



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: Insist on Using Objective (and valid) Criteria

Reason: Use of objective criteria enables
reasonable & sensible resolution
independent of will of all Ps

Valid & objective criteria include:

- fair market value or replacement cost,
- depreciated book value,
- competitive prices in the marketplace
- precedent or jury verdicts
- community values or traditional values

GTY: Insist on Using Objective (and valid) Criteria

- Use fair standards for each substantive or legal question:
 - Find objective criteria for each issue
 - Find what's most appropriate/workable for each issue
 - Yield to principle, standards or values – *don't yield to pressure or will of Ps*

GTY: Insist on Using Objective (and valid) Criteria

Use fair and reasonable procedures for resolution of Ps' conflicting interests or issues

- Specify bank check, cashier's check or money order
- Ps take turns or draw lots,
- Ps let someone else decide
- Ps use business standard as to timing of payment

GTY: Best Alternative to a Negotiated Agreement BATNA (pg 97) or WATNA

Reason for BATNA or WATNA:

1. *Protect each party from making an agreement he/she should reject*
2. *Help each party make the most of assets he/she has to any agreement will satisfy his/her interests as much as possible*

BATNA or WATNA are only developed in a private caucus!!

GTY: Use of BATNA or WATNA

In a private caucus:

- Develop BATNA or WATNA based on objective criteria
- Consider what's the best or worst alternative or different result each party can expect or anticipate if no agreement today?

GTY: Use of BATNA or WATNA

In a private caucus:

- The P's BATNA then becomes the basis of comparison: test and examine all ideas that were brainstormed against the BATNA or WATNA
 - Whichever proposal is *better* becomes that P's BATNA. *Accept it* as the resolution.
 - Whichever scheme is *worst* is the WATNA.
It shows that party what choices to accept instead.
 - *Ps must also consider other side's BATNA or WATNA*

GTY: Dirty Tricks

If a party uses problematic or tricky tactics:

1. Recognize the tactic, ploy or scheme:
deception, phony facts, ambiguous authority, dubious intentions, personal attacks, threats, escalating demands
2. Explicitly raise the issue of tactics, actions or procedures; no victims
3. Negotiate about procedures, process or tactics to be used in mediation – the Rules of the Game



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