in the various areas of ADR and having more proficient skills than your opponent should give you significant leverage when trying to resolve your case.

The goal of this class is to provide you with both a substantive overview of every area of ADR along with the practical skills necessary to make whatever type of ADR you utilize the most effective for the best possible outcome of your case.

The class will be taught in five segments, each covering one of the five major disciplines commonly referred to as “methods of Alternative Dispute Resolution”. These disciplines include: Negotiation, Mediation, Collaborative Law & Hybrid Dispute Resolution, Arbitration, and Restorative Justice. In addition to the assigned readings listed below, in-class exercises will be utilized to enhance the “theoretical” aspects of the class. There will also be several required written assignments including, but not limited to: demands for
arbitration; offers of settlement; creation of forms for agreements to mediate; motions to stay or dismiss
ongoing litigation pursuant to mediation or arbitration clauses in the contracts at issue; letters to clients
offering legal advice about the wisdom of including or submitting to mediation or arbitration clauses in
particular contracts; letters requesting opposing parties participate in ADR; and settlement agreements.

LEARNING OBJECTIVES:
After completing the Spring 2016 semester, students will be able to:

1) Identify the six stages required for a successful negotiation as well as techniques that can
   significantly impact the outcome of negotiations;
2) Recognize negative behavioral patterns in an opponent that can have a deleterious impact on any
   form of ADR and identify mechanisms to diffuse the behavior;
3) Recognize nonverbal communication/cues that can signal an opponent’s intentions or indicate
deception;
4) Explain the neuroscience that can help an advocate become a more effective negotiator and
   identify simple exercises that can positively affect the hormones responsible for elevating a
   negotiator’s presence;
5) Recognize potential ethical dilemmas that can arise during all aspects of ADR;
6) Explain the complete process of mediation as well as the various types of mediators;
7) Analyze a client’s particular legal and factual issues and advise the client regarding the pros and
   cons of every potential form of ADR in light of the client’s unique situation;
8) Identify the minimum critical elements that must be contained in an enforceable Arbitration
   Agreement;
9) Draft an enforceable business related Arbitration agreement;
10) Recognize the unique circumstances when Collaborative law can be utilized to maintain and
    possibly enhance an ongoing relationship between two adversaries;
11) Explain the fundamental philosophy of Restorative Justice and identify specific circumstances
    where one or more aspects of Restorative Justice can be more beneficial than typical remedies
    relied upon in the criminal justice system.

COURSE MATERIALS:
Required texts: *Alternative Dispute Resolution: Negotiation, Mediation, Collaborative Law, and Arbitration*,
Garvey & Graver (ADR); and

*Alternative Dispute Resolution in a nutshell, 4th Ed., Nolan* (Nutshell);

Additional materials you should have or obtain when they become available on TWEN:

Illinois Rules of Professional Conduct

Additional materials provided in class

ATTENDANCE:
Because the format of this class relies very heavily on active participation in ADR in-class exercises and
simulations, attendance is crucial to your success. Please note that the maximum number of permitted
absences for ADR is three (3). More than three (3) absences accumulated during the semester will result in
a failing grade.

Excused absence -- may be obtained for an exigent circumstance; however must be pre-approved by
instructor as time/circumstances permit.
WORKLOAD EXPECTATIONS:
The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), “a “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week. The amount of assigned reading and out of class preparation should take you about 3 hours for each class session and 6 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 9 hours per week (3 in class and 6 preparing for class) on course-related work.

CLASS PARTICIPATION:
The goal of this course is not only to familiarize you with each of the most commonly used methods of Alternative Dispute Resolution, but also to develop the skills necessary to utilize these methods to the fullest extent possible. This can only happen if you are fully prepared when you arrive at class. You will be expected to provide input when called upon in class and to actively participate in class simulations.

By signing the attendance sheet, you are confirming that you are prepared for class and willing to participate in any exercises or simulations on that date. If you are not prepared or do not participate in the class exercises/simulations, you will be counted absent.

CLASSROOM ETIQUETTE:
Although electronic devices such as tablets, cell phones, and laptops are ubiquitous, please make sure that all such devices are turned off or closed (e.g., your laptop). Use of an actual paper notepad and writing utensil is strongly encouraged.

GRADING, INCLUDING S/U GRADING:
Your final grade will be based upon your performance in and contributions to in-class exercises and a cumulative final exam. Twenty-five percent of your final grade will be based upon your in-class exercises and 75% of your grade will be based on the final exam. The final exam will be given on Saturday, May 7, 2016 at 8:15 a.m.

The grades of students who have elected to take this course with S/U grading will be converted by the Registrar according to the following scale: 2.1 or greater = Satisfactory; below 2.1 = Unsatisfactory. Only students who receive a Satisfactory grade will earn academic credit for the course.

AUDIO/VISUAL RECORDING:
This class will not be audio/videotaped. No form of electronic or cellular recording by students is permitted without express prior authorization of the instructor.

STUDENTS WITH DISABILITIES:
Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. http://disabilityservices.siu.edu/. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.
**SALUKI CARES:**
The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, http://salukicares.siu.edu/index.html. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.

**EMERGENCY PROCEDURES:**
Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT’s website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

**CLASS SCHEDULE and READING ASSIGNMENTS -- SPRING 2016**

1) **NEGOTIATIONS (FOUR WEEKS)**

**Week 1 – 01/20**

01/20 -- (ADR) Chapter 1; overview of class structure; historical development of ADR

**Week 2 – 01/25 & 01/27**

01/25 – (ADR) Chapter 2 & Chapter 4, pp. 19-38
(Nutshell) Chapter 2, pp. 17-32

01/27 -- (ADR) Chapter 4, remainder of chapter (pp. 39-68)

**Week 3 – 02/01 & 02/03**

02/01 -- (ADR) Chapters 5 and 6

02/03 -- (ADR) Chapters 7 and 8; in-class exercises

**Week 4 – 02/08 & 02/10**

02/08 -- (ADR) Chapter 9
(Nutshell) Chapter 2, pp. 33-59 and in-class exercise

02/10 – (Nutshell), Chapter 2, pp. 60-74
2) **MEDIATION (FOUR WEEKS)**

**Week 5 -- 02/15 & 02/17**

02/15 – (ADR) Chapter 10, pp. 125-131  
(Nutshell) Chapter 3, pp. 75-91

02/17 – (ADR) Chapter 10, pp. 132-138 & 146-150  
(Nutshell) Chapter 3, pp. 92-116

**Week 6 – 02/22 & 02/24**

02/22 – (ADR) Chapter 10, pp. 139-145  
(Nutshell) Chapter 3, pp. 124-150

02/24 – **Guest lecturer** -- TBA

**Week 7 – 02/29 & 03/02**

02/29 – (ADR) Chapter 11

03/02 – Putting all the pieces together in preparation for In-Class exercises

**Week 8 – 03/07 & 03/09**

03/07 – Guest Speaker – Federal Magistrate, the Honorable Phil Frazier

03/09 – In-class exercise

**Week 9 – 03/14 through 3/20 (SPRING BREAK) Enjoy!**

3) **COLLABORATIVE LAW & HYBRID DISPUTE RESOLUTION (ONE WEEK)**

**Week 10 – 03/21 & 03/23**

03/21 – (ADR) Chapter 12 and in-class exercise

03/23 – (Nutshell) Chapter 6 and in-class exercise

4) **ARBITRATION (FOUR WEEKS)**

**Week 11 – 03/28 & 03/30**

03/28 – (ADR) Chapter 13, pp. 205-212  
(Nutshell) Chapter 4, pp. 161-178

03/30 – (ADR) Chapter 13, pp. 212-218
Week 12 – 04/04 & 04/06

04/04 – (ADR) Chapter 14
(Nutshell) Chapter 4, pp. 178-240

04/06 – Guest lecture -- TBA

Week 13 – 04/11 & 04/13 and 04/15 (FOR READING DAY MAKE-UP CLASS)

04/11 – In-class exercise

04/13 – Compare and contrast methods of ADR utilized thus far and use of Arbitration in international disputes

04/15 – View Federal Magistrate Judge Phil Frazier’s video follow-up to in-class presentation and answer questions posted on TWEN re: same

Week 14 – 04/18 & 04/20

04/18 – In-class exercise

04/20 – In-class exercise

5) RESTORATIVE JUSTICE (ONE WEEK)

Week 15 – 04/25 & 04/27

04/25 – (Nutshell) Chapter 5 and Guest lecture

04/27 – Final discussion on issues involving Restorative Justice and overview of issues for Final

FINAL EXAM – Saturday, May 7, 2016 at 8:15 am -- Good Luck!