

Empowering Your Negotiations

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Superior negotiators use their authentic negotiation power to achieve winning settlements. This type of power is not about supremacy, control, bullying, or strong-arming others. Instead authentic *power* in negotiation is the ability *to influence* the other parties to want to collaborate with you to get a deal that must provide for a mutual gain. Powerful negotiators use skills to positively engage the other side to give them what their clients need without resentment. When you set up an environment of affirmative relations, trust, honesty, and mutual respect, you will attain what you need out of the negotiations to satisfy your clients and yourself. As Abe Lincoln said, “Destroy your enemies by making them your friends”.

True negotiation power and confidence (not arrogance) induces others to want to cooperate with you so that all stakeholders will get enough of their interests met to get a mutual gain agreement. When you’re in command of your negotiation skills, you will cultivate constructive relationships, maintain a reputation for getting what you want, while being considered an ethical lawyer. When misunderstandings arise (which is normal since we are humans and misperception at times is inevitable), if you use effective communication techniques, you will establish an atmosphere of trust to facilitate the resolution of miscommunications and challenging issues.

To achieve successful settlements, considering using the six steps below to increase your influence and negotiation power. The acronym POWERS is an easy way to remember the key ingredients in achieving your highest potential in a negotiation or mediation:

P = Preparation—Prepare using what I call the “*CPR method*” In this approach you will focus on the issues of **C**ontent (facts) , **P**rocedures, and **R**elationship building to breathe life into your negotiation power.

O = Options—Consider numerous alternative options that meet everyone’s needs prior to and at the negotiation table.

W = Worthiness—Demonstrate that you are worthy to be trusted and test others for trustworthiness before, during and after the negotiation. Commanding negotiators are reliable, honest, and credible. Consider if each party’s words are consistent with the facts and their actions? Has anyone puffed, bluffed, or misrepresented?

E = Enthusiasm—Show your enthusiasm, your passion, and your commitment to reach a favorable agreement that work for all stakeholders. It’s important that your client and the other parties know that you care about a fair resolution more than just your own needs. Demonstrate that you are effective, professional, and that you are a problem solver, not a problem maker.

R = Relationship—Build bridges of mutual respect using effective and active listening, and mutual civility.

S = Satisfying solutions— Use “solutioneering” to reach for a result that creates satisfying solutions based on meeting the genuine interests of all stakeholders. A fervent advocate can get clients interests met while helping all involved to retain their dignity and a level of satisfaction.

PREPARATION YOUR GREATEST STRENGTH

In this article, we will focus on the issues of preparation since it is the most critical step in any negotiation. Preparation is your greatest strength in any negotiation. The party who does the most planning for the negotiation will be most influential and persuasive in getting what he or she wants. When I ask my law students if they would ever think of walking into the bar exam without studying and preparing themselves mentally, emotionally, and physically, they gasp at the thought of lack of preparedness. Clearly, without studying they know failure would be the result. But how many people walk into a negotiation and “wing it”? You’ll set yourself up for poor results if you attend a bargaining session without preparing the content of the issues, knowing the facts, the figures and the background of the various people involved. You also must consider the procedures you plan to use (who must be there, time, place, strategy, etc. and the type of process for building a congenial working relationship with the parties.

In order to ready yourself for any negotiation (whether it is with opposing counsel, a business associate, your boss, your client, your spouse, or anyone else), you must get organized, develop a strategy, do research, and prepare yourself physically, mentally, and emotionally. Pre-planning is essential every time, in every negotiation; it doesn’t matter how trivial the issue may seem, or how well you think you already know the bargaining game...

To begin your plan, consider the following essential components: *Content*, *Procedures*, and *Relationship* issues. This strategy of “CPR” will enliven your negotiation power:

Content Issues—What are your own underlying subject matter needs?

What do you and your client honestly want and why? What are the content issues of your proposal? Is it money, product, services, actions, business arrangements, an injunction, loan approval, etc.? Does your proposal really satisfy your client’s true interests? Are your goals consistent with the objective of your client? Could it be that your client wants to get the case finished so he can get back to business? Does the attorney on the other side have a conflict of interest in his/her goals versus the needs of his client? Are you bargaining for something that won’t gratify your client—even if you achieve it?

For example, on a personal level before you purchase a residence, even if it’s a fabulous price, you will question whether the location is easily accessible for work. You’ll check out the neighborhood and schools to see if they meet your kids’ needs. You will ascertain the property taxes, homeowner association fees, and other hidden fees and costs. You will talk with the neighbors about the community and find out the risks which might not be immediately visible. You

will research the surrounding area, find out all aspects of the home, city plans, etc., and what it would mean to live there. Your due diligence will reveal any potential problems that might exist before you make an offer.

What are the interests of the other parties?

What does the other party want or need? What are his or her motivations? In the previous example, why is the homeowner selling the house? What are his or her plans, problems, desires? What kind of relationship did he or she have with the neighbors? You aren't ready to make a viable proposal until you get the complete picture. The more you know about the other person's issues before the negotiation session begins the better prepared you'll be to achieve a favorable agreement. Find out who, what, where, why, and how for *each* content issue. That will help you develop persuasive proposals to obtain your objectives. Educating yourself about your "adversary's" interests is a key to effective deal-making. Showing that you are knowledgeable and care about the other party's interests and circumstances will turn your adversaries into friends. The key to any successful settlement is to meet the interests of all the parties.

Never act on assumptions

Even if you find out extensive information about the other party or parties before you negotiate—there still will be much you don't know. Never **assume** anything about the other party's goals without checking out the facts. The old adage is true that if you assume, you make an "*ass (of) u (and) me.*" Voicing assumptions without knowing the facts is dangerous and often embarrassing. We've all learned from bad experiences that when we speak our assumptions as facts, we may be perceived as foolish. (For example you would be embarrassed if you were to ask a woman when she's "due" for her baby to arrive, only to learn she isn't pregnant).

It's human nature to try to categorize and organize data by making assumptions in our minds in order to process quickly. But before you put your foot into your mouth, consider that your assumption *could be* wrong. Your sensitivity will show others that you are interested in their perspective when you ask polite, probing, open-ended questions. By listening intently to their answers, you'll gain keen insight into their concerns, needs, and negotiation approach. This knowledge gives you potential power to influence the parties' perspective.

Consider preparing these types of questions for those with whom you will negotiate:

- What is most important to you (your client) as we try to reach our agreement today?
- What would fulfill your expectations?
- How might we make this work for your client and mine?
- What are you most worried about?
- What are your client's concerns with the proposal on the table?
- What do you feel is essential to make this mutually beneficial?

- Help me understand the basis for your proposal.
- What element of our proposal is most favorable for you?
- What specifically doesn't work for you and why?

You may not receive completely transparent answers, but you'll gain a better understanding of the other parties' intentions when you gently probe and ask for clarification. After you ask these questions, it's important to really listen to the answers and make sure that you keep opposing counsel focused on the answers.

What objective information will help you to be credible?

To influence another party, you'll need to be credible. Ask yourself what facts and objective criteria you must gather about the subject matter to be believable. What data will you need to present to be reasonable? What trustworthy expert opinions, codes, cases, facts, treatises, law review articles, and other documents will help you to convince the other party of the fairness of your proposal?

For example, if you are going to make a demand for settlement, are you ready to show opposing counsel (or your mediator) how you arrived at that number? Have your facts and figures worked out before you arrive at your negotiation or mediation. Have you looked at comparison settlements in similar cases in your jurisdiction? Have you consulted with experts or your list serve to ask other attorneys how they might view a settlement proposal? If counsel for the other side is better prepared in mediation or your one on one negotiation, your bargaining position is weakened.

The preparation of facts, figures, etc., will give you confidence and support your settlement suggestions. Be sure to verify the accuracy of your data before you present it so you won't be perceived as dishonest. Speak transparently and be willing to share facts and supporting documents in a non-aggressive manner. Your persuasive power will increase as you respectfully show the reasonableness of your offer and the high quality of the information presented.

P-Procedural Issues—what procedures must be negotiated to set a collaborative approach?

TIME, PLACE, ENVIRONMENT

Time, place, and environment all affect the process of your bargaining session. Setting a convenient time, place and pleasing environment makes a huge difference in the energy of the negotiation. For example, as the mediator I always have healthy snacks available to everyone, and set up a pleasing private environment with a view of palm trees or the ocean. It's helpful to set a positive atmosphere with an "olive branch" and good hearted humor.

Even with a positive ambience if you do not have all stakeholders present, or available by video conferencing or at least by phone, there will be no settlement. Find out all who must be at the meeting or available by phone. Inquire ahead of time who has the authority to make an agreement, who has the purse strings to write a check, or make the deal happen, and make sure all stakeholders are present at the meeting or at least available by Facetime, Skype or conference

calling to talk with you and if in mediation, the mediator must be able to talk directly with that person with counsel present. You' will waste time in your negotiation or mediation unless you and/or your mediator can get direct access to a CEO or owner who has the authority to make a decision. You must negotiate with someone who has the say-so to seal the pact.

How will you meet? What forum will you use?

The best negotiations take place in person since body language and facial expressions communicate true intent even better than words. Video conferencing is the next best forum because you can see the body language, hear intonation and inflection, and you'll have the opportunity to clarify misunderstandings immediately. Phone may work as a last resort. Letters are more formal and are best used as a follow-up to an in-person meeting or phone conversation. E-mail or texting should generally never be used to bargain or resolve conflict. It's very precarious since it's not confidential, is usually accomplished in haste, and is very easily misunderstood since you cannot even clarify with voice inflection.

If the negotiation will take place by Facetime, skype, or phone, who initiates the call? What time will the call take place? Who will be available for the call? What documents must be sent to each other and reviewed before the phone conference? These issues initiate the negotiation process and are critical to set forth mutual accommodations. By clarifying and organizing the procedural issues, you'll begin the negotiation process amicably and competently.

Who are the stakeholders?

Anyone who has an interest in the outcome should be part of the discussion and have a hand in designing the terms. If you make an agreement with only a few of the stakeholders, the other necessary parties will undoubtedly find fault because they didn't participate in the final outcome that affects them. Learn who will be directly involved in implementing the agreement. You'll need to hear everyone's concerns and challenges. If a deal is to be carried out by parties who are not at the negotiation table, be ready to work through struggles that will surface after the deal is made. It's far more efficient to engage *all* parties in the "solutioneering" process at the outset to address how the terms will be executed. When all affected parties are genuinely satisfied with the agreement, there will be commitment and better follow-through.

Relationship Issues

Human nature is such that the more we like someone, the more we are willing to accommodate his or her needs. It's enjoyable to negotiate with pleasant people, and uncomfortable to deal with difficult people.

Consider what relationship issues you have with the other parties before you meet. Is the other party logical or emotional, straightforward or closed, shy or gregarious? It's important that you pay attention to the other party's style, culture, comfort zone, and approach. Being sensitive to

the other person's feelings will set a respectful tone to interactions. Even if you are very prepared as to the subject matter, if you offend the other party with an approach that is perceived as insensitive or crude, you'll lose all credibility and negotiation power.

What must you find out about the other attorney or the parties in order to be informed and persuasive? If you're unable to learn much about the other party before you meet (by public sites on the Internet, references, phone conferencing, etc.), plan open-ended questions ahead of time to help you get at the information you need. Create questions that allow the other party to reveal his or her inner thoughts and desires. Inquire politely about family, hobbies, career, etc. Learn what you can about the "human side" of your negotiation partners.

When you better understand the other party, you'll suggest solutions that will be relevant to that person. Knowing what is comfortable for others helps you shape your proposals to put them at ease. Active listening will show you what motivates the other party. Each party has a distinct perspective, what is valuable to you may not have significance to the other party and vice versa.

To sum up how you'll attain successful negotiation power, you'll need to first and foremost focus on the P in POWER. It reminds you to *prepare your CPR issues to breathe life into your negotiations*.

The acronym CPR will remind you how to prepare for a successful negotiation:

Content— What must you research regarding the subject matter of the negotiation?

Procedures— *What procedures will be conducive to effective "solutioneering"?*

Relationship—*How can you best relate to the other party?*

When you can answer the three questions above, you'll be prepared and empowered to influence the other party (or parties) to brainstorm mutually acceptable agreements.

In the next article, we will address the other elements of Power which are Options, worthiness, enthusiasm, relationship building and satisfying solutions ("solutioneering"). Knowing that your preparation is your most potent procedure to insure a successful outcome in your negotiation or mediation, the more you prepare your CPR, the more vibrant life you will breathe into your negotiations to bring about a lucrative settlement and happy clients.

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