



Due Diligence Evaluation Tool
for
Selecting Arbitrators and Mediators

INTERNATIONAL INSTITUTE FOR CONFLICT PREVENTION AND RESOLUTION



About CPR

The International Institute for Conflict Prevention and Resolution (CPR) serves as an independent, objective resource for the avoidance, management and resolution of complex business-related disputes. By harnessing the expertise of leading minds in ADR and benchmarking best practices, it is the resource of choice for multinational corporations with billions of dollars at risk. No other organization has equal influence, range of international property, or breadth of programs focused exclusively on commercial conflict management.

CPR is also the leading destination for lawyers seeking superior arbitrators and mediators, as well as cutting-edge ADR tools and training. CPR's membership comprises an elite group of ADR trailblazers, including executives and legal counsel from the most successful companies in the world, partners from global law firms, government officials, retired judges, highly-experienced neutrals, and academic heavyweights.

Learn more at www.cpradr.org.

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DUE DILIGENCE EVALUATION TOOL FOR SELECTING ARBITRATORS AND MEDIATORS

When considering Neutral candidates for an upcoming mediation or arbitration, it is beneficial to obtain relevant information about their skills and experience to determine their suitability for your particular matter. There are various ways to obtain such information. CPR has already embarked on one such means, the on-line evaluation tool with Positively Neutral. Another vehicle for performing due diligence of Neutrals is interviewing candidates directly to obtain information from their prior experiences relevant to the requirements for a particular case.

An additional due diligence tool for evaluating Neutral candidates is communicating directly with someone who has had experience with an arbitrator or mediator candidate under consideration. Personal communications can provide insightful information about whether the candidate is likely to be effective for a particular dispute. Such discussions can also amplify or clarify the summary information obtained from the Positively Neutral tool. So, once individuals familiar with the candidate's skills and experience have been identified, what questions might elicit information that will be relevant in evaluating whether the arbitrator or mediator will be effective for your particular case?

CPR's Due Diligence Evaluation Tool (DET) is a grouped listing of potential questions designed to facilitate a more informed evaluation of potential arbitrator and mediator candidates. The questions explore topics such as the nature and complexity of the prior arbitrations and mediations in which the Neutral has served as well as the Neutral's prior performance (e.g., preparedness, disposition, effectiveness).

The DET is not intended to be a questionnaire for obtaining written responses from contacts having prior experience with the Neutral. Rather, after reviewing whatever information is available about the mediator or arbitrator (e.g., biographical, Positively Neutral evaluation), CPR members can select questions from the DET for subsequent discussions with others who have previously used the Neutral to obtain more particular information about how effective the candidate is likely to be in their particular case.

The DET is not intended to provide a comprehensive list of due diligence questions, nor is it intended to overwhelm the due diligence process. In the latter regard, DET also embodies a short form for the same purpose as the longer version of the DET.

SHORT FORM
DUE DILIGENCE EVALUATION TOOL FOR SELECTING ARBITRATORS

GENERAL INFORMATION

Name/Position/Employer of Individual Contacted:

Contact's familiarity with the arbitrator's skills and experience (e.g., professional acquaintance, hearsay, witnessed prior arbitrations):

Arbitrator's position (i.e., wingman, chair) in prior arbitration(s)?

**INFORMATION REGARDING PRIOR ARBITRATIONS
IN WHICH THE ARBITRATOR PARTICIPATED
(e.g., subject matter, complexity, amount at stake)**

**ARBITRATOR'S PERFORMANCE ON PRIOR PANELS
(e.g., grasp of issues, disposition, management skills, quality
of work product, preparedness)**

SUMMARY QUESTIONS

- ❖ Did the arbitrator rule the way you wanted him/her to rule?
- ❖ Was the arbitrator open-minded, unbiased and fair?
- ❖ Did the arbitrator fully understand the issues?
- ❖ Would you choose the arbitrator again?

DUE DILIGENCE EVALUATION TOOL FOR SELECTING ARBITRATORS

In considering arbitrator candidates, there is often no substitute for engaging directly with someone who has had experience with an arbitrator candidate under consideration. Real-time discussion often provides insightful information about how and why the candidate is likely to be a suitable arbitrator for a particular upcoming arbitration.

This Due Diligence Evaluation Tool (DET) is a grouped listing of potential questions designed to facilitate a more informed evaluation of potential arbitrator candidates. The following list of potential questions is intended to assist CPR members in learning relevant information about arbitrators they are considering for a forthcoming arbitration. It is contemplated that these questions, or a subset of them, will be useful in interviewing parties who previously used the arbitrator candidate in an arbitration.

Members may want to use these questions alone or as an adjunct to the online arbitrator evaluations compiled by Positively Neutral, to amplify or clarify the information elicited in the evaluations.



POTENTIAL QUESTIONS

- I. Describe the Prior Arbitration(s) in Which You Observed the Arbitrator's Involvement.** (Determine whether based upon the nature of the prior arbitration(s) the arbitrator candidate would be suitable for your arbitration.)
 - A.** In what kind of arbitration(s) have you witnessed the arbitrator's capabilities (e.g., contract, intellectual property, labor/employment, oil/gas)?
 - B.** Describe the complexity of the arbitration (e.g., novel/complex issues, multiple claims/counterclaims, multiple parties, motions, damages/attorney fees)?
 - C.** Were there notable characteristics about the arbitration (e.g., international parties, gender/cultural/racial issues, language barriers)?

- II. If the Arbitrator Served as a Wing-Person, How Did He/She Perform?** (Determine whether an arbitrator's prior performance as a wing-person can be used to assess his/her performance in your case as a wing-person, chair or sole arbitrator.)
 - A.** If the arbitrator actively participated on phone or at in-person conferences and hearings, what was his/her grasp of the issues?
 - B.** Did the arbitrator dissent with reasons from any of the rulings (e.g., orders, awards) of the panel? Even if you did not agree with the dissent or the reasons for it, do you believe the decision to dissent and any supporting reasons were legally supportable?
 - C.** What was the arbitrator's disposition (e.g., courteous, alert, fair, even-handed)?

III. If the Arbitrator Served as the Chair or the Sole Arbitrator, How Did He/She Perform? (Determine whether the arbitrator's prior performance as the chair or sole arbitrator can be used to assess how effective the arbitrator is likely to be in your arbitration.)

A. How well did the arbitrator manage the proceedings?

1. Was the arbitrator organized?
2. How did the arbitrator maintain order on calls and at the hearing(s)
3. Did the arbitrator hold conferences and hearings in a timely manner?
4. Did the arbitrator issue orders and awards promptly?
5. Did the arbitrator deal with discovery disputes in a timely and effective manner?
6. Was the arbitrator competent at handling procedural and evidentiary issues?
7. Did the arbitrator require the parties to perform any work or travel that the parties deemed to be unreasonable?

B. Describe the Chair's/Sole Arbitrator's Disposition During the Proceedings.

1. Was the arbitrator courteous to the arbitrators on the panel and to the parties?
2. Did the arbitrator treat the parties/counsel in a fair and even-handed manner?
3. Did the arbitrator remain alert at conferences and hearings?

C. Was the Written Product of the Chair/Sole Arbitrator the Quality Expected?

1. Were pre-hearing procedural orders (e.g., scheduling orders) written clearly, and were they easy to follow?
2. Were orders and awards clear (e.g., easy to follow) and well reasoned (i.e., depending upon the level of detail requested by the parties)?

D. Was the Chairperson/Sole Arbitrator Adequately Prepared?

1. Did it appear that the arbitrator read the parties' submissions (e.g., pleadings before the preliminary hearing, motion papers before a hearing on the motion, hearing briefs before the evidentiary hearing)?
2. Did the arbitrator understand and apply the relevant rules and law governing the arbitration?
3. Describe the arbitrator's grasp of the issues?

IV. Were the Arbitrator's Facilities Adequate? (If the arbitrator used his/her facilities for the prior arbitration(s) would they be adequate for your case?)

A. Was the arbitrator's administrative support adequate?

B. Were the arbitrator's facilities adequate, if they were used for any of the proceedings?

V. If the Opportunity Presented Itself, Would You Choose to Use the Arbitrator Again?

Short Form
DUE DILIGENCE EVALUATION TOOL FOR SELECTING MEDIATORS

GENERAL INFORMATION

Name/Position/Employer of Individual Contacted:

Contact's familiarity with mediator's skills and experience (e.g., professional acquaintance, hearsay, witnessed prior mediations):

What was the mediator's style (e.g., facilitative, evaluative, transformative) in the prior mediation?

**INFORMATION REGARDING PRIOR MEDIATIONS IN WHICH THE MEDIATOR PARTICIPATED
(e.g., subject matter, complexity, amount at stake)**

**MEDIATOR'S PRACTICES IN PRIOR MEDIATIONS
(e.g., pre-mediation submissions, pre and post mediation contact, joint session, caucuses)**

**MEDIATOR'S PERFORMANCE IN PRIOR MEDIATIONS
(e.g., grasp of issues, management skills, mediation skills, neutrality)**

SUMMARY QUESTIONS

- ❖ Did the dispute settle as a result of the mediator's efforts?

- ❖ Was the mediator open-minded, unbiased and fair?

- ❖ Did the mediator fully understand the issues?

- ❖ Would you choose the mediator again?

DUE DILIGENCE EVALUATION TOOL FOR SELECTING MEDIATORS

In considering mediator candidates, there is often no substitute for engaging directly with someone who has had experience with a mediator candidate under consideration. Real-time discussion often provides insightful information about how and why the candidate is likely to be a suitable mediator for a particular upcoming mediation.

This Due Diligence Evaluation Tool (DET) is a grouped listing of potential questions designed to facilitate a more informed evaluation of potential mediator candidates. The following list of potential questions is intended to assist CPR members in learning relevant information about mediators they are considering for a forthcoming mediation. It is contemplated that these questions, or a subset of them, will be useful in interviewing parties who previously used the mediator candidate in a mediation.

Members may want to use these questions alone or as an adjunct to the online mediator evaluations compiled by Positively Neutral, to amplify or clarify the information elicited in the evaluations.



POTENTIAL QUESTIONS

I. Describe the Prior Mediation(s) in Which You Observed the Mediator's Skills.

(Determine whether based upon the nature of the prior mediations the mediator candidate would be suitable for your mediation.)

A. In what kind of mediations have you witnessed the Mediator's capabilities?

1. What was the nature of the dispute (e.g., contract, intellectual property, labor/employment, oil/gas) in the prior mediation?
2. Describe the complexity of the dispute (e.g., multiple claims/counterclaims, multiple parties, global settlement issues, damages/attorney fees)?
3. Were there notable characteristics about the mediation (e.g., time pressures, international parties, gender/cultural/racial issues, language barriers)?

B. In the prior mediation, what style(s) did the mediator use (e.g., facilitative, evaluative, transformative)?

1. Was the mediator effective in using the style he/she chose or the parties requested?
2. Did the mediator treat the parties/counsel even handedly?

II. Did the Mediator Effectively Manage the Mediation Process? (Determine whether based upon the mediator's management of the prior mediation(s) the mediator candidate could effectively manage the process contemplated for your mediation.)

- A. How did the mediator work with the parties to design the mediation process?
- B. How did the mediator handle pre-mediation submission(s)?
- C. Was the mediator adequately prepared for the mediation?
- D. How did the mediator use pre or post mediation session calls or meetings?
- E. Did the mediator require the parties to do anything that was unnecessary and that increased the cost of the mediation?

III. Were the Mediator's Capabilities and Experience Appropriate for the Case? (Determine whether based upon the mediator's skills and experience exhibited in the prior mediations the mediator candidate would have the skills and experience necessary for your case.)

- A. If you retained the mediator for his/her expertise in a particular subject matter area, was that expertise adequate?
- B. Was the mediator's skills/experience adequate?
- C. How did the mediator effectively and/or creatively use the mediation process?
- D. How did the mediator maintain control over emotional participants?
- E. How did the mediator deal with impasse?
- F. Was the mediator perseverant?
- G. How did the mediator handle any discovery or information exchange issues?

IV. Were the Mediator's Facilities Adequate (If the mediator used his/her facilities for the prior mediation(s) would they be adequate for your case?)

- A. How would you rate the mediator's administrative support?
- B. How would you rate the mediator's facilities, if they were used for any of the proceedings?

V. If the Opportunity Presented Itself, Would You Choose to Use the Mediator Again?