

Model Interview Assignment

Stone Soup Dispute Resolution Knowledge Project
hosted by the University of Missouri School of Law
Center for the Study of Dispute Resolution

Overview

You will interview someone who has been involved in a “significant negotiation” within the last year about a dispute or a transaction. The interview should take about an hour. You will write a report summarizing the answers to the questions described below and describing insights you gained from the interview.

The goals of the assignment are to provide you with the opportunity to: (1) learn from someone's experience in an actual negotiation; (2) practice interviewing skills including developing rapport and protecting confidentiality; and (3) reflect on how concepts we discuss in class may apply in actual negotiations.

The report should be approximately 5-7 double-spaced typed pages, with one inch margins on each side, in Times New Roman 12 Font. About 1-2 pages should address your insights from the negotiation, as described below.

About the Interview

The person you interview could be one of the parties in a negotiation, an attorney who represented a party in the case, or a neutral involved, such as a mediator. A “significant” negotiation is one that took a substantial amount of time. You will ask the subject to describe their most recent significant negotiation. This may or may not have resulted in an agreement.

There is a small risk that you could be subpoenaed to testify about what you learn in an interview about an entire case. This situation seems unlikely to arise for several reasons. First, the interview would have to involve a situation that would end up in litigation in the future. Second, it will be unlikely that other parties would know about the interviews and, even if they did, you probably wouldn't learn significant relevant information and it wouldn't be worth the expense to pursue this.

If you prefer, you could do an assignment with less or no risk. For example, you could interview someone about a particular issue (e.g., dealing with difficult emotions) and ask the subject to describe what happened in one or more actual cases where this issue arose without describing the entire case. There are other options for alternative assignments. If you would like to do an alternative assignment, please discuss this with the professor. Your grade will not be affected by what assignment you do.

You will contact the person you want to interview and arrange to conduct the interview in person, by phone, or by video. If you need help identifying someone to interview, contact the professor.

You **MUST** send a document (preferably an email) to the subject describing the interview. You may send it to request the interview or, if you arrange the interview in person or by phone, to confirm the interview. A model for this document will be provided separately.

At the outset of the interview, you **MUST** remind the subject that you will not disclose his or her name or anyone mentioned in the interview. To further protect confidentiality, you **MUST** tell the subject not to mention anyone else's name and, instead, use generic descriptions such as the person's client or lawyer, the other lawyer, a manufacturing business, etc. You **MUST** tell the subject not to provide any information that might be relevant in future litigation.

In general, you should adopt the mindset of a tactful investigator to get as thorough and accurate understanding of a case and the process as possible, especially an understanding of the sequence of significant events. Instead of simply accepting statements at face value, you should ask questions probing for other possible explanations of the events.

Start the interview by asking about the subject's background. After deciding what case to discuss, ask the subject to tell the story of the case. Although the questions below focus on a final negotiation, there may have been preliminary negotiations about substantive or procedural issues that you may ask about. Also, consider that there might not be a single final negotiation event.

You are free to conduct the interview however it would be most effective. Ask follow-up questions that seem important to you, especially to clarify things that you don't understand. Often, it is a good idea to wait to ask follow-up questions until after you finish learning the chronology because the follow-up questions may distract from the chronology and cause you to miss important events. Pay particular attention to anything that seems unusual or surprising and ask follow-up questions. Whenever appropriate, ask the subject about others' perceptions of particular issues. For example, you might ask how the other side viewed an issue.

In any case, your report must include information about the questions listed below, **particularly about the chronology of events** and your insights from the interview.

After you finish asking about the chronology of the case, review the following list of questions and ask any that the subject did not previously address. You do not need to ask these questions if you know the answers from responses to earlier questions.

More information about conducting and summarizing interviews will be provided separately.

Questions to Be Addressed

The subject

- [If you don't know] What do you do for a living?

- [If you don't know] What was your role in this case?
- How often have you been involved in this kind of case?

The subject matter of the case

- Would you describe the parties, without identifying them by name?
- Were the parties negotiating to resolve a dispute or to plan a transaction?
- What type of issue was involved (e.g., real estate, personal injury, business deal)?
- What conflict or event prompted the negotiation?

The parties and the context of the case

- Did the parties have a relationship before the matter began?
- At the outset of the matter, did the parties expect to have a continuing relationship after the case was over?
- [If applicable] Did the lawyers have a relationship before the case began?
- What do you think was most important to each party in this case?
- Did lawyers represent any or all of the parties during the matter?
- Did the parties start to negotiate before litigation or arbitration was filed?
- [If applicable] Were the parties in litigation when the final negotiation began?
- [If so] When the final negotiation began, what was the stage of litigation? (e.g., before the suit was filed, soon after the suit was filed, during discovery, shortly before trial, during trial, after trial)

The negotiation process

- What, if anything, did you do to prepare for the case?
- Who initiated the dispute?
- How did the case begin?
- **What was the sequence of events after that?**
- When did the parties start to exchange numbers?
- Was there any discussion of non-monetary forms of resolution?
- How much, if at all, did the negotiation involve an exchange of offers?
- [If relevant] How much, if at all, did people talk about legal issues or what would happen if they went to court?
- How much, if at all, did people talk about their real goals underlying their positions (as opposed to the justifications of their positions)?
- Did the parties reach an agreement?
- Why do you think that they [reached / did not reach] an agreement?

Assessment of the case

- What do you think were the critical factors causing the case to turn out as it did?
- How satisfied were you with the outcome? Why?
- How satisfied were you with the process? Why?

Writing Your Paper

You have limited space to summarize the interview, so carefully decide what is most important to include. In general, the purpose of this assignment is for you to learn about

the reality of a case in some detail, including the subject's assessment of it. In describing this part of the assignment, **be objectively descriptive, use plain English (not dispute resolution terminology)**, and generally avoid expressing your judgment about the parties, actions, decisions, etc.

Your narrative should begin with a brief description of the interview subject including information that would help readers assess the report (such as the subject's past experience with similar cases, if any). Your report should include brief descriptions of the key people and entities in the negotiation, but they **MUST NOT include any details that could reasonably identify the subject or any parties. The report MUST use pseudonyms referring to the people and entities in the case. The pseudonyms MUST be sufficiently different from the real names that it would be impossible to identify them.** In keeping with the serious nature of this assignment, the report must use plausible names, not silly ones.

The report MUST NOT include specific dates. The chronology should begin with the first relevant event and refer to subsequent events in relation to other events in the chronology. For example, a narrative might identify the timing and sequence by saying "two months later."

The report MUST avoid using specific dollar amounts and should instead use general descriptions. For example, reports might use language such as "more than \$10,000" or "in the low six figures." When there is an exchange of offers, the reports should include information indicating how the figures compare with each other without using specific figures. For example, a report might state that a plaintiff demands \$X and the defendant offered \$X - \$100,000. Or a defendant offered \$Y and plaintiff demanded \$5Y (i.e., five times Y).

Your paper **MUST** prominently include the following legend at the top: "Note: Details of this case, including the names of individuals, have been omitted or changed to protect the confidentiality of the data."

Following the narrative, under a separate heading, your report must address possible alternative explanations of the events. For example you might describe limitations of the accounts due to getting only one person's perspective, limitations of the subject's memory, subject's role in the dispute, the subject's desire to present a positive image.

After the discussion of possible alternative explanations, under a separate heading, discuss your insights about what you learned from the interview and how the case was similar and/or different from concepts discussed in this course. In this part of the paper, you may use dispute resolution terminology and refer to course readings, simulations, and class discussions.

This final section should also describe how this case affects your thinking about handling cases in the future. Of course, you won't encounter the exact same situation

in the future, considering differences in parties, lawyers, facts, issues, etc. So any lessons for the future necessarily should be qualified.