



AMERICAN **BAR** ASSOCIATION

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Law Student Division

**2022–2023**  
**REPRESENTATION IN**  
**MEDIATION**  
**COMPETITION RULES**

For In-Person and Virtual Competitions



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## COMPETITION MISSION

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.

The ABA Representation in Mediation 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 advocacy and collaborative problem-solving skills. 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 and demonstrate the best overall ability to settle disputes while achieving a comprehensively favorable and sustainable outcome.

## COMPETITION RULES

### **Rule 1. Overall Format of Regional and National Competitions**

The Regional Competition will consist of three competition rounds; the National Competition will consist of four competition rounds. Each competition round will consist of two teams of two students, with one student acting as the lawyer and the other acting as the client.

Competition rounds will last 135 minutes in total. This will include all caucuses and breaks. The round and will consist of 110 minutes of active competition (10 minutes for Pre-Mediation analysis; 90 for the Mediation; 10 minutes for Post-Mediation analysis), followed by up to 25 minutes for judges to score the teams, and provide written and oral feedback.

#### ***A. Regional Competition Structure***

The Regional Competition will be conducted virtually over Zoom over four regions. Each Region will have two preliminary rounds and a final round. Each team will participate in the two preliminary rounds, with the top four teams in each region advancing to the final rounds for each region the following day.

#### ***B. Advancing to the National Competition***

The top two teams from the Regional Competition will automatically advance to the National Competition. If any team cannot participate in the National Competition, that team must notify the national coordinators within one day after the Regional Competition.

#### ***C. National Competition Structure***

The National Competition will be conducted in-person and 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 rounds.

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. The winner of each of the semi-final rounds advances to the championship round.

For the semi-final and final rounds, the top seeded team in each pairing will choose which side they will represent.

#### ***D. Competition Round Timing Breakdown***

The overall competition round format will be as follows:

- 15 minutes prior to the round, students will report to their assigned Mediation rooms to turn in their written Representation Plans and to run a technical and/or conflict check with the judges;
- At the start of the round, there will be a 10-minute Pre-Mediation analysis period – up to 5 minutes per team (judges do not ask questions during the Pre-negotiation analysis);
- After the Pre-Mediation analysis will come the 90-minute Mediation Session which includes up to 15 minutes per team of combined mediator caucus or break time (allocated at the team’s discretion) that counts towards the overall 90 minutes;
- After the Mediation ends, there will be a 5-minute period for teams to prepare in private outside the competition room for the Post-Mediation analysis (judges will begin to fill in their Scoring Ballots at this time);
- Following the preparation period will come a 10-minute Post-negotiation analysis period (up to 5 minutes per team) in the presence of the judges (judges may ask questions during the Post-negotiation analysis);
- After the Post-negotiation analysis period, there will be a 10-minute period when judges complete their scoring ballot and comment sheet for each team and turn them in to the Competition Administrators; and
- After the judges scoring period ends and judges have turned in their Scoring Ballots, there will be a 15-minute period when judges give oral feedback to both teams simultaneously.

#### ***E. Representation Plans***

Each team shall prepare a written Representation Plan setting out the team’s negotiation strategy for the Mediation based on the parties’ respective interests presented in the problem. Before the Mediation begins, judges are instructed to read each side’s Representation Plan to help the judges *interpret* what they are observing.

The Representation Plan shall be limited to two single-sided 8 1/2 by 11 sheets of paper in Times, 12-point font, 1-inch margins. In keeping with the anonymity Rules (see Rule 8), Student attorneys may use their real name, but teams will use the role assigned and their team letter designations to identify their plan, without identifying their school or region.

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 opening statement; and
- (9) Potential Agenda items of topics you would like to discuss.

Teams must have 5 copies of the plan available prior to the start of each round. Teams will hand their Representation Plans to the judges in their assigned competition rounds during the technical and conflicts check prior to the beginning of the round.

#### ***F. Pre-Mediation Analysis***

Prior to the start of the 90-minute Mediation Session, the competition round will start with a Pre-Mediation analysis where each team will have 5 minutes to explain to the judges how they plan to approach the Mediation. The team with the team letter designation closest to the beginning of the alphabet will present first.

Teams should directly address the judges and explain the following two items (without being prompted by the judges):

***(1) What are your client's main interests and goals for the Mediation?***

***(2) What is your overall strategy in approaching this Mediation and why?***

During the Pre-Mediation analysis, the opposing team will wait outside the competition room. However, since the Pre-Mediation analysis is considered part of the "active" competition, coaches and any other permissible observers for both teams must remain in the room for both teams' Pre-Mediation analyses (subject to Rule 9).

Judges will be instructed not to ask questions during this Pre-negotiation session EXCEPT for any clarifying questions they may have regarding a team's Representation Plan. For scoring purposes, judges may consider anything said during this session.

#### ***G. 90-Minute Mediation Session***

After each team has performed their Pre-negotiation analysis, both teams will return to the competition room to begin the 90-minute Mediation Session. The session will begin and time will begin to run when the Mediator begins their opening statement to start the Mediation. Once the Mediation starts, it will last for 90 minutes and time will continue to run during any mediator caucus or team breaks that may occur during the session. The 90-minute Mediation Session ends immediately at the 90-minute mark even if the Mediation itself is still going.

The Rules for caucuses and breaks are covered in Rule 1(H) just below. See Rule 9 for additional Rules for the Mediation Session itself.

#### ***H. Caucuses and Breaks During the Mediation***

During the 90-minute Mediation Session, each team will have a total of up to 15 minutes (for a possible total of 30 minutes between the two teams) to spend at their discretion in private caucuses with the mediator in the Mediation room and/or to take breaks with their teammate outside of the Mediation room.

To "call" a break or a caucus, a team must affirmatively request a break or caucus with the mediator and their competitors. When one team has called a caucus 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.

Only the team who calls the caucus/break shall have time subtracted from their allocated 15 minutes. The team who did not call the caucus/break does not deplete their allocated caucus/break time.

***EXCEPTION:*** 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 allocated 15 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.

NOTE: A mediator may not call for a break or a caucus.

Teams will be judged on whether they chose intelligently when to use a caucus and whether the caucus was effective. Factors that determine 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; and exploring alternatives to a negotiated resolution.

### ***I. Post-Mediation Analysis***

At the end of the 90-minute Mediation Session (and after a 5-minute window to prepare) each team will have 5 minutes to analyze their performance during the Mediation for the judges.

Competitors should directly address the judges and answer the following questions (without being prompted by the judges):

***(1) In reflecting on the entire Mediation, if you faced a similar situation tomorrow, what would you do the same and what would you do differently?***

***(2) How well did the outcome of the Mediation advance your client's interests as presented in the written Representation Plan?***

During the Pre-Mediation analysis, the opposing team will wait outside the competition room. However, since the Pre-Mediation analysis is considered part of the “active” competition, coaches and any other permissible observers for both teams must remain in the room for both teams’ Pre-Mediation analyses (subject to Rule 9).

Judges may ask questions during this Post-negotiation session; thus, competitors should be prepared to answer questions from the judges concerning their performance. For scoring purposes, the judges may consider anything said during this session.

### ***J. Timekeeping***

One of the judges on each panel will be selected to keep track of the time. Additionally, if volunteers are available, timekeepers may be provided for a Mediation room as well. However, responsibility rests with the student competitors to adhere to allotted time periods for the entire competition round, including Pre-Mediation analysis, Post-Mediation analysis, main Mediation Sessions, and any time spent for mediator caucuses and breaks.

Decisions by the judges as to elapsed time and as to any possible time violations are final and non-reviewable.

## **Rule 2. Competition Teams**

On each competition team, one student will be acting as the lawyer and the other acting as the client. Teams will be judged based upon the performance of both the attorney and client, not just the attorney.

For the preliminary rounds, the students on each team are to determine between themselves who will first act in which role. These roles **must** then be reversed for the second preliminary round. For all semi-final and final rounds, the team members shall decide for themselves who will act as the client and who will act as the attorney.

The ABA LSD will randomly match opposing teams in advance for each competition round. They 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.

### ***A. Alternates***

Due to life's uncertainties, schools are encouraged to register at least one student per participating team to serve as an alternate to be used to substitute for a team member for emergency situations only – casual substitutions or rotations of team members is not permitted.

If a team member is unable to compete in the Regional Competition due to an unavoidable circumstance – as determined by the Mediation Competition (“MC”) Committee – the team alternate may be designated to substitute. Once a substitute is designated, however, the substitute must compete in all future regional and National Competition rounds. The original team member cannot rejoin the team that designated an alternate or serve as an alternate for another team.

If there is no available alternate, a team with one member may be withdrawn from the competition and substituted with a “ghost team” (whose score will not count), at the discretion of the competition administrator.

If a team with one member must compete for the purposes of the administration of the competition and providing another team an opponent, the one-person team will be scored according to Rule 10(D) for the purposes of determining their opponents' results. No team may advance past the preliminary rounds in the competition with only one member.

All registered students not assigned to a participating team on the Regional Competition sign-in sheet will be considered alternates. Alternates who attend a Regional Competition may only observe the teams from their school, and they are subject to the scouting Rule and all other Rules pertaining to observers as set forth in these competition Rules.

## **Rule 3. Registration and Eligibility**

### ***A. Student Eligibility***

Competitors and alternates must be actively enrolled as a JD student and registered at an ABA accredited law school at the time of the Regional Competition. LLM students are not eligible to compete.

Although they may compete at the regional level, students who graduate or visiting students who return to their degree-granting institution in between the Regional Competition and National Competition cannot be substituted at the National Competition. These students are encouraged to confirm eligibility and reimbursement with their schools.

Additionally, **all law students registered to compete in this competition, including alternate team members, must be *premium* members of the ABA Law Student Division.** The annual fee to be a premium member of the ABA Law Student Division is \$25.00.

To join, visit the ABA website: <http://www.ambar.org/join> or call the ABA Service Center at 800.285.2221 .

Failure to comply with this requirement may result in disqualification. Law schools must provide the names and premium membership numbers of their competitors and alternates by the deadline posted on the Dates & Locations webpage for this year.

Each school may select its team(s) of eligible students in any way it chooses, though an intra-school competition is highly recommended.

## ***B. Registration Process***

The registration form and fees are available on the ABA Law Students Division, practical Skills Competitions website: [https://www.americanbar.org/groups/law\\_students/](https://www.americanbar.org/groups/law_students/) Each participating school may register two teams. On occasion, the ABA may allow a law school to register a third team. Schools may indicate during registration whether they would like to be considered for a possible third team, should the need arise.

To enter the competition, all teams must obtain approval from the law school's dean and find a faculty member to serve as an advisor. Teams must also submit entry forms no later than the announced deadline. *If a law student is listed as the faculty contact on the entry form, the team may be disqualified.*

In addition, payment must be received by the entry deadline. If payment is not received, the school's registration may be canceled. Acceptance of entry forms received after the announced deadline is at the discretion of the MC Subcommittee, and if accepted, a late registration fee of \$50 may be imposed.

## ***C. Cancellation***

If a law school that has entered the competition decides not to compete, that law school must notify the Chicago Office as soon as possible. Teams that cancel before the competition entry deadline will receive a refund of the entry fee minus a \$50 administrative service charge, so long as the email was received by the competition entry deadline. Teams that cancel after the registration deadline will not receive a refund.

## **Rule 4. The Problems**

Each round in both the Regional Competition and National Competition will involve a new and different problem. All teams in each round will use the same problem for that round.

The Mediation Competition (“MC”) through the ABA Law Student Division (“LSD”) will distribute the information for the problems for the Regional Competition and National Competition no later than two weeks prior to the competition. Each problem will consist of (1) a set of General Instructions for all participants consisting of links to the actual case files for the particular case and (2) a Settlement Memo consisting of the confidential instructions for each party and their counsel.

The ABA LSD will distribute all of the materials to judges and mediators. 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 replacement 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 Instructions and Settlement Memo for the preliminary rounds of the Regional Competition and National Competition will be distributed prior to the respective competitions. For the final round of the Regional Competition and the semifinal and final rounds of the National Competition, the confidential information will be distributed at the competition as soon as the preceding round winners are announced, and each team has chosen or been assigned a side to represent.

### ***A. Scope of the Competition Problems***

Although the problems will involve real plaintiffs and defendants, they are intended to be used 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 and may make adjustments to the first names of the parties accordingly, if needed.

Since the competition problems will be based on real court documents in real cases, the controlling law for each competition problem will be as stated in the case files provided in the General Instructions.

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. Teams may draw reasonable inferences from the facts provided but are constrained to the facts contained within the four corners of the record. Whether a team's interpretation is reasonable is a matter within the discretion of the judges for a point deduction.

*NOTE: For this competition, there will not be a clarifying question process. The problems stand as written.*

## **Rule 5. Additional Events and Sessions at Regional and National Competitions**

The following events will take place at each Regional Competition and the National Competition:

### ***A. Team Orientation Session***

The Competition Administrators will organize one team orientation session prior to preliminary Round 1. No one other than the student competitors, alternates, coaches, and person(s) conducting the orientation session may attend. The Competition Administrators will review the competition schedule, room locations, and procedure for the day. Furthermore, Rule 9(A) (Observers' Attendance During Round) and Rule 9(B) (Prohibited Communication and Attendance) will be reviewed with the participants, and participants will be afforded the opportunity to ask questions about logistics and administrative issues related to the competition rounds.

Please note: no further information or clarification will be given about the problems at this time.

### ***B. Mediator and Judges' Briefing Session***

Mediators and Judges will be briefed before each competition round in conformity with the Mediation Competition Instructions for Briefing Judges and Mediators (located in the Regional Competition Administrative Guide, which is posted to the Law Student Division website). This will happen separately, out of the presence of any of the teams, coaches, or observers so as to maintain anonymity in adherence to the Rules.

### ***C. Conflicts Check, Technical Check, and Turning in Representation Plans***

Ten minutes prior to the start of each round, both teams assigned to each Mediation and any other coaches or observers need to arrive early for a technical check and conflicts check with the judges. See Rule 7(C) for additional details for the eligibility of judges.

For virtual competitions, the Competition Administrators will also conduct a Technical Check to ensure all team members' technology is working—Wi-Fi is working, video and audio are working, etc.

### ***D. Announcement of Preliminary Round Results***

A reception or informal gathering or virtual meeting will be held following the conclusion of the Preliminary Round 2. At that time, the teams advancing to the final round at the Regional Competitions or the four teams advancing to the semifinal round at the National Competition will be announced.

Administrators will also distribute a copy of the judges' Scoring Ballots to each team at this time; judges will give their written feedback Comment Sheet directly to the teams after each Mediation Session/round. Please note, in virtual competitions, such as Zoom, written feedback may not be possible.

### ***E. Tally Sheet Review Period***

After the announcement of the finalists at the Regional Competition or the semifinalists at the National



Competition, the Competition Administrators will distribute a copy of the tally sheet to each team that indicates all teams' win/loss record, the number of winning/losing ballots, and any necessary tie-breaking procedures. The coaches will have ten minutes from the distribution of the tally sheet to file a challenge.

Following the distribution of the tally sheet, there will be a Tally Sheet Review Period for ten minutes during which teams must raise any mathematical or scrivener errors that may appear. If a mathematical or scrivener error is identified during the Tally Sheet Review Period, corrections shall be made during an open process, before beginning the final round at the Regional Competition (or semifinal round at the National Competition).

If the computational errors cannot be resolved, the MC Subcommittee representative must be contacted. No other objections or complaints about the competition can be raised during the Tally Sheet Review Period.

Once the Tally Sheet Review period expires, all other computational protests are waived.

## **Rule 6. Mediators**

In each Mediation round, all attempts will be made to have an experienced mediator who will serve in the role of a *facilitative* mediator. This means that the mediators will not be evaluative and assess the validity or legal "strengths and weaknesses" of a team's case, nor will they be overly-directive in determining the overall agenda of the negotiation nor when students make use of caucuses or breaks, etc.

By default, mediators will not act as judges during the Mediation round. However, if only one or two judges are available in a particular round, the mediator will act as either the second or third judge and also participate in evaluation and scoring as a judge.

Mediators who do not act as judges will receive the general information only. However, if the mediator also serves as a replacement judge, the mediator will receive the confidential information but should not read the confidential information until after the conclusion of the Mediation Session.

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 direct influence on the outcome.

## **Rule 7. Judges**

The judges will evaluate the performance of the student-participants according to the standards and criteria provided in the Judge's Scoring Ballot. 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 provide feedback to both teams together. Total feedback time for the judges will be limited to 15 minutes, to be split amongst the judges at their discretion.

### ***A. Number of Judges***

Each round will be observed and evaluated by a panel of no fewer than three judges, at least two of whom must be lawyers. The professional activities of any non-lawyer judge will regularly involve Mediation.

### ***B. Three-Judge Panels***

Each room should have three-judge panels, except for the final round, which can have more than three at the discretion of the Competition Administrators but will be an odd number to avoid ties.

In the event there is an insufficient number of judges on the day of competition, and there are fewer than three judges in any room even after the mediator has been instated as a backup judge, the scores of the two judges will be averaged to create a third “ghost judge” score for that Mediation room.

Averaging means adding together the scores given by the two judges and dividing by two. The result shall be rounded up or down to the hundredth decimal. For example, an average score of 99.3333 would be 99.33 and a score of 99.6667 would be rounded to 99.67.

### ***C. Judge Eligibility***

During the technical and conflicts check prior to the start of the competition round, a judge may be disqualified before a round begins 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. Every effort will be made to move a judge that is unable to participate in a particular round to a different round of the competition.

### ***D. Interaction with Judges***

Judges shall not interact with the teams during the Mediations; however, they may ask teams questions about their Representation Plans during that team’s Pre-Mediation analysis, as well as questions about the Mediation Session during that team’s Post-Mediation analysis.

Competitors, coaches, and observers also have their own Rules regarding prohibited and permitted communications with the judges – see Rule 9.

### ***E. Judges’ Feedback***

After completing the Scoring Ballots for each head-to-head Mediation Session, the judges shall meet with both teams in the same room and at the same time. Judges will have a total of only 10 minutes to provide oral feedback to guide the competitors in furthering their negotiating skills. After the 10-minute oral feedback session, judges should give their written feedback Comment Sheets directly to the teams if there is capacity to do so.

Judges will be encouraged to provide constructive feedback to help promote an inclusive, educational, and positive experience for all competitors and coaches. See the Scoring Ballots provided to the judges at the end of this document.

## **Rule 8. Team Identification/Anonymity to the Judges and Mediators**

For the purpose of avoiding the potential for bias among judges and mediators, the ABA Law Student Division will assign each team a random designation (e.g. “Team A” or “Team X”, etc.) and provide each participating school with the team designations for each of their teams via the sign-in sheet.

This “Team Letter” method will be the sole method of identifying the particular team to all competition judges and mediators during the competition, along with clarification as to which party a particular team represents. As noted, this includes any labeling the teams use for their written Representation Plans.

Anyone affiliated with a team, including team members, coaches, and observers, should not directly or indirectly divulge, imply, or project an affiliation with any law school or region to the judges or the mediator at any time prior to or during the competition round. This also means anyone associated with a team shall take care not to have with them items such as pens, padfolios, folders, water bottles, class rings, or any clothing, etc. with the school's name and/or logo on them.

For Virtual Competitions, everyone must also ensure that there is nothing in the zoom background, whether their camera is on or off, that shows a location that could show **any location**, other than the room they are in. For example, a team in Jackson Hole, Wyoming cannot have a background of Honolulu, Hawaii. This shall also apply to anything that is located in the room. For example, a team from Pittsburgh, Pennsylvania cannot have a Baltimore Ravens Jersey in a shadow box in the background. Any affiliation to any location is prohibited.

Violation of this Rule in the presence of a judge or mediator may result in a penalty, up to and including disqualification, as determined by the MC Committee.

### ***B. Clarification of Scope for the Anonymity Rule***

**PLEASE NOTE:** The intent of this Rule is **ONLY** to prevent the possibility of bias for the judges and mediators prior to judging a particular round and during the round itself.

However, nothing in this Rule is intended to prevent the competing teams, coaches, and observers from different schools from talking to one another socially during the day or events of the competition overall. The anonymity requirement in this Rule 8 is not applicable between teams, nor is it applicable to the judges or mediators ***after their rounds are completed and judges' Scoring Ballots have been turned in to the Competition Administrators.***

Meaning, it is NOT a violation of the Rules for teams to tell one another where they are from, provided that the teams have taken care not to have such conversations in the presence of a judge or mediator. Nor is it a violation of the Rules to tell judges or mediators where you are from after the round is complete and their Scoring Ballots are turned in.

The educational, social, and networking benefits and opportunities at a forum such as the Representation in Mediation Competition are an important aspect of what makes these academic competitions valuable learning experiences for students.

As such, the MC Committee intends to explicitly encourage teams to interact and engage with one another and with any of the professionals who have volunteered their time to assist at this competition, subject to the overall interest of anonymity in connection with judging in this Rule and any other Rules in addition to this one (e.g. Prohibited Communications in Rule 9(B), etc.) designed to promote that anonymity.

The goal is to change the overall "tone" of the competitions to one where communication and interaction between teams and with volunteering professionals is one of the fun and exciting aspects of the competition that competitors, faculty, coaches, and professionals who volunteer for these competitions can all enjoy.

### ***C. Team Identification/Anonymity during Virtual Rounds***

Team members need to change their screen names to indicate the client they represent in that round, their team number, and their individual name. Others, including coaches, faculty advisors, friends, family, and others associated with a team may be asked to change their screen names to simply identify the team number of the team they are observing and "coach" or "observer."

Additionally, Coaches and Observers need to mute their videos and microphones for the entirety of the round.

## **Rule 9. Additional Rules for the Mediation Session**

### ***A. Observing and Attending Rounds***

Competitors may attend only their scheduled Mediation Sessions. No person associated with a competitor, such as coaches, family members, or close friends, may attend a Mediation Session other than a session in which that school's teams are involved, until both teams from the school have been eliminated from the competition.

Mere membership in a student body does not constitute association with a competitor. If a school has multiple teams participating in the competition, persons identified with those teams (other than the competitors themselves), such as coaches, family members, or others, may attend any of the Mediation Sessions in which that school's teams are involved.

At all times, it is the competitor's responsibility to comply with Rule 9(B) and to refuse any attempts at prohibited communication.

#### **1. Scouting Prohibited**

Scouting in any form is strictly prohibited. Scouting is the observation and sharing of information with a competitor about another team in the competition, during the competition, whether intentional or inadvertent. The responsibility rests on the team to refuse any attempted prohibited communication.

#### **2. Attending Final Round**

Teams that have already been eliminated may attend the final round, subject to all of the standard Rules. If there is another team from the same school in the final round, communication between the eliminated team and the participating team is prohibited from the beginning of the final round until the conclusion of the final round, which includes the judges' feedback to the competitors.

#### **3. Procedures for Observers for In-Person Attendance**

Because of the potential for disruption of the competition, all in-person observers of a Mediation Session are discouraged from leaving the room from the beginning of the Pre-Mediation analyses through the end of the Post-Mediation analyses.

Permitted observers who unavoidably must enter the room late, leave early, or temporarily excuse themselves should do so discreetly and without disruption.

After the completion of both Post-Mediation analyses, all competitors and observers must leave the competition room until the judges have completed their Scoring Ballots and written feedback Comment Sheets and are ready to provide oral feedback to the teams, at which time competitors and observers may return to the room.

#### **4. Procedures for Observers for Attendance During Virtual Rounds**

During Virtual Rounds, all observers including coaches, faculty advisors, friends, family, or others associated with a team, must have their videos and microphones muted and have no communication with the judges or teams in any way starting from when the first team conducts its Pre-Mediation analysis, and ending when the judges conclude providing oral feedback to the teams).

### ***B. Prohibited Communications During the Competition Rounds***

#### **1. Communications with Competitors**

No one, including team coaches and other persons associated with a team or competitor, may give advice or instructions to, or attempt to communicate in any other way, including using any form of technology, with any of the competitors during the period from commencement of the technical and conflict check when teams turn in their

Representation Plans through the completion of BOTH teams completing their Post-Mediation analysis and being dismissed by judges from the Mediation room.

## 2. Communications with Judges

Generally, team coaches, team competitors, and other persons identified with a team or competitor may not speak to a judge from the commencement of the technical and conflicts check when the Representation Plans are turned in until the completion of the judges' feedback to the teams.

However, competitors may respond to questions posed by the judges to them about their Representation Plans during the Pre-Mediation analysis or questions about their performance during the Mediation Session during the Post-Mediation analysis. Additionally, when a mediator must act as a judge, competitors are permitted to speak to and interact with the mediator as they normally would during the round.

## 3. Communications in the Case of Multiple Teams From the Same School

A coach, faculty advisor, or any other person associated with a team who observes a team may communicate with that team as soon as BOTH competing teams have completed their Post-Mediation analysis and have been dismissed from the Mediation room.

If a school has multiple teams competing, once a round has started the coach cannot communicate with either team until after that particular team has completed their round.

## 4. Special Rules for Communications in Virtual Competitions

Although any communication between teams and their coaches (and others associated with a team) has always been prohibited during rounds, this Rule is particularly crucial during a virtual competition as all involved are permitted to use cell phones, laptops, tablets, and other technology, which could make such communication undetectable by judges and/or administrators.

Therefore, all competitors, coaches, faculty advisors, and all others associated with a team are "on their honor" to refrain from any communication with the team using any form of technology or otherwise, during a round, which begins when the first team conducts its Pre-Mediation analysis through the completion of the judges' oral feedback to the teams.

## 5. Access to Confidential Information for Both Sides

No one having access to confidential information for both sides may act as a coach or competitor. Similarly, no one having access to confidential information for both sides can share such information with coaches or competitors.

## 6. Consequences of Engaging in Prohibited Communication

The mere act of communication or receipt of information proscribed by this Rule will constitute a violation, regardless of the substance thereof and regardless of whether initiated by a competitor or by any other person affiliated with a competitor. Violation of this Rule may result in disqualification by the MC Subcommittee (See Rule 19 for procedures). 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.

### ***C. Permissible Team Materials During Rounds***

During a Mediation Session, competitors may use the following:

- Handwritten or typed notes, including charts or graphs, only for their own reference;

- Calculators or stopwatches or cell phones in airplane mode for the purposes of timing or making calculations
- Blank flip charts or black/white boards to write on during the round – including virtual whiteboards or chat functions contained within the programs used to conduct Virtual Rounds – provided both teams have equal access to such tools
- In a virtual round, competitors may also use cell phones, tablets, computers, and/or other technology for the purpose of joining the competition via the online platform; and texting, emailing, and/or chatting between partners to simulate writing notes or whispering to each other as they would during an in-person round.

#### ***D. Prohibited Team Materials During Rounds***

During a Mediation round, competitors are NOT allowed to use the following:

- Teleprompters or other script-scrolling apps/devices;
- Cell phones, tablets, computers, and/or other technology for the purposes of communicating with coaches, faculty advisors, friends, or family during the round; nor conducting any internet research during the round, including during the caucuses and/or breaks taken by either team.
- Any props, prepared exhibits, or costumes

#### ***E. Permissible Outside Assistance***

Prior to the competition, a team may receive advice and suggestions from any source, including practicing lawyers, professors and faculty members, and team coaches. During the competition, coaches and faculty advisors may only advise, communicate with, and observe their teams as provided in these Rules.

### **Rule 10. Scoring and Judging Standards**

Teams are evaluated and scored based on the quality of their presentations and not on the merits of the side they represent. The judges will evaluate each head-to-head Mediation Session based on 9 criteria, each worth 20 points, for a maximum score of 180 points. The criteria are as follows:

1. Pre-Mediation Analysis & Mediation Planning;
2. Presentation of Case in Opening & Throughout;
3. Advocating Client’s Interests & Outcome of Session;
4. Teamwork Between Attorney & Client;
5. Problem-Solving & Relationship-Building with Opposing Team;
6. Generating & Selecting Creative Options
7. Interaction with the Mediator
8. Caucus
9. Post-Mediation Analysis

Judges will also determine whether the teams negotiated ethically. Ethical violations are defined as one or several of the following:

- Misrepresentation of a material fact;
- Exceeding settlement authority;
- In a virtual competition, a technical glitch used as a “stalling” technique that wastes a team’s time to negotiate (as determined by the judges).

If, in the opinion of the judges, an ethical violation has occurred, judges may impose a penalty, ranging from a reprimand to the deduction of points from the offending team’s overall score. The type of penalty imposed will depend on the gravity of the offense.

Although judges are required to evaluate teams independently, if an ethical violation is observed, judges must confer and reach a majority decision. A brief explanation of why the penalty is assessed must be provided on the ballot sheet. Penalties can be reviewed by the ABA Mediations Subcommittee. No team can be disqualified except by authorization of the ABA Mediations Subcommittee.

For each judge, the winning team is the team the judge awards the higher number of points, without tying. For each head-to-head Mediation Session, the winning team is the team winning the greater number of judges' ballots (either 2 or 3 ballots).

For rounds with more or less than 3 judges, see Rule 7(B) above for creating a third judge's ballot.

#### ***A. Collecting Judges' Scoring Ballots and Comment Sheets***

After each Mediation Session, the judges' Scoring Ballots must be collected by the competition administrator *before* the judges give feedback to the teams. The judges may give their Comment Sheets directly to the teams after the judges provide oral feedback.

#### ***B. Ranking Teams After Preliminary Rounds for Regional and National Competitions***

To determine which teams will advance out of the preliminary rounds, the competition administrator must create a preliminary round tally sheet to track each team's scores.

Once the Scoring Ballots from both preliminary rounds are collected and entered into the tally sheet, the following criteria shall be used to rank teams and to break ties.

1. Win/loss record (this number will be 0, 1, or 2);
2. Number of judges' ballots won/loss (this number will be between 0 and 6);
3. Previous head-to-head competition (To easily record the head-to-head team outcome, the Competition Administrator should use the team-pairing schedule and highlight the winning team from each room.);
4. Point differential (which is the total number of points by which each team won or lost against its opponents in the two preliminary rounds—the higher the point differential, the higher the team will be ranked);
5. Overall raw score for each round;
6. Higher score for criterion #3 (Advocating Client's Interests & Outcome of Session); and, finally,
7. Random coin toss.

#### ***C. Advanced Round Scoring***

The regional Final Round and the national Semifinal, and Final Rounds will be scored as head-to-head Mediation Sessions. The winner of each round, or of each head-to-head Mediation Session is determined by the number of judges' ballots each team wins.

#### ***D. Scoring for Single-Person Teams for Criteria 4 (Teamwork Score)***

Because all teams are encouraged to register at least one alternate and have that alternate "at the ready" before each round, the MC Committee hopes to avoid having any single-person teams this year.

However, should a single-person team be present in the virtual competition, the judge will average criteria 1, 2, 3, 5, and 6, 7, 8, and 9 and enter that result (to the nearest whole number) as the teamwork rating on the Scoring Ballot.

The scoring of a single-person team will only apply for the purposes of determining the win/loss and number of judges ballots for the opposing team for that round. No team may advance past the preliminary rounds in the competition with only one member. See Rule 2 and 2(A) for further details.

### ***E. Distribution of Judges' Scoring Ballots***

Each team shall receive a copy of the Scoring Ballots for their team from every round. The competition administrator shall distribute the judges' Scoring Ballots, along with the preliminary round tally sheet to the competitors before the 10-minute Tally Review Period at the conclusion of the two preliminary rounds. One team may receive the original Scoring Ballot while the other receives a copy as long as all of the Scoring Ballots have been scanned to be sent to the ABA after the competition.

## **Rule 11: Competition Administration**

The ABA LSD and the MC Subcommittee of the ABA LSD Competitions Committee conduct this competition.

The competition webpage is located at  
[https://www.americanbar.org/groups/law\\_students/events/competitions/mediation/](https://www.americanbar.org/groups/law_students/events/competitions/mediation/).

The Mediation Competition Subcommittee, together with the Competition Administrators, administer the Regional Competition. A member of the MC Subcommittee is available by telephone for each Regional Competition. Faculty coaches and advisors of competing teams are prohibited from judging or assisting in the administration of the competitions in which their teams are competing.

The ABA Law Student Division and MC Subcommittee directly administer the National Competition.

## **Rule 12. Reporting and Resolving Complaints, Violations, and Disputes**

### ***A. Process for Filing a Complaint at the Competition***

Any complaint that may affect the results should be resolved on the day of the competition by the MC Subcommittee. Complaints must be filed within 10 minutes of the conclusion of the round. The end of the round is before the judges begin the joint feedback period. Competitors and faculty advisors/coaches waive the right to appeal any matter arising in the course of a competition round by failing to file a timely objection with the competition administrator. Every effort should be made to file a complaint while the judges are still available for consultation.

### ***B. Fact-Gathering Committee***

The MC Subcommittee, after learning of a complaint, may request that a small committee be assembled to help gather facts about the issue. The committee could be comprised of 2-3 coaches or faculty advisors from law schools whose teams are not involved on either side of the complaint.

### ***C. Scope of Violations MC Subcommittee May Consider***

In general, the MC Subcommittee will not hear any appeal relating to an alleged violation that is within the discretion of the judges. If the MC Subcommittee chooses to hear a violation that is within the discretion of the judges, the MC Subcommittee will determine appropriate sanctions.

With respect to complaints not related to those within the sole discretion of the judges' panel, a claimed violation of the Rules is to be decided by the MC Subcommittee, which will have full discretion to determine appropriate sanctions.

In assessing the severity of the penalty, the MC Subcommittee should consider whether the complained of conduct was purposeful or inadvertent and whether it resulted in substantial prejudice affecting the result. Possible dispositions for complaints range from dismissal to reprimands, assessment of penalty points, and



disqualification.

***D. Rules Interpretation***

The MC Subcommittee, in its sole discretion, shall interpret these Rules and may create additional Rules to govern situations not covered by these Rules and to ensure fairness in the competition.

***E. Team Disqualification***

If the MC Subcommittee disqualifies a team, all teams below the disqualified team shall move up one place in the standings. In the event that the MC Subcommittee assesses a team with penalty points, the penalty points will be subtracted from the affected team's overall score.

***F. MC Subcommittee Decisions Final***

The decisions of the MC Subcommittee will be final.

***G. Time for Filing Complaints to ABA***

Any complaint affecting the final results of a Regional Competition must be received in writing by the Chicago Office no later than 5:00 p.m. CST on the Monday following the end of the competition.

**Rule 13. Video Recording**

The Final Round at Regional Competitions and the National Competition Final Rounds may be video recorded by the ABA or their designee. Teams may not record in whole or in part, any part of the competition. A student's decision to enter and participate in the competition constitutes consent to video recording. As a condition of publication and for no monetary compensation, this consent grants the ABA the nonexclusive worldwide rights to reproduce, distribute, and sell any visual material in connection with the student's participation, in whole or in part, in any media, as part of a course book or any other publication published under the auspices of the ABA and to license these rights to others. Consent also grants the ABA the right to use student's name, voice, and image in connection with the published competition materials.

**No video or audio recording by teams or spectators is permitted.**

Although many virtual platforms make it easy to record a session, no video or audio recording is allowed by any teams, competitors, judges, coaches, faculty advisors, or others associated with a team during any of the rounds. Only the host may choose to record the final round(s).

**Rule 14. Expenses**

All competition expenses, including lodging, travel, and incidental costs, are the responsibility of the competitors and will not be reimbursed by the ABA Law Student Division.

**Rule 15. Professional Conduct**

In general, the ABA Model Rules of Professional Conduct govern the conduct of all participants including students, faculty advisors, team coaches, administrators, and observers. Thus, everyone who participates in or observes a Mediation competition is expected to uphold the highest level of professionalism during the competition and at all competition-related events.

Although Comment 2 to Model Rule 4.1 (Truthfulness in Statements to Others) explains that a party's intentions

as to an acceptable settlement of a claim are ordinarily not taken as statements of material fact, when negotiating, competitors should not misrepresent their authority to settle as expressed in the Mediation problems. Not misrepresenting one's authority upholds the integrity of the competition.

In addition to violations under Rule 12, the MC Subcommittee may consider and sanction any violations of professional conduct during the competition or any competition-related activity. Possible sanctions for violations range from reprimands to loss of rank to revocation of an invitation to the National Competition.

#### ***A. Professional Conduct during Virtual Competitions***

In addition to the normal Rules regarding professional conduct, all teams, coaches, faculty advisors, and others associated with a team are to operate "on their honor" during the virtual competition to abide by all Rules (both in the standard Rules and in this supplement). Law is a self-policing profession and, although it might be easier to violate some Rules without being detected, it should be everyone's goal to comply with all Rules and to participate as if you were being recorded and/or in person.

### **Rule 16. Additional Terms and Conditions**

This competition is governed by United States law and all relevant federal, state and local laws and regulations apply. By entering, all participants agree that the competition shall be governed by the laws of the State of Illinois, that the courts of Illinois shall have exclusive jurisdiction, and that Cook County, Illinois shall be the venue for any dispute or litigation arising to or arising from the competition. This competition is void where prohibited by law.

By participating, each entrant agrees with these Competition Rules and the decisions of the ABA, and releases and discharges the ABA, subsidiary and affiliated entities, and each of their respective officers, directors, members, employees, independent contractors, agents, representatives, successors and assigns (collectively, "Sponsor") from any and all liability whatsoever in connection with this Competition, including without limitation, legal claims, costs, injuries, losses or damages, demands or actions of any kind (including without limitation personal injuries, death damage to, loss or destruction of property, rights of publicity or privacy, defamation, or portrayal in a false light) (collectively, "Claims"). Except where prohibited, acceptance of a prize constitutes a release by any winner of the Sponsor of any and all Claims in connection with the administration of this Competition and the use, misuse or possession of any prize. Sponsor is not responsible for errors or for lost, late, or misdirected mail or email, or telecommunication or hardware or software failures, including by reason of any bug or computer virus or other failure. Sponsor may cancel, modify or terminate the Competition if it is not capable of completion as planned, including by reason of infection by computer virus, tampering, unauthorized intervention, force majeure or technical difficulties of any kind.

### **Rule 17. Information**

Questions concerning schedules, facilities, and accommodations for the Regional Competitions should be directed to the Competition Administrators for each respective region. Questions about the Mediation Competition in general, Rules interpretation, and the National Competition should be directed to:

American Bar Association  
Law Student Division  
Attn: Mediation Competition  
321 North Clark Street  
Chicago, IL 60654  
312-988-5671 or [competitions@americanbar.org](mailto:competitions@americanbar.org)

Competition information is also available on the competition's web site at [www.ambar.org/lstdcompetitions](http://www.ambar.org/lstdcompetitions).

Team Letter: Student #1: Student #2:	<b>JUDGE'S NAME:</b> <b>CIRCLE ROUND: PRELIM 1 PRELIM 2 FINAL</b>	Team Letter: Student #1: Student #2:
(max 20 pts)	<p><b>1. MEDIATION PLANNING/PRE-MEDIATION ANALYSIS</b></p> <p>Including the Pre-Negotiation Analysis and the Representation Plan, the team was prepared based on its performance and demonstrated effective strategic thinking.</p> <p>Poor    Marginal    Average    Good    Excellent 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20</p>	(max 20 pts)
(max 20 pts)	<p><b>2. PRESENTATION OF CASE IN OPENING &amp; THROUGHOUT</b></p> <p>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)</p> <p>Poor    Marginal    Average    Good    Excellent 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20</p>	(max 20 pts)
(max 20 pts)	<p><b>3. ADVOCATING CLIENT'S INTERESTS &amp; OUTCOME OF SESSION</b></p> <p>Regardless of whether an agreement was reached, the outcome served the client's goals; 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</p> <p>Poor    Marginal    Average    Good    Excellent 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20</p>	(max 20 pts)
(max 20 pts)	<p><b>4. TEAMWORK BETWEEN ATTORNEY &amp; CLIENT</b></p> <p>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.</p> <p>Poor    Marginal    Average    Good    Excellent 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20</p>	(max 20 pts)

(max 20 pts)	<p><b>5. PROBLEM-SOLVING &amp; RELATIONSHIP BUILDING WITH OPPOSING TEAM</b></p> <p>Team worked well with opposing team to contribute and not detract from achieving client’s best interests; Established a problem-solving relationship with other side, if possible; Recognized other side’s interest and tried to satisfy them if helpful to own client’s interests; Took initiatives to convert other team into problem-solvers.</p> <p>Poor 1 2 3 4</p> <p>Marginal 5 6 7 8 9</p> <p>Average 10 11 12 13 14</p> <p>Good 15 16 17 18</p> <p>Excellent 19 20</p>	(max 20 pts)
(max 20 pts)	<p><b>6. GENERATING &amp; SELECTING CREATIVE OPTIONS</b></p> <p>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.</p> <p>Poor 1 2 3 4</p> <p>Marginal 5 6 7 8 9</p> <p>Average 10 11 12 13 14</p> <p>Good 15 16 17 18</p> <p>Excellent 19 20</p>	(max 20 pts)
(max 20 pts)	<p><b>7. INTERACTION WITH THE MEDIATOR</b></p> <p>Responded appropriately to the mediator; Engaged the skills of the mediator to assist in breaking impasse and/or move towards resolution; Made active use of the mediator to help structure and manage the discussion</p> <p>Poor 1 2 3 4</p> <p>Marginal 5 6 7 8 9</p> <p>Average 10 11 12 13 14</p> <p>Good 15 16 17 18</p> <p>Excellent 19 20</p>	(max 20 pts)
(max 20 pts)	<p><b>8. CAUCUS</b></p> <p>Chose intelligently whether and when to use a caucus; if caucus used, used caucus effectively. Effective use of caucus may include but is 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.</p> <p>Poor 1 2 3 4</p> <p>Marginal 5 6 7 8 9</p> <p>Average 10 11 12 13 14</p> <p>Good 15 16 17 18</p> <p>Excellent 19 20</p>	(max 20 pts)

(max 20 pts)	<b>9. POST-NEGOTIATION ANALYSIS</b>  Team demonstrated that it learned from today's negotiation and recognized the strengths and weaknesses of their performance and their outcome appropriately (Scored after each team's individual Post-analysis.)  Poor                                  Marginal                                  Average                                  Good                                  Excellent 1   2   3   4   5   6   7   8   9   10   11   12   13   14   15   16   17   18   19   20	(max 20 pts)
YES—ethical NO—not ethical	<b>NEGOTIATING ETHICS—CIRCLE ONE</b>  Did team observe ethical standards? Examples of potential ethical violations include: misrepresenting material facts, exceeding authority, or inventing self-serving facts. If a team violated an ethical standard, please provide a brief explanation on the reverse side of this Scoring Ballot.	YES—ethical NO—not ethical
<b>Total</b> (max 120 pts)	<b>PLEASE INDICATE THE WINNING TEAM'S LETTER (No ties):</b>	