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Finding the Middle Ground: Mediation Clinic Teaches the Real-World Skills That Get Cases Settled

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C L I N I C S

FINDING THE MIDDLE GROUND

*Mediation Clinic
teaches the real-world skills
that get cases settled*

When Steven Sugarman '85 talks about the advantages of mediation – for clients and for the legal system – he speaks with the zeal of an evangelist. Sugarman, who practices with the Kenmore, N.Y., law firm Pustatier, Sherman, Abbott & Sugarman, concentrates his practice on mediation, mostly in divorce and separation cases. He also directs the Law School's Mediation Clinic, which trains students in the skills of this burgeoning area of legal practice – both skills as a mediator and as an attorney advocating for clients at the mediation table.

“This is about listening – about how parties in a dispute need to feel heard and understood by the mediator and by each other before they can effectively problem-solve,” Sugarman says about the process, in which a neutral third party, knowledgeable in the law, catalyzes a problem-solving discussion between disputants outside the normal court structure. “It's really a facilitated negotiation. The idea is empowerment. Instead of a judge or arbitrator resolving the dispute, the parties are often best equipped to arrive at a solution that best satisfies their interests. With a mediator's help, parties are encouraged to step away from their stated positions and examine the underlying interests driving those positions. The mediator then motivates parties to think creatively about solutions that satisfy those interests, and legal disputes are resolved saving people money, time and aggravation, as well as minimizing harm to their parenting, business or other relationships.”

The Law School's Mediation Clinic builds on Sugarman's courses on the theory and practice of the mediator's art. Six carefully selected students per semester observe mediation sessions and other appropriate dispute resolution processes; learn the practice through role playing, videos and reading; journal about their experiences; and, when it all comes together, serve as mediators for small claims courts in Amherst and Buffalo as well as assisting in mediations in child visitation cases in

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Family and Supreme courts.

“They’re helping real people in real cases resolve disputes, and at the same time honing their negotiation and legal problem-solving skills sets that haven’t been utilized much as law students, and finding, hey, this really works,” Sugarman says. “They’re learning about effective listening, effective facilitation, getting people to engage in more effective negotiations and to even creatively problem-solve.”

Besides the skills of mediating a dispute, the clinic helps students learn how to advocate for clients who want to enter the mediation process with a lawyer in tow. Part of that skill, Sugarman says, is managing the expectations of clients who, having watched too many episodes of *The Practice*, expect their lawyer to be confrontational and adversarial. Students learn that this behavior, at the mediation table, may be contrary to serving their client’s best interests.

Mediation Clinic students, along with others interested in mediation, also participate in an intramural mediation competition that tests the effectiveness of lawyer-client pairs, using scenarios and scoring rubrics provided by the American Bar Association. About 30 attorneys from the local Bar serve as mediators and scoring judges for the November competition. The Law School sends the top two teams to the ABA Dispute Resolution Section’s Regional Representation in Mediation Competition, where last year UB Law finished as the second-strongest law school.

The clinic is one instance of burgeoning interest at the Law School in non-traditional dispute resolution methods. It’s a trend that began about a decade ago when **Richard Griffin ’57** began teaching an ADR course as an adjunct professor.

“More and more attorneys are becoming conscious of this and recommending to their clients that they mediate the cases,” says Griffin, who practices with the Buffalo law firm Kavinoky Cook. “There’s no question it’s growing in our community.” For example, he says, every case in the U.S. District Court serving Western New York now must go through mediation before it can be considered for trial.

In addition, he says, appropriate dispute resolution prioritizes the skills of the counselor-at-law, particularly negotiation. “Negotiation skills are very important, whether you’re doing mediation or trying a lawsuit,” Griffin says.



Natalie Muñoz Stutz can testify to that. As a mediation clinic student this spring, she and fellow student **Katelyn Dieffenderfer** co-mediated a case in the City of Buffalo small claims court that took a tortuous route to resolution, but



was resolved nonetheless.

It was a landlord-tenant case with a complicating factor: the landlord spoke only English and the tenant only Spanish. Her children were there to translate, and both mediators knew some Spanish.

“The defendants were very, very understanding. The woman was a little stubborn and difficult,” says Stutz, who now practices immigration law in Buffalo. “Katelyn and I sat across the table from each other so we could take cues from each other on what to do. The plaintiff would go on for so long that at times we had to say, OK, that’s enough. The judge is only there for so



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- Law and Social Work Clinic
- Mediation Clinic
- Women, Children, and Social Justice Clinic
- Externships

long, so if we can’t settle the case before he leaves, it has to go to court.”

At one point, she says, the court officer gave them a two-minute warning. The parties were only \$20 apart in their negotiation, but they stood up and said that they would take their chances with the judge. “We asked them both to reconsider,” Stutz says. “We tried to reiterate that it was completely out of their hands if they went before the judge.” At Sugarman’s urging, Stutz and Dieffenderfer proposed splitting the difference with a settlement figure of \$310. The parties bit. “We went outside and finished it off,” Stutz says. “They left on good terms and smiled and were happy.”

Success – and on the parties’ own terms.

“It was just a lot of back and forth,” Stutz reflects. “They got what they wanted, got it settled, and money changed hands. Often the key factor is the relationship between the people, such as neighbors and friends. We both learned a lot.”