

NEGOTIATION SKILL # 8: BE PREPARED TO BE FLEXIBLE

Good negotiators never begin the negotiation without a solid strategic goal and plan, but every negotiation has its own set of surprises, so it is important to maintain your flexibility.

You don't have to be caught off-guard when these surprises occur, if you do this.

Last week I mediated a slip and fall case in which the Insurance Defense counsel had flown in for a private mediation hearing. It seemed to be a straightforward negotiation until she revealed that she had no authority to settle the case because the insurance coverage had not yet kicked in (now that the self-insured retention had been exhausted). Plaintiff's counsel, who had carefully prepared his client and his mediator for a negotiation based upon both issues of liability and damages was unprepared for that surprise. To his credit, he adjusted his "tactics" by engaging in a hypothetical negotiation based upon the two lawyers arriving at a number which they believed they could recommend to their respective clients. I am still awaiting their client's approval, but this was a great demonstration of flexibility with a view towards the ultimate goal of settlement.

In another example, a wage and hour case, the Plaintiff made such a generous opening concession (based upon a discount from the pre-litigation demand despite the considerable accumulation of attorney's fees) that the Defense had to adjust their negotiating strategy and instead of beginning with a nuisance value/insulting first offer, made a generous offer in response. That case settled with hearty handshakes in less than one full afternoon. All of the sticky points that the Defendant had planned to make were adjusted in response to Plaintiff's obvious eagerness to settle the case fairly and quickly.

When negotiating, Professor Peter Robinson of the Straus Institute at Pepperdine University, counsels to mind both the size of the concessions and the time it takes to make them. If a quick and generous opening demand is made, you may want to respond more generously than you planned. Then when it takes a longer time to get a smaller concession, you may need to reevaluate your pace and your client's expectations. If your business partners make a surprisingly

unfair and skewed opening offer to buy you out, despite your intention to "keep it friendly", you may need to respond with an equally outrageous beginning demand.

Remember, there is an important distinction between your well-planned negotiation strategy and the real-time tactics you take to accomplish your goals. Be prepared for the unexpected and you will never be caught off guard.

P.S. I am moderating a Panel at the Beverly Hills Bar Association on September 9, 2014 called, "Sex, Drugs and Money: The New Workplace".