

# Alternative Dispute Resolution

Spring 2010

Dedman School of Law at SMU

Tuesday / Thursday, 9:00 – 10:15 a.m.

Room 107 Florence Hall

Adjunct Instructor Will Pryor

## Course Memo

### 1. The Subject

When I went to law school so many, many years ago, no law school in America offered a course in "Alternative Dispute Resolution". Most did not offer much, if anything, in the way of negotiation or arbitration, except, perhaps, for courses in "Commercial Arbitration" or "International Arbitration".

Today, EVERY law school in America has multiple course offerings in these subjects, and some schools (Pepperdine, Harvard, Ohio State, Missouri-Columbia) have established reputations as centers for study in the field of ADR.

So what happened?

There has been a cultural shift over the last thirty years in the way litigation and our civil justice system is viewed. The dispute that is ultimately submitted to a jury for resolution is now often thought to represent a failure of the system. We at once kneel at the altar of "the right to a trial by a jury of our peers", as if it is something sacred, while at the same time we are desperate for more and more creative means of avoiding the courthouse.

The right to a trial by jury may be one of our greatest strengths, and greatest weaknesses. A jury trial can be the most grossly inefficient dispute resolution mechanism ever conceived, and outcomes wildly unpredictable. Access to justice and the courthouse has, for many, become irrelevant. The litigation process has become too expensive, too time consuming, too slow, and too biased in favor of "haves" over the "have nots".

In the opinion of many.

Whether you intend to practice as a litigator, as a business lawyer, as a mediator, or you have an ambition to serve on the bench -- even if you intend to earn a livelihood outside the legal profession -- this course should help you gain an appreciation

for how disputes in our society are being resolved today, and how disputes will increasingly be resolved in the future.

We are going to study the alternatives to litigation as dispute resolution mechanisms: primarily negotiation, mediation, and arbitration. We are going to engage in this study through reading, guest lectures and guest panel presentations, through video and role-playing exercises, and of course, through me! This course is fun. I have been told that this course is "easy". But unfortunately for both of us, they make me give you an exam which I have to grade, and the ONLY way to succeed on the exam is through participation in class.

## 2. The Required Materials

Our casebook is Goldberg Sander Rogers & Cole (sounds like a law firm), DISPUTE RESOLUTION: NEGOTIATION MEDIATION & OTHER PROCESSES (Aspen: 5th Edition)(**EARLIER EDITIONS ARE PERFECTLY ACCEPTABLE**). We will read a phenomenal little book, GETTING TO YES, from cover to cover. Occasionally there will be reprinted journal and magazine articles, and other supplementary materials, distributed in class or available on my website, [www.willpryor.com](http://www.willpryor.com).

## 3. The Course Outline and Class Coverage

Most of the academic texts in the area of dispute resolution are equally divided into such topics as negotiation, public policy dispute resolution, international arbitration, family law mediation, etc. We will cover these topics. But you will notice that the course outline emphasizes mediation more than any other topic. Mediation remains the overwhelmingly favored "alternative" to litigation. It remains a "growth industry" within the legal profession, particularly locally, and is the cause for the current popularity of this course offering in law schools everywhere.

## 4. Grading

The final grade will consist primarily of your grade on a closed-book, 3 hour exam. I reserve the right to raise or lower your final grade as much as two notches (e.g. B to A-) for exceptional or poor participation (the latter includes the written assignment and excessive absences).

## 5. Attendance / participation

Attendance is recorded at every class. This class depends on your attendance and participation. Because of the unusual amount of guest panel discussion and the role-playing exercises, participation is essential. My policy has evolved into this: you get four (4) absences, at any time, for any reason ("don't ask/don't tell!") without your grade being impaired. After that, your grade will be impacted (see above section on Grading). No exceptions. 28 class sessions; you get a pass on 4. That's it.

## 6. Writing Assignment

For one class session you will receive a writing assignment in lieu of the class meeting. The assignment will be short (4-5 pages), and is designed to see if you can pull together what we have been discussing to that point in the semester and apply ADR to hypothetical problems. This is a "pass/fail" assignment.

## 7. Office hours

You may call my office anytime: 469-374-0222; e-mail is better, [wprior@willpior.com](mailto:wprior@willpior.com); most mornings I will be available after class if you would like to visit

## 8. "Be my guest" (observing a mediation)

You are welcome, if your schedule permits, to come to my office and participate as a "neutral observer" in a mediation. From time to time I will provide my schedule two or three weeks in advance. If you are interested, just send me an email or let me know after class. Limited to one observer per mediation. You do not get "extra credit" or "participation credit" for observing. It's just for fun. Most students in the past have described it as "the highlight of their law school experience".

By the way, this invitation never expires. I have had former students observe mediations years after graduation.

Thanks for signing up for this class. I hope you will look back on it and be glad you took it. I love to teach it.