

## Scoring Criteria

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

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

### **Before the mediation begins, judges should read each side's representation plan.**

The representation plan should consist of an outline with a brief description under each of the following headings:

- (1) "Responsibility Sharing" – explain *how* you plan to share responsibilities between the attorney and the client in the mediation session;
- (2) "Allocation Strategy" – explain *why* your team chose the particular allocation strategy;
- (3) "Interests" describe the interests that your side plans to advance in the mediation session, and the likely interests of other side;
- (4) Your Team's BATNA analysis as well as the likely BATNA analysis of the other side;
- (5) Potential Collaborative solutions meeting everyone's interests;
- (6) Key Questions/Information you will seek or anticipate;
- (7) "Negotiating Strategy" – your negotiation strategy in light of the preceding factors, also potentially including bargaining chips;
- (8) preparation for introductory remarks after the mediator's introduction; and
- (9) Potential Agenda items of things you would like to discuss.

**The representation plan is not scored, it is simply to provide the judges with an understanding of each team's strategy.**

### **CRITERIA**

Please score each criterion on a scale of 1-7, with 1 as the lowest and 7 as the highest.

1= very poor

2= poor

3= somewhat poor

4= adequate (**STARTING POINT**)

5= somewhat good

6= good

7= very good (i.e. you would hire this person today)

**REMEMBER:** No scoring ties, no feedback to the participants during their analysis, and no discussion of the round between judges until the round is over (judge independently). Return the scoresheet prior to your comments, and if you wish you may keep the "notes" sheet to help you provide feedback.

**THANK YOU FOR YOUR HELP!**

**American Bar Association Section of Dispute Resolution  
Representation in Mediation Competition Score Sheet**

JUDGE'S NAME: \_\_\_\_\_ ROUND: \_\_\_\_\_ MEDIATOR: \_\_\_\_\_

SCALE: (Use whole numbers, no decimals or fractions!)

1 Very Poor	2 Poor	3 Somewhat Poor	4 Adequate	5 Somewhat Good	6 Good	7 Very Good
TEAM #/NAMES:			TEAM #/NAMES:			

SCORE (1-7)	CATEGORY/CRITERIA	SCORE (1-7)
	<p align="center"><b>Presentation of Case in Opening and Throughout</b></p> <ul style="list-style-type: none"> <li>•Presented facts and law in a way that could be heard productively by other side.</li> <li>•Offered proposals in a way that reflected careful planning and skillful implementation.</li> <li>•Accurately assessed and discussed litigation benefits and risks, as well as other consequences of failing to reach settlement (in joint session and/or caucus).</li> </ul>	
	<p align="center"><b>Teamwork Between Attorney and Client</b></p> <ul style="list-style-type: none"> <li>•Effectively divided responsibilities in light of client's knowledge, strengths, and vulnerabilities. (Clients are expected to speak during the mediation)</li> <li>•Communicated effectively with each other and worked together as a team.</li> <li>•Attorney ensured that client was able to make informed choices about settlement possibilities.</li> </ul>	
	<p align="center"><b>Problem-Solving Relationship Building</b></p> <ul style="list-style-type: none"> <li>•Established a problem-solving relationship with other side, if possible.</li> <li>•Recognized other side's interests; tried to satisfy them if helpful to client's interests.</li> <li>•Took initiatives to convert other team into problem-solvers.</li> </ul>	
	<p align="center"><b>Information Gathering and Communications with Other Side</b></p> <ul style="list-style-type: none"> <li>•Used active listening skills to promote communications.</li> <li>•Used appropriate questioning techniques to gather information.</li> <li>•Tested assumptions and collected necessary information at appropriate times.</li> <li>•Responded appropriately to developments that occurred during mediation, especially new information and unforeseen moves by other side.</li> </ul>	
	<p align="center"><b>Generating and Selecting Creative Options</b></p> <ul style="list-style-type: none"> <li>•Generated range of legal and non-legal options to meet client's interests, as well as interests of other side.</li> <li>•Evaluated/selected options based on interests and, if appropriate, objective criteria.</li> <li>•Actively encouraged the development of creative ideas.</li> <li>•Effectively managed distributive features of dispute.</li> </ul>	
	<p align="center"><b>Interaction with the Mediator</b></p> <ul style="list-style-type: none"> <li>•Responded appropriately to the mediator.</li> <li>•Engaged the skills of the mediator to assist in breaking impasse and/or move towards resolution.</li> </ul>	
	← <b>TOTAL TEAM SCORE for PAGE 1</b> →	
	<p align="center"><b>Caucus</b></p> <ul style="list-style-type: none"> <li>•Chose intelligently whether and when to use a caucus; if caucus used, used caucus effectively.</li> </ul>	

	<ul style="list-style-type: none"> <li>•Effective use of caucus may include, but are not limited to: updating/discussing negotiation strategy in light of the joint session; preparing client to make or receive offers; collaborating with the client and mediator on information gaps and how to address them; exploring alternatives to a negotiated resolution.</li> </ul>	
	<p style="text-align: center;"><b>Advocating Client's Interests</b></p> <ul style="list-style-type: none"> <li>•Understood and advanced client's legal and non-legal interests throughout the mediation process.</li> <li>•Did not sacrifice client's interests in order to be collaborative.</li> <li>•Did not sacrifice client's interests in order to seek competitive advantage.</li> </ul>	
	<p style="text-align: center;"><b>Self-Analysis of the Team's Skills</b></p> <p>(Mediator is not Present During Self Analysis) Students should begin the 10-minute period of team self-analysis by answering the following questions: (1) In reflecting upon the entire mediation, what did your team do well? (2) Also, in what areas did you experience difficulties and what would you do differently next time when facing a similar situation? Of the 10 minutes, the students will present an uninterrupted 7-minute self-analysis. The remaining 3 minutes can be used for judges' questions. If there are no questions, the students may make additional comments in the time remaining. Based on this team's self-analysis and answers to judges' questions, how adequately did it learn from its experiences in this mediation exercise?</p>	
	<p style="text-align: center;"><b>Self-Analysis of Outcome</b></p> <p>(Mediator is Not Present During Self Analysis)</p> <p>Students should include answering the following questions in their self-analysis and answers to judges' questions: (1) In reflecting upon the entire mediation, what specific problem-solving strategies did your team use well? (2) Also, in what areas did you experience difficulties and what would you do differently next time when facing a similar situation? (3) How well did the outcome advance your client's interests as presented in the written representation plan? Based on this team's self-analysis and answers to judges' questions, how adequately did it learn from its experiences in this mediation exercise?</p>	
	← <b>Total Team Score on This Page</b> →	
	← <b>Total Team Score from Page 1</b> →	
	<b>RULE 19 – ANONYMITY PENALTY:</b> Deduct up to 5 points if the team violated the rule regarding anonymity.	
	<b>GENERAL PENALTY:</b> Deduct up to 5 points if the team violated any Rule other than the anonymity Rule	
	<b>LATE ARRIVAL PENALTY:</b> Deduct 2 points for a team's late arrival if instructed to do so by the competition coordinator.	
	<b>← TOTAL TEAM SCORE →</b>	
Win Lose	<p style="text-align: center;"><b>STOP.</b></p> <p><b>You MUST designate one team as a Win and one team as a Lose, in accordance with Rule 13.</b> If you do not designate a winner and a loser neither team will be able to advance.</p> <p>← <b>Circle either win or lose</b></p> <p style="text-align: right;"><b>Circle either win or lose →</b></p>	Win Lose
<b>Judge's Signature and Cell phone # (will be redacted for students):</b>		

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

JUDGE'S NAME: \_\_\_\_\_ ROUND: \_\_\_\_\_ MEDIATOR: \_\_\_\_\_

TEAM #/NAMES:	TEAM #/NAMES:
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