



KEY QUESTIONS BEFORE YOU MEET



You may be heading for a nasty fight, but you're going to meet first.

You want the problem solved sooner - not later. You'd rather spend your time and money on better things.

BE PREPARED. You'll be making the very best use of your time by working through these questions before you meet. Even better - give these questions to both sides (all sides if there are several of you). This questionnaire has been used all over the world to help settle tough court cases, and to train lawyers, mediators, and business professionals. Nearly everyone who's written out serious answers to these questions has developed a way to settle their fight themselves - on terms that both sides could live with.

You can use your time and money for much better things than battling each other.

A. YOUR INTERESTS:

1. List your basic interests, and then number their order of importance to you. (For instance: time, money, security, get even, get on with life, minimize risk, fairness, future plans, maintain a working relationship, etc.). To help identify your real interest in each area, ask yourself - "Suppose they agree to what I want - exactly what will that do for me?"
2. How do you think they see their interests? List and rank them.
3. Any voluntary agreement will have to satisfy both your interests and theirs. Both of you will have to decide it's a better choice than fighting. Where could you cooperate to do this, if you both decided you wanted to?
4. What significant things do you think you already agree about?
5. Where do you think you disagree most strongly?
6. In these areas, what objective criteria could you use together to develop fair and constructive voluntary resolutions?
7. How will you know when a potential agreement is a better choice than fighting it out? What criteria will you use to measure how well it satisfies the interests you've identified?

B. YOUR UNDERSTANDINGS:

8. From your perspective, what important understandings did you think you had when you originally got involved together? (Time, money, working conditions, rights and duties, decision-making, who was responsible for what, who was on the hook for the unforeseen risks, methods for resolving differences, etc.)
9. What important shifts in these understandings happened as the situation developed, and where do you think their perspective differs from yours?
10. What feelings of trust and goodwill supported your original agreements?
11. Exactly when and over what did you first have any feelings of betrayal, bad faith, or loss of confidence? How strong are these still? Do you feel like they might owe you something to specifically make up for this?

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KEY QUESTIONS BEFORE YOU MEET - CONT.

C. YOUR RESOLUTION:

12. In areas where you have sharply different perspectives, what useful evidence can you bring in that will be credible to them, to help them see your view? (Receipts, photographs, witnesses, notes, written industry standards, copies of laws or rules, expert reports, etc.)
13. What could they say or do in your meeting that would really push your buttons all over again? How will you keep things on track if this happens?
14. In resolving this, how will you balance your shorter term emotional interests with your longer term financial interests? (For instance: Are you willing to risk your future financial interests to avoid uncomfortable discussions now? Will you accept a satisfactory offer, even if you're very resentful about how you've been treated? etc.)
15. If you're unable to agree on a voluntary settlement, what do you currently believe is your next best alternative in the real world? You can make an informed choice between 1) the best voluntary agreement available and 2) your next best alternative - but only if you have a clear picture of each one. List as much as you can about potential risks and benefits of your next best alternative.
16. What are their next best alternatives?
17. List every issue which might reasonably be disputed if this is argued before a court, arbitrator, boss, etc. (Verbal representations, unforeseen problems, mistakes, different versions of facts, breaches of agreements, contract language, delay, scope and quality of work, interpretations of law, methods of calculating direct and consequential damages, coverage issues, etc.)
18. List the possible consequences of not reaching agreement. Suppose you're unable to settle it between yourselves, you end up in the lengthiest and most costly alternative, and the judge, jury, boss, board, or arbitrator eventually agrees completely with the other side's arguments. For instance, what's the maximum amount of your financial risk for:
 - a) the difference between your likely claims,
 - b) everyone's attorneys' fees, expert witness fees, and procedural costs,
 - c) the value of your time lost from work and family?

If you don't know, go get the most accurate information you can. It's important.

19. What are two different potential settlements that 1) you believe will satisfy their main interests as you understand them, 2) you can live with, and 3) will address all your key issues? (Important note: You can kill the best possible resolution by putting it out too early. It's often seen as a threatening demand instead of a possible solution to a joint problem. Almost any solution will feel better to them if you both develop it together).
20. How could a neutral third party help you develop your best voluntary settlement? (Defuse emotions, and take some of the heat? Be a confidential sounding board to help you evaluate your options and approaches? Provide for safe and productive direct negotiations? Help you to break logjams, and generate creative options? Help you develop specific written language to ensure a lasting resolution?)



KEY PHRASES FOR PROBLEM-SOLVING



Suppose you have to choose only one for now. Would you rather a) fight? or b) solve the problem?

At least, you **DO** want to know what your bird in the hand is, before you risk going for the two in the bush, right? What's the best possible voluntary agreement you can get? To work this out together, you need to shift the question from a) "Whose **FAULT** is this?" to b) "How could we resolve the problem ourselves, if we wanted to?"

You want to move things away from angry contest, and toward cooperative problem-solving, at least for now.

Each sentence below is a proven tool to help you. These neutral phrasings have been developed over fifteen years of mediating, and this list has been used all over California. **PRACTICE** using them **BEFORE** you meet or write.

- ▼ "Right now we (you) can still decide this ourselves. We have a common interest in avoiding a long fight, with an unknown ending handed down by some court (arbitrator, board, boss) a year from now."
- ▼ "Can we agree that what we want to do here is work together, develop the best voluntary agreement possible, then let everyone look at it and see if it's good enough?"
- ▼ "Can we figure out together what it takes to fix this problem? Then maybe we can talk about who might take responsibility for doing what, if we can work out a voluntary agreement."
- ▼ "I'll bet we (you) can each make a pretty good case for why it's not our (your) fault. I don't think it's going to help us much to be arguing about whose fault this is."
- ▼ "I'm convinced we can work out something we can both live with."
- ▼ "It's important to me to understand how you see this."
- ▼ "Let me see if I understand you right. Are you saying...?"
- ▼ "I'm not saying I'm right. May I just explain how I honestly understood our original agreement?"
- ▼ "Let's suppose for a minute that your attorney (friend, mother) is absolutely right. Does that mean...?"
- ▼ "I can really understand how you'd feel that way. I had no business saying that (doing that), and I'm sorry. Is there something you'd like to see in our agreement to address how you feel?"
- ▼ "Leaving all the feelings aside for a moment, what do you think two prudent business people would do if they were in our current situation?"
- ▼ "Regardless of who ends up paying for it, I believe this is going to have to be redone. About how much would it normally cost (time would it take) to have this done over again?"
- ▼ "Whose responsibility do you think this should be? What objective standards led you to that view?"
- ▼ "One fair solution might be.... Can you think of others?"
- ▼ "What would that do for you? What other ways are there of accomplishing that?"
- ▼ "Is this helping (working)? Are we still going the right direction with this?"
- ▼ "We can deal with that issue next if you like. Right now we're talking about..."
- ▼ "Is our agreement not to interrupt each other (badmouth each other to John) still in effect?"
- ▼ "If we don't resolve this between ourselves, I wonder where it will be settled."
- ▼ "I'm feeling pretty stirred up right now. I've just got to step outside for some fresh air and I'll meet you back here in five minutes."
- ▼ "Are you saying you believe it's in your best interest to gamble on the outcome that the jury (judge, arbitrator, board, boss) will impose on us (you), instead of...? Suppose the jury...?"
- ▼ "When you explain our proposed agreement to your strongest critic, what's she/he going to tell you is wrong with it? How will you explain why you want to agree to it?"
- ▼ "What would it take to get you back into trying to work this out ourselves (yourselves)? If you could have this turn out any way you wanted, how would that be?"