

## **Pathway to Practice: Negotiation and Dispute Resolution**

For students who are considering a career involving negotiation and dispute resolution, as an advocate, negotiator, mediator, arbitrator, ombudsperson, diplomat, policymaker, or business leader, the following list identifies some key courses in the area, including theory and practice courses, clinics, and externship courses. Please note that not all courses are offered each year. For more information, contact Professors Rebecca Hollander-Blumoff, Ann Shields, or Karen Tokarz. For information about the Negotiation & Dispute Resolution Program, see <http://law.wustl.edu/adr/>

### **Introductory NDR Courses**

**Negotiation** – This required first-year course introduces students to the theory and practice of negotiation and lays the foundation for learning in upper-level negotiation and dispute resolution courses.

### **Key NDR Theory & Practice Courses**

**Arbitration Law Theory & Practice** – This course introduces students to the law, theory, and practice of Arbitration. The course addresses the interplay between the jurisdiction of the courts and the authority of the arbitrator, examining common law, the Uniform Arbitration Act used by most states, and the Federal Arbitration Act. The course develops legal and theoretical frameworks through case studies and articles, in which students examine and extrapolate lessons from both practitioners and theorists. The course also focuses on the analytical and interpersonal skills necessary for attorneys to be successful in arbitration, whether as an advocate or as an arbitrator. The course mixes the case-study approach with simulations in multiple contexts, including consumer, commercial, financial, and employment disputes, which allows students to work through arbitration from the initial arbitration agreement to details of the actual arbitration hearing. Students undertake several written assignments, including drafting an arbitration agreement, Arbitration Claim, Motion to Compel Arbitration, Motion to Confirm Award, and Motion to Vacate Award, as well as solving ethical problems. Students present oral arguments on the motions and participate in two mock arbitrations.

**Business Negotiation Theory & Practice** - Whether working in a law office practice, a public institution, or a business enterprise, an attorney's job inevitably involves negotiation. Many of the negotiation skills learned in this class are also applicable to individuals working in non-traditional legal positions (for example, business executives, leaders of non-profit organizations or politicians), as these and other careers frequently require reaching agreements with other parties. Negotiation skills are needed in any situation where the terms of an agreement or contract must be determined (mergers, joint ventures, litigation settlements, partnership agreements, and so forth), and also in the day-to-day work of dealing with clients, partners, employees, judges, legislators, and colleagues. Because negotiation is so integral to what lawyers do, negotiation skills play critical role in determining how successful lawyers are in their work. The premise of this course is that, while attorneys need analytical skills to discover solutions to negotiation problems, bargaining skills are needed for solutions to be accepted by others and implemented. The purpose of this course is to help you become a more skillful negotiator. The course is relevant to a broad range of business and negotiation problems faced by lawyers. A solid grounding in negotiation theory is necessary for the development of negotiation skills. Toward this end, students will study a variety of situations where negotiating skills are important and will develop a set of bargaining tools that will enable them to convert conceptual knowledge into effective action. These tools consist of preparation and at-the-table guidelines that, when practiced regularly, develop into fluid negotiation skills. Because practice is essential for negotiation skills to develop, practice opportunities are offered continually throughout the course. Indeed, at least one practice opportunity will be provided in almost every class, in the form of a negotiation or dispute resolution case that simulates a real world situation.

**Family Mediation Theory & Practice** - This course explores the theory and practice of family mediation, and addresses a wide spectrum of family issues and contexts, including divorce, child custody and parenting plans, child support, division of finances and property, domestic violence, family dynamics, child development, the psychological effect of divorce on children, end of life and health care issues, client representation and advocacy, ethics (both for the mediator and the attorney), cross cultural factors, and collaborative law. This course uses a combination of lecture, discussion, videos, demonstration, and simulations to introduce students to the theory and practice of family mediation. Students will receive a thorough grounding in the theoretical and analytical fundamentals of the family mediation process through discussions in which students examine lessons from both theorists and practitioners drawn from case studies and articles. The course also will focus on the development of the interpersonal skills necessary for attorneys to be successful in family mediations, whether as advocates or mediators. The course develops family mediation skills through weekly simulations, in which students hone their powers of communication and persuasion, and experiment with tactics and strategies typically used in mediation. The readings and the simulations will be drawn from all areas of family law practice.

**Mediation Theory & Practice** – This course introduces students to mediation theory and practice. The course explores mediation within the larger context of dispute resolution processes, and includes attention to the negotiation underpinnings of mediation. The course focuses on the development of the analytical and interpersonal skills necessary to be successful in mediations, whether as advocates or mediators. The course develops analytical frameworks through case studies and articles, in which students examine and extrapolate lessons from both practitioners and theorists. The course develops mediation skills through role play exercises, in which students hone their powers of communication and persuasion, and experiment with tactics and strategies typically used in mediation. The readings and the role play exercises draw from a wide variety of mediation contexts, such as civil litigation, family, victim-offender, commercial, and employment disputes, and provide concepts and tools that apply to all types of dispute resolution.

**Multi-Party/Public Policy Mediation & Dispute Resolution Theory & Practice** - This course explores the theory and practice of multi-party dialogue and public policy dispute resolution processes. The course focuses on the development of the theoretical, analytical, and interpersonal skills necessary to be successful as both negotiator/advocates and mediator/dispute resolution experts in multi-party conflicts, and provides concepts and tools that apply to all types of public policy dispute resolution, including environmental, organizational, community, land use, class actions, and mass torts. The course is designed to teach students how to manage multi-party conflicts and public policy dispute resolution processes, including diagnostic and process design skills, and negotiation techniques and strategies to resolve disputes in a multi-party, multi-issue world. The course develops theoretical and analytical frameworks through case studies and articles, in which students examine and extrapolate lessons from both practitioners and theorists. The course develops dispute resolution skills through video demonstrations and simulation exercises, in which students hone their powers of communication and persuasion, and experiment with tactics and strategies typically used in multi-party dialogue and public policy dispute resolution.

**Advanced Negotiation Theory & Practice** – As a lawyer, whatever field of specialization you choose, you will spend a large part of your time negotiating. Many people negotiate without consciously focusing on the process of negotiation, but there is much to be gained from looking at negotiation in an analytical, systematic manner, and from developing a variety of tools and approaches to use in a negotiation context. In this class, we will develop an understanding of various theories and aspects of negotiation by studying the academic literature on negotiation and by practicing and improving negotiation skills through in class exercises and simulations.

**Pretrial Practice & Settlement** - Focuses on developing the skills necessary for effective client representation at the pretrial stage of litigation, from the initial client interview through settlement negotiations. Several sections of this course are offered, each of which meets at a different time with a different instructor. In this course, students will “litigate” two civil cases, one of which is an employment case. Successful completion of the written and in-class exercises will require mastery of basic lawyering skills and the ability to analyze factual situations under the appropriate substantive laws.

**Introduction to U.S. and Comparative Alternative Dispute Resolution Processes** - This survey course introduces students to the fundamentals of alternative dispute resolution theory and practice. The course will analyze and compare a range of dispute resolution processes (such as litigation, negotiation, mediation, arbitration, dialogue facilitation, victim-offender dialogues, circles, ombudspersons, public dispute systems, on-line dispute resolution, mini-trials, and other mixed processes) and applications to specific types of problems and disputes (such as consumer, criminal, labor and employment, family and youth, restorative justice, environmental, public disputes, multi-party, cross cultural and international). The course will explore critical issues in the ways that societies and organizations structure their dispute resolutions systems and choose among available processes. The course will include attention to comparative dispute resolution systems, and examine the extent to which factors such as history, tradition, culture, economics, politics, institutional developments, and legal norms influence the design and selection of systems for handling different kinds of disputes, both in the U.S. and in other countries. The course will include readings, discussion, videos and demonstrations to provide students with an enhanced understanding of differences in dispute resolution processes. Examples of model rules, state and federal statutes and court rules and dispute resolution program rules and guidelines will be reviewed.

### **Related Seminars and Theory & Practice Courses**

Advanced Negotiation Theory Seminar

Game Theory & the Law Seminar

Business Planning & Drafting: The Deal

Business Planning, Drafting & Negotiation: Fundamentals of M&A Transactions

Entertainment Law, Planning, Drafting & Negotiation

IP Litigation & Dispute Resolution

Investor-State Arbitration

International Commercial Arbitration

Real Estate Practice, Drafting & Negotiation

Securities Law, Litigation & Arbitration

## Sports Law, Planning, Drafting & Negotiation

### **Related NDR Competitions**

IL/LLM Client Interviewing: Counseling Competition

1L/LLM Negotiation Competition

Upperclass ABA Representation in Mediation Competition

### **Related Clinics and Externship Courses**

**Civil Rights, Community Justice & Mediation Clinic** - The Civil Rights & Community Justice Clinic focuses on immigration, housing, public health, and municipal court matters. Clinic students provide individual representation for their clients - immigrants/refugees, workers, individuals with housing and home mortgage concerns, seniors, and individuals with HIV/AIDS and other disabilities - in conjunction with community legal services providers and non-profits that protect and advance the civil rights of individuals in these client groups. These providers typically include the Legal Services of Eastern Missouri Immigration Project and the Public Benefits Project (Health & Welfare Unit), St. Louis Equal Housing Opportunity Council, Beyond Housing, and the Migrant and Immigrant Community Action Project (MICA). Clinic students also provide broader-based community representation and engage in a diverse range of "non-traditional," sometimes interdisciplinary, collaborative, community lawyering strategies and skills, including legislative drafting and advocacy, community education ("street law"), policy development, communication and media advocacy, and dispute resolution under the supervision of Professor Tokarz. The Mediation Clinic operates in conjunction with the Civil Rights & Community Justice Clinic and introduces students to mediation and dispute resolution practice in various contexts. During the semester, clinic students interview, counsel, and represent a minimum of 6 clients. Clinic students participate in and observe at least 3 mediations or other dispute resolution processes at US Arbitration & Mediation Service-Midwest, EEOC, Community Mediation Service, Missouri Department of Special Education, St. Louis City Housing Court, and/or the Better Business Bureau. Past clinic students report gains in a variety of key areas, including writing clearly and effectively, solving complex real world problems, improving client advocacy and dispute resolution skills, contributing to the welfare of the community, understanding people of different racial and class backgrounds, working collaboratively with professionals from other disciplines, learning effectively on one's own through reflective practice, developing a professional identity, and clarifying career goals. This course is beneficial for JD/MSW, JD/MBA, JD/MPH, and other joint degree students and students who contemplate starting their own firms. [NDR LLM students can count 4 credits toward the LLM degree if their internship work addresses NDR.]

**Congressional & Administrative Law Semester Field Placements (D.C.)** - Each student admitted to this externship works with the clinic director to obtain an externship in a Congressional Office, Administrative Agency, or Nongovernmental Organization in Washington, D.C. Admission to the externship is by application only and occurs in late January. There is an informational meeting each fall for 1Ls and 2Ls who are considering applying for the following academic year. The application process includes submission of a short statement of interest, a transcript, and resume. Interested students must also include the name of a professor to serve as a reference on their behalf. All candidates will be interviewed, and final selections are made based on the interview, faculty references, the statement of interest, writing ability and demonstrated academic achievement. 3L students must complete the ethics requirement prior to beginning the program. Student and instructor collaborate during the semester preceding the student's placement in making office selection/obtaining a position. Students meet individually with the instructor and as a group on a regular basis in Washington D.C. in Congressional Office placements, students will perform professional staff work, primarily research and writing on legislation. The externship also will provide students with the opportunity to observe Congressional hearings, mark ups and floor debate. A course in legislation is recommended. Those interested in an administrative agency will be assisted in obtaining a federal administrative agency externship in Washington D.C. in a subject area that matches the student's interest. The student will perform hands-on professional staff work of the type commonly done in the agency office. The externship will also provide students with the opportunity to observe administrators making decisions about such agency activities as rule making, advising the public and case handling. The Administrative Law course is recommended for this externship. Students are also encouraged to take, as preparation, courses in the subject area of the agency in which they will be placed. Placements in nongovernmental organizations will also be available to interested students. [NDR LLM students can count 4 credits toward the LLM degree if their internship work addresses NDR.]

**International Justice & Conflict Resolution Semester Field Placement** - This course provides students opportunities to learn international criminal law practice, conflict resolution, legal advocacy, and professional responsibility while interning with international judges, lawyers practicing before international courts and tribunals, and lawyers in government offices, NGO's, or international conflict resolution offices such as the UN, with oversight from Washington University law faculty. Students engage in extensive legal research and fact investigation; draft legal memoranda relevant to cases under submission by the courts and policy reports for government offices; interview clients, witnesses, and relevant constituencies; and participate in negotiations, mediations, hearings, trials, and other proceedings. The course enhances students learning in international and comparative criminal law and practice, conflict resolution theory and practice, client representation and advocacy, and professional responsibility. Prior to the beginning of each field placement, the supervising faculty member, student, and field placement supervisor will negotiate an agreement (learning contract) as to the specific nature of the tasks the student will perform in her/his placement, the number of weeks, and the number of hours to be worked each week. In addition to the individualized learning agreements, the course includes required reading specifically geared to the work of the placement; a required pre-trip orientation; reflective journals submitted weekly by students that are reviewed by the faculty supervisor, who provides feedback to the students; regular contact between the faculty members and the field supervisors during the semester; and a 10 page final paper at the conclusion of the course, in which the student addresses an issue of law, policy, or practice relevant to the placement, in light of the reading material and the students' experiences. Throughout the semester, the student will be evaluated as to progress toward meeting her/his learning goals. The field

placement supervisor will monitor the work performed and certify to the faculty member on a regular basis throughout the semester that the student has completed the work required, both in terms of quality and quantity of hours worked, for the number of credits to be awarded. Placement offices include international organizations, government offices, and NGO's, in which our students or faculty have worked or with supervisors with whom the instructors have professional contacts. Students are required to intern in their placements on a full-time basis (40 hours per week, at a ratio of 4 hours of work per 1 hour of credit, depending on the number of credits). Students must work 520 hours for 10 credits over at least 13 weeks, 572 hours for 11 credits over at least 14 1/2 weeks, 624 hours for 12 credits over at least 15 1/2 weeks. (The formal agreements with the field supervisor will cap each student's work at no more 40 hours per week for the purpose of calculating the number of weeks of work each student must perform to earn the number of credits for the course.) Placements might include international courts or tribunals; supreme appellate or constitutional courts of foreign states; and UN, Embassy, and NGO offices that engage in advocacy and conflict resolution. [NDR LLM students can count 4 credits toward the LLM degree if their internship work addresses NDR.]