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# Understanding Interests Vs. Positions In Divorce Mediation

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*Divorce Mediator Kimberley Keyes explains the crucial difference between interests and positions in a divorce mediation.*

*Positions and interests drive every divorce, whether it is resolved through mediation, litigation or trial. Put simply, in the divorce context, a position is the legal outcome that a spouse seeks, while an interest represents the underlying concerns and motivations that cause a spouse to stake out a particular position. For an individual to have a successful mediation, it is important to understand the relationship –*

and distinctions – between the other spouse’s interests and positions. One of the biggest benefits of using *mediation rather than litigation* to resolve your divorce is that it allows you and your spouse to craft your own solutions to the issues that you face. However, custom solutions don’t work as well when one spouse fears he or she won’t be able to protect his or her own interests during the mediation sessions, or believes the other spouse will be overbearing and press for an unjust settlement. While mediators are trained to prevent one party from dominating the mediation, *mediation coaches* can also help by working with spouses to develop negotiation tactics to avoid getting steamrolled. A key insight that mediation coaches offer is the difference between your spouse’s interests and his or her positions. Deconstructing a spouse’s positions based on his or her interests enables mediation participants to negotiate smarter, while enhancing each side’s ability to find and identify common ground.

### *A Position Is the Specific Legal Outcome Your Spouse Desire Through Mediation*

*Divorce mediation* is grounded in negotiation. Spouses discuss how best to divide marital property and debt, parent their children, and financially support their family after dissolving their marriage. It is not unusual for one spouse to enter mediation with concrete positions on what he or she wants to take place after the divorce is finalized. These positions can come in the form of firm proposals or “take it or leave it” demands, such as “I need *alimony*,” or “I want full *custody of the children*.” Hardened perspectives might be the enemy of settlement, but “fighting fire with fire” is not always the smart approach when one spouse enters mediation with preconceived notions of what he or she is entitled to in the divorce. Understanding the interests that gave rise to a spouse’s hardened position is of the key to breaking through with a compromise.

### *Interests Are the Worries, Concerns and Beliefs Behind a Mediation Position*

*A spouses with fixed ideas about the outcome of the divorce usually makes his or her positions clear early on. However, such spouses do not always articulate the worries, concerns or beliefs that underpin their hardened positions. Understanding the unspoken interests that animate a spouse's given positions can unlock settlement even in tough cases. It is up to you – the settlement-motivated spouse – with the help of the mediator, to draw out the unspoken interests that motivate your spouse's hardened position. Unlocking your spouse's hidden interests may be challenging. Secrecy can arise out of a spouse's desire to keep his or her agenda hidden from you or, just as likely, because your spouse does not have a clear grasp of his or her own interests. Believe it or not, you can help.*

### *The Value of Knowing Your Spouse's Interests Vs. His or Her Positions*

*Digging deeper into your spouse's positions to discover his or her interests is immensely important during divorce mediation because it enables you to understand what your spouse is worried about or motivated by. It is essential that you illuminate the positions your spouse is taking, no matter how frustratingly extreme, by asking smart questions that demonstrate both empathy for his or her concerns and a willingness to consider other approaches. For example, if your spouse's position is that he needs \$3,000 every month in alimony, it is possible that he is terrified about his financial well-being after the divorce and feels the need to secure his financial future. Conversely, he may have read or heard from a friend that he should be entitled to alimony. Understanding the thinking that underpins his position is crucial to understanding how you will address his position. Similarly, a demand for sole custody of your children might be a sign that your spouse dreads the possibility of losing touch with your children. Or it may arise out of a belief that she will only receive full [child support](#) if she monopolizes parenting time. Or perhaps it is something more subtle; maybe she views a highly structured parenting schedule as a way of exerting control at a moment when she feels vulnerable. Is her motivation based on fear, strategy or insecurity? Knowing her*

*motivation won't just make you a better negotiator; it will equip you to offer solutions that address her concerns as well as your own.*



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### *Understanding Your Spouse's Interests Makes You Smarter in Your Divorce*

*Knowing a spouse's hidden interests will help you propose an effective compromise that may not perfectly match your spouse's position but nevertheless addresses the worries, concerns and beliefs that underpin his or her positions. Perhaps you will offer to take on more marital debt in lieu of paying alimony. Perhaps you will propose a flexible parenting schedule that compliments both spouses' work schedules. Whether a proposal is financial or child-related, knowing your audience is likely the key to success.*

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***Kim is a divorce mediator for South Shore Divorce Mediation, located in Hingham, Massachusetts and East Sandwich, Massachusetts. She is also a Senior Associate Attorney for Lynch & Owens, P.C., where she specializes in divorce and family law issues. Kim is a statutory mediator under [M.G.L. Ch. 233, s. 23C](#) and a proud member of the Massachusetts Council on Family Mediation. To read more from Kim Keyes, check out [her author page on the Lynch & Owens Blog](#). **Disclaimer:** The information you obtain at this site is not, nor is it intended to be, legal advice. You should meet with an attorney for advice regarding your individual situation. You are invited to contact our office. Contacting the office does not create an attorney-client or mediator-client relationship. Please do not send any***

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