

Handling Negotiations Part III: Working with the Client for the Most Effective Negotiations as an Associate

By Danny Newman and Todd Schwartz

This is the third 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.

Your confidence and client interactions have paid off, and you've landed the matter. Handling the client through a live negotiation will teach you more than any textbook.

Communicate Directly with the Client

Preparation and actual negotiation will go most smoothly if you are empowered to have a direct line of communication with the person at the client's organization responsible for the negotiation. If the partner has to be the go-between on every little issue that might arise, the negotiation has probably already failed. If you can be trusted with negotiating, you can be trusted to communicate with the client directly.

Make the Client Trust You, Not Just Your Firm

From the first contact with the client, the associate must maintain professionalism and demonstrate expertise. The client might be wary that an associate—not the partner with whom the client hired and has a relationship—is handling the negotiation. You must ease their concerns. Preparation and practice for every conversation are key to that effort.

Don't falter through a call with the client or go to a meeting without the documents you need. If you don't know the answer to a question they have, tell them you don't know; don't make something up. As soon as possible, follow up with a clear and concise answer. Share the negotiation strategy and solutions you are prepared to use. Ask probing questions that demonstrate a deep knowledge of the situation. Show them that you understand their business and how this negotiation fits into their vision and future.

All these things build trust and let the client know that you are capable of not just doing a good job for an associate but a good job, period.

Recognize the Cost Concerns

The biggest reason an associate handles a negotiation is cost. Associates simply cost less than partners. Rather than using a cheaper firm to get a lawyer with more experience to handle their smaller matters, the client trusts your firm enough to handle such matters with an associate. Naming that concern in conversations with the client, and demonstrating efficient work and value, will convince the client to cooperate with you and assures that the partner made the right decision to bring you onto the matter.

Trust the Client on Their Expertise, but Double-Check and Edit Them

You're a lawyer, not an accountant, banker, or business owner. If there is a question on accounting, banking, or business operations, don't pretend to know the answer. If there are likely to be several, save them all up and ask them on a dedicated call or in an email with bullet points. Don't try to run a model in Excel or deduce what a complicated accounting spreadsheet means yourself. That's a waste of everyone's time and money. Let the client do what they do so you can stick to legal issues and strategy.

Yet, clients can make mistakes, and associates are paid to catch those mistakes. Read their answers with a keen eye. If answers are inconsistent or conflict with what you were told previously, ask them why. Re-do any important, basic math to ensure there wasn't a simple mistake that could cause a big problem or embarrassment. Ask them to explain their assumptions. If they've prepared a summary, timeline, or other documents to be shared with the other side, edit it to make sure there are no unnecessary admissions or characterizations that could hurt them later if used in court. It's your job to protect them from themselves.

Don't Be Afraid to Questions/Push the Client

If a client is taking too long to answer or providing incomplete or incorrect information, tell them. Negotiating successfully without the client's cooperation and assistance is very difficult. If they don't provide you with what you need, you're much less likely than a partner to negotiate on the client's behalf successfully. You should not be afraid to push them to get what you need and ensure they are telling you the truth and the whole story. If they fail to, you may get unpleasantly surprised at the negotiating table in a way that could blow up your entire strategy.

Additionally, if the client has unreasonable expectations, challenge their assumptions, but don't push too hard. The best option to get them to provide more flexibility may be to get an offer from the other side; it could shock the client into more realistic expectations much better than an associate ever could.

Under-Promise and Over-Deliver

The client might have lower expectations for an associate negotiator. They probably think they're getting what they paid for. While that might be annoying, it is an advantage. Regardless of how negotiations unfold, do not predict a better deal than what the client has authorized in update discussions. There is no benefit to a prediction that may not come to fruition. On the other hand, refusing to accept an offer that is better than what the client authorized provides the perfect opportunity to call the client and "make sure they're ok with" the better deal. Then you two can discuss whether and how to improve the deal, which is a great place to be!

In the final entry of this series, we'll share the most useful practices we learned and used as associate negotiators.

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