

**Mediation
Fall 2017
Interview Assignment**

Overview

You will interview an attorney who has represented a party in a mediation within the last year about a legal dispute or a transaction. It does not matter if the mediation resulted in an agreement. The interview should take about an hour. You will then write a report summarizing the answers to the questions described below and describing insights you gained from the interview.

The report will be due at the beginning of class on November 9, 2017. The report should be 6 to 8 typed pages, double spaced, and with one inch margins on each side, in Times New Roman 12 Font. About 1-2 pages should address your insights from the mediation, as described below.

The goals of the assignment are to provide you an opportunity to: (1) learn about the mediation process from the advocate's experience; (2) practice interviewing skills including developing rapport and protecting confidentiality; and (3) reflect on how concepts we discuss in class may apply in actual mediation.

About the Interview

The *subject* will be an advocate in a voluntary or court-ordered mediation. Focus on a mediation that used a neutral third party; took a substantial amount of time; and that the advocate thought was, at the very least, a typical mediation based on his or her prior experience.

You will contact the person you want to interview and arrange to conduct the interview in person, by phone, or by video. If you need help identifying someone to interview, contact me and I will help you identify an advocate.

You **MUST** send a document (preferably an email) to the subject describing the interview. You may send it to request the interview or, if you arrange the interview in person or by phone, to confirm the interview. I will attach a model for this document to this assignment.

At the outset of the interview, you **MUST** remind the subject that you will not disclose his or her name or anyone mentioned in the interview. To protect confidentiality, tell the subject not to mention anyone else's name and, instead, use generic descriptions such as the person's client or lawyer, the other lawyer, a manufacturing business, etc.

When writing your report and discussing it in class, you MUST NOT INCLUDE the names of anyone involved in the mediation or any information that could identify specific individuals or entities. Instead, use pseudonyms and general descriptions that mask these identities.

When conducting the interview, you will decide what process to follow. You can, for example, ask some general questions and let subjects tell their stories, or you might pose some specific questions. In any case, your report must include information about the following questions, **particularly about the chronology of events in the mediation and your insights from the interview**. Ask follow-up questions that seem interesting or important to you. You do not need to ask the following questions if you know the answers from responses to earlier questions. I will provide more information about conducting and summarizing interviews separately.

Questions to Address

The subject

- How often do you serve as an advocate in a mediation?
- Have you ever served as a mediator?

The subject matter of both mediations

- Would you describe the parties, without identifying them by name?
- Were the parties mediating to resolve a dispute or to complete a transaction?
- What type of issue was involved (e.g., real estate, personal injury, business deal)?

The parties and the context of the mediation

- Did the parties have a relationship before the matter began?
- At outset of the matter, did the parties expect to have a continuing relationship after the mediation was over?
- What do you think was most important to each party in this mediation?
- [If applicable] Were the parties in litigation when the mediation began? If so, when the mediation began, what was the stage of litigation? (e.g., before the suit was filed, soon after the suit was filed, during discovery, shortly before trial, during trial, after trial)

The mediation process

- Was the mediation court ordered or voluntary?
If voluntary, why did you choose to mediate this particular case?
- If court-ordered, was this the type of case you normally would choose to mediate? Why or why not?
- How much discovery took place prior to the mediation. Do you think additional discovery would have been helpful to the process.
- How did you prepare your client for the mediation?
- Did you or your client give an opening statement in a joint session?
If not, why not?
- What kind of information did you choose to share in the opening statement (law, facts, interests, etc.)?
- How long in the mediation process did it take until the first caucus?
- What techniques did the mediator use to move the process forward
- What techniques did the mediator use that interfere with the process.
- How much did the process focus on legal issues or what would happen if they went to court?
- How much, if at all, did the process focus on the true interests/goals underlying their positions (as opposed to the justifications of their positions)?
- Did the parties reach an agreement?
- Why do you think that they reached/did not reach] an agreement?
- How long did the mediation take?

Assessment of the mediation

- What do you think were the critical factors causing the mediation to turn out as it did?
- How satisfied were you with the outcome? Why?
- How satisfied was your client with the outcome? Why?
- How satisfied were you with the process? Why?
- How satisfied was your client with the outcome? Why?