ALTERNATIVE DISPUTE RESOLUTION – LAW 640
Spring 2014

Adjunct Professor: Tom Margolis

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Office Hours: No regular hours – please call 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 terribly 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.
Course Materials:
Required text:  *Alternative Dispute Resolution: Negotiation, Mediation, Collaborative Law, and Arbitration*, Garvey & Graver (ADR)

Illinois Rules of Professional Conduct

Additional materials provided in class

**Strongly recommended text:**  *Alternative Dispute Resolution in a nutshell, 4th Ed., Nolan* (Nutshell)

Attendance:
Because the format of this class relies 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.

Scheduling Issues:
Due to the Martin Luther King, Jr., holiday on January 20, 2014, the January 29, 2014, class will be extended to 7:30 p.m. A comprehensive in-class Negotiation exercise will be conducted on this date.

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.

Formation of Law Firms:
The class will be divided into law firms of paired classmates during the first class. No requests for preferred partnerships will be considered. Because you are not choosing your own partners, your grades are NOT interdependent. The firm name will consist solely of the last names of the partners in alphabetical order. The firms will be split into defense and plaintiff’s bars. In the event a partner leaves a firm (drops the class), the remaining partner will carry on individually. Firms from the plaintiff and defense bars will be paired as adversaries for the duration of the semester.

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 Friday, May 2, 2014 at 1:15 p.m.**

Audio/Visual recordings:
This class will not be audio/videotaped. No form of taping is permitted without express prior authorization.
Students with Disabilities:
The law school’s policies and procedures regarding students with disabilities may be found online at www.law.siu.edu. Students with disabilities requiring reasonable accommodations should contact the Registrar’s office.

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 2014

1) NEGOTIATION (FOUR WEEKS)

Week 1 – 01/13 & 01/15

01/13 -- (ADR) Chapter 1; overview of class structure; formation of law firms; historical development of ADR

01/15 – (ADR) Chapter 2 & Chapter 4, pp. 19-38
(Nutshell) Chapter 2, pp. 17-32

Week 2 – 01/20 (No Class) & 01/22

01/22 – (ADR) Chapter 4, remainder of chapter (pp. 39-68)

Week 3 – 01/27 & 01/29 (Class extended to 7:30 pm due to holiday)

01/27 -- (ADR) Chapters 5 and 6

01/29 -- (ADR) Chapters 7 and 8; in-class exercises – class extended to 7:30 pm

Week 4 – 02/03 & 02/05

02/03 – (ADR) Chapter 9
(Nutshell) Chapter 2, pp. 33-59 and in-class exercise

02/05 – (Nutshell), Chapter 2, pp. 60-74

2) MEDIATION (FOUR WEEKS)

Week 5 – 02/10 & 02/12
02/10 – (ADR) Chapter 10, pp. 125-131
    (Nutshell) Chapter 3, pp. 75-91

02/12 – (ADR) Chapter 10, pp. 132-138 & 146-150
    (Nutshell) Chapter 3, pp. 92-116

Week 6 – 02/17 & 02/19

02/17 – (ADR) Chapter 10, pp. 139-145
    (Nutshell) Chapter 3, pp. 124-150

02/19 – Guest lecturer to discuss real world mediation issues, particularly in area of family law

Week 7 – 02/24 & 02/26

02/24 – (ADR) Chapter 11

02/26 – Putting all the pieces together in preparation for In-Class exercises

Week 8 – 03/03 & 03/05

03/03 – In-class exercise

03/05 – In-class exercise

Week 9 – 03/08 & 03/16 (Spring Break) Enjoy!

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

Week 10 – 03/17 & 03/19

03/17 – (ADR) Chapter 12 and in-class exercise

03/19 – (Nutshell) Chapter 6 and in-class exercise

4) ARBITRATION (FOUR WEEKS)

Week 11 – 03/24 & 03/26

03/24 – (ADR) Chapter 13, pp. 205-212
    (Nutshell) Chapter 4, pp. 161-178

03/26 – (ADR) Chapter 13, pp. 212-218

Week 12 – 03/31 & 04/02

03/31 – (ADR) Chapter 14
    (Nutshell) Chapter 4, pp. 178-240

04/02 – Guest lecture to discuss real world pros and cons of arbitrating civil cases
**Week 13 – 04/07 & 04/09**

- 04/07 – In-class exercise
- 04/09 – Compare and contrast methods of ADR utilized thus far and use of Arbitration in international disputes

**Week 14 – 04/14 & 04/16**

- 04/14 – In-class exercise
- 04/16 – In-class exercise

5) **RESTORATIVE JUSTICE (ONE WEEK)**

**Week 15 – 04/21 & 04/23**

- 04/21 – (Nutshell) Chapter 5 and Guest lecture
- 04/23 – Final discussion on issues involving Restorative Justice and overview of issues for Final

**FINAL EXAM – Friday, May 2, 2014 at 1:15 pm -- Good Luck!**