

Mediation Preparation & Representation Plan

This checklist is intended to assist attorneys and clients prepare for a productive mediation process. Consider using it as a shared planning tool, revising as new information or strategy adjustments emerge.

PART 1: Understanding the Dispute

- ☐ What is the dispute about (from our perspective)?
- ☐ What are our legal claims and defenses?
- ☐ What is the procedural posture of the case?
- ☐ What is the relevant contract, deal, or relationship history?
- ☐ What is the tone of past communications?
- ☐ What is the dispute about (from their perspective)?
- ☐ What are their legal claims and defenses?
- ☐ What is the negotiation history between the parties?

PART 2: Goals, Interests & Strategy

- ☐ What are our client's key interests (beyond legal outcomes)?
- ☐ What is most important to resolve or protect?
- ☐ Do we have timing, cost, reputational, or relational concerns?
- ☐ What are our client's specific goals for this mediation?
- ☐ What are the other party's likely interests?
- ☐ What are the other party's likely goals for the mediation?

PART 3: Assessing Legal & Negotiation Leverage

- ☐ What is our strongest legal argument?
- ☐ Where are the weaknesses or uncertainties?

- ☐ What is their strongest legal argument?
- ☐ Where are their weaknesses or uncertainties?
- ☐ How might the law or fact-finding develop if the case continues?
- ☐ What is the best-case outcome in litigation? Worst case?
- ☐ What are the projected costs (legal fees, internal time) for:
 - Defending [dispositive motion]: \$ _____
Likelihood of complete success: _____ %
 - Trial/hearing prep and appeals: \$ _____
Likelihood of complete success: _____ %
- ☐ How does the certainty of a settlement compare to the risks?
- ☐ What is our bottom line, and is it flexible?

PART 4: Considering the Role of Emotion

- ☐ What emotions has this dispute triggered for our client (e.g., anger, fear, betrayal, embarrassment)?
- ☐ How might emotion be influencing the client's goals or flexibility?
- ☐ What emotions has this dispute triggered for the other party?
- ☐ How might emotion be influencing the other party's goals or flexibility?
- ☐ Are there emotional barriers to communication with the other party?
- ☐ How might we acknowledge or validate emotions without escalating conflict?
- ☐ What support can we offer the client to manage emotion during mediation (e.g., breaks, coaching, preparation)?
- ☐ Are there symbolic elements (e.g., apology, recognition, acknowledgment) that might help unlock resolution?

PART 5: Mapping the Negotiation Plan

- ☐ What is our opening message (tone and substance)?
- ☐ What information are we willing to share early?
- ☐ What proposals or options can we put forward?
- ☐ Are we prepared to explain how we arrived at these proposals?
- ☐ What are acceptable tradeoffs or non-monetary solutions?

- ☐ What are potential process options if impasse looms?

PART 6: Understanding the Mediator's Role

- ☐ Have we talked to the mediator or reviewed their style?
- ☐ What can we ask for from the mediator before and during the session? (e.g., process design, testing reality, evaluation)
- ☐ Are there any special confidentiality concerns we should raise with the mediator in advance?

PART 7: Logistics and Mechanics

- ☐ Who will attend the session?
- ☐ Will it be in-person, virtual, or hybrid?
- ☐ Do we need any experts, summaries, or visuals?
- ☐ What information or documents should be exchanged beforehand?
- ☐ Have we confirmed availability and authority to settle?

Disclaimer:

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