



# Mediation: Conflict, Negotiation and Dispute Resolution for Lawyers

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# Getting to Yes

## *Four Main Principles:*

1. People: *Separate the people (relationship problem) from the (substantive/legal) problem*
2. Interests: *Focus on the parties' interests, not their positions*
3. Options: *Generate a variety of possibilities before deciding what to do*
4. Criteria: *Insist that the result be based on some objective and valid criteria*

# GTY: 1. Separate the People Problem from the Substantive/Legal Problem

## 1. People/RELATIONSHIP topics include:

- Negotiators' or parties' values, background, viewpoint. All are *unpredictable*.
- Relationships: clients, lawyers, agents – *to each other*: past AND future business and personal relationships
- Issues of reputation and future referrals


*Separate the relationship issues from the legal/  
substantive issues*



# GTY: Separate the People Problem from the Substantive/Legal Problem

## People Problem/RELATIONSHIP Issues:

1. Perception
2. Emotion
3. Communication



GTY: Separate the People Problem  
from the Substantive/Legal Problem  
People/RELATIONSHIP Issues

**1. Perception Problems:**

- People see what they want to see
- People focus on facts that confirm prior perceptions
- People assume others share their fears, hatreds

GTY: Separate the People Problem from the Substantive/Legal Problem

People/RELATIONSHIP Issues:

## 1. Perception Solutions:

- *Separate the symptoms of the substantive/content problem from the relationship issues*
- *Act inconsistently with their perceptions*
- *Give all parties a stake in the outcome*
- *Word options/proposals consistent with the Ps' values*
  - *especially to save face: ensure solution can be reconciled with Ps' past words and deeds*

GTY: Separate the People Problem from the Substantive/Legal Problem.

People/RELATIONSHIP Issues:

## 2. Emotion Problems:

- Parties' feelings may be more important than talk and discussion
- Parties begin mediation ready for battle, not conciliation
- People feel threatened by high stakes of the dispute
- Strong emotion on 1 side breeds it on the other side
- Fear breeds anger; sadness/grief breed anger
- Too much or too little lead to impasse/breakdown

GTY: Separate the People Problem from the Substantive/Legal Problem

People/RELATIONSHIP Issues:

## 2. Emotion Solutions:

- *Recognize Parties' emotions (& yours)*
- *Acknowledge their emotions; name/label them*
- *Allow Parties to vent; "let off steam" (caucus??); they can become rational later*
- *Don't react to an outburst; respond to it with acknowledgement, gentleness & understanding*

Rule: 1 party angry at a time

Idea: use symbolic gestures: An apology?  
Handshake? Business luncheon?

GTY: Separate the People Problem from the  
Substantive/Legal Problem

People/RELATIONSHIP Issues:

### 3. Communication Problems:

- Parties may not be talking to each other (they talk to impress 3<sup>rd</sup> parties)
- Parties do not pay attention to or hear each other
- Parties misunderstand/misinterpret each other

GTY: Separate the People Problem from the Substantive/Legal Problem

People/RELATIONSHIP Issues:

### 3. Communication Solutions:

- *Ensure parties listen to each other.*
- *Model active listening:*
  - *ask Ps to detail/spell out what they mean*
  - *have Ps repeat what they say if necessary*
- *Show understanding of what's said*
- *Speak to be understood; it's not a debate*

Key: *What purpose will the information/statement serve? Towards settlement or impasse?*



# Getting to Yes

## *Four Main Principles:*

*1. Separate the PEOPLE (relationship problem) from the Substantive/Legal PROBLEM.*

Identify and list these types of issues on your mediator's agenda:

- Perception Issues
- Emotions and Feelings
- Communication Issues

# Getting to Yes: Negotiating Agreement Without Giving In

## *Principled/Interest-Based Negotiation:*

- Decide issues on their merits, not Parties' positions
- Seek mutual gains for all Parties
- Where interests conflict, insist on objective, fair standards
- Get what you're entitled to while maintaining integrity



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