COMPETITION MISSION

The competition introduces law student participants to the challenges of representing clients in mediation. The judging criteria reward those participants who use an effective combination of (i) advocacy and (ii) problem-solving. Advocacy in mediation means that lawyers should advocate for their client’s interests with the mediator. Problem-solving in mediation means that the negotiating attorneys must learn about each other’s clients’ interests and BATNA (Best Alternative To A Negotiated Agreement), use objective standards, brainstorm options, and select and shape a solution that meets their interests. Participants must balance their clients’ interests with the goal of achieving an effective settlement.

INTRODUCTION

As Alternative Dispute Resolution (ADR) becomes more integrated in courts and pre-trial procedure, attorneys will have many cases referred to these processes. Thus, it is important that attorneys can adequately represent clients in this environment. This competition is designed to acquaint law students with advocacy in these processes, specifically mediation. Judging criteria evaluate the effective combination of advocacy and collaborative problem-solving skills.

COMPETITION RULES

Rule 1. Overall Format of Regional and National Competitions

Each round consists of a 90-minute mediation session. At the close of that session, there will be a 10-minute period for teams to prepare for self-analysis, followed by a 20-minute self-analysis period (10 minutes per team) for each team to evaluate its own performance in the presence of the judges, but outside the other team’s presence.

Each team may use a total of 20 minutes in caucus with the mediator or in taking breaks to speak with each other. Each team may take a maximum of two (2) caucuses. The maximum length for each caucus is 10 minutes. No caucus or break will be taken in the last five (5) minutes of the round. The attorney/client team may decide how they want to use their time and may inform the mediator of how much time they would like for caucus. Taking a break or a caucus does not suspend time on the 90-minute mediation session. Teams may not conduct their “break” in front of the mediator. Because of the potential for disruption of the competition, any faculty or other observers from either of the competing schools are prohibited from leaving the room from the beginning of the session until both teams have completed their self-analysis, including during any breaks or caucus sessions.
Regional Competition Structure

The Regional Competition consists of two preliminary rounds and a final round. Each team will participate in the two preliminary rounds, with the top two teams advancing to the final round.

Advancing to the National Competition

The first-place team at each Regional Competition automatically advances to the National Competition. If any first-place team cannot participate in the National Competition, that team must notify the national coordinators within a week after the regional competition.

If there is an odd number of regional competitions, then the regional with the largest number of teams participating in the regional competition will be asked to send both 1st and 2nd place teams from that region to compete at the national competition.

National Competition Structure

The National Competition will consist of two preliminary rounds, a semi-final round and a championship round. Each team will participate in two preliminary rounds, with the top four teams advancing to the semi-final round. For the semi-final round, teams will be paired according to their rankings from the preliminary rounds. Team #1 will be paired with Team #4. Team #2 will be paired with Team #3. For the semi-final and final rounds, the top seeded team in each pairing will choose which side they will represent. The winner of each of the semi-final rounds advances to the championship round.

Rule 2. Registration

Schools may enter one or two teams for the competition, however, schools that have met their obligation to host a regional or national representation in mediation competition within the past five years will have priority placement for a second team.

Schools will have the opportunity to indicate their regional competition location preference on the competition registration form. If an uneven number of teams are registered for the competition as of the registration deadline, the ABA may invite the host school to enter an additional team or may request another school in the region to send an additional team.

A school must send the number of teams they have registered as of the entry deadline at their assigned Regional Competition. This competition requires an even number of teams in each regional competition. A late withdrawal has a negative impact on all teams as any team that withdraws must be replaced. If an unforeseen circumstance arises, the school must contact the host school and the ABA Staff immediately upon learning about their inability to participate. If participants fail to provide a reasonable excuse for withdrawal, the participant’s school will be banned from entering the Representation in Mediation Competition the following year.

Registered schools and teams will be placed in regionals in order of the following priority:

1. Whether the registering school has hosted a regional or national competition within the last five years;
2. Date the registration form is received by the ABA Section of Dispute Resolution;
3. The registering school’s priority regional locations as indicated on the registration form.
Preliminary registration deadline

All schools and teams registered as of the preliminary registration deadline of December 16, 2019 will be placed into regionals according to the priority placement guidance listed above. The regional assignments will be confirmed by January 6, 2020. Schools that register after December 16, 2019 will be placed into regionals as space is available, according to the regional placement guidance. Depending on the number of teams registered, the regional slots available, and whether the registering team has hosted within the past five years, it is possible that only one team per school will be confirmed to have a regional placement.

All teams must register by January 17, 2020. The ABA will try to confirm the schools and teams in the available regional slots by January 24, 2020.

Registration costs

The registration costs for the 2019-2020 Competition are as follows:

- One team: $350.00
- Two teams: $650.00

The registration fee for regional host schools is waived.

Rule 3. Eligibility

The competition is open to all full-time and part-time law students enrolled in ABA approved (or Canadian LSAC-member) law schools during the semester the competition is held. Students enrolled in joint degree programs (JD/MA, JD/MBA, etc.) who have not graduated from law school and are enrolled in the joint program for the semester are eligible. LLM, MJ, or other non-JD students are eligible for the competition, provided their initial law degree graduation date was no longer than twelve months before the competition registration deadline.

To be eligible to register teams in the competition, the law school must have hosted within the last five (5) years or have formally agreed with the ABA in writing to host within the next two (2) years.

Rule 4. Team Composition

Each team will consist of two students, with one student acting as the lawyer and the other acting as the client for the first round. The students on each team are to determine between themselves who will first act in which role. Roles must be reversed for the second round. There will be no changing of partners during the competition. Teams will be judged based upon the performance of both the attorney and client, not just the attorney. For all semi-final and the final rounds, the team members shall decide for themselves who will act as the client and who will act as the attorney.
The ABA staff will randomly match opposing teams in advance for each regional competition round. The ABA staff will also designate in advance which team in each pairing is to assume the role of which adversary (plaintiff or defendant) in the problem for that round. Teams who represent plaintiffs in round one will represent defendants in round two. No two teams will compete against each other in both of the preliminary rounds. For purposes of administration and anonymous scoring, each team will be assigned an identifying letter prior to the competition.

**Rule 5. The Problems**

Each round will involve a new problem. All teams in each round will use the same problem.

The ABA staff will distribute the problems for the regional competition rounds 2-3 weeks prior to the regional competition. Each problem will consist of (1) general information for all participants and (2) confidential information for each party and their counsel.

Judges will receive all general and confidential information provided to the teams. Mediators will receive the general information only. If the mediator also serves as a judge, the mediator will receive the confidential information but should not read the confidential information until after the conclusion of the mediation session.

The general information for the semi-final (at the national level only) and the final rounds will be distributed prior to the competition. The confidential information will be distributed at the competition as soon as the semi-finalists and finalists are announced, and each team has chosen or been assigned a side to represent.

The problems will be drafted in a gender-neutral format, meaning that law students of any gender identity can play in the role of the party on either side of the problem.

Teams will have the opportunity to submit a request for clarification of the problems to ABA staff, which will be addressed by the Competition Problem Drafting Committee. The Committee will address questions and clarifications limited to matters that would appear to have legal significance in the context of the problem as presented. A request for clarification must include a short explanation of the expected significance of the clarification. If a request does not include an explanation, the Committee may ignore the request. The Committee will provide clarifications to all teams if the clarification arises from the general information, and to the teams assigned to the appropriate side if arising within the confidential information. The timeline for the clarification process will be determined when the problems are delivered and the deadline will be strictly enforced. Clarifications issued become part of the problem.

Teams may draw reasonable inferences from the facts provided, but are constrained to the facts contained within the four corners of the record. Failure to stay within the record may result in up to a 5-point penalty. Students are encouraged to do outside research to become more familiar with the subject matter as well as the legal issues. However, when presenting "facts" in the role-play, the students should be limited to facts as written in the problem. While the participants may not make up facts, the facts are subject to reasonable interpretation. Whether a team’s interpretation is reasonable is a matter entirely within the discretion of the judges and is not reviewable.
Rule 6. Team Self-Analysis

Following the 10-minute preparation for self-analysis, each team will have 10 minutes to orally analyze its own performance in the mediation in front of the judges. This will take place outside the presence of the opposing team. Students will use this 10-minute period to answer the following questions: (1) In reflecting upon the entire mediation, what specific problem-solving strategies did your team use effectively? (2) In what areas did you experience difficulties and what would you do differently next time when facing a similar situation? (3) How well did the outcome advance your client’s interests as presented in the written representation plan?

Judges are only allowed to ask questions about the team’s self-analysis or the team’s performance during this time. During the self-analysis, Judges shall not provide critique or feedback about the self-analysis or any other element of the team’s performance.

Teams should plan for speaking uninterrupted for the first seven (7) minutes of their self-evaluation. For the remaining three (3) minutes, the judges may ask questions with the parameters described above. If judges’ questions and the students’ answers leave some of the three (3) minutes unused, the students may use the rest of the time to make further comment.

The team should be prepared to respond to questions from the judges concerning the team’s performance. In addition, the team may use this time as an opportunity to explain why it chose a particular approach or even a specific tactic. For scoring purposes, the judges may take into consideration anything said during this session. Judges should make a point of evaluating evidence that the team identified errors and areas needing improvement. Specific and concrete ideas for remediation and improvement should be reflected positively in the team’s overall score.

Rule 7. Orientation

An orientation will be provided for volunteer judges, mediators and law student participants, coaches, and faculty advisors. The Competition Coordinator will hold two separate meetings: one for the judges and mediators and one for the participants. The orientation meeting for the judges and mediators is mandatory. During this orientation for judges, the scoring sheets, the problem description and summary, and the expectations of the judges will be reviewed in detail. Each competing school may designate one non-student representative to attend the orientation for judges and mediators. However, in some circumstances (for instance where a law student team does not have a coach or faculty advisor or where the Competition Coordinator has a reasonable concern that the presence of team representatives in the volunteer orientation will result in anonymity of the teams being breached) the Competition Coordinator may determine not to allow team representatives to attend the judge and mediator orientation. If team representatives are not allowed to attend the judge and mediator orientation then the Competition Coordinator must explain to the participating teams the topics to be covered in the judge and mediator orientation. If a representative from any team is allowed to attend the judge and mediator orientation then all teams must be allowed a representative at the judge and mediator orientation.

At the orientation session, all participants will be afforded the opportunity to ask questions. The Competition Coordinator will have complete discretion in answering questions related to the problem and rules. However, no new facts will be added to the problems.
Rule 8. Permissible Assistance

The team coach or faculty advisor may advise the team in its planning and preparation for the competition, including the semi-final and championship rounds. No one, including team coaches and faculty advisers, however, may give advice or instructions to, or attempt to communicate, in any way, with any of the participants between the commencement of the participants’ mediation session and completion of the self-analysis and final scoring period for that mediation session. Coaches may provide advice to their team in advance of the individual rounds, including the semi-final and championship rounds, but may not provide any such assistance once the mediation round has commenced.

Competitors may attend only their own scheduled mediation sessions. No person associated with any competitor, such as a coach, family member, or friend, may attend a mediation session other than one in which that school’s teams are involved, except during the Regional Finals round, the National Finals round, or the National Semifinal if all their teams have been eliminated from the competition. If a school has multiple teams participating in the Regional or National Competition, such persons may attend any mediation session in which that school’s teams are involved.

No person associated with any competitor team, including a coach, family member, friend, or any member of a team participating in the competition, may provide any form of advice or assistance to any competitor from another school in the competition. “Scouting” in any form is also strictly prohibited. Scouting is the observation and sharing of information with a competitor from another school about a team in the competition, during the competition, whether intentional or inadvertent. Teams from the same school (if a school has more than one team entered) are not prohibited from sharing information about other teams that they have faced. The responsibility ultimately rests on each competitor to refuse any prohibited advice or information.

The mere act of communication, receipt of information, or attendance proscribed by this rule will constitute a violation, regardless of the substance thereof, and regardless of whether initiated by a participant or by any other person. Violation of this rule may result in disqualification. Harmless error will not be a defense to a complaint based on violation of this rule, because of the appearance of impropriety occasioned even by casual exchanges unrelated to the substance of the mediation.

Rule 9. Technological Devices

Competitors may use a hand-held calculator and/or stopwatch during a mediation session, but no other technological device, including a laptop computer, tablet, mobile phone, smart phone, personal digital assistant, or similar electronic communication device (except for timekeeping purposes). Any technological device used for timekeeping must be kept in a state unable to send or receive messages, i.e. “airplane mode.” A school may request a waiver of this restriction to the extent necessary to accommodate a competitor’s physical or mental disability, but the waiver must be requested in writing in advance of the competition.

Rule 10. Mediators and Judges

In each mediation round, an experienced mediator will serve in the role of a facilitative mediator. Two or three judges will observe, and score the quality of representation by the student teams. Judges will also give feedback directly to the students at the end of the competition. If only two judges are available, the mediator will act as the third judge and participate in evaluation and scoring. The judges will evaluate the
performance of the student-participants according to the standards and criteria provided. The Judge’s Score Sheet is attached hereto as Exhibit A. Every attempt will be made for the teams to have a different mediator and different judges in subsequent rounds to the extent possible. After the judges have completed and turned in their scoring they will have the opportunity to critique both teams. The teams can be critiqued together or separately. If one team wishes to be critiqued separately, both teams will be critiqued separately. Total team critique will be limited to 30 minutes. Coaches for all teams and any other spectators may remain in the room through the critique of both teams.

The Competition Coordinator is responsible for recruiting judges who are experienced and knowledgeable in problem-solving negotiation and mediation.

A judge may be disqualified before a round begins by any team if the judge has any prior relationship with a team or team member. For instance, a judge may be disqualified if he or she knows any member of a team through academic, professional or social contact. The judge may also be requested to be disqualified by a team in the current round of the competition if the judge has acted as a judge in a prior round when one of the teams has participated in both rounds and could therefore be judged twice by the same judge. However, the judge may still serve in the second round if: (1) the other mediation sessions in that round of competition have started at the time the team moves to disqualify a judge for this reason, thereby creating the possibility that another judge cannot substitute without disrupting the other mediation sessions; or (2) an insufficient number of judges exists to allow a substitution; or (3) at the discretion of the competition committee if the committee determines this will not result in a conflict. A judge may also disqualify himself or herself if he or she feels his or her participation in the round of competition will create an appearance of impropriety.

A mediator who is not also acting as a judge in the round may not be disqualified for any reason. The mediator does not make any decisions on behalf of the parties and, as long as he or she is not also acting as a judge, has no influence on the outcome of the session.

Participants should expect mediators and judges to have read and observe the Instructions for Mediators and Judges (attached hereto as Exhibit B), the competition problems, the representation plan or mediator’s brief and any exhibits offered by the teams.

**Rule 11. Observers**

Observers may not communicate with team members at any time during the mediation session, including during the self-analysis and critique periods. If a team member is seen communicating with an observer during the session they will be disqualified. Harmless communications, such as “we were just organizing lunch,” will not be a defense to a complaint based on violation of this rule. **It is the participating students’ obligation to convey these rules to any observer associated with the individual or school.** All non-competitors, including faculty advisors and coaches, who wish to observe the competition must sign in prior to the start of the role play. All observer cell/smart phone usage is strictly prohibited. Violators of this rule must leave the room immediately. If a coach or faculty advisor is in violation of this rule, it will result in disqualification of their team. Observers are **required** to remain in the competition room until the end of both teams’ self-evaluations. Once both teams have completed their self-evaluations, observers may leave the room. During this period (while the judges are completing their scoring), observers may speak to the teams but **must not** speak to a judge in the event that a judge leaves the room during the scoring period. Observers may quietly return to the room during the scoring period or judges’ critique period.
Rule 12. Timekeeping

Responsibility rests with the student participants for timekeeping and adherence to the allotted time periods for mediation sessions, caucus, breaks, and self-analysis. Only if resources and volunteers are available will timekeepers and/or timekeeping devices be provided. However, no individual identified with a participant may act as a timekeeper in a mediation involving that participant. If there is no timekeeper, one of the judges should be designated to keep track of time (20 minutes of caucus/break per side and 90 minutes total) but should not provide the participants with updates or countdowns. At the end of time (20 minutes of caucus/break per side and 90 minutes total), the judges should announce that time is up and end the segment. Decisions by the judges with respect to elapsed times are final and non-reviewable. The judges or timekeeper should time the caucuses to ensure that they last no longer than 10 minutes each. The judges or timekeeper should ensure that there are no caucuses or breaks taken in the last five minutes of the round.

Rule 13. Scoring

In each mediation, each judge shall rate the performance of each team on certain relevant criteria, with a maximum of 70 points awarded per team, per round, by each judge. The criteria on which the teams will be judged are set out in the accompanying sample of the Judge’s Score Sheet attached as Exhibit A. A failure to reach agreement in the mediation should not result in a lower score, unless that failure comes in the face of an offer that is clearly and manifestly in the interest of the declining party and thus appears to result from bad faith.

Judges must independently score each team and are not allowed to confer with the other judges about their scores. Before the judges hear the self-analysis of either team they should give each team a preliminary score. After the self-analysis period, judges will score each team on their self-analysis and may revise other scoring categories based on each team’s self-analysis.

Each judge must total his or her own scores for each team. The judge must then circle the word “Win” at the bottom of the score sheet for the team he or she gives the most points to and should circle the word “Lose” at the bottom of the score sheet for the team that received fewer points. If the judge has given both teams the same number of points, the judge must adjust the scores for the teams to give one team more points than the other. Judges must give the Competition Coordinator the score sheets before the critique.

Rule 14. Winning a Round

The team winning the most number of individual ballots per round will be the winner of that round. Consequently, ballots (score sheets designating a “Win”) will trump overall team point totals for the purpose of determining the round winner. (A team wins with either all three judges casting ballots in their favor or on a 2-1 decision. For example, in the situation in which the total team points versus the number of winning ballots per round would result in two different overall round winners, the team with the most winning ballots will win the round).

Rule 15. Ranking of Teams

Teams will be ranked for the post-preliminary rounds in the following order:

1. Win/Loss Record;
2. Total Number of Ballots;
3. Total Number of Overall Points;
4. Total Number of Points Earned in the Self-Analysis Category.

Rule 16. Controlling Law

Although the mediation exercises may refer to actual places, assume there is no controlling state law, and the jurisdiction applies general principles of Anglo-American common law. (Any exceptions will be explicitly stated in the common facts).

Rule 17. Boards, Exhibits, and Props

The competition host may make flip charts, whiteboards, and blackboards available for use during the competition rounds. If the competition host makes flip charts, whiteboards, and blackboards available, they must be available in each competition room. The flip charts, white boards, or blackboards are available for mediator use only, and competitors may not use them. Competitors may ask for the mediator’s help in presenting information. Competitors interested in sharing pre-planned proposals or agendas may, as an alternative to asking the mediator to write on the board, utilize an exhibit for these purposes.

Teams are not expected to use exhibits in the mediation sessions. However, a team may use one exhibit, limited to one 8 ½ x 11 single sided page with print in 12 point font for each round. Exhibits must not in any way contradict or impermissibly expand upon the facts as written in the competition problem. If the Competition Coordinator finds an exhibit to contradict or impermissibly expand upon the facts as written in the competition problem, or otherwise to be non-compliant with Rule 5 or Rule 17, a penalty of up to five points may be imposed. Moreover, if the Competition Coordinator finds that the exhibit improperly affected the round, they may overrule the scoring of the judges in extreme cases.

Teams may write on an exhibit during the course of the mediation session. Teams are prohibited from using video, computers, or other technology or displays.

The students must provide a copy of their exhibit to the mediator and the judges immediately prior to the 90-minute mediation session. If the students so choose, they may attach the exhibit to their representation plan. The students shall not give any exhibit or other document to the mediators or judges after the 90-minute mediation session. Teams may choose when during the 90-minute round to share their exhibit with the opposing side. Teams may choose not to share their exhibit with the other side.

Teams are prohibited from bringing props and wearing costumes to the mediation session. A violation of Rule 17 will result in a 5 point penalty. Anything disseminated with the fact patterns does not count as a prop unless the competitors alter it before the mediation session (e.g., a photo included with the problem).

During the 90-minute round, a challenge to an exhibit’s acceptability under this rule can be made by judges, the mediator or the opposing team. The round will be delayed until the Competition Coordinator can review the exhibit and make a determination of the exhibit’s acceptability. From the time that the challenge is made until the Competition Coordinator has ruled on the exhibit’s appropriateness, the 90-minute clock will be stopped and restarted only upon resuming the round. Outside of the 90-minute round, judges and mediators may challenge an exhibit before the round begins and or after the 90-minute round up until the judges have turned in their final scores. If a challenge is made during the self-evaluation period of either team, time will be suspended until the challenge is determined by the
Competition Coordinator. Once a determination is made by the Competition Coordinator, there is no appeal.

**Rule 18. Caucuses and Breaks**

Each team may caucus with the mediator or break outside of the mediation room for a total of 20 minutes. To do so, a team must affirmatively request to break or caucus (the mediator will grant such a request). When one team is caucusing with the mediator, the non-caucusing team shall step outside of the competition room. When one team calls a break, both teams shall step outside of the mediation room and time will run against the team that called the break. When one team is caucusing, the other team is not using their caucus/break time. If one team first calls for the break, and the other team responds by asking for a caucus, the caucus will be granted and the time counts against the team caucusing. For example, if Team A calls for the break and Team B responds that they would like to caucus with the mediator, the time counts against Team B’s 20 minutes. Once both teams have left the room for the break, it is not possible for either team to caucus with the mediator until the break is over. No caucus or break may be taken or continue into the last 5 minutes of the round. The teams may take a maximum of two (2) caucuses and each may last no longer than 10 minutes.

**Rule 19. Anonymity**

Participants may not identify the school they represent until after the end of the final round of the competition. Participants must therefore refrain from wearing or carrying anything with the school name, logo or other identifying symbol, including school brief cases or note pads. Teams may only refer to themselves by name or by the team letter they have been assigned. Team members will be identified by their team letter on their name tag and table tent. Even if asked by the judges for their school affiliation, participants should politely decline, citing this rule. This rule applies to all events associated with the competition, including receptions and meals.

**Rule 20. Representation Plans**

Each team shall prepare a Representation Plan setting out the team’s negotiation strategy based on the parties’ respective interests presented in the problem. The Representation Plan shall be limited to two single-sided 8 ½ by 11 sheets of paper in Times, 12 point font, 1 inch margins. In the Regional Final Round, the National Semi-Final Round, and the National Final Round the Representation Plan may be handwritten using the same number of pages. The plan shall be given to the competition judges for their review at least 10 minutes prior to the beginning of the mediation round. Teams must have 5 copies of the plan available at the start of each round.

The plan should consist of an outline with a brief description under each of the following headings: (1) “Responsibility Sharing” – explain how you plan to share responsibilities between the attorney and the client in the mediation session; (2) “Allocation Strategy” – explain why your team chose the particular allocation strategy; (3) “Interests” – describe the interests that your side plans to advance in the mediation session, and the likely interests of other side; (4) Your Team’s BATNA analysis as well as the likely BATNA analysis of the other side; (5) Potential Collaborative solutions meeting everyone’s interests; (6) Key Questions/Information you will seek or anticipate; (7) “Negotiating Strategy” – your negotiation strategy in light of the preceding factors, also potentially including bargaining chips; (8) preparation for introductory remarks after the mediator’s introduction; and (9) Potential Agenda items of topics you would like to discuss.
In keeping with the anonymity instruction, do not put your school name or any other identifying mark or symbol on the Representation Plan. Instead, use the role assigned and/or your team letter designation to identify your plan. Teams should hand the representation plans to the judges immediately prior to the beginning of the mediation session. Before the mediation begins, judges are instructed to read each side’s representation plan to help the judges interpret what they are observing.

**Rule 21. Decision-Making**

For the regional competitions, the regional host school shall decide all issues relating to the regional competition. For the national competition, the Competition Coordinating Committee shall decide all issues relating to the national competition.

**Rule 22. Team Cancellation or Late Arrival**

A team withdrawing from the competition for any reason (including illness or emergency) must give notice to the Competition Coordinator as soon as possible. ABA Section of Dispute Resolution shall endeavor to identify an additional team to replace the cancelling team from the host school or from another participating school. Only schools representing the side of the team that canceled will be eligible as replacements. If more than one school volunteers to furnish a replacement team, the host school will be given the right of first refusal if the host school represents the same side as the team that cancelled. Otherwise, the replacement team will be chosen by lottery from among those that volunteered.

Teams must arrive timely for the competition. If a team arrives more than 15 minutes after the end of the check-in (orientation) period for any round, the judges will be instructed to impose a penalty of two points from that team’s total score for the session.

**Rule 23. Responsibility for Hosting Regional Competitions**

The responsibility for hosting the regional competition should be shared amongst schools participating in the competition. It is expected that each participating school will host the regional competition within a five-year time period. Schools who do not volunteer to host the regional competition within a five-year period, will not be confirmed to participate in a regional competition until they have a written agreement with the ABA to host within the next two (2) years. In cases where a participating school would like to host, but has limited resources of funds or available volunteers, two schools may co-host. For the planning convenience of the schools, the ABA will schedule regional hosts up to five years in advance.

*Any disputes or issues arising from the administration of these rules or the determination of eligibility to participate in the competition will be brought to the Representation in Mediation Competition Coordinating Committee, whose decision is final.*
Preface

These criteria should be interpreted to favor problem-solving strategies in the competition. Although practitioners use a diversity of representation approaches, this competition is organized on the premise that the mediators and teams will use a problem-solving approach. The criteria cumulatively enlist judges to assess whether each team consistently and competently followed a problem-solving approach throughout the mediation session. The criteria should be applied to the performance of the attorney/client team—not just the performance of the attorney. By judging the teams based on the same approach to representation, judges will be able to evaluate different teams on a comparable basis.

When these criteria refer to a problem-solving approach, the criteria refer to an approach in which negotiators learn about each other’s interests and BATNAs (Best Alternative To A Negotiated Agreement), brainstorm options, and select and shape a solution that meets their interests. When there are apparently conflicting interests (distributive conflicts), teams should first try problem-solving methods before resorting to positional strategies. In contrast, the classically positional negotiator generally starts with firm, extreme and opposite positions and then makes calibrated concessions until both sides are close enough to split the difference.

Before the mediation begins, judges should read each side’s representation plan. The plan should consist of an outline with a brief description under each of the following headings: (1) “Responsibility Sharing” – explain how you plan to share responsibilities between the attorney and the client in the mediation session; (2) “Allocation Strategy” – explain why your team chose the particular allocation strategy; (3) “Interests” describe the interests that your side plans to advance in the mediation session, and the likely interests of other side; (4) Your Team’s BATNA analysis as well as the likely BATNA analysis of the other side; (5) Potential Collaborative solutions meeting everyone’s interests; (6) Key Questions/Information you will seek or anticipate; (7) “Negotiating Strategy” – your negotiation strategy in light of the preceding factors, also potentially including bargaining chips; (8) preparation for introductory remarks after the mediator’s introduction; and (9) Potential Agenda items of things you would like to discuss.

The representation plan is not scored, it is simply to provide you with an understanding of each team’s strategy.

CRITERIA
Please score each criterion on a scale of 1-7, with 1 as the lowest and 7 as the highest.
1= very poor
2= poor
3= somewhat poor
4= adequate (STARTING POINT)
5= somewhat good
6= good
7= very good (i.e. you would hire this person today)

REMEMBER: No scoring ties, no feedback to the participants during their analysis, and no discussion of the round between judges until the round is over (judge independently). Return the scoresheet prior to your comments, and if you wish you may keep the “notes” sheet to help you provide feedback. THANK YOU FOR YOUR HELP!
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**Presentation of Case in Opening and Throughout**
- Presented facts and law in a way that could be heard productively by other side.
- Offered proposals in a way that reflected careful planning and skillful implementation.
- Accurately assessed and discussed litigation benefits and risks, as well as other consequences of failing to reach settlement (in joint session and/or caucus).

**Teamwork Between Attorney and Client**
- Effectively divided responsibilities in light of client’s knowledge, strengths, and vulnerabilities. (Clients are expected to speak during the mediation)
- Communicated effectively with each other and worked together as a team.
- Attorney ensured that client was able to make informed choices about settlement possibilities.

**Problem-Solving Relationship Building**
- Established a problem-solving relationship with other side, if possible.
- Recognized other side’s interests; tried to satisfy them if helpful to client’s interests.
- Took initiatives to convert other team into problem-solvers.

**Information Gathering and Communications with Other Side**
- Used active listening skills to promote communications.
- Used appropriate questioning techniques to gather information.
- Tested assumptions and collected necessary information at appropriate times.
- Responded appropriately to developments that occurred during mediation, especially new information and unforeseen moves by other side.

**Generating and Selecting Creative Options**
- Generated range of legal and non-legal options to meet client’s interests, as well as interests of other side.
- Evaluated/selected options based on interests and, if appropriate, objective criteria.
- Actively encouraged the development of creative ideas.
- Effectively managed distributive features of dispute.

**Interaction with the Mediator**
- Responded appropriately to the mediator.
- Engaged the skills of the mediator to assist in breaking impasse and/or move towards resolution.

< TOTAL TEAM SCORE for PAGE 1 >

**Caucus**
- Chose intelligently whether and when to use a caucus; if caucus used, used caucus effectively.
• Effective use of caucus may include, but are not limited to: updating/discussing negotiation strategy in light of the joint session; preparing client to make or receive offers; collaborating with the client and mediator on information gaps and how to address them; exploring alternatives to a negotiated resolution.

• **Advocating Client’s Interests**
  - Understood and advanced client’s legal and non-legal interests throughout the mediation process.
  - Did not sacrifice client’s interests in order to be collaborative.
  - Did not sacrifice client’s interests in order to seek competitive advantage.

**Self-Analysis of the Team's Skills**
(Mediator is not Present During Self Analysis) Students should begin the 10-minute period of team self-analysis by answering the following questions: (1) In reflecting upon the entire mediation, what did your team do well? (2) Also, in what areas did you experience difficulties and what would you do differently next time when facing a similar situation? Of the 10 minutes, the students will present an uninterrupted 7-minute self-analysis. The remaining 3 minutes can be used for judges’ questions. If there are no questions, the students may make additional comments in the time remaining. Based on this team’s self-analysis and answers to judges’ questions, how adequately did it learn from its experiences in this mediation exercise?

**Self-Analysis of Outcome**
(Mediator is Not Present During Self Analysis) Students should include answering the following questions in their self-analysis and answers to judges’ questions: (1) In reflecting upon the entire mediation, what specific problem-solving strategies did your team use well? (2) Also, in what areas did you experience difficulties and what would you do differently next time when facing a similar situation? (3) How well did the outcome advance your client’s interests as presented in the written representation plan? Based on this team’s self-analysis and answers to judges’ questions, how adequately did it learn from its experiences in this mediation exercise?

← Total Team Score on This Page →

← Total Team Score from Page 1 →

**RULE 19 – ANONYMITY PENALTY:** Deduct up to 5 points if the team violated the rule regarding anonymity.

**GENERAL PENALTY:** Deduct up to 5 points if the team violated any Rule other than the anonymity Rule

**LATE ARRIVAL PENALTY:** Deduct 2 points for a team’s late arrival if instructed to do so by the competition coordinator.

← TOTAL TEAM SCORE →

**Win**

**Lose**

You MUST designate one team as a Win and one team as a Lose, in accordance with Rule 13. If you do not designate a winner and a loser neither team will be able to advance.

Win

Lose

Circle 1

Stop.

Page 2
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American Bar Association Section of Dispute Resolution
Representation in Mediation Competition Comments

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