



TOM NEWHOUSE MEDIATION COMPETITION

October 7 & 8, 2023

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WHAT IS MEDIATION?

- **Mediation** is a private process where a neutral third person (a mediator) helps the parties discuss and potentially resolve the dispute.
- **Caucus:** a confidential, private meeting held by the mediator with individual parties during the mediation process.
 - Assumption is the conversation is confidential BUT you can ask the mediator to share certain information with the other side.
- **Best Alternative to a Negotiated Agreement (BATNA):** The BATNA represents the best-case scenario in the event that negotiations fail and a deal cannot be reached with the other party.
 - Consider the value of the relationship, the time, and the money, as well as the likelihood that the other party will live up to their obligations under an agreement.
- **Worst Alternative to a Negotiated Agreement (WATNA):** The WATNA represents the worst-case scenario in the event that negotiations fail and a deal cannot be reached with the other party.

Mediation puts the power of the law into the people's hands!

WHAT IS MEDIATION?

- The mediator is in charge of caucuses and break out rooms
- Each team consists of 2 students:
 - One as the **attorney** and other as the **client**
 - Teams **must switch roles** after the initial round
- This is a closed research competition:
 - Your only sources are in the competition packet
 - You may make reasonable inferences
 - Cannot agree to or state anything that is not within your authority
- Each problem set has **General information**, given to both sides of the mediation.
- **Confidential information** is given only to one side
- **Caucuses** may be called as many times as needed and may last as long as the teams/mediator decide—**be strategic about this!**

BASICS

- Rounds will be 120 minutes + 10 minutes of Judge Feedback
- Each round is broken up into the following:
 - **Mediator's Opening Statement**
 - Mediator explains the purpose and function of mediation and verifies the parties' consent to the mediation process.
 - **Plaintiff's Opening Statement**
 - Plaintiff attorney and client outline opening positions and interests.
 - **Defendant's Opening Statement**
 - Defendant attorney and client outline opening positions and interests.
 - **Mediation Session**
 - Mediators and parties work together through mutual exploration and caucuses to reach a joint settlement.

(5-10 minutes is suggested for each opening statement but it is up to your team)

PRELIMINARY & SEMI SCHEDULE

- Saturday, October 07, 2023 – Preliminaries
 - **9:30 AM** Check in via Zoom for Round 1
 - **9:45 AM** Log into your Zoom room
 - **10:00 AM – 12:30 PM** Preliminary Round 1
 - **1:30 PM** Check in via Zoom for Round 2
 - **1:45 PM** Log into your Zoom room
 - **2:00 PM – 4:30 PM** Preliminary Round 2
 - **5:00 PM** Announcement of Teams that Advance
- Sunday, October 08, 2023 – Semi's
 - **9:30 AM** Check in via Zoom for Semifinals
 - **9:45 AM** Log in to your Zoom Room
 - **10:00 AM – 12:30 PM** Semi Final Round

You must login to the Zoom session using a computer, you cannot use your cell phone!

CHAMPIONSHIP SCHEDULE

- Sunday, October 08 – Championship Rounds
 - **1:00 PM** Check in via Zoom
 - **1:15 PM** Log in to your Zoom Room (team 1 and 2)
 - **1:30 PM – 3:30 PM** First Championship Round (team 1 and 2)
 - **3:45 PM** Log in to your Zoom room (team 3 and 4)
 - **4:00 PM – 6:00 PM** Second Championship Round (team 3 and 4)



CHAMPIONSHIP SCHEDULE

- **IF YOUR TEAM HAS A SCHEDULING CONFLICT WITH THE SEMIFINAL OR FINAL ROUND, YOU CANNOT ADVANCE.**
- **YOU MAY STILL COMPETE IN DAY 1 OF THE COMPETITION.**
- **PLEASE INDICATE THE CONFLICT ON THE REGISTRATION FORM.**

REGISTRATION

- **Registration is live TOMORROW AT 12 PM!**
- **Must pay a Competition fee**
 - \$50 per person for non-Advocates Members
 - \$10 for Advocates Members
- **Submit registration form on the Advocates website and submit payment**
 - <https://theadvocatesatuhlc.org/competitions/tom-newhouse-mediation/>
- **If you encounter a registration issue, please reach out to me!**



HOW WILL IT WORK?

- Teams will get a confirmation of who's registered and their team number after registration closes.
- Fact patterns will be made available **one (1) week before the competition.**
- Zoom links will be sent to each individual team prior to the competition weekend.

How does scoring work?

- Teams are scored out of 100 points in each round.
- The team with the higher score wins the round.
- **Judges score teams on a scale of 1-10 for each of the following criteria:**
 - Preparation
 - Case Analysis
 - Presentation of the Case
 - Client's Goals & Expectations
 - Understanding the Opposition
 - Alternative Courses of Action
 - Answering & Asking Questions
 - Attorney/Client Working Relationship
 - Client Performance
 - Time Management

Failure to reach a settlement will not impact your score!

Criteria for advancing

- 8 teams advance to the semi-finals.
- Advancement is decided based on the amount of wins out of the first two preliminary rounds.
- If there is a tie, then the team with the highest raw total score from both rounds advances.
- Example:
 - 10 teams win both preliminary rounds and there are 8 semi-finalist slots.
 - We would then look at the total raw score from both rounds (out of 200).
 - The 8 teams with the highest total raw score advance.

Failure to reach a settlement will not impact your score!

RULES & CREDIT

- Students can earn 1 hour non substantive credit by:
 - Making a GOOD FAITH EFFORT in the competition, **and**
 - Completing the timely submission of the writing assignments
- Team Requirements
 - All teams are required to compete in 2 preliminary rounds (switching roles)
 - Team members must be in separate rooms
 - Cameras and microphones must be on during the entire competition
 - No virtual backgrounds allowed and you must be logged in from a computer
 - May not consult attorneys or professors for strategies or tactics
 - Must have the most recent version of zoom downloaded
 - Show good faith effort and be prepared - must not be intoxicated or hungover

WRITING REQUIREMENTS

- **ALL WRITING: 1" margin, Times New Roman, double spaced, 12 pt. font.**
 - **Each team member must complete the writing requirement separately.**
 - **Each team member must email the documents to theadvocatesatuhlc@gmail.com**
 - **CC: naesposi@cougarnet.uh.edu**
 - **Round 1 and Round 2 are different problem sets. Please pick either the problem from Round 1 or Round 2 corresponding to your side (A or B) for the writing requirement.**
- **Due October 6th 2023:** Position Statement & Proposed Settlement Strategy
 - You may discuss your position and strategy with your team but it must be drafted yourself.
 - Written mediation position statement **(1 page)**
 - A proposed settlement strategy in light of your position statement **(3 to 5 pages)**
- **Due October 21st 2023:** Post-competition Analysis
 - You may discuss it with your team but must draft your own. **(5 page minimum)**
 - A post-competition analysis of the final outcome
 - How well did your team's strategy work, what would you change etc.

CREDIT

- **Due October 6th 2023 by 11:59 pm:** Position Statement
 - Mediators often require parties to provide a position statement prior to the mediation.
 - **Each team member** must submit their own **written Position Statement** not to exceed **one page** in length, with their team number on the document.
 - Follow the **subject line** and **file name** requirements.
 - The Position Statement should include the **legal and factual issues in dispute** from your team's perspective, as well as **your team's positions on the issues**.

*Positions are the surface objectives a party asserts that it desires as an outcome of negotiations, as opposed to interests, which are a party's underlying needs whose fulfillment the conflict appears to be disrupting. **Example:** "Get the neighbors to turn down their music" (**position**) "Enjoy time at home in peace and quiet" (**interest**).*

CREDIT

- **Due October 6th 2023 by 11:59 pm:** Settlement Strategy
 - **3-5 pages.**
 - The settlement strategy is the risk assessment analysis of the client's position and the strategy developed as a result of the legal & factual analysis.
 - Include your client's
 - Interests
 - Desired outcome going into the mediation
 - Best Alternative to a Negotiated Agreement (BATNA)
 - Worst Alternative to a Negotiated Agreement (WATNA)
 - What your client would be willing to accept or give up
 - The Opponent's
 - Projected interests
 - Projected BATNA
 - Projected WATNA



CREDIT

- **Writing Assignment due October 21th 2023 by 11:59 pm**
 - **5 page minimum:** post-competition analysis of the final outcome.
 - Detail what actually happened during the mediation in light of your team's projected settlement strategy.
 - How well did your team's strategy work, what would you change, etc.



PRIZES

Winners will receive the following:

- Cash prize
- Plaques
- Names posted on the advocacy website

Resources

- What is the mediation process?
 - <https://www.pon.harvard.edu/daily/mediation/dispute-resolution-how-meditation-unfolds/>
- What is a BATNA?
 - <https://www.pon.harvard.edu/daily/batna/translate-your-batna-to-the-current-deal/>
- Mediation Tips
 - <https://www.americanbar.org/news/abanews/publications/youraba/2018/april-2018/experts-share-strategies-for-representing-clients-in-meditation-/>
- Recorded Final Rounds from 2022
 - [https://law.uh.edu/blakely/mediatorcompetition/2022/Mediator%20H/Mediator%20H%20\(15%20v%2022\)%20Final%20Round.mp4](https://law.uh.edu/blakely/mediatorcompetition/2022/Mediator%20H/Mediator%20H%20(15%20v%2022)%20Final%20Round.mp4)
 - <https://law.uh.edu/blakely/mediatorcompetition/2020/Mediator%20B/Mediator%20B%20%20-%20Final%20Round.mp4>



Questions

