



SCHOOL
OF LAW



SECURITIES DISPUTE RESOLUTION TRIATHLON RULES: *The Virtual Competition*

I. Competition Mission:

The practice of law is evolving from a litigation-centric to a settlement-focused practice. Practicing lawyers now need to be proficient in the skills required to advocate in different dispute resolution processes and to distinguish what each forum offers. The Securities Dispute Resolution Triathlon provides law student participants an invaluable learning opportunity to integrate the dispute resolution processes of negotiation, mediation, and arbitration into their client representation. Participants will learn to differentiate the advantages of each process and hone the distinct advocacy skills that are required not just to win, but also to find a better win for their clients.

The Triathlon problems used in the competition are designed to mirror real life situations. Not all problems are balanced, and like the rest of life, truth is often stranger than fiction. The goal is to learn how to advocate in each of the three processes and discern which process is best for your client given the facts of the case.

During this year's Triathlon, students will hone their virtual advocacy skills.

II. Format:

This competition consists of three rounds that will take place over two days. The negotiation and mediation advocacy rounds take place on Day One, followed by the arbitration advocacy round on Day Two. The total time allotted for each round, including time for judges' feedback, varies. *Please see attached Schedule of Events. **Please note: there will also be a virtual orientation on Friday, October 14 at 3 pm est. All teams, coaches, judges, and mediators must attend.***

Five awards will be given: 1) Excellence in Negotiation, 2) Excellence in Mediation Advocacy, 3) Excellence in Arbitration Advocacy, 4) the Advocate's Choice, and 5) the Triathlon Champion. Winners of all awards will be announced at the conclusion of the competition. For an explanation of each award, see Section XIII (Scoring).

III. Eligibility:

The competition is open to all full and part-time law students enrolled in ABA approved law schools during the semester the competition is held. Students enrolled in joint degree programs (i.e. JD/MA, JD/MBA) who have not graduated from law school and are enrolled in the joint program for the semester are eligible. LL.M students who are not members of the bar of any state or any foreign jurisdiction may participate in the competition.

IV. Composition of Teams:

Each team will consist of three members. Each student on the team will serve as an attorney in at least two of the three rounds. In the arbitration round, one student will serve as a lawyer who does the opening and direct, another student will serve as a lawyer who does the cross and summation and one student will act as the client. In the negotiation and mediation rounds, one student will serve as an attorney, one student will serve as a client and one student will serve as a settlement counsel. *Each team member should only have their team letter and the role they are playing in that round on their zoom screen.*

Settlement counsel plays a distinct role in the negotiation and mediation rounds. At the beginning of the negotiation and mediation rounds, the settlement counsel will preview to the judges and neutrals the negotiation strategy of their team. This will help alert judges to a given team's approach and to allow the judges to better evaluate how effectively a team implements their chosen strategy. Settlement counsel will then observe their teams in the negotiation and mediation rounds. When it is time or the team to prepare for the self-evaluation portion, settlement counsel may participate in both the preparation for the self-evaluation and the presentation of the self-evaluation to the judges.

During each round, settlement counsel may communicate with team members only during team-initiated breaks, during mediator's caucuses with the other team, and during preparation for the team's self-evaluation. Settlement counsel may observe their own team's caucuses with the mediator but may not communicate with team members during those caucuses. *During the virtual round, settlement counsel should have their webcams off except when presenting their settlement strategy to the judges and when participating in the self-assessment. During the virtual round, settlement counsel must, along with the rest of their team, be placed in a breakout room when the other team is in caucus. Settlement counsel should only have their webcams on during the times they are permitted to communicate with their team members, judges, and neutrals. At all other times, settlement counsel should have their webcams off.*

The students on each team are to determine among themselves who will act in which role

for each round. However, each student can act in any one role (settlement counsel, lawyer, and client) only once throughout the competition, with one exception. One student on each team will be able to act in the role of lawyer in two of the three rounds. One of those two rounds must be the arbitration round. There will be no substitutions of team members at any time during the competition.

At the close of the competition registration deadline, teams will be matched with opposing teams for each round of the competition. No two teams will compete against each other in more than one round. No two teams from the same school will compete against each other. For purposes of administration and anonymous scoring, each team will be assigned an identifying letter prior to the competition.

V. The Problem:

There will be one problem that will be used for all three rounds of the Triathlon. For each new round, there may be additional facts and assumptions provided. The problem will be distributed approximately one month prior to the competition. The problem will consist of background information and private facts for each round. All judges and neutrals will receive all background information and private facts provided to the teams. Neutrals will be asked to keep all private facts confidential except to the extent those facts are brought out by the competitors.

The problem will be drafted in gender-neutral format, meaning that either a male or female law student can play the role of the party on either side of the problem. The problem is carefully drafted to create a balanced playing field. Teams may draw reasonable inferences from the facts provided and may do some outside research to become more familiar with the subject matter and legal issues. However, when presenting "facts" in the role-play, the students are limited to the facts as written in the problem and the reasonable and natural inferences that flow from them. Any gaps in the facts may be filled in with information that does not contradict the facts provided and that is not unfairly self-serving. Violation of this provision may result in sanctions in accordance with Sections XIX and XX. Please note, at the beginning of each round, students are to begin with the background and private facts provided for that round. Information learned in previous rounds does not carry over to the next round because teams may learn or exchange different information in each negotiation or mediation room.

Requests for clarification of the problem may be sent to Elayne E. Greenberg at greenbee@stjohns.edu with a subject header, "Request for Triathlon Clarification." The deadline to request clarifications will be announced with the distribution of the competition problem. Requests for clarification should be limited to matters that would appear to have legal significance in the context of the problem. A request for clarification must include a

short explanation of the expected significance of the clarification.

About two weeks after the submission deadline, all clarifications about the background information will be distributed to registered teams by e-mail and a notice of the clarification will be posted on the St. John's University School of Law Triathlon website. Clarifications about a particular side's private facts will be e-mailed only to those teams who are representing that side. All clarifications issued become part of the problem. Permissible Assistance:

Prior to the Competition:

The team coach or faculty adviser may advise the team in its planning and preparation for the competition. Prior to the competition, coaches and non-competing law students may assist competitors by mooted or vetting the competition problem. Competitors may seek guidance from faculty advisors, coaches, etc. regarding the general substance of the law; however, teams shall not receive assistance regarding the possible options or solutions to the legal issues presented in the problem. Coaches may, however, tell their teams they need to be more flexible or need to create more options but may not help the team come up with those options. The prohibition against assistance regarding the possible outcomes applies to everyone - inclusive of coaches, faculty, peers, and all others. Students are encouraged to expand their legal knowledge base related to the problem but no one other than the competing students should be involved in coming up with solutions. Competitors may not seek assistance with the actual writing or editing of their written submissions.

During the Competition:

Once the first round of the competition begins, the only permissible assistance competitors may receive is from their coach or faculty advisor pursuant to these rules. 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 during the period from commencement of the participants' round through completion of the self-analysis and final scoring period for that round. Coaches may provide advice to their team in advance of the individual rounds but may not provide any such assistance once the round has commenced.

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 sanctions. See XIX. 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 round.

VI. Orientation:

Three separate, simultaneous orientations will be provided for each round. One orientation will be for judges and neutrals; the second orientation will be for participants, their coaches, and faculty advisors representing Claimant; and the third orientation will be for participants, their coaches and faculty advisors representing Respondent. The orientation for the negotiation and mediation round will be provided on Friday as part of the general orientation. The orientation for the arbitration round will be provided on Sunday.

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

VII. Teams' Written Submissions

Each team will be required to *submit* a written submission that demonstrates their preparation and advocacy skills. In keeping with the anonymity instruction, teams should not put their school's name or any other identifying mark or symbol on any written submission. Instead, teams should use the role assigned and their team letter designation to identify their plan. Teams should submit by email the written submissions to *the link provided by the competition organizer*. Before each round begins, judges are instructed to read each side's written submission to help the judges interpret what they are observing.

Negotiation Round:

For the negotiation round, each team will be required to submit a one-page 8 1/2 x 11 sheet, 12 point font negotiation plan. The line spacing should be 1.5 and the borders should be 1". The plan should consist of an outline with a brief description under each of the five headings:

- I. Our Side's Interests - identify in order of priority the interests that your side would like to advance;
- II. Other Side's Interests - identify in order of priority the likely interests the other side is trying to advance;
- III. Information Gathering - additional information you would like to learn from the other side during the negotiation;
- IV. Responsibility Sharing - explain how you plan to share responsibilities

- between the attorney and the client in the negotiation session; and
- V. Negotiation Strategy - your negotiation strategy in light of the four proceeding factors.

Mediation Round:

For the mediation round, each team will be required to submit a one-page 8 1/2 x 11 sheet, 12 point font mediation representation plan. The line spacing should be 1.5 and the borders should be 1". The plan should consist of an outline with a brief description under each of the five headings:

- I. Identify Impasse(s) - identify the impasse(s) that have prevented this conflict to resolve;
- II. Responsibility Sharing - explain how you plan to share responsibilities between the attorney and the client in the mediation session;
- III. Our Side's Interests - describe the interests that your side plans to advance in the mediation session;
- IV. Other Side's Interests - describe the likely interests the other side is trying to advance; and
- V. Use of the Mediator - explain how you plan to use the mediator to overcome impasse(s) and advance your client's interests.

Arbitration Round:

For the arbitration round, each team will be required to submit a two-page 8 1/2 x 11 sheet, 12 point font statement of facts. The line spacing should be 1.5 and the borders should be 1".

VIII. The Role of Settlement Counsel and Self-Analyses:

Settlement Counsel Presentation:

The Triathlon includes an important role for settlement counsel in the negotiation and mediation rounds. Each of those rounds will begin with a **five-minute** oral presentation by the team's settlement counsel, in which the settlement counsel previews to the judges and mediators the team's advocacy strategy and the rationale for the chosen strategy. Team members may be present. The opposing team may not be present, although all coaches, faculty advisors, and observers may remain. Judges are asked to refrain from asking questions or making comments during settlement counsel's presentation.

Team Self-Analysis:

Following the conclusion of each of the three rounds, each team will have **ten minutes**

to prepare for self-analysis. Each team will then give a **ten-minute** presentation before the judges in which they will orally analyze their own performance by answering the following questions:

1. Reflecting back on the entire round, explain whether you followed your pre-stated strategies.
2. How well did your team members work together? Explain.
3. Identify your team's difficulties. With the benefit of hindsight, how would you have approached them differently?
4. How well did your team's advocacy style work in this forum to advance your client's interests?
5. How well did your team advance your client's interests?

All team members, including settlement counsel, are eligible to participate in the self-analysis. Allocation of responsibility for the self-analysis is within the discretion of the team, however, and it is not required that all team members participate.

Judges are only allowed to ask questions about the teams' 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.**

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 the team strategically made certain choices. For scoring purposes, the judges may take into consideration anything said during this session.

Each team will be selected to present their self-analysis first in one of the three rounds. The competition administrators will determine the order in which each team will present their self-analysis.

IX. Mediators, Arbitrators, and Judges:

In the mediation and arbitration rounds, experienced FINRA neutrals will serve in the roles of mediators and arbitrators. FINRA mediators and arbitrators will conduct the mediation and arbitration rounds in a style similar to the one they use in FINRA mediations and arbitrations.

Three judges will observe and score the quality of representation by the student teams. Judges also give feedback directly to the students at the end of each round after the teams complete their self-analysis. In the mediation round, if only two judges are available, the mediator will act as the third judge and participate in evaluation and scoring. In the arbitration round, the arbitrators will also serve as judges. The judges will evaluate the

performance of the student-participants according to the standards and criteria provided. (See sample judge's Score Sheet attached.) To the extent possible, teams will not be judged by the same judge in multiple rounds.

After the judges have completed the scoring they will have the opportunity to provide feedback to both teams for 15 minutes. Coaches for all teams and any other spectators may remain in the virtual room through the entire process, including the feedback sessions for both teams.

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. He or she may also 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 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 in without disrupting the other sessions; or (2) an insufficient number of judges exists to allow a substitution. 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. Accordingly, no reasonable basis exists for disqualifying the mediator under these circumstances.

X. Observers:

All non-competitors, including faculty advisors and coaches, who wish to observe the competition must *notify the competition organizers by email at the same time the team's written submissions for the round are submitted*. Each team may have no more than a total of two observers, faculty advisors or coaches present in the competition room at any time. *Coaches and faculty advisors are expected to have their webcams off during the entire round*. Coaches and faculty advisors must remain in the room until the end of the judges' critique period. Observers who are not coaches or faculty advisors are expected to remain in the competition room until the end of the judges' critique period. If an observer must leave the room prior to the completion of the round, the observer may not re-enter the room or have any contact with the competitors until the round is completed.

XI. Timekeeping:

Responsibility rests with the student participants for timekeeping and adherence to the allotted time periods for competition sessions, breaks and caucuses. 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 round involving that participant. Abuse of time limits may result in a 5-point penalty deduction. Decisions by the judges with respect to elapsed times are final and non-reviewable. Responsibility for timekeeping during the self-analysis period rests jointly with the participants and judges, each having the responsibility to adhere to the time limits. If a timekeeper is available the timekeeper should inform the participants of time but should leave to the participants responsibility for adhering to the time limits.

XII. Scoring:

In each round, each of the judges rates the performance of each team on certain relevant criteria. The teams will be rated by different criteria in each of the three rounds. The criteria on which the teams will be judged are set out in the accompanying sample of the judge's Score Sheet. A failure to reach agreement will not result in a lower score, unless that failure comes in the face of an offer that is manifestly in the interest of the declining party, and thus appears to result from bad faith. The decision of the judges regarding bad faith is final and non-reviewable.

Judges must independently score each team. **JUDGES ARE NOT ALLOWED TO CONFER WITH THE OTHER JUDGES WHEN SCORING.** Before the judges hear the self-analysis they should give each team a preliminary score. After the self-analysis judges may revise and finalize the scores. Each judge must total his or her own scores for each team. The judge must then circle the words "Most Effective" on the score sheet for the team he or she gives the most points to and should circle the words "Less Effective" on 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 either adjust the scores for the teams to give one team more points than the other or designate one team as the winner. Judges must submit the score sheets before the judges' give the teams feedback.

In the event that a round is judged by only two judges instead of three, the scores of the two judges will be averaged and the average will be used as a substitute for the third judge. If the two judges give different teams the "Most Effective" designation, then the team with the highest score will receive two "Most Effective" ballots and the other team will receive one "Most Effective" ballot. If the judges agree on which team was "Most Effective," then that team will receive three "Most Effective" ballots.

XIII. Administering Each Round

During each virtual round, there will be at least one competition administrator who will help facilitate the round by moving team participants in and out of break out rooms and helping keep the round on schedule.

Winning a Round

In any round, the team receiving the highest number of total points wins the award for excellence in that round. In the event of a tie, the team with the highest score in the planning criterion wins. If there is still a tie, the team with the highest score in the self-analysis section wins. If there is still a tie, the team with the highest score in the flexibility criterion wins.

Winning the Triathlon

The team receiving the greatest number of "Most Effective" votes across all three rounds will be the Triathlon Champion. In the event of a tie, the team receiving the highest number of total points across all three rounds will be the Triathlon Champion. If there is a tie in the number of total points, the team with the highest score in the negotiation round will be the Triathlon Champion. If there is still a tie, the team with the highest score in the mediation round will be the Triathlon Champion. Finally, if there is still a tie, the team with the highest score in the arbitration round will be the Triathlon Champion.

Winning the Advocate's Choice Award:

At the end of the arbitration round, each competitor will be given a ballot and asked to designate one of the three teams they faced over the course of the competition as the team they believe demonstrated the highest degree of skill, competence, and professionalism. The team receiving the highest number of votes will receive the Advocate's Choice Award. In the event of a tie, the team with the greatest number of total points will win the Advocate's Choice Award.

XIV. Controlling Law:

For purposes of this competition, assume that the most current version of the Restatements of Torts and Contracts are the controlling law. FINRA rules and regulations apply. The ethical rules that apply are the ABA Model Rules of Professional Conduct, the ABA Model Standards of Conduct for Mediators, and the AAA/ ABA Code of Ethics for Commercial Arbitrators.

XV. Exhibits and Props:

Although teams are not expected to use exhibits in the rounds of competition, a team may prepare in advance one exhibit for each round. Teams are allowed to use one prepared exhibit or prop in each round so long as it does not in any way contradict or impermissibly expand upon the facts as written in the competition problem. The team retains sole responsibility for the exhibit or prop. St. John's and FINRA will not provide any assistance in the use of the exhibit or prop.

In addition to sharing an exhibit with the other side, the students should also provide a copy of the exhibit to the neutral and the judges. This can be done by *submitting the exhibit when you submit your written submission or virtually* during each round. If the students so choose, they may attach the exhibit to their written submission of the round. The students should not *share* any exhibit or other document with the mediators, arbitrators or judges after the round concludes.

If the competition host makes them available, teams may *use virtual* whiteboards for presentations during each competition round including the self- analysis and critique segments of the competition rounds. If the competition host makes *virtual* whiteboards available, they must be available in each *virtual* competition room.

For the arbitration round, teams will be provided with a Statement of Claim and a Statement of Answer, all which may include attached exhibits. The Background Facts, Statement of Claim, and Statement of Answer, including any attached exhibits, shall be deemed a part of the record as "Arbitrator's Exhibit 1." Teams may use during any of the rounds any of the FINRA rules and regulatory notices explicitly cited in the background facts and the pleadings. These don't count as a prepared exhibit so long as they are not modified in any way. Teams may refer to anything in the Statement of Claim and the Statement of Answer during the arbitration round without first offering them into evidence, and these do not count as the one prepared exhibit or prop that a team is allowed to present.

XVI. Breaks and Caucuses:

Breaks:

During each of the three rounds, each team may initiate one break of 5 minutes. When one team calls a break, both teams shall *be placed in their individual, virtual break out rooms*. Taking a break does not suspend the time; time continues to run.

Caucuses:

During the mediation round, each team may initiate one caucus of up to 10 minutes. The team must affirmatively request the caucus. The mediator must grant a team's request for a caucus. Mediators may also initiate caucuses at their discretion.

During a caucus, the non-caucusing team, including settlement counsel, *shall be placed* outside of the competition room *and into their virtual break out room* while the caucusing team meets with the mediator. If one team takes a caucus, the other team may take a caucus immediately following, or may choose to wait until a later time, unless the mediator decides otherwise. It is also permissible not to request a caucus.

If a team asks for a break and the other team asks for a caucus during the break, the caucus will go forward. However, the non-caucusing team will still be charged with a break.

The time allotted for the mediation round includes caucuses and breaks, whether client-initiated or mediator-initiated. Taking a caucus does not suspend time; time continues to run.

XVII. Anonymity:

Participants should not identify the school they represent until the *Awards Ceremony*. 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 the team letter they have been given by the competition director. During the Zoom rounds, *each team participant shall refer to themselves by the team letter and the role they are playing in that round. This information should also show on their Zoom screen.* This rule applies to all events associated with the competition, including orientation. Participants shall make extra effort to remain anonymous during any *virtual* events scheduled during the competition.

XVIII. Decision-Making:

A joint committee comprised of FINRA and St. John's University School of Law representatives will make all decisions relating to this competition.

XIX. Violation of Rules:

Any violation of these Rules or the applicable rules of professional responsibility may result in an appropriate sanction. Sanctions may include a reduction in points, transfer of

"Most Effective" ballots from an offending team to a non-offending team, and/or disqualification from the Triathlon. The imposition of sanctions is within the sole discretion of St. John's University School of Law and FINRA, in accordance with the Appeals Process described in Section XX.

XX. Appeals Process:

If a team in good faith believes their opposing team has committed an ethical violation during any round, the team must alert a competition representative about the ethical violation at the conclusion of the round and in no event no later than twenty minutes after the scheduled conclusion of the round. The competition representative will provide both teams with the "Ethical Violation Appeals" form and notify the Appeals Committee, a joint committee comprised of FINRA and St. John's University School of Law representatives. The Appeals Committee will convene a meeting with the two teams at an appropriate time to consider the appeal. If the Appeals Committee finds that a team has committed an ethical violation, the Appeals Committee may impose a sanction as described in Section XIX.



Judge's Score Sheet: Mediation Round

Team # _____

Judge: _____

Please rate the teams from one to seven in each criterion provided. Start your grading from "4" as your starting point, and go up or down as appropriate. Please use whole numbers only. Space is provided for your comments on the team's participation in each area. Students appreciate and benefit from your comments. Thank you in advance for helping the students learn from your wisdom.

I. MEDIATION ADVOCACY PLANNING

Judging from the mediation representation plan, settlement counsel's presentation, and the opening statement, how effective was the team in understanding the problem, developing an appropriate advocacy strategy and preparing for the mediation?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

II. TEAMWORK BETWEEN ATTORNEY AND CLIENT

How effective were the attorney and client in allocating responsibilities and coordinating their approach based on the client's knowledge, skills and vulnerabilities in a way that allowed the client to meaningfully participate in the mediation and helped the client make informed choices throughout the mediation?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

III. USE OF THE MEDIATOR AND THE MEDIATION PROCESS

How effective was this team in using the mediator's style and the mediation process to help gather information, clarify issues, overcome impasses and reach resolution by demonstrating active listening skills, effective questioning, and the ability to generate legal and non-legal options in the mediation to advance their client's interests and in demonstrating flexibility to new information or unanticipated actions by the other team?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

IV. MEDIATION OUTCOME

Based on what you observed in the mediation and the self-analysis, regardless of whether or not an agreement was reached, how effective were the attorneys in advancing the client's interests?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 ~ ineffective
- 1 - very ineffective

SCORE _____

Comments:

V. RELATIONSHIP BETWEEN TEAMS

How effective was the team in establishing a working relationship with the other team to allow the teams to work together and advance their respective clients' interests?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

VI. SELF ANALYSIS

How effective was this team in showing an understanding of how their strategy impacted the outcome and what they might have done differently?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

VII. MEDIATION ETHICS

In their advocacy, students are instructed to demonstrate ethical conduct that comports with the ethical guidelines set forth in the ABA Model Rules of Professional Conduct and the Triathlon Rules. For example, participating teams are supposed to represent facts accurately and truthfully. Although the ABA Model Rules permit some exaggeration of numbers during a negotiation, the Rules proscribe lying, cheating and misrepresentation. In another example, attorneys have an ethical obligation to consult with their clients once the lawyer receives a settlement offer.

Based on your observation of this team during this round and your reading of the problem's facts, please rate the ethical conduct of this team.

FOR THIS CATEGORY ONLY, PLEASE CHOOSE ONLY OF THE THREE RATINGS LISTED BELOW:

- 7 – Highly Ethical
- 4 – Neutral
- 1 – Very Unethical

Comments:

TOTAL SCORE:

I. _____

II. _____

III. _____

IV. _____

V. _____

VI. _____

VII. _____

TOTAL _____

MINUS PENALTY VIOLATIONS _____

TOTAL SCORE _____

OVERALL

Was this team (circle one):

More Effective

Less Effective



Judge's Score Sheet: Negotiation Round

Team # _____

Judge: _____

Please rate the teams from one to seven in each criterion provided. Start your grading from "4" as your starting point, and go up or down as appropriate. Please use whole numbers only. Space is provided for your comments on the team's participation in each area. Students appreciate and benefit from your comments. Thank you in advance for helping the students learn from your wisdom.

OVERALL

Was this team (circle one):

More Effective

Less Effective

I. NEGOTIATION PLANNING

Judging from the negotiation worksheet and settlement counsel's presentation, how effective was the team in understanding the problem, developing an appropriate negotiation strategy and was preparing for the negotiation?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

II. FLEXIBILITY IN DEVIATING FROM PLANS OR ADAPTING STRATEGY

How effective was the team at adapting its strategy to the negotiation and demonstrating its flexibility to new information or unanticipated actions by the opposing team?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

III. NEGOTIATION OUTCOME

Based on what you observed in the negotiation, regardless of whether or not an agreement was reached, how effectively was the team at advancing the client's interests?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

IV. RELATIONSHIP AMONG TEAM MEMBERS

How effective were team members in working together, allocating responsibility, providing mutual backup and ensuring that the client made informed choices?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

V. RELATIONSHIP BETWEEN NEGOTIATION TEAMS

How effective was this team in establishing a working relationship with the other team that made is more likely to allow the teams to work together and advance their respective clients' interests?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

VI. SELF ANALYSIS

How effective was this team in understanding how their strategy impacted the outcome and what they might have done differently?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

VII. NEGOTIATION ETHICS

In their advocacy, students are instructed to demonstrate ethical conduct that comports with the ethical guidelines set forth in the ABA Model Rules of Professional Conduct and the Triathlon Rules. For example, participating teams are supposed to represent facts accurately and truthfully. Although the ABA Model Rules permit some exaggeration of numbers during a negotiation, the Rules proscribe lying, cheating and misrepresentation. In another example, attorneys have an ethical obligation to consult with their clients once the lawyer receives a settlement offer.

Based on your observation of this team during this round and your reading of the problem's facts, please rate the ethical conduct of this team.

FOR THIS CATEGORY ONLY, PLEASE CHOOSE ONLY OF THE THREE RATINGS LISTED BELOW:

- 7 – Highly Ethical
- 4 – Neutral
- 1 – Very Unethical

SCORE _____

Comments:

TOTAL SCORE:

I. _____

II. _____

III. _____

IV. _____

V. _____

VI. _____

VII. _____

TOTAL _____

MINUS PENALTY VIOLATIONS _____

TOTAL SCORE _____

OVERALL

Was this team (circle one):

More Effective

Less Effective



Judge's Score Sheet: Arbitration Round

Team # _____

Judge: _____

Please rate the teams from one to seven in each criterion provided. Start your grading from "4" as your starting point, and go up or down as appropriate. Please use whole numbers only. Space is provided for your comments on the team's participation in each area. Students appreciate and benefit from your comments. Thank you in advance for helping the students learn from your wisdom.

I. ARBITRATION PLANNING

Judging from the team's written statement of facts, opening statement and direct, how effective was this team's preparation for this arbitration?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

II. FLEXIBILITY IN DEVIATING FROM PLANS OR ADAPTING STRATEGY

How effective was this team at adapting its strategy to the arbitration and demonstrating its flexibility to new information or unanticipated actions by the opposing team as evidenced in their cross and closing statements?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

III. IN RELATIONSHIP WITH THE OTHER ARBITRATION TEAM

How effective was this team in establishing a working relation with the other team to help advance their client's interests?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

IV. RELATIONSHIP WITH ARBITRATION PANEL

How effective was this team in establishing a working relationship with the arbitral panel to help advance their clients' interests?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 ~ ineffective
- 1 - very ineffective

SCORE _____

Comments:

V. ARBITRATION OUTCOME

Based on what you observed in the arbitration, how effective was this team in advancing their client's interests?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

VI. SELF ANALYSIS OF THE TEAM'S SKILLS

How effective was this team in self-evaluating their advocacy skills and identifying what they could have done more effectively?

- 7 - highly effective
- 6 - effective
- 5 - somewhat effective
- 4 - neutral
- 3 - somewhat ineffective
- 2 - ineffective
- 1 - very ineffective

SCORE _____

Comments:

VII. ARBITRATION ETHICS

In their advocacy, students are instructed to demonstrate ethical conduct that comports with the ethical guidelines set forth in the ABA Model Rules of Professional Conduct and the Triathlon Rules. For example, participating teams are supposed to represent facts accurately and truthfully. The ABA Model Rule 3.3 requires lawyers to be candid before a tribunal including arbitration.. In another example, attorneys have an ethical obligation to consult with their clients once the lawyer receives a settlement offer.

Based on your observation of this team during this round and your reading of the problem's facts, please rate the ethical conduct of this team.

FOR THIS CATEGORY ONLY, PLEASE CHOOSE ONLY OF THE THREE RATINGS LISTED BELOW:

7 – Highly Ethical

4 – Neutral

1 – Very Unethical

SCORE _____

Comments:

TOTAL SCORE:

I. _____

II. _____

III. _____

IV. _____

V. _____

VI. _____

VII. _____

TOTAL _____

MINUS PENALTY VIOLATIONS _____

TOTAL SCORE _____

OVERALL

Was this team (circle one):

More Effective

Less Effective