

JANUARY 2009

Dealing with the "gap" in negotiations

The "ideal" result is an expectation that no reasonable negotiator would ever expect to achieve in a situation where compromise is essential.

This story is for you if. . .
• You and your client are sending mixed signals during the negotiation process about the size of the settlement you are seeking; and
• The mixed signals you are sending have resulted in a "gap" in the negotiation that appears to be insurmountable.


Krivis

JEFFREY KRIVIS

The myth:

Asking for your ideal result will enable you to find common ground during the negotiation and allow you to avoid leaving money on the table.

Why this myth is misleading:

The ideal result is the end of the horizon – you can look out as far as the eye can see, but it is impossible to ever reach.

The ideal result is a mental paradigm that does not exist in the real world. During negotiations, if you send a signal to the other side that you are trying to reach your horizon, or ideal result, then you should prepare to be disappointed. You will experience frustration and failure before you ultimately reach the point of impasse – the gap. Unfortunately, most attorneys start the negotiation process by creating the inaccurate (and impossible) impression that they are attempting to reach the end of the horizon – their ideal result.

To come to grips with "the gap" in negotiations and avoid sending mixed signals about your ideal resolution, consider the following:
• As the other party thinks about your case, imagine what he or she is focusing on;
• Give the mediator "tools" to move forward. You should reveal some information regarding your acceptable settlement amount to motivate the mediator to keep going;
• Use the mediator as a conduit for communicating clues and distributing strategic information to your opponent.

Dealing with the reality of "the gap" in negotiations requires that plaintiff's counsel recognize that the gap exists for both sides. You can use the mediator to evaluate the gap by gathering information and diagnosing the problem. By taking small steps and making changes in how you approach the negotiation process, you will be able to create an artificial impasse.

An artificial impasse is not the end of the negotiation process, but an invitation to continue the negotiation where both parties recognize that there are more discussion points that will bridge the gap between the "ideal result" and the resolution.

At this point in the negotiation process, you should try to determine what the other side's area of agreement might look like. Additionally, the mediator will be attempting to get the parties to move on their "ideal results." You can view this "movement" as benchmarks for further negotiations. Doing this will enable you to have a better understanding of the value or range that the other side might consider reasonable.

Finally, look at how the other side makes decisions. If the other side simply reacts to your mixed signals and your idealism, give them some numbers that they can work with. By doing this, the other side will not feel constantly off balance attempting to figure out where the plaintiff is coming from.

Copyright © 2009 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**