

# Handling Negotiations Part II: Handling Negotiations When You're the Junior Lawyer on the Matter

*By Danny Newman and Todd Schwartz*

This is the second article in a four-part series detailing several points which relate almost exclusively to younger lawyers. These articles offer lessons not taught in the classroom that are vital to successful negotiations for clients and career management.

The time has come to sit down with opposing counsel and open the negotiation. Here are practical ways to navigate the process and, perhaps most importantly, keep it on track to close.

## **Make an Agenda and Stick to It**

Having an agenda will give opposing counsel the impression that, even though you are an associate, you are well-prepared, organized, and understand the issues that need to be addressed. There is a tendency for more experienced attorneys to take control in negotiations. Setting the agenda is a subtle but effective way to gain power in the negotiation and demonstrate that you are not there to be pushed around. The agenda will also help you ensure all the important points are dealt with. Relying on experience or memory can lead to failures during a stressful encounter. Finally, pointing to the agenda when opposing counsel tries to stray off-topic or into an area where you have not fully prepared can help you avoid negotiating from a position of weakness and potentially making painful concessions.

## **Keep the Senior Lawyer Updated on the Progress**

Communication is critical for managing expectations and avoiding surprises. You won a great responsibility in managing the negotiation but swallowing your pride and updating the partner is still necessary and helpful. The partner can provide insight and help the associate interpret events based on their experience. They can also help strategize for the next steps. On the other hand, a surprised partner could derail negotiations or view the negotiation as unsuccessful, even if it was a hard-fought success.

One of the best ways to keep the more senior attorney updated is to copy them on all written communications related to the negotiation, which keeps them abreast of key developments, stops opposing counsel from trying to take advantage of the associate, and ensures that the associate doesn't say something inaccurate that the partner needs to correct or fix.

## **Have a Plan for Unforeseen Circumstances**

Weird things happen in a negotiation. Opposing counsel will throw curveballs, and unknown facts may come out. You can't be prepared for everything, but it's important to plan how to handle the difficult situations you will inevitably face, especially in a fast-paced in-person or telephonic negotiation. Without a plan, you will feel like you are back in your 1L year, getting cold-called and being unprepared; you'll get sweaty, nervous, stumble over your words, or even say something silly.

Your plan can (and probably should) be as simple as stepping out and calling the partner. They should know you might do that and should make themselves available to avoid confusion and delay. Associates may be afraid to step out and privately talk to the partner for fear of annoying the partner and looking like they lack expertise or authority. But associates shouldn't be afraid to use their "phone-a-friend" lifeline. The partner will be much happier to get the call and be slightly inconvenienced than have an associate trying to handle an unforeseen difficulty on their own. Opposing counsel won't care, but if you're really worried, say you need a bathroom break or need to check with the client. The benefits of a pause far outweigh the perceived costs. Regardless, if this approach is impossible, or you hate the idea of calling for help, you must have some plan to deal with unforeseen circumstances prior to entering the negotiation.

## **Take Advantage of the Natural Good Cop/Bad Cop Dynamic If Necessary**

By communicating, you may determine there is a good point in the negotiation for the partner to leverage their experience and authority to chime in as the bad cop. For example, if you do not want to push on a particular issue or demand action in a certain timeframe, but the partner insists either is important, invite the partner to be the bearer of bad news. This is an effective, natural way to utilize the old-fashioned good cop/bad cop routine.

## **Close Good Deals; Avoid Bad Ones**

Perhaps most importantly, close the deal on your own. Successfully completing the negotiation while meeting the client's interests—ahead of schedule, without major issues, and without much help from the partner—will ultimately save the partner time and stress they would have had to otherwise pour into that negotiation. The partner will be very thankful for it and will provide additional opportunities in the future.

On the other hand, avoiding agreeing to bad deals might seem obvious. The partner needs someone who can get the job done properly. If an associate agrees to the maximum authority that the client gave without developing any creative solutions or seizing any excess value, the partner will likely not be happy, and neither will the client. If you must agree because you believe the deal is better than the best alternative to a negotiated agreement (or BATNA), be ready to defend the deal and explain the result. Again, keeping the client and partner updated and managing expectations before, during, and after the deal will make this easier.

[In the next entry of this series](#), we'll go over ways to solidify client relations during a negotiation.

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