



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL *of* LAW

MEDIATION

LAW 703/SECTION 1

Fall 2021

ADJUNCT PROFESSOR MYRNA S. GUIDRY

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THE PROFESSOR

NAME: Myrna S. Guidry

TELEPHONE: 985-517-9491

EMAIL: guidrymed8@gmail.com

LOCATION: Classroom:

OFFICE HOURS: Tuesday 4:00 – 5:15
Tuesday 7:30 – 8:15
(All other times by appointment only)

NOTE FROM THE PROFESSOR:

Class Meeting Times

This class meets on Tuesday from 5:30-7:10 p.m.

NOTE FROM THE PROFESSOR:

Welcome! I look forward to working with you this semester. Before beginning Mediation, I want to remind you of the course's overall goals and how it will attempt to achieve those goals. Knowing the course's goals and methodology will help you understand the purpose behind the assignments you will receive during this semester.

This course will provide you with an alternative to a traditional law practice. A Mediation practice can be a stand alone profession or it could be an additional source of income along with your law practice.

While this course is not a portion of the Texas State Bar, the legal study in the course will certainly provoke a thought process that may be useful on the essay portion of the bar exam.

At the end of this course, if successful you will receive the 40-hour certificate required by the Texas Supreme Court to mediate cases in Texas. Your dedication to this course is essential not only to your success in this course but also to your success in any mediation practice. It is my expectation that you will stay focused and remain engaged during our time together this semester.

“In the middle of every difficulty lies opportunity.” -Albert Einstein

COURSE BOOKS & MATERIAL

(1) The **required** textbook for this course is available in the Texas Southern University Bookstore and online. It is as follows:

The Mediator's Handbook: Revised and Expanded 4th Edition

(2) In addition to the textbook above, please note that you are required to have access to the following codes, whether you choose to purchase the codes or rely on free online access to the relevant material. **The Texas codes are our priority.** Here is a link to access the Texas Constitution and all statutes: <http://www.statutes.legis.state.tx.us/Index.aspx>. But note this *free* website (and any other free website) may not include recent 2020 updates to the Codes. **Many students prefer to buy a copy of the Texas code books** and here is a link: <https://legalsolutions.thomsonreuters.com/law-products/Practice-Materials/OConnors-Texas-Civil-Code-Plus-2018-19-ed/p/105532935>. There are other purchase sites as well. **Also note that you may need to access other Texas code provisions.** You also may access the relevant Texas codes at the links and websites below.

- [Texas Family Code](#)
 - <http://www.statutes.legis.state.tx.us/?link=FA>
- [Texas Civil Practice and Remedies Code](#)
 - <http://www.statutes.legis.state.tx.us/?link=CP>

COURSE DESCRIPTION & OBJECTIVE

DESCRIPTION:

This Mediation course is designed to introduce and instruct the potential future professional the basics regarding Mediation process and procedures which is as follows:

Mediation is a private process in which an impartial person, a mediator, encourages and facilitates communications between parties to a conflict and strives to promote reconciliation, settlement, or understanding. A mediator should not render a decision on the issues in dispute. The primary responsibility of the resolution of a dispute rests with the parties.

A mediator's obligation is to assist the parties in reaching a voluntary settlement. The mediator should not coerce a party in anyway. A mediator may make suggestions, but all settlement decisions are to be made voluntarily by the parties themselves.

OBJECTIVE:

To ensure each student meet the necessary standards pursuant to State Legislation regarding becoming and maintaining as a mediator and to give each student the necessary tools to become successful as a mediator, attorney or participant.

STUDENT LEARNING OUTCOMES

To ensure each student acquire the skills and course understanding to become capable of conducting a successful mediation with confidence and without the necessity of further instruction. Also to ensure that each student is eligible to and receives the required participatory hours to successfully complete the 40 hours training required by the Texas Supreme Court to obtain bona-fide Certification to Mediate.

40-HOUR BASIC MEDIATION TRAINING

TRAINING CONTENT

The nine minimum areas of information that will be covered in this basic mediation 40-hour training program include:

I. History of Mediation

Students need an understanding of the historical perspective of mediation because it has evolved over time and continues to evolve today.

II. Overview of ADR Legislation in Texas

Students should be introduced to legislation that regulates the practice of mediation, so they may comply with relevant legal requirements.

III. Conflict Resolution Theory

The theory of conflict resolution helps Students differentiate between mediation and other forms of dispute resolution. Topics include:

- A. Definitions, types of, sources of, and responses to conflict
- B. Conflict resolution continuum
- C. Interest-based, collaborative problem solving

IV. Mediation Theory and Practice

Students need a theoretical grounding to understand the process fully. Students should understand a full range of mediation models in order to serve the parties most effectively. Topics include:

- A. Definition of mediation
- B. Role and characteristics of mediators
- C. Theory of mediation
- D. Benefits of the mediation process
- E. Differences in third-party roles: mediators, arbitrators, and judges
- F. Approaches to negotiation
- G. Range of styles, types of mediators and mediations
- H. Impact of diversity issues
- I. Court systems and procedures

V. Mediation Process and Techniques

Students must develop a conceptual framework for conducting the session. This requires learning key techniques to assist in managing the session's process while encouraging a collaborative problem-solving environment.

A. Elements of the Mediation Process

1. Preliminary arrangements
2. Opening and structuring the mediation session
3. Introduction/orientation of disputants/attorneys
4. Gathering and exchanging information (venting/opening statements)
5. Issue and problem clarification
6. Generating options
7. Bargaining and negotiation
8. Agreement writing/enforceability
9. Closure

B. Techniques

1. Trust building
2. Reframing
3. Keeping on track, following agenda, managing process
4. Focusing on interests vs. positions
5. Building on partial agreements
6. Caucusing
7. Reality testing
8. Working with third parties
9. Managing difficult people or strong emotions

VI. Self-Awareness of Trainee

Students should understand how their personal characteristics, values or biases might influence their ability to perform effectively as a mediator. Topics include:

- A. Diversity/cultural awareness (personal biases)
- B. Language differences
- C. Conflict style
- D. How the trainee responds to conflict
- E. Personality style

VII. Ethics

Students must be able to support the effectiveness and credibility of the mediation process through making informed choices based on ethical principles. Topics include:

- A. Conflict of interest/appearance of impropriety
- B. Neutrality/impartiality
- C. Confidentiality
- D. Sample of standards recommended by dispute resolution professional organizations
- E. Staying in the role of mediator
- F. Violence, substance abuse, child abuse & neglect, screening, reporting and legal issues
- G. Power imbalances
- H. Liability
- I. Misuse of process
- J. Protecting the process
- K. Awareness of various organizations' ethical guidelines and grievance processes

VIII. Communication Skills

Students should have an opportunity to learn selected written and oral communication skills in order to foster understanding and trust, elicit relevant information, and accurately track and record key areas of agreement. Skills include:

- A. Listening
- B. Note taking
- C. Questioning
- D. Nonverbal communication (i.e., eye contact, body language)
- E. Restating and clarifying
- F. Use of neutral language
- G. Drafting the agreement
- H. Recognizing feelings and emotions of parties

IX. Professional Considerations

The trainers should promote the belief that continuing education and development is critical to achieving excellence in mediation. Students should be made aware of opportunities to continue to learn, to network, to find support within the field, and to establish a professional identity. Topics include:

- A. Professional organizations
- B. Networking
- C. Practicum
- D. Continuing education
- E. Aspects of establishing a practice
- F. Community service

GRADING

Your final grade will be based on the following:

• Midterm exam	40%
• PPA	5%
• Mediation Observation	15%
• Final Examination	40%
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	100%

Examinations: The format for your Midterm examination will be traditional testing in nature. You will be examined in short answer questions or multiple-choice and true/false question format. The format for your Final Examination will be practical in nature. You will be examined on your opening statement, mediation procedures and closing. You should prepare for these exams by reviewing the material we cover in class and by recalling the process learned during your required live mediation observation.

PPA: Please see the section below on “Participation, Professionalism, and Attentiveness.”

Mediation Observation: As part of your experiential learning experience, you will observe a live mediation. By the due date, you must **observe at least one live mediation** to earn 15% of your final grade. You must observe the complete mediation in order to receive any credit. You will document the date, time, mediator, attorneys, and substance of what you observed in the required format and submit this form to me not later than one (1) week post observation. Your mediation time may be completed with any of the mediators assigned in class. It will be your responsibility to contact the mediator’s office to obtain a date and time for your observation. Observations completed with other mediators require prior approval.

Approved mediators:

Myrna S. Guidry guidrymed8@gmail.com

Tammy Moon tammymoonlaw@yahoo.com

Dessiray Cusic dessiray@thecusiclawfirm.com

Tom King Tom@tomking.com

ACCOMMODATIONS

If you require special accommodations, please fill out the necessary forms with the Dean's office. Your application and documentation will remain confidential. Your prompt attention will allow the law school to accommodate you as soon as it has been made aware of your situation.

Also, please contact Dean Virgie Mouton (Student Affairs) if you require any special accommodations regarding any of the assignments, including, but not limited to, extensions, note-takers, etc. You must contact Dean Mouton before the related assignment is due.

Dean Mouton

Assistant Dean for Student Development and Academic Support

Phone: (713) 313-7909

Email: vmouton@tmslaw.tsu.edu

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

PARTICIPATION:

Class participation will be considered in determining your final course grade. You must be prepared for all classes. If you do not actively participate in class discussion and exercises, you may lose “Participation, Professionalism and Attentiveness” points (“PPA points”). You must prepare all assignments to the very best of your ability even if they are not submitted for a grade or feedback. In addition, if you fail to bring all relevant materials with you to class or do not have these materials open and ready for use in class, you will lose PPA points. You will need to have the required texts in class (or access to them) to fully participate in the discussion. Lastly, as you know, you must be on time for class.

ATTENDANCE:

Class attendance is mandatory. Attendance will be taken at the beginning of each class. Per Article III, Section 9 of the Student Rules and Regulations, for this four-hour course, you will be permitted five (5) absences. Tardiness will not be permitted and will be considered an absence, as will dismissal from class for misconduct or lack of proper preparation. Please see the Student Rules and Regulations for information on grade reduction and further details on absences. The class attendance rule is strictly enforced.

PROFESSIONALISM:

A. Electronic Devices: Laptop computers, tablets, or mobile devices may be used for accessing your e-textbook, Texas codes, the UPC, or Uniform Trust Code and for class-related note taking and reference. During class, however, it is inappropriate to use these devices for any other purpose (e.g., to download music, play games, watch DVDs, access inappropriate web sites, or to instant message others). Use of a laptop, tablet, or mobile device in class is a privilege. In addition to any other sanction, I will rescind use of these devices, individually or collectively, if it is abused. Cell phones, smart watches, and similar devices must have the ringer turned off (or the volume muted).

B. Classroom Conduct: Also, as you well know, at all times, you must respect your fellow colleagues. Please refrain from excessive side conversations or other distracting conduct during class. Also, ***please refrain from leaving the classroom during instruction***. Once class begins, you should remain seated and fully engaged in the discussion. If you have a medical condition that requires you to regularly leave after class has begun, please see Dean Mouton for approval. Otherwise, **such disruption of class will result in a loss of PPA points**. Further, any other conduct that displays a lack of professionalism will result in a loss of PPA points.

POLICIES & PROCEDURES

ASSIGNMENTS IN GENERAL:

If you have any questions regarding these guidelines or the guidelines on any individual assignments, please ask me. **All pages of each assignment *must be stapled together*** (in the upper left-hand corner). Any format guidelines provided for formal writing assignments are designed to further prepare you for the level of professionalism required in law practice.

When directed to do so, you must use an EXAM NUMBER when submitting your assignments. If you are instructed to use an exam number, **DO NOT** put your name on the assignment, as preservation of your anonymity during grading is mandatory. **If you put your name on your assignment, your work will not be graded, and you will receive a zero for the assignment.** If you use the wrong exam number, you will lose PPA points. Furthermore, you must submit these assignments on time. Lastly, if you submit your assignment on TWEN more than once, I will review and grade only the most recent submission (the last submission). **Please note that you may be required to submit a hard copy of your assignment (in class) in addition to your TWEN submission.**

A. Syllabus and Reading Assignments

This is a syllabus, not a contract. Set forth on the following pages is a tentative schedule for our class meetings, but additional required reading materials may be posted on TWEN and reading assignments may change as we make our way through the course. The class will generally follow the order of the textbook (with the exception of our coverage of mediation legislation). If you are absent from class, please see a classmate about any missed material and required preparation for the nextclass.

- B. Consequences for Late Assignments** Late Submission of Assignments: If you submit an assignment after the relevant due date and time, but within one hour after the stated deadline, you will receive a 25% reduction in your grade. If you turn in your assignment more than one hour late, your grade on that assignment will be reduced by an additional 15% for each “day” that the assignment is late, up to two days. **You will not receive any credit for a writing assignment that is submitted more than two days after the relevant due date. Your TWEN submission provides the time-stamp for grading purposes, not your hard copy submission. Moreover, if you upload your assignment on TWEN multiple times, I will review only the most recent submission for time and grading purposes.** For purposes of this section, a “day” ends at 5:00 p.m. For example, if an assignment is due using TWEN at 8:00 a.m. on a particular day and you submit the assignment at 8:59 a.m. on that day, you will lose 25% of the total available points. If you turn in the assignment at 11:00 a.m. on that day, you will lose 40% of the total available points for that assignment. If you turn in the assignment any time after 5:00 p.m. that day or any time before 5:00 p.m. the next day, you will lose 55% of the total available points for that assignment. If you turn in the assignment any time after 5:00 p.m. the second day after the due date, you will not receive any credit for

the assignment. For purposes of this section, a “day” is further defined as a calendar day (including weekends and holidays), not a Texas Southern University or Thurgood Marshall School of Law business day. All calendar days, including weekends and holidays, will be counted in determining any grade reduction. Also, please note that you will be required to turn in a hard copy of your assignment in class. **If you fail to bring a copy of your assignment to class, you will lose points on your grade for that assignment. You will also lose points on your assignment if you turn in the hard copy late.** It is very important that you adhere to all instructions and the rules for this course. ii. Assignments Submitted in Class or by Email (and not on TWEN): If an assignment is to be submitted in class or by email (and not on TWEN) then that assignment is due at the beginning of class or on the relevant due date and time, respectively. If you submit the assignment after the beginning of class, but before the end of class, you will receive a 25% reduction in your grade. Assignments that are due in class may not be submitted after the class period concludes in which the assignment was due. **If you do not turn in your assignment before the end of class in which the assignment was due, you will not receive any credit for the assignment.** Also, be sure to bring an extra copy of your assignment for your use during class or for review or exam preparation. If you are absent or will miss class, you must make arrangements to have your assignment submitted in a timely manner; otherwise, you may not receive credit for the assignment. If you submit an assignment by email late, you will receive a 25% reduction in your grade. **If you turn in your assignment by email more than two hours late, you will not receive any credit for the assignment.**

C. Laptop Misuse

As mentioned, laptop computers may be used to access your e-textbook and code sections and for class-related note taking and reference. During class, however, it is inappropriate to use laptops for any

other purpose (e.g., to download music, play games, watch DVDs, access inappropriate web sites, or to instant message others). Laptop use in class is a privilege. In addition to any other sanction (such as a deduction of PPA points), I will rescind laptop use, individually or collectively, if it is abused. Cell phones, blackberries, and similar devices must be turned off.

D. Plagiarism

Plagiarism in *any* form is strictly prohibited. You may not plagiarize any other written work, including, but not limited to, any sample answer, article or news report. Should an instance of plagiarism exist, the matter will be forwarded to the Dean for appropriate action.

E. Questions Sent by Email

I welcome your questions by email, provided you adhere to the following requirements. If you send me a question by email, you must (1) identify the steps you have taken to solve the problem or answer your specific question or issue and (2) include what you believe the solution or answer to be. In particular, you should identify the materials you have read or sources you have researched. Many times, the answer to a question (especially technical requirements for assignments) may be found in the Course Guidelines and Syllabus. Be sure to check this document first.

F. Campus Carry

As you know, the State of Texas has recently passed legislation permitting you to carry a *concealed* firearm on campus if you have a concealed license permit recognized by the State of Texas, subject to the rules and regulations of Texas Southern University's ("TSU's) Campus Carry Policy. Under TSU's Campus Carry Policy, I have designated my office as a gun-free zone. Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun. (Conforme a la secciòn 30.06 Del Còdigo Penal (traspasar portando armas de fuego con licencia), personas con licencia bajo del sub-capitulo 411, Còdigo Del Gobierno (ley de portar armas), no deben entrar a esta propiedad portando un arma de fuego ocultada.). For a complete list of the gun-free zones on this campus and the rules governing campus carry at our institution, please visit Texas Southern University's website at <http://www.tsu.edu/>. Please note that entering a gun-free zone on campus with a firearm, including inside my office, could not only lead to criminal prosecution but suspension or expulsion from school.

CLASS SCHEDULE

Discussion Topics: Introductions Overview of course; Review Course Syllabus; Observation; Mediation Simulations; Class Exercises

Assignment Due Next Class:

Read: Mediator's Handbook, Chapters 1-4; Texas CPRC Ch. 154

Week 2: Assignment Due: Mediator's Handbook, Chapters 1-4; Texas CPRC Ch. 154

Assignment Due Next Class:

Read: Mediator's Handbook, Chapters 5-8, Texas CPRC Ch. 154

Week 3 –

Assignment Due: Mediator's Handbook, Chapters 5-8, Texas CPRC

Assignment Due Next Class: Read: Mediator's Handbook, Chapter 9-13, Texas CPRC Ch. 154

Week 4

Assignment Due: Mediator's Handbook, Chapter 14-18, Texas CPRC Ch. 154 **Written Assignment:** Prepare an opening statement **Simulation:** Opening Statement **Discussion Topics:** Mediation Process; Opening Statement

Assignment Due Next Class: Access link below—read “Mediating with Zoom” article and watch video <https://www.mediate.com/articles/online-mediating-zoom.cfm#> **Written Assignment:** Prepare questions for guest speaker next week **Simulation:** Opening Statement cont'd

Week 5

Assignment Due: Access link below—read “Mediating with Zoom” article and watch video <https://www.mediate.com/articles/online-mediating-zoom.cfm#> **Guest Speaker:** Attorney Angelina Gooden, Mediator **Simulation:** Opening Statement cont'd

Week 6

Assignment Due Next Class: Mediator's Handbook, Chapters 19; Texas CPRC Ch. 154

Week 7

Assignment Due: Mediator's Handbook, Chapters 20-24; Texas CPRC Ch. 154

Week 8

Assignment Due: Mediator's Handbook, Chapters 25-27

Assignment Due Next Class: Written Assignment: Mediated Settlement Agreement

Week 8 –

Assignment Due: Mediation simulation

Assignment Due Next Class: Role play (2 Teams)

Week 9 –

Assignment Due: Role play (2 Teams) **Assignment Due Next Class:** Role play (2 Teams)

Week 10 –

Assignment Due: Role play (2 Teams) **Assignment Due Next Class:** Role play

Week 11– October 22 LAST DAY OF CLASS

Assignment Due: Role play (2 Teams) **Assignment Due Next Class:** Role play

