

# SAGE MEDIATION ADVOCACY STANDARDS

## PRACTICAL ASSESSMENT

I. PRE-MEDIATION	
S/No	A. Management of Client
1	Analyses the suitability of the present conflict for mediation and effectively explains the value of mediation for de-escalating and resolving the conflict.
2	Advises correctly on mediation-related issues such as mediation clauses (if any), applicable mediation rules of mediation providers and professional bodies, ethical guidelines, liability issues, confidentiality, refusals to participate, mandates, and enforceability of settlement agreement.
3	Factors in relevant considerations to determine (1) whether mediation should be institutional or <i>ad hoc</i> , (2) qualities of a suitable mediator for the case, and (3) time frame for the mediation. Key considerations should include: <ul style="list-style-type: none"> <li>• location of the participants,</li> <li>• language,</li> <li>• presence of technical issues in dispute,</li> <li>• cultural differences, and</li> <li>• whether time is of the essence for a resolution</li> </ul>
4	Helps the client to identify the relevant financial, social, legal, reputational, commercial and other interests related to the resolution of the dispute.
5	Uses a relevant risk analysis metric to define the client's best, worst, and most likely alternatives to a negotiated agreement.
6	Advises the client comprehensively on the roles of client and advocate during the mediation and helps the client to gain familiarity and confidence with the mediation process.
B. Pre-Mediation Meeting with Mediator	
7	Identifies and overcomes possible misperceptions (e.g., concerns of appearing to be weak if agreeing to negotiate).
8	Explains desired outcomes of the client for the mediation and expectations of the mediator.
9	Provides the mediator with useful guidance on the client's priorities and preferences in relation to the dispute.
10	Able to build a reasonable rapport with the mediator.
II. MEDIATION	
Opening Statement	
11	Works with the client when delivering the opening statement to provide the mediator with <ul style="list-style-type: none"> <li>• the relevant background information,</li> <li>• key client interests and topics of discussion,</li> <li>• basis of client's position,</li> <li>• foreseeable impasses, and</li> <li>• desire for a constructive discussion</li> </ul> as the circumstances require and in a manner that supports the client's interests.
12	Interprets the other party's opening statement and identifies key information, interests, opportunities and impediments
13	Supports information exchange by summarizing facts and addressing queries from the other party and the mediator

<b>Joint Negotiations</b>	
14	Collaborates with the mediator, other parties, and counsel ensuring they understand the client's interests and priorities.
15	Persuasively explains the offers and responses to offers and pursues the support of the mediator and the other party for the client's desired outcomes.
16	Applies communication skills like active listening, reframing, and non-positional communication skills to constructively overcome impasses and negative behaviours during the mediation.
17	Establishes mutually acceptable norms or reference criteria by which to assess feasibility and possible implementation of options.
18	Applies reality-testing techniques to manage the expectations of the client and the other party and align them with existing norms and the available opportunities.
19	Manages and adapts the communication strategy so that the right information is disclosed at the right time to resolve the dispute and reach the best possible mediated outcome for the client.
<b>Caucus</b>	
20	Applies relevant norms to generate, set and advocate realistic options for settling the dispute.
21	Seeks and provides constructive feedback to/from the mediator to overcome existing and foreseeable impasse
22	Works with the mediator to craft a persuasive proposal (e.g. package deals, phased payment schemes, etc.) that supports the client's interests, and ensures that the mediator safeguards the confidentiality of sensitive information.
23	Ensure that the client fully understands and accepts the proposal that is being put forward.
<b>Closing</b>	
24	Ensures that the settlement is drafted with the appropriate safeguards to ensure the client's interests would be effectively achieved when the settlement terms are performed.
25	Explains all legal obligations encapsulated in the settlement and ensures the settlement terms are substantive, clear, and enforceable.

## WRITTEN ASSESSMENT

<b>A. Case Statement</b>	
1	Accurately and succinctly provides background information that will be helpful for the mediation and clearly summarises the key issues to be mediated.
2	Appropriately applies the relevant norms (e.g., laws, customs, community response, market practice) and subjective interests, or a combination of the two to draft a constructive and persuasive mediation statement.
3	Identifies the necessary documents to be exchanged with knowledge of applicable confidentiality rules, as well as any documents intended only for the mediator.
4	Organises the information strategically to persuade and convince the mediator and the other party to support the client's desired outcomes.
5	Shows sensitivity to the relevant laws affecting the mediation including the enforceability of the settlement agreements, confidentiality and privilege.