

Pre-Negotiation Worksheet

Note: this worksheet is for use in preparing for negotiations of any type. It is therefore generic in nature and may need to be adapted for a particular type of case.

Case: _____

Negotiator(s): _____

I. Planning your approach to this negotiation

- A. Do you have proper settlement authority?
- B. Have all parties agreed to keep negotiations confidential (e.g., FED. R. EVID. 408)?
- C. Which of the following will this negotiation likely involve? Explain.

- ✓ Rights _____
- ✓ Positions _____
- ✓ Interests _____
- ✓ Wants / Needs _____
- ✓ Values / Priorities _____
- ✓ Facts / Perceptions _____

D. Place a ★ to the left of those that you think will be dominant in this negotiation.

E. What are your best factual arguments? Legal arguments?

F. What information do you want to disclose, which will help the negotiation from your standpoint?

G. What information do you want to refrain from disclosing? What will you say if you are asked about this information?

H. What are the terms or issues which will require negotiation in order to achieve resolution?

For each issue, consider the following:

Will you make the first offer?

What will be your opening offer?

In what order would you prefer to negotiate this issue?

Have you planned to make any concessions on this issue?

What is your optimal goal on this issue?

What is your "bottom line" on this issue?

| Issue(s) [list these from most to least important to your client] | Will you make the first offer on this issue? [yes or no] | Opening offer | Negotiation order [agenda] | Planned concessions | Optimal goal | Bottom line |
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- I. Which negotiating style and strategy do you intend to use? How will you perform that strategy or style?

II. Assessing your settlement position

- A. What is your BATNA (best alternative to a negotiated agreement)?

Monetary. Calculate your BATNA. What is the best alternative available to your client? What are the chances that the alternative will be available?

Other. Are other items of value available to your client without a negotiated agreement?

B. WATNA: If you do not settle, what is the worst alternative for your client? What are the chances that your client's "worst" will materialize?

C. Other than the absolute "Worst," are there other risks to your client in the event a negotiated agreement is not achieved?

D. For each issue listed above, what is your range of acceptable outcome(s)?

E. For each issue listed above, what is your absolute "bottom line" or authorization limit?

F. Are certain issues related to other issues? [For example, I want my job back and I want \$10,000. for the incident. If I do not get my job back, then I want \$100,000. for the incident.]

III. Anticipating your opponent's settlement position

- A. What are your opponent's best factual and legal arguments?

- B. What is your best estimate regarding your opponent's BATNA?

- C. *Monetary.* To the extent possible, calculate your opponent's BATNA.

- D. *Other value or benefit to your opponent's client:*

- E. If your opponent does not settle with you, what risks exist for your opponent (WATNA)?

- F. What is your best estimate of your opponent's range of acceptable outcome(s)?

- G. And your best estimate of your opponent's "bottom line" or authorization limit?

Post-Negotiation Worksheet

1. What result did you reach through negotiation? If an agreement was reached, please attach a copy of the agreement.
2. How well was your negotiation plan implemented?
3. Were your guesses about your opponent's settlement position accurate?
4. How well did you deal with your opponent's negotiation strategy and style?
5. What barriers did you overcome in this negotiation? Which barriers kept you from achieving a more optimal outcome?
6. Could you have done anything differently to achieve a more optimal outcome?