



NATIONAL PARALEGAL COLLEGE

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PLG-111-1002

Alternative Dispute Resolution

Syllabus and Course Guide

The NPC Alternative Dispute Resolution course meets 15 times over the course of the 8-week term in the NPC Interactive classroom. Each 75-minute session consists of 45 to 60 minutes of online lecture by the course instructor. During the remainder of the time, students may ask questions and make comments on the material being studied. Unless otherwise noted, all lectures begin at 9:00 P.M., Eastern Time.

All class sessions are recorded and may be viewed by students at any time.

To successfully complete the course, each student must satisfactorily complete:

- 5 written assignments
- 3 examinations

Unless an extension has been granted by the instructor, all assignments and exams must be submitted within 30 days of the end of the course in order to receive credit.

COURSE DESCRIPTION:

There exists a common misapprehension that lawyers and legal assistants do most of their work in court. More and more often, attorneys and their clients are seeking ways to reconcile differences without spending the time and money involved in a law suit. This course will provide students with a working knowledge of the basic theories underlying negotiation, arbitration, and mediation. Students will learn the important distinguishing characteristics of each of these "alternative" approaches to resolving disputes, and will also learn how to address the ethical and legal issues which may arise in pursuit of these remedies.

In addition to covering current theory on these topics, much of the course will be dedicated to hypothetical scenarios and court cases concerning arbitration. Another portion will center on the contracts involved in mediation. Thus, students will complete

this class familiar with the general workings of these processes both from a theoretical perspective and from a practical perspective.

INSTRUCTORS AND CONTACT INFO:

Instructor: **Jessica Borden**
Email: jessbordenmp@gmail.com

COURSE OBJECTIVES:

At the completion of this course, the student should be able to:

- Analyze the advantages and disadvantages of negotiation in a particular situation vis a vis taking the dispute to a court of law.
- Assist in strategically determining a client's negotiation position; in terms of the strength and weaknesses of that client's case.
- Explain how one can generally avoid dangers which arise during negotiation.
- Analyze ethical issues which may arise in negotiation.
- Analyze ethical issues which may arise in negotiation.
- Explain what a mediator does and does not do.
- Analyze the meaning, and effect, of mediation agreements and how they affect the parties' future rights.
- Explain the advantages and disadvantages of arbitration and assist in making the determination of whether arbitration is appropriate in a particular case.
- Research and apply the state and federal laws which govern arbitration.
- Take the steps necessary to initiate an arbitration proceeding.
- Explain the form and functions of high-low arbitration and how it operates differently from traditional arbitration.

READING ASSIGNMENTS:

All reading assignments refer to the NPC courseware, including the interactions attached to each subchapter. Cases and/or statutes that are specifically mentioned in the syllabus are required reading. The texts of these cases and/or statutes may be accessed directly from the courseware. In addition to the assigned courseware and cases, students should familiarize themselves with the various legal documents listed for each lecture. These documents can be found on the “Documents and Slides” page on the NPC student

website. Some, but not all, of these documents will be discussed in class. Reading assignments for each class should be completed prior to the class.

WRITTEN ASSIGNMENTS:

At the outset of the course, five assignments will be posted. These assignments cover material covered throughout the course, in chronological order (i.e., the first assignment will cover material covered in the first couple of weeks of the class, etc.). It is recommended, but not required, that you do the assignments at approximately the time that the material corresponding to that assignment is covered in class. The 5 assignments will cumulatively count for 40% of the student's grade for the course.

Assignments are to be submitted via the section of the student menu entitled "Assignments & Exam Grades." If a student wishes to attach a diagram or another document whose formatting does not allow it to be submitted easily through the website, the document may be e-mailed to the instructor.

Each submitted assignment will be graded on the following scale:

4 - Excellent

3 - Good

2 - Satisfactory

1 - Poor

0 - Not acceptable (must resubmit)

(Half-points may also be awarded in assignment grading.)

Please see the "Assignment Grading Rubric" (attached on the next page) for more detailed information as to how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments.

Assignment Grading Rubric

Factor	4 (Excellent)	3(Good)	2(Satisfactory)	1 (Poor)	0 (no credit)
Thoroughness	Answered all questions in the exercise completely and in the appropriate order.	Answered all questions in the exercise but not completely and/or not on the appropriate order	Answered most of the questions in the exercise but not completely and/or not on the appropriate order	Did not answer many of the questions in the exercise but did make some reasonable effort to do so.	Made little or no reasonable effort to answer the questions posed in the assignment
Demonstrated Understanding Of the Assignment and has come to an appropriate conclusion	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the students comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported b the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
Documentation/ Legal research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)	Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.	Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.	Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.	Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.	Student has not cited any legal authorities or has cited authorities that are irrelevant.
Organization	Essay is organized very well; the reader can clearly understand where the essay is going at all point and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.	Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.	Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.	Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.	Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.
Critical Thinking and Analysis	Shows excellent critical thinking and analysis. The student was able to apply the cited law to the facts of the given case in a clear and convincing manner.	Shows good critical thinking and analysis. The student's points are well argued and well supported.	Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.	Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.	Shows no effort critical thinking or analysis. The student's points make no sense.

EXAMINATIONS:

Examinations will be posted on the NPC website at the times indicated in this syllabus. The examinations consist entirely of “short essay” questions. The 3 examinations will cumulatively count for 60% of the student’s course grade.

Examinations are non-cumulative; they cover only the material that has been covered since the previous examination. The instructor will provide specific information regarding the content of each examination as the examination time approaches.

Each student will be required to designate a single computer to be used for all examinations. NPC will then install a security certificate on the student’s designated computer. A student may only take the examinations on the computer that has the NPC security certificate installed.

All examinations are timed. A student may begin the examination any time after it is posted to the NPC website. Once begun, the examination must be completed within 4 hours.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each examination question, full credit will be awarded if the student:

- 1) Correctly identifies the legal issue(s) presented by the question
- 2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student’s answer comes to an “incorrect” conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)
- 3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

The following factors are generally NOT taken into account in grading examinations:

Legal research; Although research is a key component of assignments, examinations are graded on the student’s knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student’s answer); Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not

necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would rather see the students spend their time spotting legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

For more information on assignments and examinations, please see the *NPC Student Handbook*.

WEEKLY INTERACTION REQUIREMENT

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least one during each week, either:

- 1) Attend a live lecture
OR
- 2) Submit at least one assignment
OR
- 3) Take at least one examination
OR
- 4) Answer a weekly “interaction” question or questions that will be posted on the “Assignments and Exams” page.

The weekly “interaction” question(s) will be simple and straightforward and will cover material covered in class that week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

This student response (which is necessary only if the student does not attend a live class or take an exam or submit an assignment in the given week) will be graded on a pass/fail basis. The interaction questions will be posted no later than Monday of each week and must be answered on or before the following Monday.

The weekly interaction questions will be posted alongside the assignments. Students who do not attend a live class or take an exam or submit an assignment in the given week will be required to answer the questions presented. Students who did attend a live class or take an exam or submit an assignment in the given week may ignore the question.

Any student who does not fulfill this requirement during a given week will receive a reduction in his or her over-all grade of 2 percentage points from his or her over-all average. Conversely, any student who demonstrates excellent participation either through message board participation or through relevant in class discussion may receive an increase in his or her over-all grade, in the discretion of the instructor.

All examinations and assignments are due no later than May 9, 2010.

Lecture and reading assignments schedule

CLASS 1

Tuesday, February 9, 2010

9:00 PM Eastern Time

In this first class, we will discuss the history of the alternative dispute resolution movement in the United States and the extent to which solutions alternative to litigation can save time and money for all parties involved, including taxpayers. We will outline the three main alternative dispute resolution categories (negotiation, arbitration, and mediation), each of which will be handled in far greater depth in classes to come.

Courseware Reading:

Chapter 1: Introduction to Forms of Alternative Dispute Resolution

- A. Overview of Alternate Dispute Resolution
- B. History of Alternate Dispute Resolution
- C. Negotiation Overview
- D. Mediation Overview
- E. Arbitration Overview

Documents for Review:

Dispute Resolution Policy

CLASS 2

Thursday, February 11, 2010

9:00 PM Eastern Time

With this class we begin our in-depth coverage of negotiation as an alternative to litigation. We will examine how parties can use negotiation as a viable alternative to litigation or other means of addressing the issues. Central to Class 2 will be our discussion of the two main negotiating postures (adversarial versus problem-solving).

Cases and Statutes:

Chapter 2:

Negotiation Positioning-Problem Solvers Cooperate, Adversaries Compete

A. Negotiation Generally

B. Adversarial Positioning & Distributive Bargaining

CLASS 3: (Assignment/ Lexis walkthrough)
Tuesday, February 16, 2010 9:00 PM Eastern Time

This class will consist of a Lexis tutorial/ assignment walkthrough. The instructor will use a research assignment from a past or current course to demonstrate the manner in which an assignment should be researched and composed.

The instructor will walk the students through the various Lexis databases and explain to students how to most efficiently use the Lexis system to complete research assignments. Various general aspects of navigating Lexis, including Shepardizing, seeking and finding appropriate search databases, getting a document by citation, etc., may be explored.

The Instructor will also discuss how to most effectively plan, outline, organize and draft research assignments. Model answers and/or past student submissions may be used to illustrate what a “4” assignment looks like and how to compose one.

CLASS 4

Thursday, February 18, 2010

9:00 PM Eastern Time

This class will focus on cooperative negotiations. Even though cooperative negotiations can sound simple enough, they can be some of the trickiest to execute. We will discuss some of the things to be aware of in the course of a cooperative negotiation and to always remember that negotiation is, at its heart, a zero sum game, and how important it is not to lose sight of this fact. We will look at the classic problem of the “prisoner’s dilemma” to illustrate how complex negotiations can be.

Courseware Reading:

Chapter 2: Negotiation Positioning-Problem Solvers Cooperate, Adversaries Compete

C. Cooperative Negotiators

D. Cooperative Negotiation & The Prisoner’s Dilemma

Our foray into negotiation continues by examining the ethics involved in negotiation. We will look tonight at the ethical responsibilities owed by an attorney representing a party in a negotiation proceeding to one's client/. We will look at the duty to zealously represent one's client and the impact that duty has on a negotiation proceeding.

Courseware Reading:

Chapter 3: The Legal Professional as a Negotiator- Ethical Considerations

- A. Model Rules of Professional Conduct
- B. Negotiator's Duties to Client - Model Rule 1.4
- C. Negotiator's Duties to Client - Model Rule 2.1

Cases and Statutes:

Model Rule of Professional Conduct 5.3

Model Rule of Professional Conduct 2.1

In this class, we will continue our discussion of the ethics involved in negotiation. We will look at the duties owed by an attorney involved in a negotiation proceeding to other parties involved in the proceedings. This will include a discussion of the rules regarding contact with opposing parties and when and to what extent it is okay to lie (or “stretch the truth”) during a negotiation.

Courseware Reading:

Chapter 3: The Legal Professional as a Negotiator- Ethical Considerations

D. Negotiator’s Duties to Others – Model Rule 4.1

E. Negotiator’s Duties to Others – Model Rule 4.2

F. Negotiator’s Duties to Others – Model Rule 4.3

Cases and Statutes:

Model Rule of Professional Conduct 4.1

Model Rule of Professional Conduct 4.2

Model Rule of Professional Conduct 4.3

Examination # 1 will be administered at this point.

CLASS 7

Tuesday, March 2, 2010

9:00 PM Eastern Time

Our foray into negotiation continues by examining the role which negotiation plays in situations unrelated to any dispute. We will distinguish the role of negotiation in deal-making situations from its role in disputes and discuss how we can use our understanding of the former to gain an edge in disputes. Next, we will continue our discussion of negotiation by discussing settlement agreements. We discuss various considerations that go into such agreements.

Courseware Reading:

Chapter 4: Negotiating Deals Absent Disputes, Settlement Agreements & Special Settlements

A. Making Deals Cooperatively and Competitively

B. Drafting a Valid Settlement Agreement

Cases and Statutes:

Mallory v. Eyrich

Marek v. Chesny

We will devote this class to settlement agreements. We will look at a settlement agreement and discuss the important provisions in it. We will discuss the important of common settlement provisions and the requirements for making them enforceable. We will also look at certain uncommon settlement agreement provisions and discuss when and under what circumstances they might be desirable.

Courseware reading:

Chapter 4: Negotiating Deals Absent Disputes, Settlement Agreements & Special Settlements

C. Special Settlement Agreements

Document for Review:

- Sample settlement Agreement

CLASS 9

Tuesday, March 9, 2010

9:00 PM Eastern Time

In this class, we will begin our work on mediation. We will discuss the relative advantages and disadvantages of mediation *vis a vis* commencing with litigation as soon as a dispute arises. We will also discuss how mediation is initiated and the extent to which contracts that call for mediation can be enforced (including the “good faith” mediation requirements, etc.)

Courseware Reading:

Chapter 5: Mediation: How It Works

- A. Mediation– What It Is and What It Is Not
- B. Advantages and Disadvantages of Mediation

Documents for Review:

- Request for Mediation
- Agreement for Optional Mediation

In this class we will focus on mediation structure; i.e., how the mediation proceeding is held. In addition, we will discuss the all important question as to how one becomes a mediator; including private mediators and court appointed mediators. Finally, we will discuss the extent to which and the circumstances surrounding which) a mediated agreement can later be challenged in court on the grounds that the proceeding was unfair, etc.

Courseware Reading:

Chapter 5: Mediation: How It Works

C. Mediation Structure

Cases and Statutes:

Harrison v. Nissan Motor Corp. in U.S.A.

United States v. Bankers Ins. Co.

Documents for Review:

Civil Mediator Application

Domestic Relations Mediator Application

CLASS 11

Tuesday, March 16, 2010

9:00 PM Eastern Time

To continue our discussion on mediation, we will turn to the real world and the practical application of what we have been discussing. An unenforceable contract does no one any good. Therefore, we will cover issues related to enforceability of agreements to mediate and mediation settlements.

Courseware Reading:

Chapter 6: Mediation: Case Studies

- A. Hypothetical Mediation Scenario
- B. The Clergy Cases & Meddlesome Mediators
- C. The Foxgate Case – Good Faith & Confidentiality

Cases and Statutes:

Travelers Casualty & Surety Co. v. Superior Court

Foxgate Homeowners' Association Inc. v. Bramalea California, Inc.

Documents for Review:

Mediation Status Report

Motion to Remove a case from Mediation

Examination # 2 will be administered at this point.

In this class, we will begin the largest area in our study of alternate dispute resolution: the field of arbitration. We will discuss arbitration agreements in contracts and other manners in which people choose to submit their disputes to an arbitrator. We will also discuss the arbitration process and the jurisdiction and authority that arbitration panels have and the limits to that authority. In addition, we will discuss legislation passed (mostly on the state level) that impacts arbitrators and their awards.

Courseware Reading:

Chapter 7: Arbitration

A. Arbitration's History Prior to the Twentieth Century

B. The Rise of Arbitration Legislation

Cases and Statutes:

Textile Workers Union v. Lincoln Mills of Alabama

Citizens Bank v. Alafabco, Inc.

Documents for Review:

Arbitration Agreement

Demand for Arbitration

Tonight, we will continue our study of arbitration. We will compare arbitration to other alternatives of dispute resolution, including mediation and litigation. We will also examine when and how courts will enforce arbitration awards, including the procedural steps necessary to enforce an arbitration award. We will finish the class by discussing other forms of arbitration, such as “high-low arbitration” and “court-annexed arbitration.”

Courseware Reading:

Chapter 7: Arbitration

- C. Arbitration vs. Mediation
- D. Arbitration vs. Litigation
- E. High-Low Arbitration
- F. Court-Annexed Arbitration

Cases and Statutes:

Raytheon Co. v. Automated Business Sys.

Bonar v. Dean Witter Reynolds, Inc.

Application of Smith

Documents for Review:

Binding Arbitration Award

Judgment on Arbitration Award

CLASS 14

Thursday, March 25, 2010

9:00 PM Eastern Time

We will spend tonight's class discussing the very important question of to what extent a court can, should and will review an arbitration award. The courts have struck a delicate balance between preventing the courts from being used as appellate courts for every arbitration decision (thereby discouraging arbitration) on the one hand, and making an arbitrator's decision always absolute (risking unfairness). We will discuss various fact patterns that straddle this border and discuss the standards to which courts hold arbitrators in terms of fairness and accuracy in applying the law.

Reading:

Handout to be posted on the message board

Cases and Statutes:

Application of Smith

We will conclude the course by looking at various actual arbitration cases that have occurred in the recent past. We will discuss the various practical, strategic and ethical issues that arose in those cases and how they demonstrate pitfalls that should be carefully avoided by legal professionals involved in alternate dispute resolution cases.

Courseware Reading:

Chapter 8: Arbitration: Case Studies

A. Arbitration: Case Studies

Cases and Statutes:

Ting v. AT&T

Iberia Credit Bureau, Inc. v. Cingular Wireless LLC

Green Tree Fin. Corp. v. Bazzle

Examination # 3 will be administered at this point.

All examinations and assignments are due no later than May 9, 2010.