

NOTES ON NEGOTIATIONS

WHAT IS NEGOTIATION?

In legal practice negotiation is the process by which through discussions and interchange of proposals and views disputes or differences are resolved or agreements concluded without litigation or the imposition of a third party's opinion or judgment. Negotiations are often used to settle the terms of a contract or its renewal or to compromise a pending action.

PREPARATION

Acquire a thorough knowledge of your client's case, his interests and objectives.

Acquire a thorough knowledge of your opponent's case, his interests and objectives.

Make an assessment of the strengths and weaknesses of the opposing cases.

Evaluate your best and worst alternative to a negotiated agreement.

Make an assessment of your opponent's best and worst alternatives to a negotiated agreement.

DEVELOP YOUR STRATEGY

CONCILIATORY, COOPERATIVE, COMBATATIVE, CONTENTIOUS.

Consider what is the opponent's likely reaction to one or the other approach.

DEVELOP YOUR PLAN

What is your critical first offer or initial position?

What concessions can you make?

When should each be made?

Consider the time factors.

Consider the time factors.

What linkages are necessary?

What is your bottom line?

THE ENVIRONMENT

Cordiality v firmness

Patience v earnestness

Alertness to weakness and openings

Flexibility and Re-assessment

THE EXPLORATION

Place your proposal in a rational and probable framework.

Be confident but credible.

Take the high point but be realistic.

BE OBSERVANT

Listen and Probe.

Observe body language.

Reciprocate and respond with consistency.

EXCHANGE CONCESSIONS

Give and take.

Link factors and solutions.

Reward concessions.

Avoid or circumvent impasse.

CLINCHING THE BARGAIN

Assess the level of consensus.

Summarize the areas of consensus.

Demonstrate the concessions made.

Emphasize the advantages of amicable resolution.

CONCLUSION

Communicate with and explain to clients.

Where appropriate obtain specific consent or signatures.

Consider the use of the Court's authority.

Document the terms.