



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 or valid criteria*

GTY: Invent Multiple Options for Mutual Gain

4 Obstacles to Creating Multiple Options:

1. Premature judgment
2. Searching for a single answer
3. Assumption of a “fixed pie” – only limited solutions are available or possible
4. Solving their problem is their problem

GTY: Invent Multiple Options for Mutual Gain

Obstacle #1: Premature judgment

- Judgment hinders imagination
- Presence of other side hampers creativity
- Ps fear disclosure of information might jeopardize bargaining position or strength

GTY: Invent Multiple Options for Mutual Gain

Obstacle #2: Searching for a single answer

- Negotiators don't want to invent
- Negotiators want to narrow the gap between positions
- Parties fear extended discussion will delay end to the mediation conference
- Premature closure or end to negotiations precludes formation of ideas to select from

GTY: Invent Multiple Options for Mutual Gain

Obstacle #3: Presumption of a “fixed pie” – solutions are limited

- EITHER / OR thinking and perceptions
- “If you get something, I automatically lose ... if I gain what I want, you will lose ...”

Key: Parties need to see possibilities for all of them

GTY: Invent Multiple Options for Mutual Gain

Obstacle #4: Solving their problem
is their problem

- Perception that only “the other Party needs a solution – not me – because my position is right”
- Reluctance to acknowledge and legitimize other party’s needs or views

GTY: Invent Multiple Options for Mutual Gain

4 Points on how to invent & generate options:

- 1) Separate creating options/brainstorming from critically analyzing the choices
 - (a) Designate a brainstorming session
 - (b) Devise as many ideas as possible
 - (c) Broaden the proposal list
 - (d) Mediator records the ideas on a notepad (not a marker board or laptop)

GTY: Invent Multiple Options for Mutual Gain

How to invent or generate options:

- 2) Help parties nominate potential choices
 - (a) Formulate improvements on possible alternatives
- 3) Analyze the improved list of options
 - (a) Shared interests can become shared *goals*
- 4) Select the most workable, feasible and effective solutions to meet the Ps' objectives and aims



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