



NATIONAL ASSOCIATION FOR
PRESIDING JUDGES AND COURT EXECUTIVES
Leadership Guide 3
Using Negotiation Techniques in Leading

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This NAPCO Leadership Guide on Effective Negotiation is based on the 2018 Leadership Academy focused on developing leaders' understanding of and skills in negotiation.

Court leaders engage with others in a complex system that includes the executive and legislative branches of government, state and municipal agencies, and service providers from both private and non-profit organizations – while being bound by constitutions, statutes and codes, the requirements and language of which may not be understood by court users. Negotiation is not a singular event, but is a primary means of effective, accountable, and agile court leadership that builds trust, credibility and presence with those whom we expect to create an environment that builds an atmosphere of growth and commitment to the primary mission of delivering justice. Effective use of negotiation principles enhances leadership strength and can move a system from good to great.

According to Rebecca Hollander-Blumoff, J.D., Ph.D., Vice Dean & Professor of Law at Washington University, negotiation is used “anytime we are trying to reach a resolution where people are not automatically moving forward together in the same way.” Dr. Hollander-Blumoff also described negotiation as “reaching an agreement that all parties will sign off on.” Ronald A. Heifetz and Marty Linsky have stated that “[t]he hope of leadership lies in the capacity to deliver disturbing news and raise difficult questions in a way that people can absorb, prodding them to take up the message rather than ignore it or kill the messenger.”

Negotiations can be involved in anything from creating a work schedule for an individual employee who needs an accommodation; to making changes in judicial assignments and

workload distribution critical to the constitutional functioning of the court system during an economic downturn; to demands for significant “real dollar” cuts to court resources from funders.

Success in any negotiation begins well before the initial discussion – it is critical to develop an understanding and appreciation for the constitutional and statutory responsibilities of the agencies and departments the courts will work with and through to accomplish the delivery of justice. Understanding the workflow process of cases from filing or arrest through final disposition, and the various alternative paths cases may take during this process is critical to truly understanding the perspective of another department or agency. Identifying key performance indicators, outcomes, and trends can bring clarity to individuals' perceptions and emotions during a negotiation by using fact-based assessments to show that court leaders have “done their homework” and are empathetic to the circumstances and views of others.

The framework for effective negotiations is based on the seminal work entitled “*Getting to Yes: Negotiating Agreement Without Giving In*” written by Roger Fisher and William Ury, and for the revised editions, Bruce Patton.

Too often, negotiations begin with each side taking a particular stance, which ultimately leads to the defending of positions and a hardening of wills, and the focus quickly shifts to “getting our way” instead of gaining insight into, and an understanding of, what each side sees as critical to a successful resolution. In addition to the inefficiency of this approach, and of more long-term significance, is the deterioration in relationships that often have been built over time and are not easily repaired. In the resulting battle of wills, significant

emotion is expended by all involved, and the real issues remain hidden and out of reach, ending in results that are not favorable, or even optimum, for either party. The process must then begin anew because the underlying issues, challenges, and interests of each party were never effectively identified, and remain unresolved. This leads to further negotiation that begins with all the “baggage” that remains from the original encounter – taking positions and responding in kind is inefficient and detrimental to relationships – and does not address the parties’ true interests.

A good agreement advances each party’s interests and improves relationships. The successful completion of the negotiation process creates trust and understanding and sets new expectations for future collaboration. Instead of focusing on opposing views, effective leaders frame the negotiation process with the following principles identified in “*Getting to Yes*:”

- **People** – separate people from the problem.
- **Interests** – focus on interests, not positions.
- **Options** – identify multiple options that provide mutual benefits or gains before reaching a final decision.
- **Criteria** – use objective criteria or standards.

1. **People – separate people from the problem.**

We are all shaped by our experiences, education, leadership opportunities, and culture. We bring beliefs and ideas about how things are, or how things should be. We have differences in organizational mission and values, and different ideas on how best to

achieve goals. Leaders bring different attitudes about administration and management of the organization – some believe in maintaining the status quo, others see the need for change. Challenges stem from advances in technology, methods of dispute resolution, and the need – if not demand – for greater accountability and transparency.

Rogers and Ury identify three types of “people opportunities:”

- **Perception** – Differences among parties arise based on different interpretations of the facts, assumptions about attitudes and beliefs, and different viewpoints, but these differences create opportunities to bridge gaps and facilitate compromise. Fears about “the other side” obscure the ability to see clearly what might be possible. Parties should seek to understand the other side – see the issues from the opposing point of view and be willing to engage in “active listening.” Leaders should encourage a curiosity among participants to learn about one another’s challenges, constraints, and pressures – both internal and external – and seek to achieve a common understanding.
- **Emotion** – Negotiation can be frustrating, and fraught with perceptual differences. People react based on fear that their interests are being threatened. These feelings are real and need to be addressed directly with empathy and fact. Achieving a good agreement that addresses each party’s interests and improves relationships requires dealing with emotions, building trust, and allaying fears.
- **Communication** – Effective leaders understand that there is a difference between talking “at someone” and talking “with someone.” Effective leaders listen and address the interests of each party, seeking a common ground. Effective

leaders avoid responding to rash or provocative statements, and instead bring the conversation back to interests and attempt to gain a better understanding of the parties' perspectives and priorities. Communication is used to uncover the real issues or needs of the other party, and how the parties define success in their own terms.

2. Interests – focus on interests, not positions.

An attribute of a good agreement is a focus on interests. Fisher and Ury state that “[y]our position is something you have decided upon. Your interests are what caused you to so decide.” Parties bring their own interests to the table, and those interests may not be shared, even among the members of a particular side, especially those representing large, complex organizations. This circumstance is complicated within the justice community by requirements and limits imposed by constitutions, statutes, or rules. To those unfamiliar with this framework, court leaders may appear to be unwilling to listen to or address the needs and interests of others, who themselves may have similar requirements or limitations. Before any successful or good negotiation can be achieved, leaders must create an environment of collegiality, sharing and informing or educating others about these constraints and the sources of their authority. Effective court leaders know that using an argument that begins with “we’re the third branch” is at best chilling to meaningful exploration of interest, and at worst perceived as a challenge to the legitimate authority of the other party, as it focuses on position rather than interest. Instead, effective court leaders rely on relationships built over time, and develop an understanding of the parties’ perspectives, needs, and interests over many conversations

that take place outside a formal or critical negotiation, where the pressures of time and the need for a decision do not allow for thoughtful consideration.

3. Options – identify multiple options that provide mutual benefits or gains before reaching a final decision.

Before the development of options can begin, leaders must create an environment for the open development of options – or “brainstorming” – that is distinct from the evaluation of options. It is easy for parties to begin this process with preconceived ideas – “there is only one option for us.” Skillful leaders set the stage for this process by encouraging free and open discussion of all alternatives, an environment established through the dialogue during the achievement of the first two principles. No idea should be discarded, and all participants should be given time to adequately express their thoughts.

Once the options area identified, and any clarification provided, the evaluation process should begin by focusing on the most promising options – the ones that address the identified interests of the parties. Leaders need to be cautious and not allow these discussions to devolve into the taking of sides. The focus needs to remain on the option or options that address the interests of both parties and lead to effective collaborations and relationships in the future.

4. Criteria – use objective criteria or standards.

The taking of sides leads to a battle of wills or the raw use of power. This has the potential to destroy future relationships, make future negotiations more difficult, if not practically impossible, and creates an environment devoid of understanding and trust.

When interests are in conflict, or perspectives continue to shape differences, use objective criteria to seek resolution and evaluation of options. The identification of criteria should be a shared activity where both parties seek to identify benchmarks, standards, or statutory requirements that provide a specific measurable outcome.

The parties may develop their own set of criteria to test the true understanding of the status quo, set targets that demonstrate achievement of defined goals, or those that directly reflect the parties' interests, and provide direction for future negotiations.

Conclusion

In sum, successful court leaders must be effective negotiators. When people at all levels in an organization, including courts and court systems, are involved and have input in a decision, they are more likely to be satisfied with the outcome and to embrace a result. Allowing people to have a direct impact on the way things are done leads to overall satisfaction and continued cooperation in working to achieve organizational goals and objectives in the future. Using negotiation as a leader requires patience and determination – it often does not offer the quickest solution, but a solution reached using successful leadership negotiation techniques results in long-term organizational stability and success. Although leaders may have many goals, the maintenance of a productive and motivated team that advances the mission and objectives of the organization requires leaders to not only pursue the development and refinement of their negotiation skills on an ongoing basis, but to strive to continually integrate the principles of negotiation described above in their day-to-day work.

References

Presentation: The Art and Science of Negotiating “Hard Conversations,” Third Annual Court Leadership Academy and Leadership Conference, Rebecca Hollander-Blumoff, J.D., Ph.D., October 15, 2018.

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