

## Eight Negotiation Tips Designed to Get Better Results at Mediation

by John Shipp

Despite the misconception that great negotiators come out of the womb with their negotiation abilities fully formed, negotiation is a learned skill. We can all become better negotiators through education, practice, and preparation. Here are eight tips designed to improve your negotiating skills and your results at mediation.

### 1. Know your Negotiating Leverage before Mediation

You won't know whether you should take the deal on the table until you know what your alternatives are. Before mediation, consider in detail what are your alternatives to a settlement agreement, and do the same thing from the other side's perspective. This exercise will give you insight into the realistic settlement range, whether you are dealing from a position of strength or weakness, and how hard you can push for concessions. **Bonus tip:** Sometimes the best deals are the ones you walk away from.

### 2. Know the Difference Between Positions and Interests

Knowing the difference between a party's position and his or her underlying interests can lead to creative solutions. A position is what someone demands, while his or her underlying interest is why they are making the demand. For example, a homeowner demands \$20,000.00 from a contractor in a construction dispute. However, the contractor can't pay the demand. The homeowner's demand is his position. His underlying interest may be that he wants the money to repair his roof. If you know why someone wants something, you may be able to craft a creative solution. In this example, rather than pay monetary compensation, perhaps the contractor can repair the roof instead. **Bonus tip:** One of the most powerful tools available to discern the underlying interests of someone's position is to ask "why" they have taken a particular position.

### 3. Set Expectations before Mediation and Identify Interests

The more information you have regarding what is important to the other side, the more likely you will be able to craft a negotiated agreement that everyone can live with. Likewise, if you can set expectations with opposing counsel before mediation, you minimize the potential for getting bogged down over an issue because it was brought up for the first time in mediation. You can address both of these points by having a substantive discussion with your counterpart before mediation. This discussion can be effective in identifying interests, potential barriers to an agreement, and possible paths toward settlement. **Bonus tip:** Ask questions and listen. When you want to talk, resist the urge, and then listen some more. You can gain valuable insight into the other side's interests, which you can then leverage to get the deal points that are important to you.

### 4. Make a Demand or Offer Before Mediation

When dealing with large companies and insurance carriers, make a detailed demand or offer weeks before the actual mediation session. These cases are often evaluated through roundtable discussions and committees, and these matters often go through several levels of leadership before the case is valued and settlement authority is given. If you fail to provide your counterpart with your view of the case, he or she is setting the valuation in a vacuum. While mediation can shift perceptions of case value, it's tough for any party to substantially change the case value on the fly or obtain sufficient additional authority at mediation -- so you're better off helping them set that value earlier in the process. Providing the other side with a detailed demand or offer before mediation forces your counterpart to consider your evaluation of the case, tests his or her preconceived views of the value of the case, and sets expectations for mediation. **Bonus tip:** The more information you provide to support your evaluation, the more likely your counterpart will consider your valuation.

### 5. Make the First Offer

Anchoring is when one party sets an initial position that begins the offer/counter-offer process. The party that sets an anchor first often achieves better results. A well-placed, realistic anchor can move the range of a possible agreement closer to your initial position. To increase your chances of moving the settlement range in your direction, you should anchor just within the realistic value of the case. **Bonus tip:** When the other party makes an unrealistic first offer and anchors outside the value of the case, it can have the opposite effect. He or she will lose credibility, and you can now set a more realistic anchor, which can move the possible settlement range in your direction.

### 6. Deal with Insulting Offers and Responses

Parties are often insulted with offers made in mediation. These offers typically have no relation to the value of the case. Although it may seem counterintuitive, an effective technique is to respond with a reasonable offer within the realistic range of possible settlement. You should send the offer with the message that the insulting offer was not considered in making the current offer as it has no relation to the value of the case, and that this latest offer was made with the intent to invite the other party to counter with a reasonable number. If the other party is unwilling to respond accordingly, he or she must know that there is a disconnect in the process. **Bonus tip:** This technique can be effective when a negotiation has begun to stall when one party is unwilling to move off its number.

### 7. Consider Making Multiple Simultaneous Offers

Consider making multiple simultaneous offers in a negotiation. At the beginning of a negotiation, you can often determine the true interests of parties by offering different terms in multiple offers. Parties will often counter with select terms from the multiple offers presented, which allows you to determine the underlying interests of the counterpart which you can then leverage to obtain favorable concessions from the other side. **Bonus Tip:** You can also use this technique at the end of a negotiation when the parties are bogged down over numbers by making an offer at your number, and an offer at your counterpart's number with additional terms. This will often highlight for the other side the value of your number offer. Your counterpart will often determine that there is more value in your number rather than in his or her number with preconditions.

### 8. Close the Deal and Maximize your Results

You have to do two things to maximize your results at mediation. Give your counterpart hope that there is an opportunity for a deal, and then make it painful for them to walk away. You can give hope by making an offer within a realistic range of the settlement value of the case. They don't have to like the terms, but it should be attractive enough that it encourages them to negotiate off of their number. As the midpoint gets closer to each side's number, urgency and pressure increase to get a deal done. You can often obtain additional concessions and push your counterpart past his or her desired resolution by making a final offer close enough to the other side's bottom line that it is too painful to walk away from the deal. **Bonus tip:** A good rule of thumb is that most parties will not walk away

from five to ten percent off of their bottom line.

In conclusion, we can all become better negotiators if we take the time to develop the necessary skills. While this list is by no means exhaustive, implementing these tips can often lead to better results for your clients



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