



## International Mediation Writing Competition

### INSTRUCTIONS FOR JUDGES

On behalf of the Weinstein International Foundation (hereinafter "WIF"), we would like to thank you for agreeing to act as a judge in the third annual WIF International Mediation Writing Competition. This short memo is meant to help guide you through the process of judging entries to the competition.

As a judge, you will be reading a number of short memoranda written by law students who are acting as advocates in a mediation scenario. The memorandum should not exceed 2500 words, with a division of the memo into an open part (intended to be shared with the other party) and a closed part (intended to be kept confidential between the mediator and the author). You will be judging the memos according to nine criteria. These criteria (spelled out in more detail in the attached "Criteria for Judges") are:

- Summarizes facts effectively, accurately and completely
- Uses law appropriately (The applicable law is the law that students are taught at their law school)
- Persuades the other side about the strength of the author's claim
- Invites the other party to negotiate in good faith
- Offers a helpful description of negotiation history
- Offers a realistic assessment of the obstacles to settlement
- Proposes useful and workable strategies to help guide the mediator in determining his approach
- Effectively breaks down information between the open part and the closed part
- Is generally well-written

Each criterion will be awarded equal weight along a four-point scale, as follows:

POOR (OR MISSING) = 0

FAIR = 1

GOOD = 2

EXCELLENT = 3

The highest score an author may obtain is 27 points.

Your role involves four discrete tasks:

1. Read these instructions in their entirety. Please raise any questions you may have about the instructions before taking any additional steps.
2. Read this year's problem (attached) a few times to get a sense of the scenario and the role of the advocate.
3. Read each entry/memorandum and grade each of the criteria on a copy of the attached "Grading Sheet for Judges". You need merely to place an "X" or a check in the appropriate box to the right of each criterion.
4. Return the completed sheets to [polobrasil@icfml.org](mailto:polobrasil@icfml.org), via email attachment and mention in the subject line: **WIF Writing Competition - participant number XXXX until October 22, 2023.**

Thank you very much for agreeing to judge this competition. We hope that this event helps raise awareness of the importance of mediation in the world of dispute resolution, and also of the importance of good advocacy in mediation. Your contribution in this competition will turn that hope into reality.



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### GRADING SHEET FOR JUDGES

**NAME (OR NUMBER)** OF PARTICIPANT \_\_\_\_\_

TOTAL POINTS AWARDED \_\_\_\_\_

JUDGE'S NAME \_\_\_\_\_

DATE ENTRY WAS JUDGED \_\_\_\_\_

	0 points (POOR or MISSING)	1 point (FAIR)	2 points (GOOD)	3 points (EXCELLENT)
Criterion 1: Summary of Facts				
Criterion 2: Use of Law				
Criterion 3: Persuasiveness				
Criterion 4: Invitation to Negotiate				
Criterion 5: Negotiation History				
Criterion 6: Assessment of Obstacles				
Criterion 7: Proposes Mediator Strategies				
Criterion 8: Breakdown between Open and Closed Parts				
Criterion 9: Quality of Writing				

If you have any other comments or feedback for the author, please include it with this form. That feedback will be forwarded to the author but unless you specify otherwise, your name will be omitted from the score sheet and feedback.



## International Mediation Writing Competition

### CRITERIA FOR GRADING

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#### CRITERION ONE: AN EXCELLENT MEMO SUMMARIZES FACTS EFFECTIVELY, ACCURATELY AND COMPLETELY

This memo must not exceed 2500 words. Any memo that exceeds the limit should be graded down. An excellent memorandum distills all the important facts down into an easily digested summary, and it does not lose accuracy in the distillation.

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#### CRITERION TWO: AN EXCELLENT MEMO USES LAW APPROPRIATELY

The simulation contains no applicable law. The applicable law is the law that students are taught at their law school. Participants in this competition are invited to do whatever legal research they want and to include relevant law in their memoranda. However, the most effective mediation memos are much lighter on the law than the memos written for a judge or magistrate called upon to render a decision. The memo should alert the mediator to any relevant rules or laws that the mediator should be aware of, but stops short of being a legalistic argument.

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#### CRITERION THREE: AN EXCELLENT MEMO PERSUADES THE OTHER SIDE ABOUT THE STRENGTH OF THE AUTHOR'S CLAIM

After reading an excellent mediation memo, the reader is left with the impression that the author is "right" - that is, that she has a strong claim. However, given that mediation is a process in which the author will need to persuade the other negotiator of that "rightness," the argument ought not to be strident or worded in such strong language that the other negotiator will react negatively or feel the need to argue back. An excellent memo is assertive without inviting argument.

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#### CRITERION FOUR: AN EXCELLENT MEMO INVITES THE OTHER PARTY TO NEGOTIATE IN GOOD FAITH

Excellent advocates are keenly aware that they must persuade the other negotiator to say "yes" to a proposal that will come during the mediation. Such an advocate judiciously chooses language that signals a willingness to make concessions in return for compromises or concessions from the other side. Some memos even contain an explicit offer to make a concession if the other side is willing to reciprocate. But even in the absence of such an explicit offer, an excellent memo is framed in such a way that the

opposing negotiator feels more inclined to come to the negotiation as a problem-solving ally, not a legal opponent.

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#### CRITERION FIVE: AN EXCELLENT MEMO OFFERS A HELPFUL DESCRIPTION OF THE NEGOTIATION HISTORY

It is always useful for a mediator to know what attempts at settlement have preceded the mediation. No mediator wants to repeat a failed past tactic or approach. Thus, it is incumbent on the advocates to let the mediator know what the negotiation or settlement history has been in the dispute. If that negotiation history is too self-serving, the mediator is likely to discount or dismiss it. And if the self-serving description is in the Open Part of the memo, it is likely to alienate the other side. An excellent memo summarizes the negotiating history accurately, and portrays prior failures to settle as "no one's fault."

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#### CRITERION SIX: AN EXCELLENT MEMO OFFERS A REALISTIC ASSESSMENT OF THE OBSTACLES TO SETTLEMENT

A mediator needs to determine how he or she can help move the parties toward settlement. A critical piece of background information the mediator needs is an understanding of what stands in the way of an agreement. Sometimes the obstacle is obvious - for example, where one side denies liability and the other side insists that the defendant is liable. Or where one side values the claim in the tens of millions of Euros and the other values it in the hundreds. However, it is often the case that there are obstacles to settlement that are not immediately apparent to a mediator from the facts or negotiation history - for example, when the advocate has lost trust with her client and the client no longer believes the information the advocate brings to him. There are many such examples of hidden obstacles. An excellent mediation memo helps the mediator diagnose the roadblocks that will have to be surmounted before a settlement can be attained.

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#### CRITERION SEVEN: AN EXCELLENT MEMO PROPOSES USEFUL AND WORKABLE STRATEGIES TO HELP GUIDE THE MEDIATOR IN DETERMINING HIS OR HER APPROACH

Mediators are greatly helped when participants facilitate the structuring of an effective mediation process. While it is useful for a party to identify obstacles to settlement (see Criterion Six), it is even more useful when the parties then offer their perspective on how to structure the mediation in a way that overcomes the obstacles, exploits common interests and creates a settlement that both parties prefer over further conflict. An excellent mediation memo will contain at least one suggestion about how the mediator might proceed, and sometimes more than one. These strategies ought to arise organically out of the situation, and should not be monolithically biased in favor of the author's position.

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#### CRITERION EIGHT: AN EXCELLENT MEMO EFFECTIVELY BREAKS DOWN INFORMATION BETWEEN THE OPEN (SHARED WITH THE OTHER SIDE) PART OF THE MEMO AND THE CLOSED (CONFIDENTIAL) PART

One of the most important skills in mediation is knowing what to share with one's negotiation counterpart and the mediator, and what to keep between the mediator

and one's self. This skill is important during a mediation, but also in the writing of a pre-mediation memo. Many mediators prefer that the parties write something private in addition to something shared. The private memos often contain information about strategy, about the other side, about aspects of the negotiation history, and perhaps even about settlement targets and obstacles. To the extent that the memo ought to inform the mediator without inflaming the other side, this can be accomplished by keeping the information confidential.

However, advocates who keep too much information confidential fail to serve their clients' interests. It is the other side who must be persuaded. This means that as much information as possible ought to be in the Open Part of the memo and that the Closed Part is kept to a minimum.

Moreover, the information in the Closed Part still needs to be accurate and believable. If the author is too one-sided in the Closed Part, the mediator will naturally discount the strength of the author's statements.

A fine balance needs to be struck, but an excellent memo manages to expertly walk the line between shared and confidential information.

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#### CRITERION NINE: AN EXCELLENT MEMO IS WELL-WRITTEN

This point ought to be obvious. When an advocate takes the time and exercises the skills required to produce a well-written work, he or she makes the job of the reader much easier. Well-written works are more persuasive and show the author in the best possible light. When spelling and grammar are perfect, when word choice is creative and appropriate, when sentence and paragraph structure evince care and skill, the product and the argument contained therein are all more likely to do the intended job.