



Mediation Prep Packet

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Preparing for Mediation:

Mediation is a successful way for resolving your disputes. Mediation gives the parties a venue to discuss a dispute in a safe and confidential atmosphere. It gives all parties opportunities to explore disputes in ways that court or other conflict resolution forums cannot. Mediation works because it allows all parties to be involved in the decision making process. There is no judge, or third party decision maker who interprets and makes decisions based on testimony and evidence.

Success in mediation is directly related to the preparedness of the parties. The more prepared and familiar the parties are, the greater the success will be in creating solid solutions to disputes that will work for everyone. This packet is designed to help parties prepare for mediation. It will give you essential information to help you understand the process, and give insights and direction.

This packet is a work book. It will ask you questions that will help bring into focus your interests and potential solutions while preparing you for mediation. Please take the time to read through this packet and answer the questions. The more honest and searching you are in working through the packet, the better prepared you will be. Remember that the work you do in the packet is confidential. It is designed only to help you to take advantage of the mediation process.

Section 1: The Mediation Process:

For many, mediation is a new process. This section will help you understand what mediation is, and everyone's role in the process. Please take time to familiarize yourself with mediation because it will help reduce any anxieties and that you may have.

How mediation works:

Mediation is a participatory process. All solutions and decisions are made by you and the other party. The parties are the key decision makers and final authorities in mediation. Thus the success of mediation is solely based on how willing you are to work with the other party for resolution. Mediation is a voluntary process in which all parties decided to participate. Therefore mediation respects all parties' willingness to participate and their decision making ability. Mediation is also confidential. Nothing that is discussed is used outside the mediation, so you are free to discuss anything that you feel is important.

Mediation process:

The location of the mediation is negotiable. All parties meet at an agreed upon location with the mediator. The mediator will welcome everyone to the mediation and let everyone know that this is a volunteer confidential process. At the beginning, the mediator will discuss any ground rules that he/she has and will ask if there are any rules that the parties would like to make.

Typically the rules that the mediator sets are: 1) confidentiality, 2) allowing everyone to speak in turn, and 3) the right to ask for a caucus (more on this later). If there are rules that you may want to add, it is here that they will be addressed. Once the ground rules have been discussed, the mediator will ask each party in turn to begin to tell his/her "story", while asking questions along the way. Then he/she will begin to identify key issues and move all parties toward an agreement. Once a solution is agreed upon by the parties, the mediator will solidify the agreement by writing a memorandum of understanding. This is a written agreement of what the parties have agreed to in mediation.

If for any reason that a party wants to talk to the mediator by themselves, the mediator or the party can ask for a caucus. A caucus is a confidential meeting with the mediator to discuss any concerns or strategy that one may have. It is a confidential meeting, and it gives you a chance to talk to the mediator up front. The mediator will help you move to a resolution, but will not break his confidentiality with the other party, or his neutral status. Sometimes the mediator may feel it would be better to separate the parties or talk to them individually. If this is the case, he will request a caucus in the interest to move all parties to a solution.

Mediator:

The mediator's role is to help bring the parties to a resolution of their dispute. He is a confidential neutral third party who does not make any decisions. He uses facilitation skills to help identify the parties concerns, and interests. It is his/her job to move the parties to a resolution, by enforcing the ground rules, making sure that all parties are heard, and pushing parties to a resolution.

The Parties:

The parties are the decision makers. It is their job to identify and communicate their interest to the other parties, and then listen, and resolve the conflict. The success of the mediation is based on them. All parties must take an active role in mediation through participation. Participation is voluntary; therefore attendees are never forced to participate. If any party requests for additional attendees, the request must be approved by all parties involved.

Questions to consider:

Are there any rules that you want to implement that you feel will make the mediation successful?

Who can attend the mediation is up to the disputing parties. Is there anyone you can think of that needs to be attending the mediation? If so why?

Do you have any concerns, questions, and or anxieties about mediation that you want to discuss with the mediator?

Section 2: Understanding your interests

Many times parties come in to mediation not understanding their interests. This section will help you identify your interests and separating them from your positions. The clearer your interests are to you and the other party, the more prepared you will be to make sure that they are met. Remember your interests are only as clear to the other party as you make them. This section will not only help you identify your interests, but also help you to be able to communicate them to the other party.

Interests vs. Position:

First lets' look at the difference between an interest and a position. One of the most important things that you can do to prepare for mediation is to know what your needs and interests are. Before you can identify your interests, you have to separate them from your positions or proposed solutions. An *interest* is what you want to gain from mediation, while a *position* is how you expect that interest to be met. For example, if you are a divorced parent an interest may be to have more time with your children, and a position would be that you want to

pick your children up three hours early each weekend, even though it cuts into the other parent's time with the children. While your interest may have many ways to be met, your position only has one way. Take some time before the mediation to write down your interests and needs. This will help you to be open in finding solutions to meet your interests and increase your chances of succeeding.

Here are some examples of interests and positions:

1) *Position:* I want \$5,000 to replace the floor that was installed incorrectly.

Interest: I want the floor installed correctly

2) *Position:* I want you to pay for all of our child's school supplies.

Interests: Our child needs schools supplies.

3) *Position:* Each adult child needs to take a day each week to take care of mom and dad.

Interests: Mom and dad need attention.

The better you know your interests the easier it will be to know when you have reached a good solution in mediation. Knowing your interests will also make it easier to convey them to the other party. Take some time to think about your interests and needs.

Questions:

What are your interests and needs? Please try to stay away from positions? Write down everything that you would like to get from the mediation.

Relationship interests:

One important thing to remember is your relationship with the other party. It is important to know what kind of relationship you have and will need to have after the mediation. For example, if the other party is an ex-spouse, then a relationship will exist after the mediation. How would you like for that to look like? If the other party is a business vendor, then you may want to keep a strong relationship after the mediation. Our relationship is an interest that many overlook. What is your interest in the future relationship?

Take some time to think about the relationship and what it will need to look like to make your life better. What do you want it to be?

Section 3: Knowing What the Minimum is that You Will Accept

When trying to resolve any conflict, there will be compromise, alternate solutions, and give and take. Therefore it is always good to know what the minimum is you are willing to accept in your resolution. Knowing this before the mediation will help you protect your interests, and keep you on track and focused. The best way to visualize this is to know what the best outcome or your alternative option is if you did not mediate. Take time to explore your limits and boundaries. Seriously consider what you will be willing to live with. The more honest that you are with knowing what you can live with the better off you will be. This will help you be prepared when you consider alternative solutions and proposals in mediation, and will help you know beforehand what you may be able to live with.

Questions:

What would the ideal outcome look like for you? Please take time to envision this.

What would the worst outcome look like for you? This will help you identify what you are not willing to accept.

What are my alternatives if no solution is found?

In mediation, the reality is that there will be negotiation, and some compromise as to what the resolution will look like. Therefore it is important to rank the importance of your interests. This will help you negotiate and make sure you get what is most important for you. Take the time to rank your interests in importance.

Now you have created some parameters as to what you are willing to accept. You have identified what a good and bad resolution may look like. You also have ranked your interests in order of importance. This will help you be prepared to work to a solution that you can live with.

Section 4: Walk in the Other Parties' Shoes

Mediation is about finding solutions that will work for all parties. It is a solution making process. Thus the more that you understand the other parties feelings, perspectives, 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 understand what the minimum is that the other party would accept. This will help you be more creative in finding alternate solutions, and help you to become creative in your proposals. 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 of how these interests should be met. When both parties begin to look for mutual ways that benefit the other, mediations become powerful opportunities to create strong and lasting resolutions.

Questions:

What do you think are the interests of the other party? If you do not know, what do you need to understand their interests?

What do you think that an idea solution of the other party looks like?

What do you think the worst solution the other party looks like?

What is their best alternative if no solution is found?

Rank the other parties interest in the way that *you feel* are the most important to them.

What are the goals and needs that you and the other party share?

What are possible options for a solution?

Now you have an idea of what the other party's perspective is. Although this is not an absolute list, it is however what you feel may be important to the other party. Be aware that this list may change as you go through the mediation. You may find that there are other interests that you are not aware of. However, this list that you have created will get you thinking about what the other party needs to come to an agreement. You will be more prepared to listen and discover what the other party's needs are.

Section 5: Be Aware of You and the Other Parties' Emotional State

Conflict is an emotional process that can bring the best and worse out of people. No matter how well one controls his/her emotions, they will ultimately surface. Emotions may be something we have difficulty controlling in conflict, but being aware of them and their power can help. It is always best to know what issues, words, and actions can make us and the other party to explode. This will help you know how to approach a subject, and identify what is happening to us emotionally during the mediation. It will also help you to prepare for talking about important and sensitive subjects. Having an awareness of emotions by preparing for them will help you when emotions are high.

Questions:

What are words, topics and situations that may come up that will affect your emotions?

How will you respond to them if they do indeed come up?

How do you think the other party will respond to them?

What are words, topics and situations that may come up that will affect the other emotions?

How will the other party respond to them?

How will you respond to them?

One Final Note:

Now you are prepared to mediate. You have an idea of what mediation is, and the roles of all the parties involved. You have an understanding of what to expect from the mediator and the mediation process. You know what your role and responsibility is within the mediation.

You also have taken the time to explore your interests, so that you know what it is that you need in a resolution and how to communicate them to the other party. You also know what a good and bad solution looks like and you have ranked your interests in importance. This will help you negotiate and find creative solutions to your problems.

You also have taken the time to look at the other party's perspective. You have identified what you think the other parties interests are, and what possible solutions may look like for him/her. This will help you understand the other party and get you to move faster to

resolution. Remember that resolution is a two way street. For a resolution to work it has to be good for all parties.

Finally you have taken the time to think of scenarios and words that may affect your emotions. Mediation can be gut-wrenching, preparing for our emotions will help you. Furthermore, knowing what will affect the other party emotionally will help you address issues that may be difficult to discuss. Emotions are a part of our humanity. They cannot be turned off, but we can recognize them and acknowledge how they may affect our situations and decision making ability.

This packet may have given you additional questions. If this is the case, please feel free to contact the mediator prior to the mediation to discuss your questions. A responsible mediator will always be willing to answer your questions about mediation. Remember that the answers that you have given are only here to help you. They are not set in stone. During your mediation you may find new needs and interests, or the importance ranking may change. That is OK and expected. However, if and when changes come, you will be ready and more equip to act upon them, then if you had not prepared.

Quick Tip Reference:

Your Responsibilities:

- Please arrive at least **15 minutes prior** to the scheduled mediation time.
- Inform the Mediator of cancellation at least **24 hours** in advance.
- Bring any supporting **documentation** (ie. Mediation Worksheet, receipts, contracts etc.), if applicable. **Research and bring quote samples for replacing damaged property.**
- All additional people attending need to be cleared 24 hours before the mediation.

Communication Tips:

1. Active listening. Hear the other's point of view. Avoid interrupting.
2. Keep your emotions in check. Focus on the problem, not your emotions.
3. Reflective listening. Take responsibility for your own feelings and let the listener know our inner feelings, including:

- a) Your feelings
- b) Behavior that is causing the feelings
- c) Consequence of the behavior

Example:

"I feel angry when you stay up late at night with the light on because I am kept awake and have an 8:00a.m. class to go to every day."

4. Focus on interests, not positions.
 - a) Position - something you have de
 - b) Interest - what caused you to decide on your position
 - c) Ask yourself "why" and "why not"
5. Stay focused on the issue at hand.

Wording to avoid:

Avoid Commands such as:

You should.... (or shouldn't)

You will...

You must... (or have to)

You're supposed to... (or not)

You can't...

Avoid Comparisons such as:

You're just like...

You're not anything like...

(3rd person) would never... (or would always)

If I were in your position...

Avoid Exaggerations such as:

Always...Never...Forever...Constantly...Everybody...Nobody....Six times (when it was actually two)

Weeks (when it was actually days)

-Blaming

