

MARQUETTE LAW SCHOOL
SMALL CLAIMS MEDIATION CLINIC
VOLUNTEER SUPERVISOR HANDBOOK

Thank you for participating as a volunteer supervisor as part of Marquette Law School's Small Claims Mediation Clinic. Volunteer supervisors are a valuable part of the Mediation Clinic and the law students' experience within it.

The volunteer supervisor has three important roles:

- **Safety net.** Serve as a safety net during the mediation in case a student gets stuck in a place from which they cannot work out of.
- **Monitor.** Be prepared to intervene if the mediation participants are misbehaving, rude, uncivil or aggressive in a way that the student should not have to tolerate or may not know how to respond to.
- **Evaluator.** Provide feedback to the student on their performance during the mediation. Your experience as a practitioner greatly benefits the students.

Marquette Law School aims to provide law students with clinical experiences, consistent with ABA Standard 304(a), which asks that students have, among other things, opportunities:

> (1) to "integrate doctrine, theory, skills, and legal ethics, and engage students in the performance of one or more of the professional skills necessary [for competent and ethical participation as a member of the legal profession]";
> (2) to "develop the concepts underlying the professional skills being taught;"
> (3) "for student performance, self-evaluation, and feedback."

Your time and volunteer efforts in supervising clinical students mean that we can provide students with meaningful learning experiences in the field. By providing direction, feedback, and a professional example, you contribute to students' developing knowledge, lawyering skills, and professionalism.



Learning Outcomes

The Marquette Law School Small Claims Mediation Clinic introduces students to mediation approaches, gives students an understanding of mediation techniques, and provides opportunities for students to practice their mediation approaches and techniques.

The clinic's curriculum is designed to help students develop knowledge, skills, and values essential to the practice of law in the twenty-first century. Through your work as a volunteer supervisor in the Small Claims Mediation Clinic, *you play a meaningful role in assisting students with some or all of these learning outcomes adopted by the law school*:

- Outcome 1: Graduates will competently communicate, orally and in writing, with clients, decision makers, and the range of other stakeholders in the legal system to solve legal problems in a manner expected of a new lawyer.
- Outcome 3: Graduates will competently employ legal reasoning strategies to identify, analyze, and research legal problems.
- Outcome 4: Graduates will be prepared to exercise proper professional and ethical responsibilities to clients and the legal system.
- Outcome 6: Graduates will critically reflect on how lawyers serve the economically disadvantaged, marginalized, and underrepresented in society, consistent with the Jesuit mission.

The Small Claims Mediation Clinic Experience

As part of the Small Claims Mediation Clinic, students are able to mediate actual cases, primarily small claims cases, within Waukesha and Milwaukee Counties, with experienced mediators, and under the supervision of a licensed attorney.

Mediators in the Small Claims Mediation Clinic may be surprised by how often the disputes being mediated involve relational issues, which may arise from partnership, other business, family, friendship, or romantic relationships.

The cases come to the clinic through a referral directly from the Waukesha and Milwaukee Circuit Courts, through a party's inquiry and subsequent mutual parties' agreement, and through referral from public interest organizations. Students mediate cases (or observe the mediation of cases), draft stipulations upon agreement, and engage in supplemental reading as well as discussion outside of the mediations to develop their mediation skills.

Most mediations through the small claims mediation clinic occur on Zoom. The Clinic Zoom opens at 8:30 a.m. on Monday mornings with the mediations beginning at 9:00 a.m. A volunteer supervisor should arrive between 8:30-8:45 a.m. The parties arrive at 9:00 a.m. The volunteer supervisor is assigned by Director Stenzel to a student for a selected mediation. You, as the volunteer supervisor, are asked to meet with your student directly after receiving the mediation assignment for mutual introductions, a brief discussion of the case being mediated, participation in the give and take of any student questions, and provision of any words of advice.

At the time the parties arrive for the mediation, they already will have signed an Agreement to Mediate. In that Agreement to Mediate, a copy of which is included in this handbook, the parties agree to (among other things):

- Not subpoena the student, supervisor or any records.
- Hold Marquette University and its agents harmless from liabilities and claims.
- Confirm that no other person who is not a participant is allowed to listen or have any access to the mediation conversation.
- Not record the session

The mediation will occur on Zoom, and the mediation will occur similar to that of an in-person mediation. By way of example, the student will use break-out or meeting rooms to caucus with the parties when helpful. The law student will state at the beginning of the mediation that they are a law student mediator with the Marquette Law School Small Claims Mediation Clinic. The student will further relate that they are being supervised by an experienced mediator, and an experienced attorney. The law student will go over the ground rules, including making sure that the parties understand the Agreement to Mediate that they have signed. The mediation then can proceed.

Although some parties are court ordered to mediation, neither the Clinic nor the student can force a party to participate. They may leave at any time.

If an agreement is not reached, Director Stenzel simply will notify the court by letter that the parties participated (or didn't) in a mediation. If an agreement is reached, the student will work with the parties on drafting a stipulation. You, as a volunteer supervisor, will be asked to assist with the stipulation if the student has questions. In all events, the stipulation will be reviewed by Director Stenzel before being provided to the parties for signature through DocuSign. Director Stenzel then will submit the signed stipulation to the court.

This is a learning process for students whether the parties settle or not. We appreciate your comments for students to help them reflect on the outcome of the process.

In all, you, as a volunteer supervisor, are an integral part of this mediation educational experience. Brief suggestions follow in this handbook about how you can assist law students to progress in developing their mediation skills. We welcome your suggestions as well.



Enhancing the Student's Mediation Clinic Experience

Listen. With every mediation, the student learns to assess legal issues, analyze problems, and, hopefully, to help the parties work towards a resolution. Your listening to the student articulate legal problems, talk through legal analysis, and discuss factual considerations along with appropriate, environmental factors will advance student learning.

Encourage Active Listening by Students. Students are beginning their journey as lawyers and have much to learn. While students understand the importance of listening to parties, they may not have developed the skill of active listening. It is through not making assumptions, actually listening to what is said by the parties, and asking clarifying questions where necessary that students will learn how to develop the necessary skills for active listening, which can greatly contribute to a successful mediation.

Be Receptive to Questions. As part of the learning experience, we encourage students to be appropriately curious. Please be receptive to students' questions and encourage them.

Encourage Conversations about Mediation. The students will benefit greatly from your express comments about mediation approaches and dealing with parties in a mediation, as well as your instructions on mediation techniques to use or to avoid.

Give Constructive Feedback. Students need feedback in order to develop their professional skills. The students will learn more when you provide honest, concrete suggestions: What are positives in the student's work or approaches? What are problems in the student's work or approaches? What specific improvements could be made in approach or questions asked?

Discuss Professionalism. This clinical experience is designed to expose students to a variety of professional experiences. The students have a sense of what is expected in a professional environment, but they still are clinical students who are learning about the law and its practice. The learning curve is steep. Your discussion about expectations for professionalism in mediations will help make the learning curve less steep for the students, facilitate better work process, and make for a positive overall clinical experience.

Debrief after Observing Mediation in Practice. The observation of professional activities is a learning opportunity for students. You enhance that experience by answering students' questions about what they have observed, about the preparation behind the activity, about the strategy involved, about decision-making, and about your professional assessment of the result.

Confidentiality and Other Ethical Responsibilities

Students have discussed the importance of confidentiality and other ethical responsibilities related to their clinical experience, but they may not have yet completed formal training in professional responsibility. You can help the students identify ethical issues that may arise and discuss the issues.



Supporting Clinical Students

Key Contacts:

- **Director of the Mediation Clinic. Paul Stenzel. 414-288-8038**
- **Director of Clinical Education. Anne Berleman Kearney. 414-288-4450.**
- **Assistant Dean of Students. Anna Fodor. 414-288-5121**
- **Associate Dean for Academic Affairs. Nadelle Grossman. 414-288-1908**

The Jesuit principle of *cura personalis*—or "care for the whole person"—underscores much of our work at Marquette Law School. We ask that you consider the whole person of the students under your supervision.

Support an Inclusive Environment

Marquette Law School requires of students "Respect for Others" as part of its academic regulations. "The Law School expects its students to treat others with sensitivity, consideration, and understanding, respecting persons with different cultures, practices, beliefs, and needs, and to demonstrate active concern for the safety, health, and welfare of others." *See* Standards of Conduct Regulation.

As a volunteer supervisor, we ask that you build and support a positive, enriching, and dynamic learning environment for students. This means ensuring that students feel a sense of belonging without assumptions made about their backgrounds, that students feel they can contribute to the process free from harassment or ridicule, and that students feel safe to explore the law and its nuances. Please be sensitive to the need for respect for all, which is what is required of students.

We ask that you consider being prepared to intervene should the mediation environment contain any behavior from participants that is not consistent with these expectations. Your words and actions will be viewed by students as helping to set a standard of professionalism. We hope to engender in students the desire to become allies in creating a respectful environment. Thank you in advance for your high standards of professionalism.

Support Student Wellbeing

If a student is struggling, please reach out promptly to the Director of the Mediation Clinic, the Director of Clinical Education or one of the other listed administrators.

Student Evaluation

At the conclusion of each mediation, you as the volunteer supervisor, will be asked to review the student's work in the mediation and to provide a brief assessment using the evaluation form contained in this handbook.

The evaluation form, a copy of which is included in this handbook, contains spaces for a scaled evaluation of aspects of the mediation experience as well for narrative comments. The assessment is designed to provide the student with general and specific comments about the student's facilitation of the mediation in order to help the student understand what may have worked well and what areas may need improvement. For instance, you are asked to comment upon the student's management of the mediation, techniques used by the student, problems faced by the student, and any ethical issues that may have arisen. In short, the hope is for the students to make progress in their skills development and in their professionalism. We ask that you complete the evaluation form at the end of the mediation and return it to Director Stenzel so that he also can assess how the student has progressed in their clinical experiences as the semester passes.

For your information, overall for this course, a clinical student is evaluated on a satisfactory/unsatisfactory basis. They are graded based on their active participation in the mediation clinic and their having satisfied the required fieldwork hours and other coursework requirements, including submitting student guided reflections.

Questions?

Please do not hesitate to reach out to the Director of the Mediation Clinic, Paul Stenzel or Director of Clinical Education, Anne Berleman Kearney, with any questions or problems. Professor Stenzel can be reached at 414-288-8038, paul.stenzel@marquette.edu, and Professor Berleman Kearney can be reached at 414-288-4450 or anne.kearney@marquette.edu. We would rather hear about problems sooner rather than later. A small problem may be an indication that a student could benefit from additional guidance, and we would like to make any needed changes as soon as possible.

Case Number:

County:

Marquette University Law School
Small Claims Mediation Clinic

AGREEMENT TO MEDIATE

1. We agree to allow _____, to serve as the mediator in the dispute between _____ and _____We also agree to cooperate in this mediation process for the purpose of working toward a settlement of the dispute.

2. The parties understand that whether to reach an agreement in mediation is voluntary. Any party can decide to terminate the mediation at any time. No one will be forced to agree to any settlement. Agreements will only be signed if all the interested parties voluntarily agree to the terms of the agreement.

3. The parties accept the responsibility for representing themselves in this mediation session (unless already represented by counsel) and seeking legal advice, if desired. The mediator will not be engaging in the practice of law, cannot and will not give legal advice and is not representing any of the parties present at the mediation. The student mediator does not serve as an attorney in this process.

4. The parties understand that they are not giving up any legal rights or options by engaging in this mediation process. If the parties are unable to resolve this case, they are in the same legal position that they would have been in had they not engaged in this mediation.

5. The parties agree not to subpoena the mediator, the records of the mediation session, or any of the other students or supervisors involved in the Mediation Clinic. Communication in mediation is covered by Wis. Stat. sec. 904.085 which generally states that communication in mediation, subject to some exceptions, is not admissible in Court.

6. The parties agree that the mediator may have private one-on-one sessions, also known as caucuses, with the other party or parties.
7. The mediator accepts NO responsibility for the terms of the agreement reached. The mediator will not impose the terms of the agreement on any party.

8. Marquette University Law School Mediation Clinic agrees that all information presented at the mediation session shall be held in strict confidence. The generalities of the mediations will be discussed for educational purposes. The parties should realize, however, that the student mediator may share information from the mediation, without identifying parties by name or specifics, with the faculty supervisor and other students in the mediation course. Everyone in that course is required to keep confidential any information gained as a result of a mediation session.

9. Please be aware, however, that student mediators are required to report incidences of bodily harm and other criminal activity or the future threat of bodily harm and other criminal activity made by or

on behalf of either party. This includes incidents or threats made against either party or persons not present at the mediation table.

10. The parties agree not to sue Marquette University or its Law School for anything arising out of this mediation. The parties further agree to release and save harmless Marquette University and its agents from and against all liabilities, obligations, claims, damages, causes of actions, and expenses imposed upon, incurred by or assessed against them by reason of or arising from or out of any and all mediation efforts and activities conducted by the Marquette University Law School Mediation Clinic, its students, its faculty, its staff, and any other supervising mediators.

Telephone or Online Mediation Terms

1. The parties and mediator are at a distance from each other and intend to mediate from different locations using telephones or an online platform (Zoom).

2. No party will disclose or attempt to compel disclosure of any notes, emails or other communications made by a party or the mediator during the electronic/remote mediation process.

3. The mediator and the parties will not meet in person and will rely primarily upon Zoom (or a similar platform) to conduct or participate in the mediation.

4. Each party further understands that the mediation session is conducted as part of a clinical program and a supervising mediator and students enrolled in the Clinic may be observing the session as part of their training process. Everyone in the Clinic is required to keep all information from the mediation session confidential.

5. Each party agrees that all participants in the mediation shall sign this Agreement. Each party confirms that no other person who is not a participant to this mediation shall be allowed to listen to or have physical, virtual or electronic access to the mediation conversation.
    a. If either party wishes to have another person in the room, they will obtain permission of the mediator and the other party prior to the mediation session beginning.
    b. Where all the parties agree that the other person will be privy to the mediation process, that person must sign the Agreement to Mediate and is bound by the terms of agreement.

6. Each party recognizes that, given the use of information and communication technology, it is not possible to ensure that all communications will be confidential.
    a. Each party commits to minimizing the chance of inappropriate disclosures, including protecting access to any emails, notes or other information relating to the mediation which may be stored in their computers or elsewhere, and to minimizing the consequences of any such disclosures should they occur.
    b. Parties agree that no electronic, digital or audio recording will be made of this mediation session.
    c. Each party understands that, given the use of information and communication technology, it is not possible to completely control where or how some personal information may be collected, stored or accessed.

7. By signing this Agreement, each party specifically agrees to mediation using a telephone or Zoom or similar platform, and releases the Mediator and Marquette University Law School from any liability in the event of any inadvertent disclosure.

8. This agreement may be executed in separate documents, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Signatures may be submitted via email or via other identified electronic method such as Docusign or a similar platform.

I HAVE READ AND UNDERSTAND THIS MEDIATION AGREEMENT AND, BY MY SIGNATURE, AGREE TO ABIDE BY ITS TERMS.

_____	_____
Printed:	Printed:
Dated:	Date:
□ Plaintiff □ Defendant	□ Plaintiff □ Defendant
_____	_____
Printed:	Printed:
Dated:	Date:
□ Plaintiff □ Defendant	□ Plaintiff □ Defendant

MARQUETTE UNIVERSITY LAW SCHOOL
SMALL CLAIMS MEDIATION CLINIC

Student Mediator Evaluation Form (for supervisor and observer)

Date of Mediation

Student Mediator

Supervisor's Name

Case Number/Parties' Names:

Describe the Nature of the Dispute:

Settled: Yes No

1) Did the mediator do a good job with the opening statement and introduction?

Excellent	Very Good	Average	Not Good	Poor
5	4	3	2	1

How did the parties react to the student's introduction and description of the process? Could the student have done something differently to set the right tone? Did the parties appear to be as comfortable as possible?

Did the parties adequately understand the **Agreement to Mediate** form before signing it? Did the student give the parties and opportunity to express concerns or ask questions before signing the form? Did the parties understand what was about to happen?

2) Did the mediator do a good job with the gathering information and setting and agenda?

Excellent	Very Good	Average	Not Good	Poor
5	4	3	2	1

Did the student listen intently to opening statements, reframe the opening statements, and transition appropriately to discussing the issues?

3) Did the mediator do a good job managing the mediation overall?

Excellent	Very Good	Average	Not Good	Poor
5	4	3	2	1

What specific techniques did the student employ (e.g. reality testing, role reversal, changing the focus of the discussion, expanding options)? Were they effective? What might have the student done differently?

What unique problems did the student face, and how were they handled? Could the student have handled the problem more effectively?

Did the student face any ethical issues, such as one party wanting more attention or private conversations, creating the appearance of impartiality? Were there any other ethical issues? If so, how was the situation handled? Could it have been handled differently?

Did the student have problems trying not to provide legal advice or from expressing an opinion as to the appropriateness of one particular resolution?

4) How well did the mediator maintain neutrality?

Excellent	Very Good	Average	Not Good	Poor
5	4	3	2	1

Did the student adequately maintain neutrality during the process, or do you think that the parties believed that the student was leaning toward one position over another?

Give an example of how the student managed to maintain neutrality or did not maintain neutrality.

5) Did the mediator do a good job managing the end of mediation, either drafting the agreement or ending the session?

Excellent	Very Good	Average	Not Good	Poor
5	4	3	2	1

Did the parties completely understand and agree to everything in the settlement agreement? Did the parties appear to be pleased with the process? If the case did not settle, did it appear that the mediation was helpful to the parties in other aspects?

Please write any additional comments or suggestions below.