

Confidential Position Statement

Introduction:

Success in mediation is dependent upon preparation. Preparation is equally important to both mediator and the parties in dispute. These questions can be used as a tool for helping you prepare a confidential position statement. It is also a tool that can be used for self-assessment. Your answers will help determine whether the mediation process can fulfill your needs. If a victory is absolutely required, you might consider proceeding with litigation.

The process of coming up with answers to these questions may stimulate new avenues of thought. Taking the time to reflect on your answers to these questions, before you see a mediator may help you see why you are on this particular path and help the mediator facilitate the parties reach a settlement.

Confidentiality:

As with all communications received by me during the pre-mediation process, all of this information will be treated with strict confidentiality and will not be divulged to anyone without specific permission.

Questions to Consider:

What understandings and agreements did you and the other side have which you believe have been violated?

What changes, if any, occurred in these understandings and agreements?
How do you and the other party differ in your current interpretations?

What was your relationship at the beginning; how did you get together?
Did you trust each other?

When did you first suspect that something was going wrong?
Did you feel betrayed, taken advantage of, ignored, undercut, etc.?
Did you discuss your feelings with the other side; when; how often?
Have these beliefs changed, if so, how?
What do you believe the other side owes you on account of these actions?

Are there any areas where you agree, or are close to agreement?

What are the areas of greatest disagreement?

In the areas of disagreement, what criteria will you use to judge the merits of your and the other side's claims?

What are the most important points an agreement must have to satisfy you and why are they important?

What do you believe are the most important points to the other side?

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Are there topics you would prefer to not discuss?

Are there things that the other side might say that would cause you distress or cause you to lose your temper?

If this happens how can I help to keep our discussion on track?

Where you have different ideas on how things should be done, do you have anything to support your belief such as industry standards, notes, receipts, witnesses, photos, etc.?

Are there areas or items you are not willing to discuss? Why?

If we do not arrive at an agreement and you go to court or arbitration:

What do you think could be your best result?

What do you think could be your worst result?

Which of the following statements are more important:

An immediate solution even if it is less than I would like, or a big win even if I have to wait a few years?

Financial satisfaction or emotional satisfaction?

Ending the conflict and dispute quickly or getting even?

Is a settlement without an apology acceptable?

Is an apology without payment of money acceptable?

If this goes to court what are all the issues you believe will be disputed?

Do you have any suggestions as to what I might do that would help bring about an early resolution of this problem?

Is there any other information that might have a bearing on this matter?

What information do you believe should be obtained by the mediator prior to the mediation session?

If the case cannot be settled at mediation, have the parties contemplated other forms of alternative dispute resolution procedures that may assist in pre-trial settlement of this case? If so, please state what other procedures you believe could be helpful.

If this case cannot be settled at mediation, is there any narrowing of legal issues that can be accomplished at mediation? For example, are there any pre-trial matters that could be agreed upon at mediation, or any discovery disputes that could be addressed?