

## **ADR - In-Person Interview Assignment**

### **Overview**

For this assignment, you will interview practicing attorney with a minimum of 5 years' experience whose practice requires them to negotiate frequently. The interview should take about an hour. Following the interview, you will prepare a report that summarizes the answers to the questions described below and that describes any insights that you derived from the interview.

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

The report will be due on or before class on November 21, 2017. The report should be no more than 10 single-spaced, typed pages, with one-inch margins on each side, in Times New Roman 12 Font. The discussion of your insights should occupy at least 25%-30% of that total.

### **About the Interview**

The attorney whom you interview should routinely represent parties in negotiations, but some of that experience might be as a mediator serving as a neutral who can respond based upon her or his observations of the negotiations involved in the mediation process. You should ask the subject about both a specific "significant negotiation" in which s/he engaged AND about the subject's general perceptions and observations as they relate to the questions. The negotiation and/or mediation need not have resulted in an agreement. In addition to these topics, you also must ask about a case that the subject felt was unusually difficult, successful, or unsuccessful.

You must contact the attorney whom you seek to interview, asking her or him if s/he is willing to participate. If the response is "yes," you shall arrange to conduct the interview in person or via a visual online platform such as Zoom, etc. If you need help identifying an interview subject, contact Professor Jacobs for suggestions.

You **MUST** send a document (preferably an email) to the subject describing the interview. You may send it with your request for 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.<sup>1</sup> 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 in order to obtain thorough and accurate data about the "significant" case, the subject's more general observations, and the "difficult or challenging" negotiation. Remember, do not simply accept statements: probe more deeply for more significant insights.

I expect you to apply the reading about the interview and negotiations processes. You are free to conduct the interview however it would be most effective. Ask follow-up questions that seem important to you, particularly to clarify things that are not clear or that you do not understand. Never be afraid to reveal that you do not understand something or are not familiar with a subject or person, i.e., a term of art or acronym that may be associated with a practice area, details about a business, etc.

As per our reading, it often works best to wait to pose follow-up questions until after you finish learning the chronology. You do not want to disrupt, or distract from, the chronology as you might 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 about the counterparty's interests or how that counterparty 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.

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

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<sup>1</sup> NOTE: 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 a number of reasons: (1) you will remind your subject to discuss cases in generic terms so as to preserve confidentiality and all privileges; (2) the interview topic would have to involve a situation that might result in litigation in the future; (2) it is unlikely that other parties will know about the specifics of any single interview.

## Questions to Be Addressed<sup>2</sup>

- Information about the subject: \*\*To protect the confidentiality of this information, please remember not to use your subject's interest
  - Approximate age
  - Gender
  - Race:      African-American/Black       Asian       Caucasian       Hispanic  
                    Other (Specify):       Native American
  - How many years this attorney has been in practice:
  - What is the attorney's practice?
    - In -House Corporate Law Office       Public Service
    - Law Firm       Solo Practitioner       Other (Specify):
  - If your subject is part of a law firm or is in-house, how many attorneys work in his or her firm or department?
  - What is the attorney's area of primary emphasis?
    - Civil Litigation       Commercial Law       Property/Real Estate
    - Other: Specify \_\_\_\_\_
  - Where did your subject go to law school and undergrad?
  - Did s/he have other work experience?
  - Why s/he chose a particular practice area and what they like/dislike about it.
- Details of the “significant” negotiation:
  - Most recently concluded case or transaction in which some negotiations occurred, regardless of whether it was resolved by mutual agreement, by plea-bargaining, by trial, on appeal, or in some other way.
    - equally interested in your experiences in civil or criminal litigation or in transactions (commercial contracts, real property trans- actions, business agreements, or other types of business or private negotiations), so do not hesitate to urge your subject to select a case from any of these areas.
  - The subject matter of the negotiation, i.e., resolve a dispute or plan a transaction, and what type of issues as involved, i.e., real estate personal injury, family law issue, etc.
  - A description of the parties, without identifying them by name.
  - A description of 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 the parties start to negotiate before litigation or arbitration was filed?
  - [If applicable] Were the parties in litigation when the final negotiation began?

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<sup>2</sup> Many of these questions were part of a broad, successful study, the results of which were reported in Andrea Kupfer Schneider, *Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143 (2002).

- [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 negotiation?
  - Who initiated the dispute/transaction?
  - How did the matter 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 or did NOT reach agreement?
  - How much, if at all, did people talk about their real goals underlying their positions (as opposed to the justifications of their positions)?
  - If this matter involved a transaction rather than an actual or potential litigation dispute, did you reach agreement?  Yes  No
  - If the matter involved an actual or potential litigation dispute, how was it resolved?
 

Mediated Settlement  Negotiated Settlement  Still Pending  
 Summary Judgment  Trial Verdict  Other (Specify) \_\_\_\_\_
  - Ask your subject to assess her or his goals in the negotiation by indicating their importance to her/him. Please read quickly through the whole list before responding.

	Not at all		Moderately		Extremely	
	Important		Important		Important	
Getting a "fair" settlement	0	1	2	3	4	5
Maximizing the settlement for your client	0	1	2	3	4	5
Outmaneuvering the other attorney	0	1	2	3	4	5
Ensuring that your client's interests/needs were met	0	1	2	3	4	5
Taking satisfaction in exercise of legal skills	0	1	2	3	4	5
Conducting self ethically	0	1	2	3	4	5
Avoiding litigation	0	1	2	3	4	5
Maintaining or establishing good personal	0	1	2	3	4	5
Maintaining or establishing good relations between/among parties	0	1	2	3	4	5
Reaching an agreement that met underlying interests of both sides	0	1	2	3	4	5

- What does your subject believe makes an attorney an effective negotiator?
  - Please get a narrative response, then ask them how they rate these specific characteristic: 1 being totally ineffective scaled to 5, very effective

Adaptable/Flexible	_____	Analytical	_____	Argumentative	_____
Arrogant	_____	Assertive	_____	Clarifies	_____
Communicative	_____	Compassionate	_____	Confident	_____
Creative	_____	Deceptive	_____	Discreet	_____
Egotistical	_____	Empathetic	_____	Ethical	_____
Evasive	_____	Fair-minded	_____	Forceful/Tough	_____
Hostile	_____	Impulsive	_____	Intolerant	_____
Good Listener	_____	Manipulative	_____	Objective	_____
Organized	_____	Perceptive	_____	Rational	_____
Realistic	_____	Rude	_____	Sarcastic	_____
Self-controlled	_____	Stubborn	_____	Suspicious	_____
Trusting	_____	Trustworthy	_____	Unpredictable	_____

- Assessment of the case:
  - Why does your subject think that they [reached/did not reach] an agreement?
  - What do s/he think were the critical factors causing the matter to conclude as it did?
  - How satisfied was your subject with the outcome? Why?
  - How satisfied with the process? Why?
- Negotiation Training:
  - Did your subject take any negotiation classes in law school?
    - If yes, please have her or him describe, i.e. one course, part of a course, clinic, etc.?
      - If yes, please what was the intent of the training, i.e., to teach students how to win, to teach students "problem-solving" negotiation, to teach students tactics and strategies, to teach students ethical behavior, to teach students negotiation theory, other, etc.?
    - If not, why not, please describe why not, i.e., not a priority, did not believe class would help, lack of interest, not offered, other, etc.?
  - Does your subject attend CLE or training on negotiation?
    - If yes, were any effective/did you learn useful information?
      - Describe what made this training effective?

## **Send a Thank You Note**

At the conclusion of the interview, thank your interview subject for taking the time to share her or his experiences with you. You also **MUST** send a follow up thank you. A suggested text of this Thank You is appended as a separate document.

## **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 apply the material that you have learned in the reading and in class to “live” negotiations. In describing this part of the assignment, **be objectively descriptive**, i.e., avoid expressing your opinions about the parties, decisions, etc.

Your narrative should begin with a brief description of the interview subject, including information that would help readers assess the report. Your report should include brief descriptions of the key people/ 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.”

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.**

After the discussion of negotiation as described by your interview subject, consider possible alternative explanations of the outcome objectively. Your subject will have her or his own perspective, but you, as an objective observer, should consider that there may be other explanations for an outcome.

Next, 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 must use dispute resolution terminology and refer to course readings, simulations, and discussions. Consider power differentials, cultural influences, or other relevant material. Consider carefully how attorneys apply “classroom theory” in practice. This final section should also describe how this case affects your thinking about handling cases in the future. Of course, you likely will not encounter the exact situations in the future, considering differences in parties, lawyers, facts, issues, etc. Accordingly, any lessons for the future necessarily should be qualified.

Keep in mind that your subject may ask to see your final report. If so, and depending upon your frank analysis, you may prefer to prepare a version that is more flattering/less critical of approach, etc.