

FRAMING ISSUES

How issues are framed makes them more or less susceptible to management. Therefore, presenting an issue effectively is a critical skill in the mediation of conflict.

The “trick” is to differentiate between positional statements and the substantive, “real” issues. Parties invariably begin with essentially nonnegotiable, positional statements that appear to be the issues. Most positional statements are defensive postures—they are more about what the party is afraid of losing than what they really need or want. The underlying real issues must be culled and taken out from behind the positional statements. This is done first by clarifying the story/facts and then by carefully framing the issues. If the positional statements of the parties remain the focus and allowed to become the issues then the negotiation will break down into an either/or proposition that cannot be effectively managed.

- (1) Clarify facts and avoid confusing facts with issues. Issues are drawn from facts. Clarify the facts (story) with the parties first before attempting to frame issues. This helps assure that the issues determined are the substantive ones.
 - (a) Identify the basic facts that are agreed upon—who, what, when, where, how. For example:
 - "There was a contract signed on September 1, 1995."
 - "The work ended on November 16, 1995."
 - "An inspection was completed on December 13, 1995."
 - "The accident occurred on January 29, 1996."
 - "These injuries resulted ... "
 - "She has been employed since March, 1995."
 - "She slipped and fell on the new floor."
 - "You both agree it is stressful living in the house together."
 - (b) Identify the facts not agreed upon. Facts not agreed upon may be: (1) “quasi issues,” where further information is needed to effectively proceed (e.g., a doctor’s report, other financial documents), or (2) substantive issues in their own right, such as the valuation of a complex asset.
- (2) Frame the issues in a manner susceptible to resolution. A well-framed issue is inclusive of all parties and positively presented.
 - Issues must be framed positively and inclusively—Neither party will easily agree to liability; both can agree there is risk of exposure at trial. No party will easily agree they have done shoddy work; both might agree further work may need to be done to resolve the matter. An issue that

addresses legal liability—who is liable or at fault—is not useful in mediation: only courts can resolve those issues.

- THE OPERATIVE TEST OF A WELL-FRAMED ISSUE IS DONE BY ASKING ALL PARTIES IF THEY AGREE THE ISSUE IS VALID AND RELEVANT FOR THEM TO ADDRESS. MAKE SURE ALL PARTIES HAVE VALID ISSUES.

Well-framed issues allow the potential for multiple options to be considered, poorly framed issues (positional statements) allow for few options. Thus, for the positional statement, "I want him out of the house now" there are only two options: he moves or he doesn't move. Whereas for the reframed issue, "How can the stress in the house-hold be reduced?" there may be many potential options: (a) he moves out, (b) she moves out, (c) rules are set for the household; (d) a time frame for moving out is set, (e) the parties modify schedules or (f) the parties adjust living arrangements within the house.

Positional Statement	Story/Facts	Mediation Issues
<p><u>PERSONAL INJURY:</u></p> <p>"We demand \$500,000."</p>	<p>What, when, where how did accident occur? what were injuries and their severity?</p>	<ol style="list-style-type: none"> 1. What compensation will suffice? 2. How will injured parties be acknowledged? <p>(<u>Not</u> they pay this amount or else)</p>
<p><u>CONSTRUCTION DISPUTE:</u></p> <p>"The work was shoddy."</p>	<p>What, when, where How was work done? What is adequate and inadequate about work? What was understanding? What are industry standards?</p>	<ol style="list-style-type: none"> 1. Sufficiency of work 2. What work needs to be further completed or repaired? 3. What compensation should there be—transaction costs? <p>(<u>Not</u> is the work shoddy or not)</p>

Positional Statement

Story/Facts

Mediation Issues

DISSOLUTION OF MARRIAGE:

"I want him out of the house now."

What exactly is happening?
When? How often?

1. How to reduce the stress in the household
2. How to respect both parties rights
(Not does he move or not?)

PARENTING RESPONSIBILITY:

"He/she drinks too much..."

How much? when? where?
circumstances? frequency?

1. Safety of children;
2. Autonomy of parents
(Not is he an alcoholic or not)

MEDICAL TREATMENT DISPUTE ("Medical Malpractice"):

"The doctor was negligent."

Kind of operation
Testing
Standards of practice
Contacts

What amount of compensation might settle this matter?

What is the risk/exposure of the doctor's reputation?

Is the injured party sufficiently acknowledged?

(Not is the doctor liable or not)

EMPLOYEE GRIEVANCE—APPROPRIATE CONDUCT ("Sexual harassment"):

"He harassed (discriminated against) me."

How long worked together
Responsibilities
Nature of contact
When, where, how

1. What is appropriate behavior?
2. What should be future work relationship?
(Not was the behavior inappropriate)

(3) Set an Agenda of the Issues.

List all the issues before beginning to negotiate on any particular issues. Assess with parties which issues are easier and which ones they anticipate to be harder.

Link the issues together; make all negotiations on any issue contingent on the resolution of all the issues so that no party feels "backed into a corner." All negotiations on issues are only tentative understandings until there is final agreement.

- (4) Lay in the Negotiation Format and generate options for each issue. Begin with easiest issues first and move toward harder ones.

