***1L Negotiations***

**For the Competitor**

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**Welcome to your first ever Board of Barristers Competition!**

Thank you for competing with us. The following materials are meant to help guide you in your competition but remember that they’re only a guide. If you want to do something different or if your coach recommends a different route, you are more than welcome to pursue that.

Please ask your coach any questions you may have. They have valuable experience that can help you. Keep in mind that your coach may not help you on substantive issues. For Negotiations, that means they can’t help you with deciding what to offer or anything else related to the content of the problem. Ask your coach questions relating to the format of the competition, style, or feedback on performance. Your coach will watch at least one of your preliminary rounds. Speak with them after! That is where many people get their most valuable feedback.

**What does the Negotiations competition look like?**

Negotiations starts with the preliminary rounds (“prelims”). The preliminary rounds are the first three rounds you participate in. After each round, the judge of that round will fill out a ballot, determining which side won that round. These ballots become available for you to access after the preliminary rounds are concluded and the next rounds for those who advanced (“broke”) are announced. You are strongly encouraged to look at those ballots. They can offer incredibly valuable insight.

Everyone who competes in the Negotiations prelims will receive 10 BoB points. Those who do not break will receive 1 additional point for each prelim round they won. Those who do break will receive an additional 5 points for each round they advance to.

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| **How far they advanced** | **Competitor** | **Points** |
| Didn’t break but won one prelim round | Charlotte Smalley | 11 |
| Broke to octafinals but didn’t win | Bridget Pembroke | 15 |

If you have questions about points, contact the Vice Chair of Competitors, Grace Slauterbeck. Her email is [gslauter@ttu.edu](mailto:gslauter@ttu.edu).

**What does a Negotiations round look like?**

Before each Negotiations round, you will be given a set of facts including general facts and confidential facts. General facts are given to both parties. Confidential facts are only given to your side. Be strategic on how you use that information.

You should show up to your Negotiations round in business professional dress and 30 minutes early. This gives you time to find your room and prepare your materials. You may bring a copy of your facts, both general and confidential, and a legal pad or scratch paper to write on. Electronic devices will not be permitted, except for timing purposes during the negotiation. You may have an initial offer written down for your own purposes but **do not give any materials across the table to your opposing team.**

Once your judge arrives, each side will do a “pre-negotiation.” Pre-negotiations are 5 minutes alone with the judge to discuss what your goals and expectations are for the round. You should aim to have your pre-negotiation memorized but be as relaxed as possible so that is sounds conversational. Tailor your pre-negotiation to your client’s goals and interests and how you can best act to achieve those goals. You have been provided a pre-negotiation script at the end of this packet, but please remember that it is a jumping-off point. If it doesn’t work for you, change it so that you can address your client’s goals and your strategy to achieve them but in your own words. Judges will appreciate variety in how pre-negotiations are given so that it sounds genuine to you. The pre-negotiation can be delivered while standing or sitting, just be sure to be cohesive with your teammate (i.e. both sit or both stand).

You will have 50 minutes to negotiate. You may spend that time however you like but most negotiations begin with introductions and fact finding questions. When you introduce yourself, follow the lead of the facts. If the facts say you have been working with the opposing side for a while, mention that is nice to see them again. Each side will ask the other questions to get a better sense of what each side is working with. If you are asked a question, you must answer it honestly, but if there is room to be evasive it may serve you to do so. However, a dishonest answer will be an ethical violation.

After gathering information then you move into setting an agenda for the round. Setting the agenda is an opportunity to see what is most important to your client and their client. If you are a visual person, you may write the agenda on a whiteboard.

Then each side will put out their initial offers. For each offer, you should try to provide a justification behind that offer. This shows both your opposing team and your judge that you recognize your client’s strong points and weak points, and you are very familiar with the problem. Each term that your client wants to be addressed should be addressed. Prior to ending the negotiation, you should review the terms with the opposing side so that you both are on the same page.

Each side is allowed a 5-minute break during the round but be strategic when/if you take it. If you choose to take a break during the round time does not stop.

Once the negotiation concludes, each side will get 5 minutes to prepare for their “post-negotiation.” Post-negotiations are another 5 minutes alone with the judge to discuss the deal you reached and your thought process that led to those final terms. You should explain all the terms and briefly explain why you agreed to that term, particularly if it was a concession. Explain how the terms fit your parameters. Then, you should address some things you did well and some things you can improve on. You may be asked questions. Answer them in a friendly manner. View them as an opportunity to explain rather than defend. The post-negotiation can be delivered while standing or sitting, just be sure to be cohesive with your teammate (i.e. both sit or both stand). While the other side is doing their post-negotiation, you may not prepare for your own.

**What is an Ethical Violation?**

Ethical violations are most common in Negotiations and can arise fairly easily if you are not paying attention. For the Board of Barristers competitions, an ethical violation occurs when you agree to a term that you were not permitted to do under the facts provided or you deliberately behave in a way that is unethical like lying. An ethical violation does not occur if you agree to a term that is on the lower end of what your client wants. An ethical violation does not occur if you are not able to reach a deal (but you should still try to). An ethical violation does occur if you agree to a term that your client explicitly stated they did not want. An ethical violation does occur if you lie. All your problems are a closed problem so do not bring in any outside research or materials to your problem. If you are familiar with your facts and careful with your words, you should not encounter an ethical violation.

If you feel as though there was an ethical violation in the round you can report it online using the Board of Barristers website. Be mindful although you and your partner may feel as though an ethical violation occurred, the ethics committee for the board reviews the grievance and will issue a ruling.

**Ethical Violations**

* Blatantly lying about the authority given to you by your client
  + “We can’t go above x today…”
  + “We were told we can’t do that…”
  + “Our client has said that number is simply too much/little to reach a deal…”
* Note: saying those phrases (and others) are perfectly acceptable when TRUE.
* Additionally, note the difference between “we can’t do that…” versus “we are not willing/comfortable to do that today”
* The second phrase is not an absolute and does not say you don’t have the authority to do so; but rather, is simply saying you are not willing to do so.
  + Another example of setting a hard line that won’t result in an ethical violation is saying something like “I don’t think that offer is in my client’s best interest.”
* Making material facts up
  + This is probably where people get in the most trouble.
  + We encourage creative SOLUTIONS, but you cannot make up facts that are not in the problem or commonly known.
  + An example of an ethical violation from a made-up fact:
    - In a divorce problem, the facts provide that Brittney is the primary caregiver. If the team representing Brittney said “Brittney currently has the kids for 90% of the time” that would’ve been a self-serving, made-up fact.
      * All you could ethically say there was that Brittney was the primary caregiver.
* **Exceeding your client’s demands/authority**
  + Pretty straightforward, but if your client says you can only pay $10,000 for the settlement, and you pay $11,000, you have committed an ethical violation.

**Resources**

**Pre-Negotiation Script**

Good [morning/afternoon], my name is [your name] and my negotiation partner is [negotiation partner’s name]. We are here today to represent [client’s name] in a negotiation with [opposing side’s client’s name].

We have been tasked to answer two main questions for today’s negotiation being: 1) what our client’s main goals and interest are, and 2) what our overall negotiation strategy.

The first topic is: Our client’s main goals and interests for the negotiation.

**NOTE:** Be conversational here! Address what your client is most concerned with. This could be a great opportunity to introduce your judge to your client. This is where you tell the judge the bounds of your client’s interest to ensure the judge is informed on what it is that your client wants, and to show the judge your knowledge of the facts.

The second topic is: Our overall negotiation strategy and reasonings.

**NOTE:** Choose a negotiation strategy that works for your position and your personality. If it would not be natural for you to be aggressive, even if you have great points, don’t do it. Most people say they are planning on either being “amicable” or “aggressive,” but you don’t have to use either of those words. You want to pick a strategy that you can use in the heat of the round, not just something that sounds good to a judge. If you don’t use it in the round after you said you would in your pre-negotiation, be prepared to be questioned about it in post.

**Post-Negotiation Script**

Good [morning/afternoon], my name is [your name] and along with my negotiation partner, [negotiation partner’s name], we represented [client’s name] in a negotiation with opposing counsel for [opposing side’s client’s name].

Give a brief recap of the deal you came to. In today’s negotiation we agreed to …

We will address two main topics during this post-negotiation analysis:

If we were to do this same negotiation again, what would we do the same and what would we do differently?

First, some things [negotiation partner’s name] and I feel as if we did very well and would do again include.

**NOTE:** Try to give at least two or three good examples from the round that relate to your flexibility, your advocacy for your client, your teamwork, and your relationship to the opposing side. Point out the favorable terms or creative solutions you came to. Try to be specific about what you did well and give examples of things that happened during your round to point out.

Of course, no negotiation is perfect, so if we were faced with this situation again, there are some things we could improve on.

**NOTE:** Acknowledge places where you didn’t perform as well as you wanted to. Try to name one or two examples of things you can improve on. Be honest with yourself and the judge about your mistakes, this allows you to reason what you did and show the judge you learned from the experience. This may relate to how much time you spend on certain terms or information gathering. Be realistic here. Your judge may ask you questions about these things. Remember to be polite and not defensive.

At the end of the day [negotiation partner’s name] and I are pleased with today’s negotiation and all our terms stayed within our client’s bounds.

**NOTE:** End with an impact statement, like “Our client walked out with a great deal” or “Although we didn’t reach a deal today, we fought for our client and when we come back to the table that won’t change.”