

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

1. 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.)

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

a. What was the nature of the dispute (e.g., contract, intellectual property, labor/employment, oil/gas) in the prior mediation?

b. Describe the complexity of the dispute (e.g., multiple claims/counterclaims, multiple parties, global settlement issues, damages/attorney fees)?

c. Were there notable characteristics about the mediation (e.g., time pressures, international parties, gender/cultural/racial issues, language barriers)?

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

a. Was the mediator effective in using the style he/she chose or the parties requested?

b. Did the mediator treat the parties/counsel even handedly?

2. 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.)

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

3. 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.)

- If you retained the mediator for his/her expertise in a particular subject matter area, was that expertise adequate?

- Was the mediator's skills/experience adequate?
- How did the mediator effectively and/or creatively use the mediation process?
- How did the mediator maintain control over emotional participants?
- How did the mediator deal with impasse?
- Was the mediator perseverant?
- How did the mediator handle any discovery or information exchange issues?

4. 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?)

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

5. If the opportunity presented itself, would you choose to use the mediator again?