

QUESTIONS TO CONSIDER TO FACILITATE  
DISPUTE AND CONFLICT RESOLUTION

David Tate, Esq. (California)

Litigation, Governance, Administrations, Investigations, Mediator & Conflict Resolution

Blogs:

California trust, estate, elder abuse, conservatorship, and power of attorney litigation and contentious administrations <http://californiaestatetrust.com>;

D&O, business, audit committee, governance, litigation, investigations, liability, and risk management <http://auditcommitteeupdate.com>

Best to you,

David Tate, Esq.

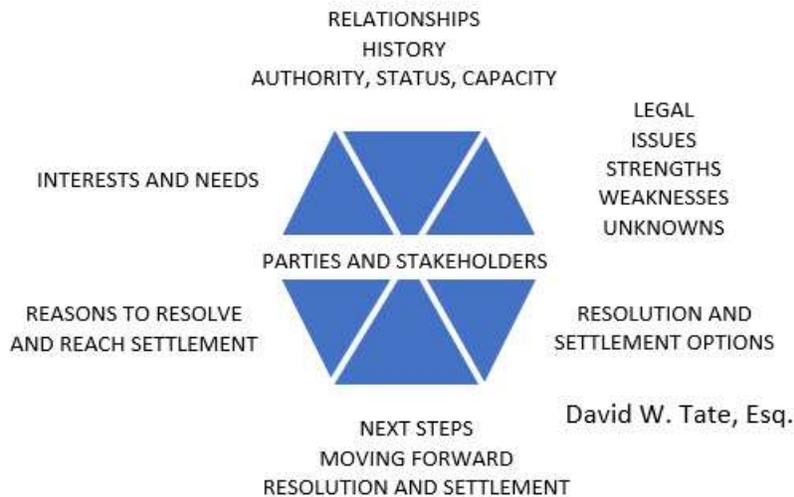
Email: [dave@tateattorney.com](mailto:dave@tateattorney.com)

Tel.: (415) 917-4030

Law Office of David W. Tate



Mediation and Conflict Resolution Hexagon Matrix to  
Help Achieve Resolution and Settlement



I wrote the questions that are below to help you prepare for mediation or settlement and resolution of your dispute or conflict – these questions were written from the viewpoint that you have a dispute or conflict that might proceed to litigation or that you are already involved in a court or arbitration case that is in litigation. 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 posture and value of possible 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. All parties to the dispute or conflict and their counsel should consider these questions before mediation, and all parties and their counsel should both be prepared and willing to discuss these questions with the mediator.

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

Dave Tate, Esq.  
Law Office of David W. Tate

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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).

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 law 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, 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.

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?

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. What more do you suggest 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?

I hope that you found this material helpful. You can find additional discussions on my blogs. I ask that you pass this 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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