

Preparing for Your Mediation

I'm often asked about the "secret" underlying mediation success. Experience has taught that the prospect of reaching a mutually acceptable outcome through mediated settlement discussions primarily depends on two key variables: (1) pre-mediation preparation, and, (2) the willingness of the parties to work together cooperatively. The following information will help you with the former and give you an appreciation for the latter.

1. Consider Whether You Have a Dispute, a Conflict, or Both.

The terms *dispute* and *conflict* are commonly used interchangeably, but it is very helpful when preparing for mediation to make a clear distinction between the two. A dispute is an argument or debate over contending views, positions, or interests and is related to rights and responsibilities. A conflict is discord or strife resulting in a severance of friendly relations. If you have a dispute, the outcome you are seeking is resolution of the issues. If you have a conflict, the outcome you are seeking is reconciliation of the relationship. If you have both, you need to prepare for both resolution and reconciliation.

2. Understand Your Interests and Create Options for Meeting Them.

One of the most important things that you can do to prepare for mediation is to know what are your needs and interests. Before you can identify your interests, you have to separate them from your positions (i.e., proposed solutions). An interest is what you want to gain from mediation. It is that which must be satisfied in order for you to say "yes" to any proposal, counter-proposal or settlement offer. A position, on the other hand, is how you expect an interest to be met.

While your interests may have many ways to be met, any single position prescribes only one of those ways. Take time well in advance of the mediation to intentionally consider your interests and needs...and prepare yourself to adjust them as the mediation process unfolds. Then spend some earnest time thinking about the various ways in which your needs and interests might be satisfied. This will help you to be open and flexible in finding solutions to meet your needs and increase your chances of arriving at an outcome that also is acceptable to the other party.

When thinking of various options that might appeal to your needs and interests, please be mindful of the fact that "options" don't require a commitment or a decision when under initial consideration. Rather, an option is just one possibility that could lead to a workable agreement or part of an agreement. People often shut down creative thinking and bring 'mediation momentum' to a grinding halt because they shoot down options much too quickly.

Again, options don't require a commitment or a decision merely to be considered and further explored. They're just ideas that could lead to an agreement or an aspect of a workable agreement.

3. Consider Not Only Your Own Interests, But Those of Others as Well.

Mediation is about finding solutions that will work for all parties. It is a solution-making process. Thus, the greater your understanding of the other party's feelings, perspectives, needs and interests the better you will be able to create a solution that everyone can agree upon. Take time before the mediation to try to understand what a solution would look like for the other party. Try to anticipate their essentials and non-essentials.

This will help you be more creative in developing options and finding solutions. Look for shared goals and interests that you both have. Many times parties come to mediation with very similar goals and interests, but have very different positions or ideas about how they should be met. When both parties begin to look for mutual ways that benefit the other, the mediation process becomes a powerful opportunity for resolution and reconciliation.

4. Know Your Essentials from Your Non-Essentials.

When trying to resolve a dispute or reconcile a conflict, it is crucial for you to know what is essential to you and what is not. The more honest you are in identifying the non-essentials the better off you will be. Knowing your essentials and non-essentials will keep you on track and focused and prepare you to be flexible and creative in reaching an outcome acceptable to you and the other party. You will also find it helpful to spend time thinking through the *best* and *worst* outcomes that are possible should you not reach a mediated agreement.

5. Acknowledge, But Manage, Your Emotions.

Disputes and conflicts produce emotions. The emotional content of a controversy has the potential to bring out the best and worst in people. Negative emotions can cause people to become ineffective and unproductive when trying to seek solutions to problems. Indeed, impasse at mediation almost always results from negative emotions. Hence, as you contend with your emotions, try to work through them as best you can prior to the mediation in order to minimize their becoming a stumbling block to resolution and/or reconciliation.

6. Gather and Organize All Pertinent Information.

Prior to the mediation conference, you and the other party should gather all pertinent information sufficient to make informed decisions about options for resolution and/or reconciliation. If there is information you need from the other party, ask them for it. Likewise, if you receive a request for information from the other party, be generous and timely in giving it to them. It is common for the mediator to help with these informal information exchanges.

7. **Final Thoughts.**

Mediation is *hard work*...and there's just no way around this! The better prepared the parties are and the more willing they are to work together, the greater the possibility of a satisfactory outcome. Thorough preparation may take considerable time and reflection on your part, but the fruits of your preparation will be seen in the quality of your outcome.

No mediated settlement can be reached without you and the other party's consent. It is, therefore, imperative that everyone collaborate to craft a mutually acceptable outcome. You "win" only when the other party "wins." Going into mediation with this mindset will be extremely beneficial, greatly enhancing the likelihood of resolving the issues, reconciling the relationship, or both.

For *your* mediation success,

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