

S.W.O.T. ANALYSIS

for Mediation

S.W.O.T. Analysis allows you to see your case for what it is - its strengths, its weaknesses, its options and its truths. These are the bare facts of your case, devoid of emotions, personalities, client demands, your personal thoughts and other subjective factors that create noise and interfere with solid decision making.

PART I: STRENGTHS AND WEAKNESSES

Indicate whether the listed item is a *Strength* or *Weakness* of your client's case. Leave blank if not applicable. Incorporate additional elements into your S.W.O.T. Analysis that are specific to the facts and circumstances of the case.

- | | | |
|--|-----------------------------------|-----------------------------------|
| 1. Venue | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 2. Demographics | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 3. Right to jury trial | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 4. Right to arbitration | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 5. Professional background of presiding judge(s)/arbitrator(s) | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 6. Temperament of presiding judge(s)/arbitrator(s) | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 7. Opposing counsel's experience | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 8. Opposing counsel's demeanor | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 9. Client's reputation in community | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 10. Fact finder's perception of client | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 11. Witness credibility | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 12. Relevant facts | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 13. Applicable law | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 14. <i>Daubert/Frye</i> scrutiny of expert witness(es) | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 15. Client's financial resources | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 16. Balance of power between parties | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 17. Litigation costs | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 18. Creation of bad precedent | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 19. Resolved dispositive motions | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 20. Resolved motions in limine | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 21. Other resolved motions | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 22. Collectability of judgment | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |
| 23. Client sophistication | <input type="checkbox"/> Strength | <input type="checkbox"/> Weakness |

Additional STRENGTHS:

Additional WEAKNESSES:

Now that you have clearly identified the relative Strengths and Weaknesses of your client's case, you should outline your client's opportunities to avoid extreme results as the dispute moves forward.

PART II: OPTIONS

Indicate whether the listed item is an *Option* available to your client. Add *Options* your client should consider to achieve the most favorable outcome.

- 1. Are there motions your client can file to change the complexion of the case? Yes No
- 2. Are there steps your client can take to alter the time to completion of the case? Yes No
- 3. Have you identified themes that are likely to resonate with the fact finder? Yes No
- 4. Does your client require confidentiality to protect its reputation? Yes No
- 5. Are there measures available to emphasize or avoid relevant but embarrassing topics? Yes No
- 6. Are there alternatives to the one-time exchange of money such as payments over time or the ability to discount future transactions? Yes No
- 7. Are certain settlement terms *only* available through mediation? Yes No

Additional OPTIONS available to your client:

Next examine the list of Strengths and Weaknesses you identified in the first section. Are there any Strengths that your opponent has not yet accepted as Truth? Are there any Weaknesses that your client has not yet accepted as Truth?

PART III: TRUTHS

Identify every *Truth* about the dispute which must be accepted for the parties to make reasonable and informed decisions at mediation. Add *Truths* your opponent or your client should confront to resolve this dispute at mediation.

- 1. Is the trial/hearing outcome reasonably predictable? Yes No
- 2. Is your client facing an all-or-nothing outcome at trial/hearing? Yes No
- 3. Do you know how the presiding judge(s)/arbitrator(s) have ruled in similar cases? Yes No
- 4. Do any key witnesses have an admissible criminal record? Yes No
- 5. Does your client's organizational structure make quick decisions difficult? Yes No
- 6. Will the complexity of the case overwhelm the fact finder? Yes No
- 7. Is your client able to prove each element of every claim or defense? Yes No
- 8. Is your client concerned about contribution, indemnity or subrogation claims? Yes No
- 9. Are there any lien claims against potential case proceeds? Yes No
- 10. Are the parties likely to interact in the future? Yes No
- 11. Will your client be required to spend significant time away from family? Yes No
- 12. Will your client be required to spend significant time away from work? Yes No

Additional TRUTHS that must be accepted:

Finally, having realistically evaluated your case, you must determine which mediator will maximize chances of a successful outcome. This exercise is most useful when you understand your client's personality.

PART IV: CHOOSING THE RIGHT PROFESSIONAL NEUTRAL

You should evaluate the mediators you use on a case-by-case basis. The mediator who handled your last case may not be the right one for this dispute. Your ultimate success in any mediation may turn on your knowledge of different skill sets offered by different mediators and choosing the neutral with *the right combination of skills* for this case.

The ebook *How to Select the Best Mediator - A Guide for Legal Professionals* by Brandon S. Peters can quickly familiarize you with the different mediator approaches, styles and proficiencies. Free copies are available at www.uww-adr.com.

1. Are your client's interests best served by a facilitative mediation approach? Yes No
2. Are your client's interests best served by an evaluative mediation approach? Yes No
3. Are your client's interests best served by a transformative mediation approach? Yes No
4. Are your client's interests best served by an eclectic mediation approach? Yes No
5. Are your client's interests best served by a minimally-involved mediator? Yes No
6. Are your client's interests best served by a moderately-involved mediator? Yes No
7. Are your client's interests best served by a highly-involved mediator? Yes No
8. Are the mediator candidates capable of moving seamlessly between different approaches and styles to keep the mediation process moving forward? Yes No
9. Are the mediator candidates familiar with the laws governing the subject matter of your client's dispute? Yes No
10. Do the mediator candidates have highly-refined interpersonal and communication skills? Yes No
11. Do the mediator candidates have well-honed and creative problem-solving skills? Yes No
12. Do the mediator candidates have a reputation for paying attention to details with a thoroughness that leaves no possibilities off the table? Yes No
13. Do the mediator candidates have state-of-the-art negotiating skills? Yes No
14. Do the mediator candidates have the ability to disassemble a controversy and reframe individual issues to develop better understanding among the parties? Yes No
15. Are the mediator candidates known for dealing effectively with difficult clients? Yes No

Additional MEDIATOR QUALITIES necessary for this case:



Your questions or comments are always welcome. Contact BRANDON PETERS by Phone: (407) 661-1123

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Fresh copies of the S.W.O.T. Analysis for Mediation Template available at: www.uww-adr.com

Also on the website is the popular, ready-to-use Pre-Mediation Case Summary Template that can shave many hours off the time normally required to produce such a document. Both Templates are made freely available to legal professionals.