

Handling Negotiations Part IV: General Tips for Negotiations as an Associate

By Danny Newman and Todd Schwartz

This is the fourth 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.

Here are some final thoughts from my experience as an associate negotiator.

Take a Deep Breath and Review Your Notes One More Time

Preparation is the most important aspect of negotiation. Associates with relatively less experience must be even more prepared than their more senior counterparts. Once preparations are complete, and as you get ready to get on the phone or head out to the drafting room, take a deep breath. Read through your notes one more time with a clear head and focus. Recite whatever opening statement or argument you'll make one more time. Review your prepared responses to tough questions once more. That last, calm review ensures you're truly ready to make a good impression for your client.

Write Down Reasoning and Offers to Avoid Confusing Yourself and Others

If you have difficulty articulating an argument or reasoning for an offer, or if the opposing party will better understand your offer by having an opportunity to read and digest it, consider conveying your opening or counteroffer via email or letter. For example, if you cite relevant cases that support your position, opposing counsel will have time to analyze them and perhaps agree with you.

This technique is also very useful if you base your argument on an unfamiliar area of the law or if opposing counsel has significantly more experience than you. It reduces the chances that you mischaracterize an issue, become nervous and fail to argue forcefully, or are asked follow-up questions that you are uncomfortable answering on the fly.

Do the Work—Take the Pen on the First Draft

Always volunteer to write the first draft of the agreement, especially if you have strong precedent from which to work. Senior lawyers won't want to do the work themselves, so they may let you write the first draft to avoid the task. As an associate, you should be used to and willing to exert that extra effort that will be advantageous to your client. Volunteering helps you stand out, and you will gain insight by seeing how the partner comments on the draft.

Don't Reinvent the Wheel—Use Precedent the Partner Likes

Speaking of precedent, every efficient associate should first use precedent from their firm or, better yet, the supervising partner. On deal documents, this may be easy and obvious. Finding on-point precedent may be more difficult for a settlement agreement, but it will be worth asking

for guidance. The partner may remember a settlement that, even if factually different, has secured the same protections they hope to provide the current client.

Put Disclaimers and Agreements in Principle in Writing

It's unfortunate, but misunderstandings and miscommunications can occur. Negotiations break down. All communications about resolving a dispute or completing a deal should include the appropriate disclaimers, including for privileges, confidentiality, and Federal Rule of evidence 408 for settlement discussions. If a document or offer remains subject to client or further internal review, say so. That way, if the discussions break down and the parties end up back in court or some other adversarial situation, the documents and communications can't be used against your client.

Similarly, if you have a verbal agreement in principle, reach out and confirm the rough terms in writing. It will cement the deal in everyone's minds and ensure there wasn't any miscommunication or confusion on the material aspects of the deal.

Be Willing to Say, "I Don't Know," and "I Have to Check with My Client"

This is simple but difficult to do. As lawyers, we want to provide answers to everyone; we think we can talk or reason our way out of or into anything. But if you don't know the answer, or if you don't have specific authority from your client on a term, good associate negotiators should acknowledge this fact and make time to check with their client. Some might worry that this makes the associate look weak. On the contrary, it shows you are thoughtful and careful and know that the client is the decision-maker. Don't overdo it, but when appropriate, these are statements of strength.

Maintain Your Firm Bio to Show Experience

Before the negotiation starts, update your firm biography to detail your experience the same way partners do, listing deals, restructurings, and disputes worked on, as well as clients serviced and areas of expertise. The goal is to impress upon opposing parties and counsel that you are experienced, thoughtful, and will not be intimidated by the situation or negotiation. A list of complex deals or disputes, like the subject of the negotiation, will go a long way toward building your credibility and leverage with the other side.

Just Do It!

Like marking up a document, taking a deposition, or arguing in court, you will only become a better negotiator by practicing. Seeking opportunities and seizing chances to negotiate are as important as any other career development tool and skill.

Being a law firm associate is stressful. Receiving an assignment you have never performed can make it even more so. But new experiences are how we grow and learn, and being trusted to handle negotiations is an important step. Keep these tips in mind when dealing with your first negotiation assignments, and you will have everything you need to succeed as an associate negotiator.

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