

Lawyering: Problem-Solving and Dispute Resolution
University of Missouri School of Law
Fall 2019

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Class: Section 3, TR 10:00-10:50 Room 332A

Office hours: You can drop in whenever I'm around or make an appointment, whichever works best.

Course Goals, Objectives, and Expected Learning Outcomes

This course is essentially a semester-long examination of the roles of lawyers. It will increase your knowledge of what it means to be a lawyer and improve the skills you need to be an effective one. The course will also increase your understanding of the values embraced by the profession; these are the ideas, principles, norms, and rules that guide us when we make choices about how we should act when practicing as lawyers.

More specifically, this course is structured to accomplish the following goals, objectives, and outcomes:

- Increasing your understanding of lawyers' roles and relationships with clients generally;
- Knowing the distinction between problem-solving and traditional legal adversarial approaches to lawyering;
- Acquiring basic skills in interviewing and counseling clients and negotiation;
- Knowing basic "alternative" dispute resolution (ADR) procedures, their strengths and weaknesses, and the basic elements of the theory and practice of these procedures;
- Understanding how to analyze cases to assess appropriateness of different dispute resolution approaches and procedures;
- Acquiring basic skills in negotiation and mediation advocacy;
- Acquiring the knowledge and skills needed to recognize and evaluate ethical dilemmas that can arise during the representation of a client during dispute resolution; and
- Improving analytical skills. Effective analysis has several elements: identifying problematic issues; developing alternative perspectives about those issues; and making sound generalizations based on theory and one's own experience to develop appropriate strategies to suggest to the client.

This course focuses primarily on the roles of advocates with some discussion of the roles of neutrals (such as mediators and arbitrators). You will increase your knowledge of how lawyers help clients select and participate in efficient, just, and appropriate methods of managing and resolving conflicts.

Standard 303 of the *ABA Standards and Rules of Procedure for Approval of Law Schools* requires each student at an accredited law school "to satisfactorily complete at least . . . one or more experiential course(s) totaling at least six credit hours." In the judgment of your School of Law faculty, successful completion of this course will satisfy two of Standard 303's six credit hours requirement.

Requirements and Grading

Your grade in this class is based on the following:

75% - Final Exam. The exam will be an in-class, closed-book exam.

25% - Reflection papers, exercises & class participation. We will be conducting a number of in-class and out-of-class exercises. Some of these exercises require you to write a reflection paper or other related paper. In addition, students are expected to be present and prepared to participate in class discussions and exercises. Active participation and engagement is part of the class participation grade. A schedule for the paper assignments is posted on the TWEN website.

American Bar Association rules require “regular and punctual class attendance” of students. Attendance is very important because much of the learning happens in class. No distinction will be made between excused or unexcused absences. You may miss three classes without penalty. **With your fourth absence, your final grade will be penalized three points. With your fifth absence, you are subject to being dropped from the class.** Grades may also be reduced for repeated tardiness.

On occasion, I may have to cancel a class and schedule a make-up. Attendance at make-up classes is expected and the material covered may be part of a paper assignment or covered on a final exam. However, an absence at a make-up class does not count toward your total absences.

Required Readings

Required textbook: STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., ESSENTIAL LAWYERING SKILLS (5th ed. 2015) (hereinafter “K&N”).

Additional required readings listed below are posted in the “course readings” page in TWEN.

Course Web Site

This course will make use of a course web page through TWEN (The West Education Network). The syllabus and other required course materials will be posted on this website. I occasionally send email messages to the email account that you designate when you register with TWEN. It is your responsibility to check this account regularly (at least every other day or so) and to make sure that the account remains functional and is not too full to accept emails.

Class Schedule and Reading Assignments

As you read, consider what makes sense to you and what does not. Do not assume that everything in the readings is the only or necessarily correct perspective. For most issues in this course there are multiple valid perspectives from which you can build to advance your clients’ interests.

Class discussion will usually cover some but not all of the material in the readings. If you have questions about the readings, feel free to ask them, especially in class, although you may always ask me privately.

8/20 Introduction to Lawyering Skills

K&N, Chapters 1 & 4.1-4.3

Foundations for Practice: The Whole Lawyer & The Character Quotient, pp. 5-21, 29-34 (IAALS 2016)

MacCrate Report, *Fundamental Lawyering Skills and Values*

8/22 Basic Lawyering Skills – With a Focus on Communication Basics

K&N, Chapter 2

Cunningham, *What Do Clients Want From Their Lawyers?*, 2013 J. DISP. RESOL. 143-151

8/27 Basic Lawyering Skills – With a Focus on Communication Basics, con'td

We will continue in-class exercise from last class – no new reading

8/27 Makeup class in ROOM 3 – Brian Stevenson Video “American Injustice”

8/29 – class cancelled

9/3 Questioning & Listening Skills

K&N, Chapter 5

Diane Schilling, *10 Steps to Effective Listening*, FORBES, Nov. 9, 2012 (you can search for this online or get the posted copy on TWEN)

Not required but enormously helpful to understand active listening:

The Power of Listening <https://www.youtube.com/watch?v=saXfavo1OQo> (Ted Talk by William Ury)

Active Listening <https://www.youtube.com/watch?v=t2z9mdX1j4A>

9/5 Introduction to Conflict and Dispute Resolution in the Legal System

Armstrong, *Why We Still Litigate*, 8 PEPP. DISP. RESOL. L.J. 379 (2008)

RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS (Abridged 5th ed. 2009), pp. 6-13, 34-37

Moore's Circle of Conflict

9/10 In Class Exercise – Dispute Resolution Alternatives

9/12 Interviewing Clients

K&N, Chapters 3, 7 & 8

9/17 Interviewing Clients – continued

Video & discussion (based on previous readings)

- 9/19 Counseling Clients**
K&N, Chapters 18, 20, 21 & 22
- 9/24 Interviewing Clients: Discuss Simulation**
- 9/26 Counseling Clients Videotape – when your client asks you to lie**
Again K&N Chapter 22 is good background)
- 10/1 Counseling Clients: IN-CLASS Exercise – Preparation for Counseling Session**
- 10/3 Negotiation: Introduction to Negotiation Styles and Approaches**
K&N, Chapters 23 & 24
- 10/8 Negotiation: Videotape and Discussion**
- 10/10 Negotiation: Videotape and Discussion**
- 10/15 Negotiation: Strategy & Preparation**
K&N, Chapters 25 and 26
- 10/17 Negotiation: Conducting Negotiation Effectively**
K&N, Chapters 27 & 28
- 10/22 Negotiation: Legal and Ethical Obligations in Negotiation**
K&N, Chapters 23 (§ 23.5 only) & Chapter 28 (§ 28.1.2 only)
- 10/24 Discuss Negotiation simulation**
- 10/29 Mediation: Introduction**
RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS (Abridged 5th ed. 2009), pp. 209-11, 235-48
ABA Section of Dispute Resolution, Preparing for Mediation,
http://www.americanbar.org/content/dam/aba/images/dispute_resolution/Mediation_Guide_general.pdf
Skim: Model Standards of Conduct for Mediators
Recommended: CPR ADR Suitability Guide

10/29 Makeup 1pm ROOM 332A Mediation: Effective Advocacy
Tom Arnold, *20 Common Errors in Mediation Advocacy*, 13 ALTERNATIVES TO HIGH COST LITIGATION 69 (May 1995)
Elliot Hicks, *The Why, When and How of Effective Mediation Opening Statements*, WA. VA. LAWYER 30 (Apr. 2013)
http://www.jamsinternational.com/hubfs/PDFs_resources/JAMS-effective-mediation-advocacy-ebook.pdf?t=1469026908816

10/31 – Class Cancelled

11/5 Mediation: Understanding the Process
RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS (Abridged 5th ed. 2009), pp. 211-24, 324-29
John Lande, *Doing The Best Mediation You Can*, DISP. RESOL. MAG. Spring/Summer 2008, at 43.
***Will discuss these issues in context of a videotape*

11/7 Mediation: Continue video from 11/5

11/6, 7, 8 Mediation simulation – 6-9 pm!!!

11/12 Mediation Simulation Debrief

11/14 Selecting the Right Mediator
Arthur A. Chaykin, *Selecting the Right Mediator*

11/19 Practicing Law in a Diverse World
K&N, Chapter 6 and Chapter 4.4 & 4.5

11/21 Discuss Mediation Paper (aka Final Exam Review)

11/25-29 THANKSGIVING BREAK – NO CLASS

FINAL EXAM: Friday, December 6, 2019, 8:30 AM
Two hour in-class exam – closed book

Miscellaneous Policies

Intellectual Pluralism

The Law School community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities (<http://osrr.missouri.edu>). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

Academic Integrity

Academic integrity is fundamental to the activities and principles of the Law School. All members of the Law School community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of its Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

Disabilities

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (<http://disabilityservices.missouri.edu>), S5 Memorial Union, 882-4696, and then notify me of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

Requirement of Consent for Redistribution of Recordings of Classes

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. In addition, a violation may affect a student's grade.