

12/24/17

SYLLABUS – ENVIRONMENTAL DISPUTE RESOLUTION (Including First Assignment)

HOFSTRA UNIVERSITY SCHOOL OF LAW
Room: TBD [check with Registrar's office]
Thursdays 6:10 – 8:00 p.m. (7 Weeks)

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Overview and Learning Objectives

Negotiation has long been a key component of environmental law practice and, increasingly, environmental lawyers are being called upon to participate in other dispute resolution processes such as mediation, facilitation, and collaborative decision-making. This course will help students to develop and refine dispute resolution skills that they could apply to any number of substantive areas of environmental law and to other fields of law as well. Coursework will include the study and practice of environmental negotiation, mediation and facilitation, and will provide an opportunity for students to develop these professional skills in a broad range of contexts including, among others, a two-party Clean Air Act environmental enforcement negotiation, a multi-party hazardous waste mediation, and a complex multi-stakeholder climate change consensus-building process involving local zoning law. Students will also learn how to determine the appropriate environmental dispute resolution process for a given matter, deal with high conflict situations, and manage disparate factual and scientific information in a dispute. The course will help students develop oral communication skills, practice client counseling, and gain insight into their own actions and reactions as a negotiator. Through journaling, observation, and self-critique, students will learn how to build on their unique strengths and address weaknesses in their negotiating style. Students will practice a variety of negotiation styles and learn when and how collaborative strategies can be used to enhance their clients' objectives.

Texts and Materials

- Menkel-Meadow, Love, Schneider, and Sternlight, *Dispute Resolution: Beyond the Adversarial Model*, referred to as "Text" below.
- Supplementary materials will be provided

Grading

Students will be graded on the following basis:

1. Class participation and performance in simulations (40%)
2. Journal entries containing self-assessments of performance (40%): There will be three or four 1-2 pp. reflections on your experience in the simulations. The reflections must be submitted on TWEN by midnight on the Monday immediately following the class simulation, but I encourage you to write them asap after the

simulation, while the experience is fresh in your mind.

3. Final project: Situation Assessment (20%)

Classes

This course is scheduled to meet for 2 hours per week on Thursdays at 6:10 p.m., for seven weeks beginning **January 11, 2018**. In the event that we need makeup classes, they will be held on **Wednesday, Feb. 28 at 6:10 p.m. and Thursday, March 1 at 6:10 p.m.**, so be sure to reserve those dates for our class.

Attendance and Preparation: Students are expected to attend classes regularly and prepare for classes conscientiously. Due to the course's focus on skills, the class will be successful only if you are present and prepared for the simulations. Absences and lack of preparation will impede the ability of other students in the class to learn from the simulations. As such, absences and lack of preparation will affect your final grade. Alternatively, I may ask the Registrar to withdraw you from the course. Sometimes you can't avoid missing a class. If you know in advance that you will be missing a class for a compelling reason, or if you have missed a class due to illness or emergency, please send me an e-mail, briefly explaining the situation. Given the need to assign roles for the simulations, it would be most helpful to know in advance of any unavoidable absences.

Lateness: Students are expected to be on time to class. However, it is better to come to class late than not at all, but please keep in mind that your lateness will impact your classmates' ability to start the simulations in a timely manner.

"TWEN" (The West Education Network): I have set up a course page for this class on TWEN and already posted this syllabus. TWEN gives me a quick way to reach all of you with any announcements, syllabus changes, new assignments, handout materials, interesting links, etc. It also gives me a way to extend class discussion beyond the classroom. *You should register for this course on TWEN by **January 8, 2018**.*

Computer Policy: Computers are to be used during class for taking notes and no other purpose. They are not to be used to "surf the net" or send email or instant messages. Violations of this rule may lead to prohibiting you from using a laptop during class.

Communications: The best way to communicate with me is by e-mail. I'm also happy to arrange a time to talk via telephone; just send me an e-mail requesting a phone conference and let me know when you are available. I will get back to you as expeditiously as possible. While I do not maintain regular office hours at Hofstra, if you need to speak with me in person, we can set up an appointment either before or after class.

Course Schedule and Assignments

The following plan for classes and reading assignments is subject to change. Be sure to check TWEN regularly for assignments and/or changes to the syllabus.

Class 1 – Jan. 11 **Introduction to the Course; Overview of Environmental Dispute Resolution**

Reading Before First Class:

1. Text (*Dispute Resolution: Beyond the Adversarial Model*, Menkel-Meadow, Love, et al.), pp. 13-17, 30-36, and 93-95;

2. Go to the U.S. Institute for Environmental Conflict Resolution website and read the “Basic Principles for Agency Engagement in Environmental Collaboration and Conflict Resolution” at <http://www.udall.gov/OurPrograms/Institute/Principles.aspx>. Then read the “FAQs about ECR” at <http://www.udall.gov/OurPrograms/Institute/QuestionsAnswers.aspx>. How are ECR processes different from and/or similar to the range of ADR processes you read about in the text on pp. 30-36?

Class 2 – Jan. 18 **EPA Penalty Policy Negotiation: The Case of Sam’s Cement** Students will use EPA’s Federal Clean Air Act Civil Penalty Policy to negotiate a settlement in a two-party administrative environmental enforcement case. We will study negotiation strategies beginning with positional bargaining and prepare for next week’s interest-based negotiation exercises.

Reading: Text, pp. 96-99; Simulation materials (to be distributed).

Class 3 – Jan. 25 **Multi-Stakeholder Land Use Conflict: Negotiation Simulation** Through a series of mini-simulations, we will practice interest-based negotiation skills such as active listening, understanding positions and interests, framing and reframing, developing options, and criteria for option selection.

Class 4 – Feb. 1 **Introduction to Environmental Mediation; Mediation of a Two-Party Contaminated Soil Access Dispute** Environmental mediation basics; Ethics in mediation; Confidentiality in mediation; Convening; Introductory mediation skills practice

Class 5 – Feb. 8 **Multi-Party Mediation Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for Cleanup of Contaminated Groundwater** Students will practice client counseling in preparation for mediation and serve as mediator and advocate in simulated multi-party CERCLA settlement

Class 6 – Feb. 15 **Collaborative Decision-Making in Environmental Law; Policy and Dispute Resolution Process Selection**
The spectrum of collaborative processes; Negotiated Rulemaking; Situation Assessments; Joint Fact-Finding; Introductory facilitation skills; Managing high conflict situations; Begin Seahigh Facilitation

Class 7 – Feb. 22 **Climate Change Adaptation Consensus Building Facilitation: The Fictional Town of Seahigh**
Students will apply their accumulated knowledge from the course to a multi-stakeholder collaborative process using model ordinances and zoning law. Using a facilitation process in this role-play, the class will generate a climate change adaptation plan for the fictional town of Seahigh.

Makeup Classes – Wednesday, Feb. 28 and Thursday, March 1 –
We will hold makeup classes on Wed., March 8 and Thurs., March 9, at 6:10 p.m., in the event of class cancellations due to inclement weather or any other unexpected occurrence.