2015 NATIONAL SPORTS LAW NEGOTIATION COMPETITION

GENERAL ORIENTATION FOR JUDGES

Structure of the Competition

The Negotiation

You will be seeing two sessions of each round. That is, you will be watching two sets of teams negotiate the same problem. During the first session, you will be evaluating each of the two teams on seven criteria listed on the Evaluation Form, e.g. (Attachment A), and you will also receive a Judge's Feedback and Comment Sheet to record your comments for each team in that session, e.g. (Attachment C). During the second session, you will evaluate the next two teams on the same criteria form. Also after the second session, you will be ranking the four teams from most effective to least effective on the Ranking Sheet, e.g. (Attachment B).

The teams will negotiate for 45 minutes. Each team is allowed to call for a five-minute break or caucus during the 45-minute period, but the clock keeps running so any time in caucuses comes out of the 45-minute session.

Self-Analysis

At the end of 45 minutes, both teams will leave the room to prepare for their self-evaluations. During this ten-minute break, you should evaluate both teams on the first five criteria on the Evaluation Form. After 10 minutes, the first team will come in and answer the two self-evaluation questions listed on the Evaluation Form:

> (1) "In reflecting on the entire negotiation, if you faced a similar situation tomorrow, what would you do the same and what would you do differently?"
>
> (2) "How well did your strategy work in relation to the outcome?"

You may also ask clarifying questions during this ten-minute session, including questions about how they dealt with any uncertainties built into the problem (e.g., "What uncertainties did you foresee for the parties?" "How did your agreement help the parties deal with future uncertainties?"). The purpose of any the questions during the self-evaluation session are to help you evaluate the teams, not to give feedback. Thus, it is appropriate during this period to ask a team why they turned down on offer or why they called a caucus, but not to comment on the answer. Feedback can be offered after both teams have done their self-evaluation. You are free to make notes on the Comment Sheet to help you remember your thoughts during the feedback sessions and to give the competitors written feedback not limited to what is on the evaluation sheet.

You should complete the final two criteria of the Evaluation Form at the end of this self-evaluation session. You may also revise your scores on the first five criteria in light of the self-analysis. Thus, if you had rated a team a "5" on the outcome of session criterion, but were convinced by the team's self-evaluation that they had taken a creative and original approach that had advanced their client's interests in ways you had not seen, you could raise the score.

After the first team in the session completes its self-evaluation, the second team comes in and the process repeats itself. That completes the scoring events for the first session. You will then finalize your Evaluation Form and have an opportunity to give the teams feedback in a joint session. The feedback session is a joint meeting of both teams. Judges should give both team members feedback. For example: (1) what they did well, and (2) areas where they could improve. Students have been working hard on their preparations and are looking for informative feedback.

Teams hearing what they did well helps them hear the suggestions about how they could improve. In addition, you should try to be diplomatic in expressing the ways that they could improve (e.g. do not say "it was stupid to bid against yourself;" do say "I have found it to be a good rule not to bid against yourself; when you lowered your demand, the other side had not given a counter offer; instead of lowering your offer, you could have told the other side: 'in light of those concerns, what are you willing to offer?'").

After the first session, the exact same process takes place during the second session, but with different teams. At the end of the self-evaluation portion of the second session, each judge fills out the Evaluation Form for the two teams in the second session and the Ranking Sheet. On the Ranking Sheet, you and your judge colleagues will rank each of the four teams as most effective to least effective.

Scoring

On all forms, the scoring system is like a round of golf, the lowest score is best. On Saturday, there are forty teams participating in two preliminary rounds. At the end of the preliminary rounds, the four teams with the lowest scores advance to the finals on Sunday. The first method for determining who advances to the finals is lowest total score on the Ranking Sheet If, as is likely, there is a tie for the top four positions, your rankings on the Evaluation Form will be used to break the tie. The first tiebreaker will be whether you found any ethical violations, which were not serious enough to disqualify the team, but were substantial enough to be called ethical violations. The next tiebreakers are overall score on the Evaluation Form, then lowest overall score on Outcome of the Negotiation, and finally lowest score on the self-evaluation. Bottom line: both of the scoring forms are likely to play a crucial role in determining who advances to the finals so please complete them thoroughly.

Filling out the Evaluation Form during the Session

The Evaluation Form is self-explanatory. There are seven criteria to be evaluated: planning, flexibility, outcome, teamwork, relationship between the parties, self-evaluation, and ethics. The first five criteria are filled in at least tentatively during the 45-minute negotiation period and the 10-minute break before the self-evaluation. The final-two criteria are filled out at the end of the self-evaluation. As to all scored criteria, the scores run from "1," which is best, and "7," which is worst. "4" is a neutral score. <u>You should start with 4 and only move up or down as you observe the team's performance during the negotiation and their performance convinces you that they did better or worse than neutral number on that criterion and by how much</u>.

Ethical Violations

The one criterion on the Evaluation Form that requires some discussion is criterion VII – negotiating ethics. This is not a scored criterion, but rather a potential disqualifier. You are asked whether each team observed ethical standards and to circle either "observed ethical standards" or "team violated ethical standards." (1) If you concluded that the team violated ethical standards, then (2) you must determine whether the violation should disqualify the team or not.

In deciding whether an ethical violation took place, there are generally two ways a team may do so:

(1) Did the team misrepresent material facts?
(2) Did the team invent self-serving material facts?

Any other serious violation of ethics may also be considered by the judges.

For purposes of this competition, we emphasize ethical accuracy because each team has confidential facts, which the other side does not know. If a team makes up material facts or deliberately misleads the other side about material facts, there is no way for the opposing team to know this because the opposing team may reasonably believe that the other team has been given that information in their confidential facts.[1] Note that it is not an ethical violation to misrepresent your client's instructions or mislead the other side about the limits of your authority. This is because ethical rules do not consider such as "material facts" and negotiations would be impossible if the each side were ethically required to disclose the least their client would take or the most their client would give.

[1] The situation is further complicated because teams are allowed to do outside research and use it in the negotiation as long as: (1) it is for the narrow purpose of background information; (2) they clearly identify it as the results of research and not confidential facts); (3) it is from sources available to all competitors without payment of fees; and (4) it is consistent with the facts given to the teams. Thus, a team in a round involving an endorsement contract, could research what kind of ownership deals other professional athletes had made and inform the other side that their research shows a particular athlete made an option deal with another team even though that fact is not in the confidential facts. However, the team introducing the facts must make it clear that the deal they are describing was not one described in their confidential research (e.g., The term "According to our research, *Forbes* magazine indicates that . . .").

Please also note that for purposes of this competition, we will not consider exceeding your client's authority or otherwise violating client's instructions as an ethical violation. Rather, you should consider such lapses very strongly on the evaluation sheet in the "Outcome of Session" category. Any team that agrees to provisions that violate the instructions from their client should receive a poor score on that category. Moreover, when you fill out the Ranking Sheet, you should consider the violation of client instructions a strong negative factor in assessing the effectiveness of a team.

Please note that if you decide there is an ethical violation, you should confer with your fellow judges and, if it is decided that an ethical violation has taken place, bring this concern to the NSLNC Board immediately. You should base this decision on how much the ethical violation affected the negotiation, and whether the violation was deliberate and strategic or accidental and unplanned. Please note that even if you find the ethical violation was not disqualifying, finding that a team did not act ethically is the first tiebreaker in advancing to the finals. Therefore, if you conclude that a team committed an ethical violation, it is unlikely that they cannot advance to the Finals. This means you should find an ethical violation only if you find that it is serious and substantial even though it is not necessarily disqualifying.

Filling out the Judge's Comment and Feedback Sheet

This is the place to take notes to help you remember specific points during the negotiation that you may wish to share with the team during the feedback portion. The teams will also receive copies of the feedback sheet, so follow the same protocol as with oral feedback. For example, include things the team did well under "strengths," and areas on which they could improve under, "needs improvement."

Filling out the Ranking Sheet at the End of the Two Sessions

After observing both sessions, you will be asked to fill out the Ranking Sheet, which asks you to rate the four teams from most effective to least effective. Again, the lowest number is the best. You are not bound by your scores on the Evaluation Form, but are asked to make an independent judgment of who was most effective. For example, you should ask which team you would most want to represent you in a matter of similar complexity in real life. A team does not have to reach an agreement in order to be rated most effective. In the real world, complicated deals would not be completed within 45 minutes. In addition, even if a deal is agreed to, an effective team does not have to accept it if it would not advance the interests of their client. Making the determination of effectiveness is not a matter of who got the best result for their client, but rather, which team was most effective in representing its client's interests given the constraints placed on it by their client and the problem.

Thus, a team with less leverage that worked out a deal within its client's instructions and met their client's interests may be rated better than a team with more leverage that missed opportunities for a better deal by using that leverage too aggressively. A determination of effectiveness also includes communication skills and how effectively the team established a relationship with the other side. You should consider the Ranking Sheet in determining effectiveness, but in the end this is a subjective judgment we are asking each judge to make.

Relationship between the Evaluation Form and the Ranking Sheet

You will be filling out the Evaluation Form before filling out the Ranking Sheet. It is our intention that the Ranking Sheet be your judgment about the team that was most effective, next effective, next effective, and least effective, without directly using the scores on the Evaluation Form. Thus, you should not simply add up your scores for each team and rank them according to which team scored best. On the Ranking Sheet, we are asking you to make a judgment on the overall effectiveness of the teams as compared to the other teams. This is to be your real-world assessment of the team that did the best overall job of representing their clients. On the Evaluation Form, however, you are rating specified individual criteria. On the other hand, the Ranking Sheet asks you to make your own judgment based on the criteria mentioned there. One way to look at it is if you were to be a client in a similar matter, which team would you want representing you?

There is another way in which the Evaluation Form does not govern the Ranking Sheet. You may have a round where you thought all teams performed poorly, but you still have to rate the teams from first to fourth, or least effective to most effective, as compared to each other. Conversely, you may have a round where you thought all four teams performed excellently; you will still have to rate one of the teams least effective.