Advanced Training in Conflict Resolution

NEVADA DISPUTE RESOLUTION COALITION

Forrest S. Mosten

January 28, 2011

ARTISTS

Pablo Picasso

Paul Cezanne

Henri Matisse

Claude Monet

COMPONENTS OF ADVANCED TRAINING

- Role Modeling
- Structure
- Substantive Knowledge
- Process Skills
- Ethics
- Trends
- Perspectives

BENEFITS EXPERIENCED FROM ADVANCED TRAINING

- Advanced Negotiation and Communication Skills
- Enhanced Ability to Advise Clients Concerning Mediation and CL
- Competence to Represent Clients in Mediation and CL
- Increased Possibility of Financial Success in Building a Peacemaking Practice

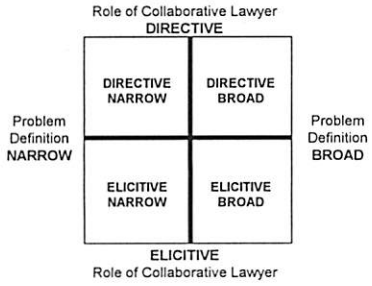
SETTLEMENT FORMATS

- 1 WAY—SELF RESOLUTION
- 2 WAY PARTIES
- 2 WAY LAWYERS
- 4 WAY TRADITIONAL
- 4 WAY COLLABORATIVE
- 3 WAY MEDIATION
- 5 WAY MEDIATION

GOLDBERG: LAWYER VIEWS OF SUCCESSFUL MEDIATORS

- CONFIDENCE BUILDING ATTRIBUTES
- PROCESS SKILLS
- EVALUATIVE SKILLS

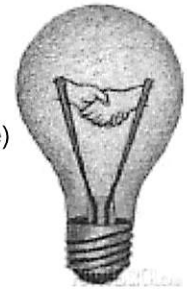
Riskin Orientations



Copyright © 2003 Leonard L. Riskin.

STRATEGIC THINKING

- THEORY
- STRATEGY
- INTERVENTION (Move)
- REFLECTION



STRATEGIC MEDIATION

- **Next Statement or action to create baby steps**
- **Create Awareness**
- **Motivate Discussions**
- **Guide – don't direct**
- **Best Opportunity to agree**

STRATEGIC MEDIATION

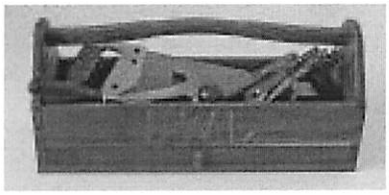
HOW?

- DETERMINE STRATEGY (Goal, Objective)
- MOVE (Action or Statement)
- ASSESS

USEYOUR TOOLBOX TO DESIGN TO BUILD LASTING AGREEMENTS

SHIFT FROM MAKING A DEALTO BUILDING AGREEMENTS

TOOLB0X APPROACH



ACQUIRE TOOLS

- PRIOR EXPERIENCE IN OTHER FIELDS
- BASIC TRAINING(S)
- ADVANCED TRAININGS
- STUDY GROUPS
- SUPERVISION
- CONFERENCES
- READING

KNOW WHAT TOOLS YOU HAVE

MOSTEN'S TOOLBOX

GETTING PEOPLE IN THE DOOR
FIRST MEETING
AGREEMENT READINESS
SMOOTHING OUT THE BUMPS
LATE STAGE STRATEGIES
CLOSING AND PREVENTION OF FUTURE CONFLICT

USE TOOLS AFTER EXHANGE BY HARRY AND HARRIET

- Identify Position
- Dig for Interests
- Explore Options
- Normalization-Solvability of the Client's Problem
- Reframe Issue as Agenda Item and Emotional Content of the Issue

TOOLS (S)

- Client Self-Soothing
- Reframe Issue as Possible Proposal and Emotional Content of the Issue
- Range of Issue with BATNA, WATNA, and MLATNA
- Client Self-Resolution

TOOLS CAN BE USED FROM INTAKE TO IMPASSE

Interest Based Negotiation DURING INTAKE

- **"I have to get my husband out of the house because his abusive language is frightening me and the children"**

OLD PARADIGM:

Change the Locks, Call the Police, and get a Video Security Camera

REFRAME:

Interest Based Negotiation DURING INTAKE

- **"I only have a budget of $3,000 for professional fees. Can you do it?"**
- **OLD PARADIGM:**
- **I don't work on a flat fee.**
- **Let me refer you to a colleague with a lower hourly rate**
- **REFRAME :**

Interest Based Negotiation DURING INTAKE

- I love your background and your approach, but you are too far from me (20 miles, 30 minutes). Can you refer me to someone just like you who is closer?"
- OLD PARADIGM: Sure, call _____
- REFRAME

INITIAL CLIENT MEETING

- "My spouse is very controlling and manipulative. I want to take the money from the joint money market account before he does."
- OLD PARADIGM: "THE ACCOUNT IS HALF YOURS. JUST TAKE HALF AND EMAIL HIM TO TELL HIM"
- REFRAME

INITIAL CLIENT MEETING

- "I don't want my spouse to consult with a lawyer I don't want the expense or hassle of lawyers"
- OLD PARADIGM: If she doesn't get a lawyer, any settlement you reach will be useless
- REFRAME

INITIAL CLIENT MEETING

- "If my daughter doesn't want to stay overnight at my house, there is no way that I will pay for college next year"
- OLD PARADIGM: While you don't have an obligation, don't threaten to cut her off because it will ruin your relationship.
- REFRAME

COLLABORATIVE TEAM PLANNING/DEFRIEFING MEETING

- OLD PARADIGM: We're the Pilots, the Clients are the Passengers. Let's Start with Communication:
- REFRAME

FIRST JOINT SESSION

- "I don't want to read the participation agreement out loud. Let's just get down to it as this is my first and last session."
- OLD PARADIGM: You have to know what is in the agreement and our Protocol says reading it aloud together is the best way"
- REFRAME:

FIRST JOINT SESSION

- **We must work out which schools the children go to next year and send a check by Friday. I don't have time to fill out a budget."**
- OLD PARADIGM: "If you don't fill out a budget we can't start working on support"
- REFRAME:

FIRST JOINT SESSION

- **I can't come to any more sessions for the next 5 weeks as I am starting a new project at work next Monday.**
- **OLD PARADIGM: "We have to build momentum and taking a 5 week break will hurt the process.**
- **REFRAME**

AGREEMENT READINESS

- **"There is no way that we can sell the house until the market recovers"**
- **OLD PARADIGM: You don't have the cash flow to support this house.**
- **REFRAME**

AGREEMENT READINESS

- **Wife must go back to work in 6 months and earn at least $2500 per month . If she doesn't, her income must reflect that amount of imputed income."**
- OLD PARADIGM: Both parties must make every effort to support the children
- REFRAME:

AGREEMENT READINESS

- **My father loaned us the $300,000 for to open up this business and you agreed that you would repay your half to him if we ever broke up"**
- OLD PARADIGM: Contracts made to third parties during the marriage are community obligations
- REFRAME

GETTING PARTIES IN THE DOOR

HOW DO YOU HANDLE THE FIRST CALL?

FIRST CLIENT CONSULTATION

PEACEMAKER FRIENDLY ENVIRONMENT

- Space for Discussion and Dialogue
  - Round Tables
  - Visual Aids
  - Break-Out Rooms
- Client Library
- Use of Written Materials
- Office Decoration
- Staff Training

CLIENT LIBRARY

- SYMBOLIC CLIENT HOME
- SUBSTANTIVE INFORMATION
- (PRESCRIPTIVE OR SELF-SELECT)
- PREPARATION FOR CLIENT ROLE
- GET WORK DONE
- BREAK-OUT ROOM

Conflict as Opportunity

Baby Steps

Create Movement in Right Direction

Adapted from Melamed and Corcoran, Mediating Divorce Agreement

NEGOTIATION STRATEGIES

TOOLS FOR INTEREST BASED NEGOTIATION

- NEW PARADIGM
- REFRAMING SKILLS
- IMPORTANCE OF POSITIONS
- INTERESTS
- OPTIONS

INTEREST BASED NEGOTIATIONS

"INTERESTS MOTIVATE PEOPLE; THEY ARE THE SILENT MOVERS BEHIND THE HUBBUB OF POSITIONS. YOUR POSITION IS SOMETHING YOU HAVE DECIDED ON. YOUR INTERESTS ARE WHAT CAUSED YOU TO SO DECIDE."

Getting to Yes

ELEMENTS OF INTEREST BASED NEGOTIATION

- POSITIONS
- INTERESTS
- OPTIONS
- CONVERSATION Leading to AGREEMENT

YOU MUST....

1. IDENTIFY AND DEMONSTRATE UNDERSTANDING FOR POSITIONS
2. DIG FOR INTERESTS
3. DEVELOP OPTIONS

DIG FOR INTERESTS

CL Professional DRIVEN—THE KEY TO MOVEMENT

PRODUCES INSIGHT AND BRIDGE TO COMMONALITY

STEPS 1-6
USE POSITIONS TO DEVELOP INTERESTS

10 STEPS IN INTEREST- BASED NEGOTIATION

- Stage 1: Party 1 States Position
- Stage 2: Acknowledge and Restates Position Accurately
- Stage 3: Party 2 States Position
- Sage 4: Acknowledges and Restates Position Accurately
- Stage 5: Uncovers the Interests Beneath the Positions of Both Parties
- Stage 6: Mutualize Interests

STEPS 7-9
DEVELOP AND TEST OPTIONS

- Stage 7: Brainstorm Options Developed by the Parties
- Stage 8: Add Additional Options with Permission of Parties and Prioritize based on Each Party's Willingness to Consider

OPTIONS

- Stage 9: Test Selected Options with Both Parties Using Criteria of Impact on Relationship (Cost, Children, Privacy, Speed of Resolution)

REFRAME OPTIONS

FACTS
INTERESTS
EMOTIONS
AGENDA ITEM
- LEGALCONCEPTS

STEP 10 DISCUSSION TO RESOLUTION

- Stage 10: Facilitate Discussion
- Leading to Agreement

DE-POSITION WITH SELF-INTEREST

DePosition with Positive Self-Interest

- Accurately Restate Party's Position
- Ask: Imagine a Judge accepted your position, how would that benefit you?
- List: All Benefits---squeeze dry.
- Restate All Benefits
- Ask: If an ultimate settlement dealt with each of these concerns, would you consider it?

TIPS FOR DEPOSITIONING

- Use Either Joint Session Or Caucus
- Be Accurate In Restating
- Lean Over Backwards To Accept Party's Goals
- Go For Baby Step—not Agreement-leave It Hanging
- Can Be Used With Overall Goal Or With A Single Issue

LATE STAGE STRATEGIES

Confidential Mini-Evaluation (CME)

- Parenting Disputes
- Impasse During Negotiations
- Best in Mediation Setting
- Least Invasive Evaluation

CHANGING PERCEPTIONS OF GAP

Purpose: To Keep Party in CP by Comparing BATMA and Costs of Maintaining Position

Late Stage Strategy

Prevent Walk Out

Link with earlier Reasons to Mediate

Accepts Position of Party as Stated

Focus on Costs of Maintaining Position

Do not Test Substantive Terms or Explore Options

CHANGING PERCEPTIONS OF GAP

- Delineate Gap
- Assess Probable Outcome
- Soft Costs
- Emotional Costs
- Financial Benefits
- Transaction Costs
- Delineate Remaining Gap

DELINIATE GAP

- Restate the current positions and state full amount of gap
- Ask party if CP's assessment of gap is correct.
- Ask party if party is willing to explore areas to reduce gap or look at gap in different way.

SOFT COSTS
Non -Out of Pocket Costs

- Loss of Income/Profits
- Loss of Momentum and Creativity
- Use of Staff Time and Overhead
- Personal Reputation
- Business Good Will—Corporate Image
- Contingent Liability
- Impact on Credit
- WHAT WOULD YOU PAY TO AVOID THESE COSTS BY SETTLING TODAY?

EMOTIONAL COSTS

- Physical symptoms (tummy, headache, sleeplessness, etc)
- Internal Feelings-(fear, deprivation, uncertainty)
- Impact on Social Relationships

FUTURE FINANCIAL BENEFITS

- Explore possible future relationship with other party
- Determine whether other party is be able to help in any way in the future if matter is settled
- Would such help have a direct or indirect financial benefit for this party?
- What minimum amount could be allocated for this financial benefit?

TRANSACTION COSTS

ASK PARTY FIRST—IF UNABLE OR UNWILLING TO RESPOND, INVITE INPUT FROM LAWYER

- Lawyer's Fees
  - Experts' Fees
  - Costs-Filing Fees, Reporters, Parking, Duplication, Travel
  - Babysitting
  - Replacement Staff
  - ACCEPT AMOUNTS ESTIMATED BY PARTY AND LAWYER—EVEN REDUCE WHENEVER POSSIBLE

MEDIATOR PROPOSALS

MEDIATOR PROPOSAL

- Latter stage after party development of offers and information sharing;
- Choice: Possible Impasse or Directive Mediator Involvement;
- Still Party Empowerment as to Process and Ultimate Deal Terms

SETTING UP MEDIATOR PROPOSAL

1. Assess Progress of Parties' Negotiation;
2. Check in with parties
3. Ask if parties and counsel want help
4. Describe Process of Mediator Proposal

STEPS FOR MEDIATOR PROPOSAL

1. Neutrally describe state of negotiation
2. Set out areas of agreement;
3. Set out issues (and sub-issues) that need further work;
4. Check in with parties as to agreement with your description and invite other areas that need work to achieve overall agreement

STEPS FOR MEDIATOR PROPOSAL

5. Inquire what facts or objective criteria are needed to bridge gap;
6. Ask parties and counsel if they are ready to hear Mediator Proposal
7. Indicate that Mediator Proposal is not take it or leave it—It is Mediator's ideas of what might meet the interests and concerns as developed in mediation

FINAL FINAL MEDIATOR PROPOSAL

1. Gather parties and counsel in joint session
2. Indicate that it appears that energy and ideas of discussion are running dry—Choice is between Final Final Mediator Proposal and Suspending/Terminating Mediation
3. Inquire whether parties want a Final Final Mediator Proposal—

4. Mediator give specific proposal as to each and every outstanding issue;
5. Each party must sign off on entire Mediator Proposal without change or mediation is suspended
6. Be prepared to neutrally draft

DISPUTE RESOLUTION CLAUSES CONTAIN FUTURE CONFLICT

- AGREEMENT TO DISCUSS
- WRITTEN NOTICE OF PROBLEM OR DISPUTE---
- FOUR WAY MEETINGS WITH LAWYERS AND PARTIES--- USE COLLABORATIVE APPROACH
- REQUIRED MEDIATION
- EVALUATION (CONFIDENTIAL OR NON CONFIDENTIAL) OF DISPUTED ISSUES
- COURT LITIGATION
- BINDING ARBITRATION

Co-Mediation

- Conjoint Co-Mediation
- Collaborative Co-Mediation
- Why use a mediation team rather than a sole mediator?
- Disadvantages of Co-Mediation

Preventive Conflict Health Care Provider

SYMPTOMATIC
- Monitor Compliance of Court Orders
- Provide for Future Dispute Resolution
- Change Documents Based on Martial Status

ASYMPTOMATIC
- Anticipate Trouble
- Maximize Opportunities
- Encourage Harmonious Relationships
- Regular Client Legal Check-ups
- Non-litigation Calendar to Monitor Client's Life Events

FEATURES OF PREVENTIVE MEDIATION

- Education is cornerstone
- Surface financial and legal concerns
- Anticipate future problems
- Improve communication
- Learn conflict resolution skills
- Set up conflict resolution process
- Legal Check-up

Preventive Mediation

- Avoid conflict
- Maximize opportunities
- Preserve current relationships
- Create and stabilize new relationships
- Protect legal and financial rights
- More transactional than disputes

Preventive Mediation

- Drafting Future Dispute Resolution Clauses
  - Written Notice of Dispute
  - Parties Meet and Confer
  - Required Mediation
  - Confidential Mini-Evaluation (CME)
  - Formal Evaluation Report
  - Binding Adjudication
  - Arbitration
  - Private Judges
  - Mediation to Follow a Binding Decision
- Preventive Mediation
- Preventive Legal Wellness Checkups

USE OF PREVENTIVE MEDIATION

- Pre-marital
- Committed relationships
- During marriage
- Pre-retirement
- Parent-Child
- Family business
- Estate planning
- Adoptions

USE TOOLS AFTER EXHANGE BY HARRY AND HARRIET

- Normalization-Solvability of the Client's Problem
- Reframe Issue as Agenda Item and Emotional Content of the Issue
- Client Self-Soothing

TOOLS (S)

- Reframe Issue as Possible Proposal and Emotional Content of the Issue
- Range of Issue with BATNA, WATNA, and MLATNA
- Client Self-Resolution

Interest Based Negotiation DURING INTAKE

- **"I have to get my husband out of the house because his abusive language is frightening me and the children"**

OLD PARADIGM:

Change the Locks, Call the Police, and get a Video Security Camera

REFRAME:

Interest Based Negotiation DURING INTAKE

- **"I only have a budget of $3,000 for professional fees. Can you do it?"**
- **OLD PARADIGM:**
- **I don't work on a flat fee.**
- **Let me refer you to a colleague with a lower hourly rate**
- **REFRAME :**

Interest Based Negotiation DURING INTAKE

- I love your background and your approach, but you are too far from me (20 miles, 30 minutes). Can you refer me to someone just like you who is closer?"
- OLD PARADIGM: Sure, call _____
- REFRAME

INITIAL CLIENT MEETING

- "My spouse is very controlling and manipulative. I want to take the money from the joint money market account before he does."
- OLD PARADIGM: "THE ACCOUNT IS HALF YOURS. JUST TAKE HALF AND EMAIL HIM TO TELL HIM"
- REFRAME

INITIAL CLIENT MEETING

- "I don't want my spouse to consult with a lawyer I don't want the expense or hassle of lawyers"
- OLD PARADIGM: If she doesn't get a lawyer, any settlement you reach will be useless
- REFRAME

INITIAL CLIENT MEETING

- "If my daughter doesn't want to stay overnight at my house, there is no way that I will pay for college next year"
- OLD PARADIGM: While you don't have an obligation, don't threaten to cut her off because it will ruin your relationship.
- REFRAME

COLLABORATIVE TEAM PLANNING/DEFRIEFING MEETING

- OLD PARADIGM: We're the Pilots, the Clients are the Passengers. Let's Start with Communication:
- REFRAME

FIRST JOINT SESSION

- "I don't want to read the participation agreement out loud. Let's just get down to it as this is my first and last session."
- OLD PARADIGM: You have to know what is in the agreement and our Protocol says reading it aloud together is the best way"
- REFRAME:

FIRST JOINT SESSION

- **We must work out which schools the children go to next year and send a check by Friday. I don't have time to fill out a budget."**
- OLD PARADIGM: "If you don't fill out a budget we can't start working on support"
- REFRAME:

FIRST JOINT SESSION

- **I can't come to any more sessions for the next 5 weeks as I am starting a new project at work next Monday.**
- **OLD PARADIGM: "We have to build momentum and taking a 5 week break will hurt the process.**
- **REFRAME**

AGREEMENT READINESS

- **"There is no way that we can sell the house until the market recovers"**
- **OLD PARADIGM: You don't have the cash flow to support this house.**
- **REFRAME**

AGREEMENT READINESS

- **Wife must go back to work in 6 months and earn at least $2500 per month . If she doesn't, her income must reflect that amount of imputed income."**
- OLD PARADIGM: Both parties must make every effort to support the children
- REFRAME:

AGREEMENT READINESS

- **My father loaned us the $300,000 for to open up this business and you agreed that you would repay your half to him if we ever broke up"**
- OLD PARADIGM: Contracts made to third parties during the marriage are joint marital obligations
- REFRAME

SPOUSAL SUPPORT

- **Spousal Support**
-
- **H---Support should terminate when W lives with a romantic partner**
-
- **W—Cohabitation is different from remarriage. It may never happen—if it does, let's deal with it then**

VALUING A BUSINESS

- H—She has a book of business---we need to get a forensic accountant to value goodwill
-
- OLD PARADIGM:
- If you two can just agree on a value, no CPA would be necessary.
- REFRAME:

VALUING A BUSINESS

- "W—It's just me. If I get sick, the business is over. There is no good will and I'm not going to waste $5,000 paying a CPA to make up a fantasy number."

OLD PARADIGM:

"It's better to have one neutral CPA in mediation than two adversarial CPA's in litigation"

CHILD SUPPORT

- **W---H should pay 100% of ballet and summer camp because he can easily afford it**
-
- **H—Child support should cover ballet and camp---$5,000 per mo well exceeds the children's daily expenses**
-

- **H—Child support should cover ballet and camp---$5,000 per mo well exceeds the children's daily expenses**
- OLD PARADIGM:
- "Guideline Support just covers basic living expenses and not "extras" that you two agree upon:"
- REFRAME

EMOTIONAL ASPECTS OF FINANCIAL ISSUES (1)

- DEEP SEATED CONDITION
- SPECIAL TRANSITION NEEDS
- OVERWHELMING ONE-TIME EXPENSES
- COMMUNICATION REPLAY OF MARRIAGE
- ROLES DURING MARRIAGE
- Feelings of DEPRIVATION

EMOTIONAL ASPECTS OF FINANCIAL ISSUES (2)

- DIFFERENT VALUES ABOUT MONEY
- LACK OF REALITY
- FEAR
- UNCERTAINTY
- GENDER DIFFERENCES
- FINANCIAL POWER IMBALANCE
- DISPARATE RISK TOLERANCE
- LACK OF EXPERIENCE OR SKILLS

LINKING STRATEGIES TO MOVES

ASSESS

- WHO NEEDS TO MOVE?
- SELECT INTERVENTION

FOCUS OF MOVEMENT

- PARTY A---PARTY B
- LAWYER A---LAWYER B
- LAWYER A—PARTY B
- LAWYER A—CLIENT A
- LAWYER—COACH
- COACH A---COACH B

REFRAME

FACTS
AGENDA ITEM
- LEGAL ASSERTIONS
- EMOTIONS
- PROPOSALS

Maintain the Momentum

- Conduct private sessions
- Emphasize the progress
- Invite suggestions of the parties
- Suggest homework
- Use "what if" statements
- Refocus attention on interests
- Look to the future

© Mosten Mediation Training, 1999

Maintain the Momentum (2)

- Suggest a further exchange of information
- Reality test their alternatives – BATNA
- Move to another agenda item
- Present the reality of a failing negotiation
- Introduce additional value into the pie

Maintain the Momentum (3)

- Suggest the use of experts to resolve particular issues
- Ask for reasons behind a particular position
- Use objective standards to evaluate options
- Consider changing the principal negotiators or support persons+

Maintain the Momentum (4)

- Discuss the possibility of changing the mediator
- Remind parties of external pressures to settle
- Reassess the effect of the venue, seating, visual aids, etc.
- Consider a joint meeting with the lawyers only

Maintain the Momentum (5)

- Use silence to encourage opening up by parties
- If mediation is terminated, leave door open for future resumption

CONFRONT NAÏVE REALISM

- OTHERS SEE THE WORLD AS I DO
- OTHERS SHARE MY REACTIONS
- IFTHE OTHER PARTY DOES NOT AGREE, IT IS BECAUSE
  - Need Info
  - Lazy or Crazy
  - Biased or Selfish

MEDIATOR RESPONSE TO NAÏVE REALISM

- EXPLAIN WHY WE HAVE DISPUTES
- HELP CHANGE PERCPTION
- ACCEPT THAT THERE ARE DIFFERENCES—Not good or bad
  Not Right or Wrong

LISTEN AGAIN

- Is there anything from the other party that you haven't heard (answer is usually "no"
- Do you believe that the other party feels that you have heard it?
- Repeat what the other party has said so that he/she knows you have heard it—maybe other side will have to say it differently

COMPROMISE OF POSITION IS NOT COMPROMISE OF INTEGRITY

- Multiple views of fairness
- Reaching an agreement is better than insisting on a fair agreement
- Do not ask parties if they want a fair agreement—this will polarize

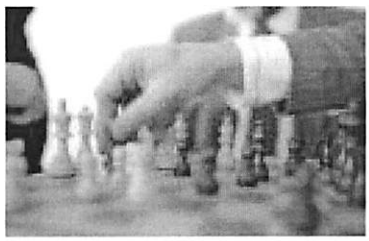
ANCHORING WILL AFFECT SETTLEMENT

- PARTY WHO MAKES FIRST OFFER SETS PARAMATERS
- IF NO OFFER, EXPLAIN HOW OTHER PARTY IS GETTING ADVANTAGE

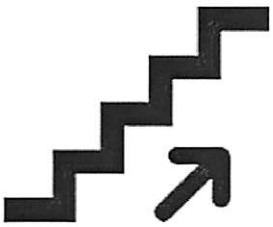
RISK AVERSION

- IF FEELING LOSS, PEOPLE WILL TAKE UNREASONABLE RISKS AGAINST GREAT ODDS TO AVOID LOSS
- WRITE OFFER OR GIVE A CHECK—PEOPLE DO NOT WANT IT TAKEN AWAY
- PEOPLE PAY MORE TO HAVE CERTAINTY TO AVOID SMALL LOSS

NEGOTIATION STRATEGIES



SEVERAL SMALL GAINS BETTER THAN ONE LARGE GAIN



USEYOUR TOOLBOX TO DESIGN
TO BUILD
LASTING AGREEMENTS

SOFT COSTS
Non -Out of Pocket Costs

- Loss of Income/Profits
- Loss of Momentum and Creativity
- Use of Staff Time and Overhead
- Personal Reputation
- Business Good Will—Corporate Image
- Contingent Liability
- Impact on Credit
- WHAT WOULD YOU PAY TO AVOID THESE COSTS BY SETTLING TODAY?

EMOTIONAL COSTS

- Physical symptoms (tummy, headache, sleeplessness, etc)
- Internal Feelings-(fear, deprivation, uncertainty)
- Impact on Social Relationships

FUTURE FINANCIAL BENEFITS

- Explore possible future relationship with other party
- Determine whether other party is be able to help in any way in the future if matter is settled
- Would such help have a direct or indirect financial benefit for this party?
- What minimum amount could be allocated for this financial benefit?

TRANSACTION COSTS

ASK PARTY FIRST—IF UNABLE OR UNWILLING TO RESPOND, INVITE INPUT FROM LAWYER

- Lawyer's Fees
  - Experts' Fees
  - Costs-Filing Fees, Reporters, Parking, Duplication, Travel
  - Babysitting
  - Replacement Staff
  - ACCEPT AMOUNTS ESTIMATED BY PARTY AND LAWYER—EVEN REDUCE WHENEVER POSSIBLE

ATTORNEY/PARTY PRESENTATION OF OFFERS (PAGE 46)

- Caucus as Extension of Joint Session
- Eliminate Kissinger Shuttle
- Benefits of Party Presenting Offer
- Detriment—Reactive Devaluation

CAUCUS SET-UP

HUSBAND'S ROOM

HUSBAND
CPA
LAWYER

←M→

WIFE'S ROOM

WIFE
CPA
LAWYER

A'S LAWYER PRESENTS OFFER TO PARTY B and LAWYER

- Mediator makes preparatory comments
- A's lawyer presents proposal
- Mediator questions and clarifies
- B and B's Lawyer questions and clarifies
- A's Lawyer leaves room

ATTORNEY/PARTY PRESENTATION OF OFFERS

- Caucus as Extension of Joint Session
- Eliminate Kissinger Shuttle
- Benefits of Party Presenting Offer
- Detriment—Reactive Devaluation

MEDIATOR MEETS WITH PARTY B AND LAWYER

1. Mediator offers B and Lawyer opportunity to meet privately
2. Mediator ask for reaction to A's Proposal
3. B and B's Lawyer discuss concerns and needs
4. B and B's Lawyer formulate proposal
5. Mediator questions and clarifies substance of proposal—Points out areas of acceptability and framing of open issues.
6. Mediator questions and Clarifies method of B's Lawyer Presentation to A and A's Lawyer
7. Mediator and B's Lawyer go together to A and A's L

ATTORNEY PRESENTATION OF OFFERS-Mediator's Role

- Mediator Meets With Party A
- Clarify Party A's Proposal
- Prepare Party A and Lawyer for Process

MEDIATOR MEETS WITH PARTY B and LAWYER

- Prepare Party B and Lawyer for Process
- Go Over Ground Rules

JOINT CL PROFESSIONAL PROPOSAL

- Latter stage after party development of offers and information sharing;
- Choice: Possible Impasse or Directive
- CL PROFESSIONAL Involvement;
- Still Party Empowerment as to Process and Ultimate Deal Terms

SETTING UP CL PROFESSIONAL PROPOSAL

1. Assess Progress of Parties' Negotiation;
2. Check in with parties
3. Ask if parties want help
4. Describe Process of CL Professional Proposal

STEPS FOR CL Professional Proposal PROPOSAL

1. Neutrally describe state of negotiation
2. Set out areas of agreement;
3. Set out issues (and sub-issues) that need further work;
4. Check in with parties as to agreement with your description and invite other areas that need work to achieve overall agreement

STEPS FOR CL Professional Proposal PROPOSAL

5. Inquire what facts or objective criteria are needed to bridge gap;
6. Ask parties and counsel if they are ready to hear CL Professional Proposal
7. Indicate that Proposal is not take it or leave it—It is CL Professional joint ideas of what might meet the interests and concerns as developed in CL process

STEPS FOR FINAL JOINT PROPOSAL

8. Present all terms—use RANGE, FACTORS, AND CONDITIONS to give parties room to manuever.
9. Jointly Meet with each party to discuss acceptability and/or additional concerns that need to be raised
10. Continue to facilitate discussion and/or offer other Joint Proposals until full agreement reached
11. Be prepared to Neutrally and Fairly Draft

FINAL FINAL CL Professional Proposal

1. Gather parties and counsel in joint session
2. Indicate that it appears that energy and ideas of discussion are running dry—Choice is between Final Final Proposal and Suspending/Terminating CL process
3. Inquire whether parties want a Final Final Joint Proposal—

4. CL Professionals Joint Final Final Proposal give specific proposal as to each and every outstanding issue;
5. Each party must sign off on entire Final Final Proposal without change or CL is suspended
6. Be prepared to neutrally and fairly draft

DEVELOP OPTIONS FOR CLIENT OR OTHER PARTY/LAWYER

- When parties have run dry, let silence fall
- Ask whether your help needed/welcome
- Indicate that you have an idea (s) that might help
- Your ideas are not binding or have any more weight than other options
- Get buy-in : "Are you both comfortable if I give my idea

SETTING UP THE PROCESS (PAGE 68)

STEPS TO SETTING UP A MEDIATION

- STEP 1: Party selects Mediation from spectrum of Alternatives
- STEP 2: Party who Wants Mediation seeks agreement from other party to Mediate (Overcomes Resistance)
- STEP 3: Parties agree on Possible Mediators
- STEP 4: Parties Contact Mediator (s)
- STEP 5: Convening and Intake
- STEP 6: Parties and Mediator Design format of Mediation