

## **Guidance for Conducting and Summarizing Interviews**

### **In General**

In your interview, you will try to get the best possible understanding of a negotiation that you can. To do this, you will need to enlist the cooperation of your interview subject(s) to disclose potentially sensitive matters. This is similar to the process when lawyers conduct initial interviews of clients who may be reluctant to fully or accurately describe possibly embarrassing facts. Lawyers and other professionals who are interviewed have additional concerns about protecting confidentiality of clients due to professional requirements and norms.

So your first order of business is to gain your subject's confidence that you will protect the confidentiality of the information provided and that you will treat him or her with understanding and respect.

This process begins with your first contact to invite the person to be interviewed, and you should assure him or her that you will be very careful in protecting confidentiality. The model letter inviting people to be interviewed illustrates how to do this.

Respecting the subject's time is an important way to help gain their confidence. You should accommodate his or her preferences as much as possible in scheduling the time and manner of the interview. If you schedule the interview for a time more than a week or two in the future, send a reminder email or text a few days before the interview to confirm that the subject is still available at the time you scheduled.

Be on time for your interview. Being late is an immediate sign of not respecting the subject's time. If you will be late or need to reschedule, let the subject know as soon as possible.

### **Conducting the Interview**

Develop rapport from the outset of your conversation. Begin by thanking the subject for taking the time to talk with you. Then mention how long are you expecting the interview to take and ask if that would still work for the subject. It is a good idea to start with some "small talk" about safe topics such as traffic, weather, sports, school, mutual acquaintances etc.

After a few minutes, shift the conversation to begin the interview. Remind the subject that you will not disclose his or her name or anyone mentioned in the interview. To further protect confidentiality, 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. Mention that you will take notes with their permission. Even if the subject states someone's name, do not record it in your notes. In general, use single letters in your notes to refer to particular individuals or entities, which will help you take notes faster. Then ask if the subject has any questions and, if so, answer the questions.

Conduct the interview in a conversational manner rather than simply asking a list of standard questions. Feel free to use your own language if you think that will be more effective than using

the wording of the questions in the assignment. Whenever appropriate, ask follow-up questions.

Use plain English as much as possible and avoid using the negotiation terminology we use in the course because the subject may not be familiar with it. If you think it really would help to use some of this terminology, define it clearly and make sure that the subject accurately understands what you mean.

Generally avoid expressing judgments about the story. You should certainly avoid criticizing the subject or his or her client or lawyer etc. You should also generally avoid agreeing with the subject's perspective. Instead, you should convey that you understand, using verbal and non-verbal communication. As appropriate, you may summarize your understanding of what the subject said and check if you understand it correctly.

The heart of this assignment is to get as thorough and accurate understanding of a negotiation as possible, especially an understanding the sequence of events. Pay particular attention to anything that seems unusual or surprising. If appropriate, ask the subject about others' perceptions of particular issues. For example, if you interview a lawyer, you might ask how the other side or his or her client viewed an issue.

Begin the interview with asking broad, open-ended questions. After you have a better sense of what the subject is trying to communicate, you can follow up with more specific questions.

If your subject is uncomfortable answering a question, do not press him or her to do so. Instead, try rewording the question so that the subject would be comfortable answering or just move on to the next question.

After you have asked all the questions on your list, ask if there is anything important that you didn't discuss about the negotiation. Then thank the subject for his or her time and cooperation.

Below is a sample set of questions that you might use during the interview. The specific questions you will ask, of course will depend on the topic(s) you selected as the focus of your interview.

### Possible Questions

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 negotiation?
- How often have you been involved in this kind of negotiation?

The subject matter of the negotiation

- 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 negotiation

- Did the parties have a relationship before the matter began?
- At outset of the matter, did the parties expect to have a continuing relationship after the negotiation was over?
- What do you think was most important to each party in this negotiation?
- Did lawyers represent any or all of the parties during the matter?
- [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 final negotiation?
- Who initiated the final negotiation?
- How did the final negotiation begin?
- **What was the sequence of events after that?**
- 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?
- How long did the negotiation take from the first communication in the matter until the conclusion?
- How much of the negotiation was conducted by phone, email, letters, or in person?

### Assessment of the negotiation

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

### Taking Notes of the Interview

Take notes of key points, recognizing that you probably won't be able to take verbatim notes. If the subject uses vivid and distinctive language to make an important point, make a note of that language and put it in quotation marks in your notes.

Even as you take notes, periodically look up to maintain eye contact. If you conduct the interview by phone, you can use a speakerphone feature and type your notes into your computer. You may need to pause in the interview a number of times to keep up with taking notes of the conversation. Feel free to tell the subject you need to stop for a moment to write your notes

before resuming the conversation.

You may record the interview with the subject's permission, though I encourage you not to record it. Part of the purpose of this exercise is to give you practice in conducting interviews and you generally won't record interviews in your work. Sometimes the quality of the recording is poor and you may have a hard time understanding the conversation. In addition, listening to and transcribing interviews takes much more time than most people realize.

As soon as possible after the interview, review your notes and fill in any important points that you may have omitted in your notes. It is important to do this promptly because your memory will fade quickly. In order to protect the subjects' privacy, you might want to consider destroying your notes after you have written your paper.

### Writing up the Interview

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

Use pseudonyms referring to the people and entities in the matter. The pseudonyms should be sufficiently different from the real names that it would be impossible to identify them. In keeping with the serious nature of this assignment, use plausible names, not silly ones. Your descriptions of facts and events should avoid using any details that would enable someone to identify any of the people or entities involved. Do not use specific dates in your paper because that could help identify the matter. Instead, refer to times in relation to the beginning of the case, e.g., two months after the lawyer and client first met.

The final section of the report should include your insights about what you learned from the interview and how the negotiation was similar and/or different from concepts discussed in this course. In this part of the paper, you may use negotiation terminology.

This final section should also describe how this negotiation 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, legal issues, etc. So any lessons for the future necessarily should be qualified.