

Why Don't You Just Meet Me in "The Middle"?
Effective Negotiation Techniques

1. Formal or not, people are *always* negotiating. There are a number of overarching principles of negotiation that should always be applied, including, first and foremost, to separate the people from the problem. Additionally, negotiators should strive to focus on interests, rather than positions. This approach dictates avoiding hardline positions that do not lend to compromise.
2. Advocates should be mindful of an attorney's ethical obligations while negotiating. Specifically, the ABA Professional Model Code (the "Model Rules") requires that an attorney not knowingly make a false statement of material fact to another person. Luckily, certain negotiation tactics are not considered statements of material fact. For example, misrepresentations of a walkaway point during a negotiation is viewed by the Model Rules as mere puffery, rather than a knowing false statement of material fact.
3. There are numerous negotiation strategies that may be adopted by advocates to reach a favorable outcome. One of the most common strategies is the "good cop / bad cop" routine, where an outwardly reasonable individual seemingly eases the resistance of a tougher counterpart. Other strategies may include, for example, intentional silence; false demands or portrayals of insufficient client authority; and limited time offers.
4. While some may view negotiations as inherently adversarial, research suggests that an adversarial approach is often ineffective. In this regard, a study showed that 90% of lawyers perceived as ineffective were also adversarial. A problem-solving approach often leads to more favorable outcomes than an adversarial one. The same study concluded that 91% of lawyers viewed as effective took a problem-solving approach to negotiation.
5. Negotiation results are not accidents. Rather, they are the result of extensive strategy and planning to align on the most effective strategies. Negotiators should work diligently with their clients to strategize on the most appropriate approach to negotiations.

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