

ICC Australia Asia-Pacific Commercial Mediation Competition

Judge and Mediator Induction



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Judge and Mediator Induction

Topics

- Competition purpose & aims
- Mediation session logistics – participants; timing; virtual rooms; tech support
- Judge and Mediator – roles & responsibilities
- Scoring
- Feedback method
- Q & A



Focus today: aspects of the roles that are competition specific

- Judge – dual role
- Mediator – how the role differs from real world
- Feedback – a specific methodology

Competition Purpose

- The competition is an **educational** event
- Aims to develop **best practice skills in international commercial mediation**
- Competitors are challenged to effectively combine the **use of the Mediator & collaborative problem-solving skills** to successfully further the **Parties' interests & progress towards resolution**
- Seeking to empower future business people & legal practitioners to better meet the needs of an increasingly **cross-cultural & global market** (Rule 1.1)



Online Room Setup & Logistics



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Online Rooms – Modron Spaces

- The online platform is Modron Spaces
- All participants can be seen and heard in the 'Everybody' space
- Session Supervisor or the Mediator will facilitate introductions

The screenshot displays the Modron Spaces interface for a video conference. On the left, a sidebar menu includes 'MODRON', 'Search', 'Inbox', and 'Cases'. Under 'Cases', the 'Holland vs Gray' case is selected, and the 'Everybody' space is active. Below this, roles such as 'Applicant', 'Respondent', 'Lawyer conference', 'Expert Witness', and 'Case notes' (with a '2' notification) are listed. The main area shows a video feed of participants, with a large window for Olivia Holland. A dropdown menu is open over her video, listing 'Case Actions' (Create Resolution, Create Issue, Create Agreement, Create Invoice) and 'Space Actions' (Upload File, Record Video Message, Record Audio Message, Create Form Request, Schedule an Event). Below the video, a message from Olivia Holland dated 16/04/2020 1:00 pm states 'Uploaded File' with a link to 'New supporting evidence'. At the bottom, a text input field says 'Share something with Everybody...'. The footer indicates 'Powered by Spaces'.

Judges – how many?

- Preliminary Rounds: 2 Judges
- Preliminary Finals: 3 Judges
- Final: 5 Judges

Preliminary Rounds & Preliminary Finals

- The rounds will be held online via Modron
- Inside the online room will be:
 - ✓ Mediation Session Supervisor
 - ✓ Two teams, comprising two Team Members each, being Client and Counsel, sitting opposite each other at the table
 - ✓ Mediator
 - ✓ Two or three Judges respectively
 - ✓ Coaches
 - ✓ Observers as permitted by the Organising Committee
(generally not anticipated)



Final (on Zoom)

- The Final is held online via Zoom
- Inside the online room will be:
 - ✓ Mediation Session Supervisor
 - ✓ Two teams, comprising two Team Members each, being Client and Counsel, sitting opposite each other at the table
 - ✓ Mediator
 - ✓ Five judges
 - ✓ Coaches of the finalist teams
 - ✓ Observers as permitted by the Organising Committee
(encouraged!)



Online adaptations

Agenda setting:

- Chat function recommended; supplemented by each participant writing on paper
- Modron does not have a whiteboard function

Handouts:

- Files may be uploaded
- Modron does not have screen sharing function

Rule 2.1.1 - Timing of mediation sessions

Preliminaries:

Total of 135 minutes (2 hours, 15 minutes) in Mediation Session, comprises:

- 5 minutes to settle into the room & take pledge
- 85 minutes for the Mediation (1.25 hours)
- 15 minutes for Judges to score
- 30 minutes of feedback from Judges and Mediators (combined; Judges first, followed by Mediator)

NB. Online amendment to timing:

Time for Judges to read and score Mediation Plans will be undertaken prior to the competition.

Rule 2.1.1 - Timing of mediation sessions

Preliminary Finals:

Total of 135 minutes (2 hours, 15 minutes) in Mediation Session, comprises:

- 5 minutes to settle into the room & take pledge
- 85 minutes for the Mediation (1.25 hours)
- 15 minutes for Judges to score
- 30 minutes of feedback from Judges and Mediators (combined; Judges first, followed by Mediator)



Rule 2.1.1 - Timing of mediation sessions

Finals

Total of 135 minutes (2 hours, 15 minutes) in Mediation Session, comprises:

- 5 minutes to settle into the room & take pledge
- 85 minutes for the Mediation (1.25 hours)
- 15 minutes for Judges to score
- 30 minutes of feedback from Judges and Mediators (combined; Judges first, followed by Mediator)



Session Supervisors

- Session Supervisors are volunteers appointed by the Organising Committee to keep time and ensure the Rules are followed (Rule 0.0 Definitions)
- As Mediators & Judges we respect the time limits enforced by the Session Supervisors
- Session Supervisors have been instructed to be politely assertive with the professional Mediators and Judges 😊



Time Management

- Logon for each Session via Modron is 15 minutes prior to start time
- In the unlikely event of Mediation Sessions running early or late, Session Supervisors will be enforcing the following:
 - a. If the Mediation finishes early (in less than 85 mins), scoring and feedback must still be limited to 15 mins & 30 mins, respectively.
 - b. If the Mediation Session begins late, the full time must still be allowed for each step.
- If Judges or Mediators take less than 20 mins or 10 mins, respectively, giving feedback, the Session Supervisor will move to the next step of the Mediation Session.



Contingencies if technical issues - 1/4

If for any reasons there are disabling technical difficulties experienced by any Competing Team, Mediator or Judge, the following steps will be followed:

- Timing will be paused
- We will seek to limit a 'tech pause' to a maximum of 10 minutes
- Whomever has been disconnected is to use their best endeavours to reconnect, supported by the Session Supervisor and Organising Committee as needed
- If a Judge or Mediator is disconnected for longer than 10 minutes, the Organising Committee will determine how the Mediation Session is to be completed, including possibly calling for a Reserve Judge or Mediator to step into the session



Contingencies if technical issues - 2/4

- Any competitor who is disconnected during a Mediation Session continues to be bound by the Competition Rules regarding no communication with anyone outside the Mediation Session, including a Coach or other Team Members
- In the event that a Judge or Mediator has any concern regarding the authenticity of a presenting technical difficulty (e.g. a student dropping out seemed to coincide with a moment when they were in a 'tight spot' in the negotiation ...) please inform the Organising Committee of your concern, including the identifying number of the Team; the name of the Team Member (if known); and the role the Team Member played in the Mediation



Contingencies if technical issues - 3/4

- If a competitor is disconnected for longer than 10 minutes, **the session will resume** and the remaining Team Member partner will continue negotiating alone
- If the remaining Team Member is the Client they will negotiate on the basis that they have received their legal advice
- If the remaining Team Member is Counsel they will negotiate on the basis that they are fully instructed, have authority to settle and understand their Client's interests
- The disconnected competing Team Member will be readmitted to the session by the Session Supervisor as soon as possible
- Judges will allocate points in the usual way to each team



Contingencies if technical issues – 4/4

- If there is a full outage of the session, the Judges will consider all the circumstances, and in their sole discretion decide how to best assess the performance of the teams.
- Judges may allocate points based on the performance of the team before the technical difficulty occurred (if applicable).
- As an ultimate fall back, the Organising Committee may consider allocating the mean of the impacted teams' points received from earlier sessions.
- There will be no time delay for any Coaches and other observers losing connection, including non-competing Team Members.

**Mediators & Judges
roles
responsibilities**



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Role of Mediator – overview

- In advance, know the scenario facts (excluding confidential information)
- Mediator’s opening less than 5 mins duration (Annex III). Less will suffice.
- Support the 5 Phase Model of interest-based, facilitative Mediation outlined in Annex III, C.
- Mediator interventions outlined at Annex III, D.
- Three way conversation. “This is a mediation competition, not a negotiation competition.” (Annex III)



Role of Judge - overview

- In advance, know the scenario facts, including each party's confidential facts

Dual role:

- Score
 - Mediation Plans **before the Mediation (no more than 15 mins each)**
 - Mediation simulation (15 mins)
- **Feedback in accordance with the guidelines** in Annex IV, C (20 mins shared between 2 Judges)

Mediators & Judges - impartiality

- It's important that both Judges and Mediators demonstrate appropriate impartiality
- “Actual and apparent neutrality, impartiality and independence of each Judge are of the utmost importance.” (Annex IV)
- Both Judges and Mediators need to keep this in mind during Mediation Sessions in relation to all their interactions, particularly their interactions with Teams & Coaches



Key preparation tasks

For both roles:

- Familiarise yourself with the Rules

When mediating:

- Read General Information for Problems
- Annex III

When judging:

- Read General & Confidential Information for Problems
 - Vital that Judges know the detail of the facts in order to be able to judge effectively, e.g. Rule 4.3 Staying within the Record
- Familiarise yourself with the detail of Score Sheets Annex IV



Role of Mediator – How

- Competitors arrive ready to negotiate collaboratively. Mediators may find less intervention is required than with real parties (see Annex III)
- Mindful of **educational purpose and competition context** e.g. students are rewarded for advancing interests and appropriate progression towards resolution. If we help too much, we deprive them of the opportunity to demonstrate skills
- Mindful of **time constraints**, if Mediators choose to summarise/reflect parties' Opening Statements; reflection of key points is even briefer than in real world



Role of Mediator – How

- Give the students the opportunity to demonstrate **use of the Mediator**. Guideline: hesitate longer than in real world before making a Mediator initiated intervention
- E.g. unlike real world facilitative mediation, Mediators are less likely to initiate agenda setting. How & when the students initiate agenda setting is a potential display of skill
- Seek to allow space for experiential learning
- Mediator feedback – maximum 10 mins – supplementary to the primary Judge feedback



5 Phase Model (Annex III)

The Mediator supports Competing Teams to progress through:

1. Establishing Working Atmosphere
2. Fact-Finding/ Information Gathering
3. Working through Conflict
4. Developing and separately Evaluating Options
5. Agreement and Closure *

* Agreement not essential within Competition



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2.1.3 Caucus in the Competition

- Caucus is a private meeting between competitors and Mediator
- Caucuses are not a required process step
- Caucuses may be called by either the Mediator or a Competing Party in accordance with the provisions of Rule 2.1.3, including:
 - Each Caucus may last no longer than **5 minutes**
 - Can take place between the Mediator and both members of a Team (Caucus)
 - Caucuses can take place between the Mediator and either the Counsel from both Teams or the Clients from both Teams (a Cross-Caucus)



Caucus – When & How

- Each Team has the right to call for one Caucus and for one Cross-Caucus during a Mediation
- The Mediator may call for one Caucus with each of the Teams during a Mediation
- The Mediator may call for one Cross-Caucus with the Counsel from each Team and one Cross-Caucus with the Clients from each Team during a Mediation
- The two competing Team Members who are not participating in a Caucus will leave the 'Everybody' room and go to their Team's breakout room where they can speak to each other (but to no one else)



Caucus – Purpose

- Teams may call for a Caucus when they consider they need private consultation with the Mediator “to Progress the Mediation” (Rule 2.1.4)
- Judges will evaluate the use and non-use of Caucuses
 - Did the Team who called the Caucus use it purposefully? Strategically?
 - Was it well timed?
 - Did it amount to effective use of the Mediator?
- A Caucus should not be used to seek clarification of the Competition Rules or any procedural matter



Caucus logistics online

- The Team, or Team Members, participating in the caucus will stay in the 'Everybody' space.
- Both other competing Team Members will move to their respective 'breakout' rooms on Modron.
- The tab for the 'breakout rooms' is on the left, under 'Everybody'
- The Session Supervisor will have access to the Teams' breakout rooms.

The screenshot displays the Modron interface for a caucus session titled "Holland vs Gray" in the "Everybody" space. The interface is divided into several sections:

- MODRON** logo and navigation icons at the top left.
- Search, Inbox, Cases** sidebar on the left. The "Cases" section is expanded to show "Holland vs Gray" with a sub-tab for "Everybody" circled in red. Other options include Applicant, Respondent, Lawyer conference, Expert Witness, and Case notes.
- Video Feed** showing a woman (Olivia Holland) speaking. Other participants (Elisa Slo, Victor Ar) are visible in smaller windows.
- Case Actions** menu on the right, listing options like Create Resolution, Create Issue, Create Agreement, Create Invoice, Upload File, Record Video Message, Record Audio Message, Create Form Request, and Schedule an Event.
- Breakout Rooms** section below the video feed, with a red arrow pointing to it.
- Share something with Everybody...** input field at the bottom.

Powered by Spaces

Breaks (3 mins)

- Each Team may take one Break of no more than **3 minutes**.
- If a Team calls for a Break, that Team leaves the 'Everybody' room and goes to their Team break-out room where they can speak to each other (but to no one else) (Rule 2.1.2).
- Silence is to be observed by all people remaining in the 'Everybody' room, **including Judges**
- At all times when not speaking, and particularly during Breaks online, please mute yourself



Role of Judge – How

Dual task:

- Scoring
- Feedback in accordance with the guidelines

Online protocols for judging

- **Cameras off**, after initial introductions by the Session Supervisor, until the time for Judges' feedback
- Teams will be identified by their identifying competitor number for the purpose of judging

NEW Scoring of Mediation Plans

- Mediation Plans will be scored prior to the mediation
- Judges will be sent the relevant Mediation Plans in advance and be asked to return the score sheets by a certain date prior to the commencement of the preliminary rounds
- Judges need to read both the General and Confidential Information for each party prior to scoring the Plans for that problem
- Please limit the time spent scoring each Plan to a maximum of 15 minutes



Scoring - Method

- “Each Judge must first independently score each Competing Team” (Judges may then confer; Judges may subsequently revise scores) (Annex IV)
- No requirement for two Judges to agree
- Indicate clearly which team won & lost
- There must be a difference of at least one point between the scores given by a single Judge to the two Competing Teams in each round
- Score Sheets will be scanned* and emailed by the Judges to: apcmc@disputescentre.com.au at the end of each Mediation Session

* **iphone notes function:** We recommend Judges use its scanning function, or install another free scanning app on their mobile phones

Scoring – score sheets

Mediation score sheet categories:

- ✓ Opening statement
- ✓ Advancing your interests
- ✓ Team work: Counsel & Client
- ✓ Information gathering & ascertaining the other Party's interests
- ✓ Seeking to collaborate with the other Party
- ✓ Working together to develop options
- ✓ Making good use of the Mediator



Scoring – what is rewarded?

Furthering the Client's interests (i.e. beyond positions) 🙄	Flexibility
Commercial realism 🙄	Emotional realism
Use of the Mediator	Asking open questions
Listening	Empathy (when authentic)
Effective negotiation & deal-making consistent with General and Confidential Information (NB. penalised for going off the record, Rule 4.3)	Creativity, e.g. exploring possibilities; lateral questions & ideas re options identifying potential synergies between each side's interests
Progress towards a collaborative resolution 🙄	

Scoring - consistency

- Recognising human variation in any qualitative judgment task, we seek as much consistency in judging as possible
- Consistency & the appearance of consistency in scoring are critical for the integrity of the Competition
- “For the sake of ensuring fairness and equality, you must use the judging criteria, as set out in B below, to evaluate and score the Competing Teams, even if such criteria do not conform to your concept of best practice.” (Annex IV)

Scoring – standards

- `Good` is the starting point descriptor: team is displaying all the elements of the particular scoring criterion, mediation is going well but team not delivering overall great performance
- Majority of teams will score `Good` & `Very Good`
- `Excellent` & `Poor` will be rare & exceptional



Scoring – the score sheets

- Know your Score Sheets *forensically*



Please look at Score Sheets Annex I



Scoring – the numbers

- It's easy 😊
- You may use a calculator
 - Note Rule 2.7, if you wish to use calculator function on an electronic device, ensure the device is on `do not disturb' and do not use it for any other purpose
 - Inform the Session Supervisor of the electronic device you will be using
- Mediation Plans are marked out of 16; this mark is then divided by 4, sometimes resulting in fractions, e.g.
 - $12 \div 4 = 3$
 - $10 \div 4 = 2.5$
 - $13 \div 4 = 3.25$



Scoring – The numbers

- **Preliminary Rounds** final scores are out of 50:
 - Mediation Plan out of 4 + Mediation out of 46 = score out of 50
- **Finals** scores are out of 46 (there are no Mediation Plans)



Scoring in Preliminary Rounds - 7 Steps:

Prior to mediation session

1. Score two Mediation Plans (each has a final derived score out of 4)

During mediation session

2. Score each Competing Team out of 46
3. Calculate totals out of 50 (46 + 4)
4. Ensure there is a difference between the two Teams' scores
5. Nominate 'Won' or 'Lost' for each Team
6. Sign each score sheet
7. Scan and send to apcmc@disputescentre.com.au

Feedback
based on
National Institute of Trial Advocacy (NITA)
method



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Feedback

- Feedback is a critical part of the students' learning experience
- Judges' & Mediators' feedback has high impact
- Comments in written feedback received from past Competition participants:
 - ✓ *"I found the feedback sessions fantastic"*
 - ✓ *"A highlight for me was the quality of feedback from the professionals"*

Feedback Method – Why?

- Recognised method that **maximises learning**
- Giving students **specific & relevant** feedback that they can use in subsequent mediations to **enable skill development**



Feedback - Judges

- **“The Judge’s feedback must be consistent with ... the guidelines in Annex IV, C” (Rule 2.12)**
- **Each Judge to offer 2 pieces of feedback to each team, explicitly linked to a category on the Score Sheet**
- **Each Judge to use 4 element method:**

1. Headline	2. Playback
3. Rationale	4. Prescription

- **Succinct:** maximum 10 mins each in Preliminary Rounds; 7 mins each in Finals

Feedback – things we don't do

- “Judges must not reveal ... any Team’s Scores
- We don’t reveal undisclosed Confidential Information
- During their feedback, Judges may refer to the Confidential Information ... to the extent that such Confidential Information was disclosed by the Competing Teams.” (Rule 2.12)



Feedback - Mediators

- After the Judges' feedback, the Mediator has 10 minutes for feedback to both Teams
- Aim to be encouraging and appreciative rather than prescriptive or evaluative (Rules, Annex III, E)
- Not required to follow particular structure (cf. Judge feedback requirements)
- Aim to be even-handed in attention given to the two Teams



Informal feedback

- The opportunity for feedback to students is time limited during the Mediation Sessions. However, in a face to face competition, students are encouraged to engage in conversation with the professionals at other times.
- In the online environment, when the Mediation Session is ended, the `Everybody` space will remain open and we invite Mediators & Judges to stay online after the session to engage less formally with the students who may wish to seek further feedback in relation to their skills and learning. Please feel no obligation to do this if it is not convenient.

Feedback Practice Exercise



Feedback exercise: Example 1

The students set an agenda after their Opening Statements but then have a 25 minute meandering discussion about the facts that does not follow the agenda.

They do not use the Mediator to help bring them back on track.



Feedback exercise: Example 2

After a 10 minute discussion about a core issue that results in an impasse, Team B calls a Caucus with the Mediator and seeks advice on how to reveal a sensitive fact that has the potential to unlock the discussions.

Team B then uses the work done in Caucus to progress the negotiation.



Feedback exercise: Example 3

The students reach an agreement where one party settles for less than their Confidential Information says they needed. The tone of mediation has been very friendly and collaborative, with each party describing how pleased they are to be rebuilding trust in the relationship.

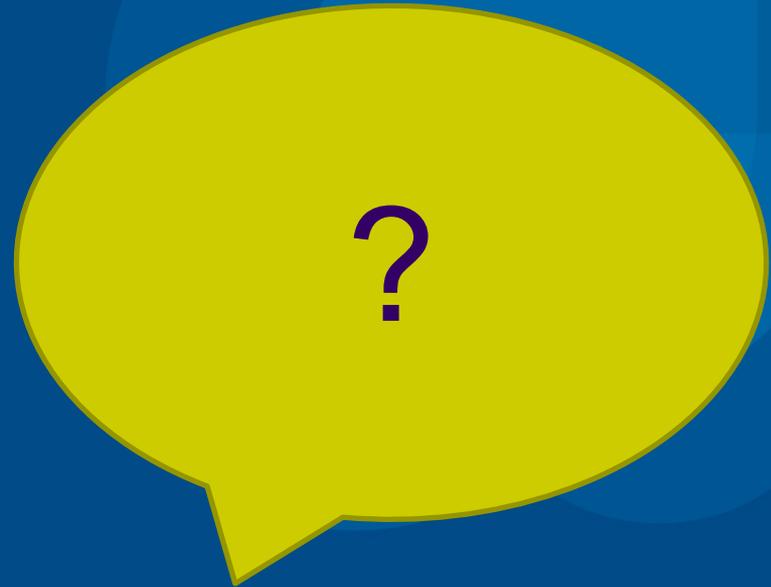


Feedback exercise: Example 4

Within Team A, Counsel dominates the discussion,
at times interrupting her Client
and conducting the negotiation herself.



Questions?



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