

Mediation Preparation Questions*

The purpose of these questions is to help you prepare for the upcoming mediation by getting you to think broadly about the dispute in which you are involved. Please give them serious, private consideration. Although you will not be asked to answer these specific questions at the mediation, some of these issues may be discussed.

1. Mediation works best when participants know what really matters to them.
 - What are the key needs and interests of yours that, if satisfied, would allow you to resolve the matter?
 - Examples of key needs or interests – certainty, closure, economic security, avoidance of legal precedent, avoidance of litigation, fairness, respect, understanding, institutional change, etc.
 - Try to identify the key interests of the other party to the dispute.
2. Assuming anything is possible, what would you like to talk about at the mediation? What do you think the other party would like to discuss?
3. What choices do you remember making in the events that gave rise to the dispute? How might your actions have been misunderstood by the other party to the dispute?
4. What could you learn at the mediation that might help you understand the actions of the other party?
5. What is the emotional tenor of the dispute?
 - What are your emotional hot button issues? What do you think the other party's hot buttons might be?
 - How might you best deal with your own emotions? How might the mediator help you do this?
 - How can you best avoid triggering a destructive emotional response from the other side? How might the mediator help you do this?
6. Consider what might happen if you win at trial?
 - Consider what might happen if you lose at trial?
 - Will the trial end the litigation?
 - Might you or the other party file for bankruptcy?
 - How much will it cost to pursue litigation and any subsequent appeals?
7. What practical concerns inform your thoughts about how to resolve this matter?
 - Practical concerns may include tax consequences, precedential implications, satisfaction of lien holders, cash flow issues, attorney compensation, etc.
8. What would it feel like to have the case proceed without a negotiated resolution? And end favorably for you? And end unfavorably for you?
9. What other concerns might be relevant to your thinking about how to resolve this case? Are there issues of principle for you or the other party to the dispute?
10. Will ending the litigation end the entire dispute? Might you have further contact with other parties to this matter? Do you have common business or personal associations?
11. Can you imagine a resolution that would meet the needs and interests of both parties?
 - What would it feel like to have the dispute settled in a manner that was satisfactory to both parties?
 - Are there other people to whom you'd want to explain your decision to settle this matter?

** Adapted and reproduced with permission from Claudia Bernard, mediator for the U.S. Ninth Circuit Court of Appeals, San Francisco.

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