**Comenius University / International Journal of Clinical Legal Education Conference**

**ENCLE - IJCLE 2019 Improving the Future: Using Clinical Legal Education to Educate Lawyers for a Just Society**

|  |  |
| --- | --- |
| Title | Mr |
| Lead Presenter First Name | Alex |
| Lead Presenter Last Name | Nair |
| Organisation of Lead Presenter | University of the Witwatersrand and Wits Law Clinic |
| Name/s and details of other presenters |  |
| Title of Proposal | Achieving social justice through effective mediation and negotiation skills |
| Summary of Proposal | The development of well-rounded problem-solving law students requires exposure to both the adversarial and co-operative systems of litigation. This presentation will set out and discuss the particular mediation and negotiation skills that should be integrated into clinical programs to develop law students concerned with achieving social justice. |
| Abstract Proposal | Presenter:  Alex Nair LLB (Wits)  Lecturer, supervising clinical attorney (Employment) Alex Nair completed his articles at the Wits Law Clinic where he now heads up the Labour Unit. Alex is currently reading for his LLM with a focus on employment law. His research interests include CLE, employment law and pensions law.  Abstract of presentation:    The adversarial system of litigation requires lawyers to further the interests of their clients to the detriment of their opposition. However, clients are often unaware of possibly detrimental, rigid and binding implications of litigation, when they seek assistance. Therefore, lawyers bare the responsibility of determining the appropriateness of the relief sought and the appropriateness of litigation as the avenue for the resolution of the dispute. In contrast, the processes of mediation and negotiation offer clients a flexible, cost-effective and expeditious alternative which may protect, and possibly further their interests outside the adversarial system. Lawyers need to possess the requisite skills to problem-solve in a manner which focuses less on litigious merit and focuses more on alternatives which will achieve their client’s goals without the need for litigation. Law students undergoing legal training in university law clinics which implement the live client model work under the assumption that instructions should only be accepted where there is legal merit to litigate and where there is not, clients are turned away. Doing so may create the impression that litigation is the only appropriate avenue for resolving disputes. As a result, law students fail to develop the ability to properly explore the various ways in which a client’s interests may be protected outside of litigation. Problem-solving through recourse to litigation alone not only hampers the development of well-rounded law students but creates a barrier to furthering social justice on behalf of clients who have no merit for litigation but whose problems could be solved through alternative means. This piece will explore the mediation and negotiation skills which should be taught in clinical programs to develop well-rounded problem-solving law students. |