

QUESTIONS TO CONSIDER TO HELP FACILITATE LEGAL DISPUTE EVALUATION, RESOLUTION AND SETTLEMENT

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- Trust, estate, probate, POA and elder abuse litigation, contentious administrations, special assets such as business interests, collectibles, accounts and partition actions; ethics.
- Business breach of contract, agreement, license and venture; internal co-owner disputes, litigation, split-up and buyout; and governance, boards, audit committees, ethics, etc.
- Real property breach of contract, and co-owner, and partition disputes and litigation.
- Mediator services; disagreement, dispute and dysfunction resolution; successful meetings.

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LIST OF POSSIBLE PRIMARY FACTORS – NOT IN ANY PARTICULAR ORDER

Complaints, cross-complaints, claims, causes of action, and defenses. Optics, persuasion.	Authority, rights, duties, responsibilities, conflicts, and required standards of conduct.
Personality, character and relationships, the history, emotions, human factors, etc.	Options, solutions, techniques and strategies for resolution of each issue in true dispute.
Conduct, actions, and inactions.	The evidence (A, B, C), admissibility, etc.
Discovery status. Roll playing, direct & cross.	Burden of proof. Presumptions.
Trial date. Trier of law and fact – judge, jury.	The laws-jury instructions-motions in limine.
Agreements, instruments, documents, etc.	Breach, liability, damages and mitigation.
Strengths, weaknesses, uncertainties 30+%.	Interests and needs. Interest in resolution.
Comparable persistence and dedication, ability to grind it out, and financial strength. Costs.	Capacity, limitations, influence, governance, undue actions, control, and decision making.
Reasons to resolve, reach settlement and move forward. Settlement and resolution demeanor.	Win/win negotiations, working together and development opportunities and options.
Other areas pertinent to the dispute.	Perceived power, authority, right or must win.

I wrote this paper to help you with evaluation and to help you prepare for mediation, resolution and settlement of your dispute or conflict – and also so that you can help the mediator help you reach resolution and settlement. Your dispute or conflict might already be in litigation or might be proceeding to litigation, or your dispute or conflict might be procedurally less formal. Preparation is important to effectively mediate, settle and resolve difficult disputes and conflicts – preparation helps you to evaluate the strengths and weaknesses of your position or case, and the options, posture and value for resolution and settlement. It will be beneficial for you to work on full answers to the below questions after you have given them careful thought. Remember: it is your conflict or dispute – you need to take ownership and work toward resolution and settlement. All parties to the dispute or conflict and their counsel should consider these questions before mediation, and all parties and their counsel should be prepared and willing to discuss these questions with the mediator, and to help the mediator help you to reach resolution and settlement.

Thank you for reading these materials. I ask that you pass this paper along to other people as it is through collaboration that great things and success occur more quickly. Please also subscribe to my blogs (see below), and connect with me on LinkedIn, Facebook and Twitter.

Remember that every case situation is different. You do need to consult with an attorney and other professionals about your particular situation. These materials are not a solicitation for legal or other services inside of or outside of California, and, of course, these materials are only a summary of information that changes from time to time, and do not apply to any particular situation or to your specific situation. So . . . you cannot rely on these materials for your situation or as legal or other professional advice or representation.

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1. In the order of importance to you (beginning with the most important), list and describe, including important dates, each item for which there is a dispute or conflict, including your views or positions, and, if you know or have a belief, the views or positions of the other party(s) to the dispute or conflict.

2. For each item discussed in number 1 above, describe conversations, documents, agreements, industry standards and other items that state and support your views or positions. You should have copies of the important documents, and have them with you or have them easily available to you for resolution and settlement discussions.

3. For each item discussed in number 1 above, describe conversations, documents, agreements, industry standards and other items that tend to state and support the views or positions of the other party(s). You should have copies of the important documents, and have them with you or have them easily available to you for resolution and settlement discussions.

4. For each item discussed in number 1 above, if you have been injured and/or damaged list each person and/or entity that caused or contributed to your injuries and/or damages; describe what each such person or entity did wrong that caused or contributed to your injuries and/or damages; and estimate the percentage of fault that you attribute to each such person or entity for causing or contributing to the injuries and/or damages.

5. For each item discussed in number 1 above, if it is claimed that you caused or contributed to injuries and/or damages, describe why you are not responsible for causing or contributing to the injuries and/or damages; list each person and entity who is responsible for causing or contributing to the injuries and/or damages; and estimate the percentage of fault that you attribute to each such person or entity for causing or contributing to the injuries and/or damages.

6. For each item of alleged injury and/or damage estimate the value or amount of each such injury and/or damage regardless of who you believe is responsible or at fault for causing or contributing to the injury and/or damage.

7. For each item discussed in number 1 above, describe the resolution offer(s) that the other party(s) has made (if any) to resolve or settle each item of dispute or conflict.

8. For each item discussed in number 1 above, describe the resolution offer(s) that you believe the other party(s) would be willing to make to resolve or settle each item of dispute or conflict.

9. For each item discussed in number 1 above, describe the resolution offer(s) that you have made (if any) to resolve or settle each item of dispute or conflict.

10. For each item discussed in number 1 above, describe the resolution offer(s) that you would be willing to make to resolve or settle each item of dispute or conflict.

11. For each of the items that you discussed in number 1 above discuss whether you believe that you are close to agreement or settlement with the other party(s), and why or why not.

12. For each item discussed in number 1 above, describe the criteria that you would use to determine whether a settlement proposal is reasonable.

13. For each item discussed in number 1 above, describe or explain the award or remedy that you believe a judge, arbitrator or trier of fact will most likely give you if this dispute or conflict does not settle, and why you believe that a judge, arbitrator or trier of fact will give you that award or remedy. Include oral (testimony) and written (documents) facts and evidence, and, to the extent possible, the applicable laws relating to the claims that have been made, and possible defenses that have been made or are available. You should also keep in mind that in every case there are many additional matters to consider including, for example, legal and evidentiary presumptions and implications, burdens of proof, evidence actually in hand or available and admissible, witness and evidence credibility, motions in limine, 30+% inherent uncertainty, etc.

14. Describe how the other party(s) has been unfair to you.

15. Describe in detail each downside risk to you if resolution of each item in dispute or conflict is not achieved. Roll playing, sample direct examination and cross-examination.

16. What additional information and documents, if any, need to be known or obtained to help you and the other party(s) achieve resolution and settlement? For example, consider: what will motivate and get each party to settle on each issue, and to actively work toward settlement?

17. Your situation and case history include important past events – for example, things that have happened or that people have said or done, or perhaps events involving relationships and emotions. Describe each of those and also indicate for how long difficulties have been ongoing.

18. Personality, character, relationships – differences or propensities sometimes impact or in some manner influence efforts to reach agreement and resolution – sometimes they make it easier while sometimes they make it more challenging. For the purpose of this paper and discussion I will merely ask that you give these some consideration as to each person who will be involved in the mediation process, and that you be prepared to discuss this with me if the circumstance arises.

19. What more do you suggest needs to occur or be done, and what else can be done, to help you and the other party(s) reach resolution of the items that are in dispute or conflict? Thus, for example, I am also asking you, what more can you tell me, or suggest, that will help me to help you reach resolution of your dispute or conflict? If it is additional discovery, what “A” evidence will you obtain through additional discovery?

I hope that you found these materials helpful. You can find additional discussions on my blogs. I ask that you pass this paper along to other people who would be interested as it is through collaboration that great things and success occur more quickly.

Best to you,
David Tate, Esq., Law Office of David W. Tate

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