INTRODUCTION TO WORKSHEET

Note from Mediator Phil Neiman

Both parties are encouraged to complete this worksheet prior to their mediation session. Doing so is not a requirement, but you will get more out of the mediation, and become clearer about the approach you want to take to resolving your dispute, if you spend time considering and writing out answers to the questions posed here.

Your responses are private and you will not be asked to give a copy to the mediator or to the other party. Simply bring your worksheet to the mediation and use it as you negotiate.

This document is divided into the following five parts:

1. Background of the Dispute
2. Relationship with the Other Party
3. Settlement
4. Alternatives to Settling
5. Special Issues for the Mediation Session
Part 1 - BACKGROUND OF THE DISPUTE

1. Describe the events that gave rise to your dispute. It may be helpful to start with a timeline that shows the dates of what took place. Include details, such as the other people involved and identify any documents (such as a written agreement) that pertain to what occurred.

2. What emotions do you have around what happened between you and the other party? For example, do you feel taken advantage of, undercut, cheated, betrayed, violated, ignored, misunderstood? Are you angry, upset, fearful, suspicious? In what ways? Do you still have those feelings today?

3. Identify anything that you believe would help the other party better understand your perspective on the dispute. For example, do you feel that your actions have been misinterpreted or that you are being blamed for something that’s not your responsibility?

Part 2 - YOUR RELATIONSHIP WITH THE OTHER PARTY

Describe your relationship with the party whom you are in conflict with. You might find it helpful to answer:

1. What initially brought you together?

2. What were things like at the beginning?

3. Did you ever function well together and, if so, for how long?

4. When did you first suspect that something was going wrong?
Part 2 - YOUR RELATIONSHIP WITH THE OTHER PARTY (cont’d)

5. What understandings or agreements did you have with the other party that you believe have been broken? (For example, if you are in a partnership dispute, your answer might relate to the other party’s level of participation or investment in the business.)

6. Describe how the other party broke these understandings or agreements.

7. At what point in time did this occur?

8. What changes or shifts, if any, occurred in these understandings and agreements over time?

9. Do you and the other party see the understandings and agreements differently? If so, how?

10. Although mediation is not like a trial and your goal is not to “prove your case,” it might be beneficial to refer to evidence that might help the other party see your side of things. Are there any records, write-ups, reports, photos (and so on) that will support your view?

Part 3 - SETTLEMENT

1. What discussions have you had with the other party to try to resolve the dispute? Have there been conversations about a settlement or offers from one party to the other?

2. Are there any areas where you agree, or are close to agreement? What are the areas of greatest disagreement?

3. What do you believe the other party owes you or should do as a result of what occurred? Why?
**Part 3 - SETTLEMENT (cont’d)**

4. If you get absolutely everything you want out of a mediated settlement, what would that be? In other words, what’s your wish list?

5. What are the most important points an agreement must have to satisfy you and why are they important?

6. What do you believe are the most important points to the other party?

7. Identify your needs, interests and concerns in the dispute and rank these in order of importance to you.

8. Identify the needs, interests and concerns of the other party as you understand them and, if you are able, rank these in order of importance to the other party.

9. Do you have any suggestions for resolving this dispute? Consider ideas that might appeal to the other party that are also acceptable to you. Be creative. Are there potential settlements that you believe will satisfy the other party’s main interests as you understand them and that will also address your key issues?

10. Why is it important for you to resolve this dispute? What will you gain? What will you avoid?

11. Why is it important for the other party to resolve this dispute? What will they gain? What will they avoid?

12. Which of the following are most important to you and least important to you: (1) an immediate solution even if it is less than you would like; (2) a big win even if you have to wait several years for the payday; (3) financial satisfaction; (4) emotional satisfaction; (5) ending the conflict and dispute quickly; (6) justice; (7) getting even; (8) an apology.

13. Will you have any form of relationship with the other party after the dispute is resolved, either because you have to (family members, neighbors, mutual friends) or because it will benefit you (business relationships)?
Part 4 - ALTERNATIVES TO SETTLING

1. What are your options if your dispute is not resolved at mediation? In other words, if you’re unable to reach a voluntary settlement, what do you currently believe will happen next?

2. Consider your best alternative to not reaching an agreement and your worst alternative to not reaching an agreement. List as much as you can about the possible consequences, including the potential risks and benefits, to not settling in mediation.

3. Suppose that you and the other party are unable to settle things between yourselves, you end up in the most costly alternative in an adversarial setting, and the third-party who’s deciding your case (judge, jury, arbitrator or boss) eventually agrees completely with the other side’s arguments. If this occurs, what’s the maximum you would be required to pay for (a) the other party’s claims, (b) everyone’s attorneys’ fees, discovery expenses, expert witness fees and other expenses of litigation? Now put a price on (c) the value of your time lost from work and family and (d) stress and anxiety associated with an unknown result and the passage of time until your case is resolved. Finally, assign a value to (e) the negative impact on other people (e.g., family members or colleagues) whose lives will be effected if you go to trial and (f) any loss of future business with the other party. What is your total figure?

4. What are the other party’s next best alternatives to reaching a settlement in mediation?

5. List the issues that are open to dispute if your case is not settled in mediation and the matter goes instead before a judge, jury, arbitrator, boss or other third-party decisionmaker. Consider, for example, if there are different versions of the facts, oral representations, unforeseen problems, mistakes, breaches of agreements, ambiguous contract language, quality of work issues, interpretations of the law, methods of calculating damages, questions of risk-allocation and so on.)
Part 5 - SPECIAL ISSUES FOR THE MEDIATION SESSION

1. Are there discussion topics you would prefer to avoid during the mediation? Why? What is the effect of not discussing these topics?

2. Are there things that the other party might say in mediation that would anger you or otherwise push your buttons? If this happens how can you keep the discussion on track?

3. How can your mediator, who is a neutral third-party, be most helpful to you in resolving this matter? For instance: Defuse emotions, and take some of the heat? Be a confidential sounding board to help you evaluate your approaches to negotiating? Provide for safe and productive communication with the other party? Help you to break logjams? Generate creative options to resolve your conflict? Help you develop specific written language to ensure a lasting resolution?