Consummate Negotiation: Techniques & Tactics
Webinar Recorded October 24, 2012 – 1:00 p.m. ET

PROGRAM SUMMARY

This webinar will build upon the basics of negotiation and provide advance techniques such as guiding the exchange of information, maintaining a climate conducive to collaborative problem solving, effective brainstorming, avoiding impasse and more for attorneys, mediators and business people to give guidance for a more successful negotiation.

AGENDA

1:00 p.m. Welcome and Introduction of Speakers (5 minutes)

1:05 p.m. Goals for the Session (5 minutes)

1:10 p.m. General Observations about Negotiation (70 Minutes)

- Negotiation Skills Self Assessment and Scoring Sheet
- Review of the Guide to Negotiation Preparation
- Facilitating an Effective Exchange of Information
- Serving as an Effective Idea Catalyst
- Use of Specific Bargaining Style – Appropriate and Not Appropriate
  - Avoidance
  - Compromise
  - Accommodation
  - Competition
  - Collaborative
- Matching Bargaining Style with Nature of the Conflict
- Standard Negotiation Tactics
- Relationship of Bargaining Styles to Negotiation Tactics

2:20 p.m. Conclusion and Questions (10 minutes)

2:30 p.m. Evaluation (5 minutes)

2:35 p.m. Adjourn
GUIDE TO NEGOTIATION PREPARATION

P. Jean Baker, Esq.
June 24, 2011

1. What is the minimum monetary point on your settlement range?
   *This is the lowest result you would accept given your worst alternative to a negotiated settlement (WATNA)

2. What is the maximum monetary point on your settlement range?
   *This is the most optimistic, yet realistic, result you believe you might achieve through negotiation based upon your calculated BATNA - best alternative to a negotiated settlement.
   *Is your aspiration level high enough? Too high?
   *Use objective benchmarks on which to base each of your settlement demands (e.g., lost wages, plus relocation expenses; attorney's fees).
   *Never commence a negotiation until you have determined all terms and conditions as well as the monetary amounts
   *Create a detailed settlement template that includes terms and conditions as well as monetary targets

3. Are there terms and conditions that need to be included in the settlement agreement?
   *Identify each as: (1) essential, (2) important, or (3) desirable to you; (4) independent, (5) shared, or (6) in conflict with the anticipated demands of the other side.

4. How important is maintenance of a relationship?
   Consider whether the dispute can be characterized as being: (1) high stakes/low relationship; low stakes/high relationship; high stakes/high relationship; or low stakes/low relationship.

5. Estimate your opponent's minimum and maximum settlement targets.
   *To do this you must consider your opponents options and limitations, such as timing or financial constraints, personal or professional needs, aversion to risk, etc.

6. Estimate key terms and conditions your opponent will want included.
   *Identify each as: (1) essential, (2) important or (3) desirable to your opponent; (4) independent, (5) shared, or (6) in conflict with your goals.

7. How important is maintenance of a relationship to the other side?
8. Compare your settlement needs with your opponent’s estimated settlement needs.

*If there is no overlap settlement will not occur if you are unwilling to adjust your demands.

9. What are the strengths and weaknesses of the position(s) you plan to take during the negotiation?

*Prepare a logical explanation supporting each of your strengths.

*Anticipate ways in which you might minimize each of your weaknesses.

10. Evaluate the strengths and weaknesses of your opponent's positions.

*Prepare effective counter-arguments for the strengths of each of their positions; prepare questions that focus upon the weaknesses of each of their positions.

11. Prepare a persuasive opening position statement.

*The content of the opening must be drafted in such a way that the listener (the other party) will actually hear the message and want to respond in a positive way.

*The tone should be both friendly and persuasive (tailored to meet the communication/negotiation style of your opponent.)

*Don't attack your opponents - they will not listen if you attack them and you cannot settle without their agreement.

*Insert a positioning theme that is a crisp, memorable phrase or framework that defines the problem you are attempting to solve and will resonate favorably with your opponent.

12. What information do you need to elicit during the information exchange phase of the negotiation?

*Draft the questions you plan to use to test your assumptions concerning settlement targets, terms and conditions, underlying needs, interests, constraints and objectives of your opponent.

*Gaining new information and confirming assumptions is a key element of a successful negotiation because it will provide you with additional options for making concessions to bridge settlement gaps.

13. What information are you willing to disclose and how do you plan to divulge this information?

*If you plan to prevent disclosure of sensitive information you need to consider "blocking techniques" that you can use.

*Lying is not a legitimate blocking technique for use by an attorney when dealing with material facts - non-attorneys have no such constraints.
*Attorneys, however, may “puff” (mislead) when making statements concerning case value and settlement intentions of the client

*Attorneys have no affirmative duty to reveal material facts if not asked with specificity by the other side

*Create an agenda with a time line.

*Best approach if you are negotiating against an unknown person for the first time is to start cooperatively and then strictly mirror the behavior adopted by your opponent (Tit for Tat).

14. Consider whether you should or shouldn’t make the first offer and what it should be.

*First offers should be optimistic, but not unreasonable

*Make the first offer if you believe you have a better understanding of the value of the negotiation to anchor your opponent’s expectations

15. Make a prediction about your opponent's strategy and plan counter-measures and identify concessions you are willing to make.

*To be effective you must be able to neutralize your opponent’s strengths and emphasize the weaknesses of your opponent's bargaining positions.

*You need to have principled reasons for either agreeing to or refusing concessions demanded by your opponent.

*Compare the settlement templates to identify areas where you are willing to make concessions.

*Plan your anticipated concession pattern carefully so you disclose only the information you intend to divulge when you intend to divulge it.

*Prepare principled explanations for each planned concession to maintain your credibility.

16. Anticipate problems to reduce the occurrence of negative surprises.

*Determine who will participate and the role each participant will play.

*Have someone you trust play devil's advocate

*Obtain expert evaluations to boost bargaining strength

17. Decide what if any special negotiating techniques to use (team approach, telephonic conference, etc).
*A team approach can provide increased expertise, a chance to confer privately throughout the process, and the ability to outnumber the other side. Always designate a team leader.

*Consider counteractions you will take if your opponent adopts a team approach: insist on a different spokesman; create diversion; ask silent members to respond

*Use of the telephone is quick but risky:

*Advantages to the caller: caller is better prepared; caller controls the timing;

*Disadvantages to the caller: easier to say no over the phone; poor note taking can lead to misunderstandings; no visual feedback.

*Counteractions: screen the call; claim there is a bad connection
NEGOTIATION SKILLS SELF ASSESSMENT

P. Jean Baker, Esq.

Instructions: This is a self scoring assessment. It is designed to test your knowledge of negotiation theory and best practices. Select the answer that corresponds to the best response to each question. Do not select multiple answers. The number of points scored for each answer selected can be found on the separate scoring sheet. Complete the assessment before you review the scoring sheet.

I. Determining Your Bargaining Style:

1. When confronted with conflict how do you typically respond:
   a. Wait for the other side to respond first______
   b. Suggest that the conflict be resolved by everyone agreeing to give a little______
   c. Ask the other person what they want to resolve the problem______
   d. Immediately threaten to hire a lawyer______
   e. Try to get the other side to discuss the underlying cause of the problem______

2. When confronted with conflict and your first response fails, what is your next most likely response?
   a. Suggest you both go home and think about it______
   b. Offer to give the other person a little less than what they are demanding to preserve the relationship______
   c. Offer to give the other person exactly what they want______
   d. Walk away if you don’t get what you want______
   e. Look for additional ways to resolve the dispute______

3. When discussing a problem do you typically find yourself:
   a. Unable to listen to the other side or express your point of view______
   b. Able to listen to the other side, but unable to express your point of view______
   c. Able to express yourself, but unable to listen to the other side______
   d. Able to listen to the other side and then express your views in a reactive way______
   e. Able to express your views and listen to the views of others in a proactive give and take manner______

4. When you speak you typically converse in the following way:
   a. Long, discursive, well-formulated sentences______
   b. Sprinkle your speech with examples, illustrations, references to popular opinion______
   c. Typically focus on feelings and values when asking indirect questions______
   d. Short, direct statements______
   e. Focus on exploration of opposite viewpoints______

5. Your tone is typically described as being:
   a. Assertive______
b. Aggressive_____
c. Tentative_____
d. Enthusiastic_____
e. Stubborn_____

6. You prefer:
   a. Rational, non-emotional examination of issues_____  
   b. Brainstorming, lively give-and-take, use of voting____
   c. Discussions that include an exploration of feelings_____  
   d. Short, to the point, factual statements_____  
   e. Open and honest exploration of points of view and options_____

II. Setting Goals and Expectations

7. When setting goals your primary focus is:
   a. Getting a better deal for your self_____  
   b. Getting a good deal for both parties_____  
   c. Getting a fair deal for the other side_____  
   d. Getting the best deal for yourself_____  
   e. Getting a deal as quickly as possible regardless of who gets the most____

8. Your tendency is to set goals that are:
   a. Extremely hard if not impossible to reach_____  
   b. Very hard to reach – but doable_____  
   c. Not too hard – not too easy____
   d. Fairly easy to reach____
   e. Extremely easy to reach____

9. When setting your goals do you:
   a. Always consider whether the other party will be hurt by the result____
   b. Sometimes consider whether the other party will be hurt by the result____
   c. Neutral about whether the other party will be hurt by the result____
   d. Not overly concerned about what happens to the other party____
   e. Never concerned about what happens to the other party____

10. When setting your goals do you seek advice from experts or research objective criteria?
    a. Always____
    b. Most, but not every time_____  
    c. Occasionally_____  
    d. Only if I have to____
    e. Rarely, if ever_____  

11. When setting numerical goals do you:
    a. Always crunch the numbers_____  

b. Occasionally crunch some numbers_____
c. Prefer crunching the numbers with the other side_____
d. Let the other side crunch the numbers_____
e. Not good at crunching numbers so try to avoid it_____

III. Determining the Other Party’s Needs

12. How do you typically respond when someone says something you don’t agree with?
a. Don’t respond_____
b. Respond emotionally by looking hurt or distressed_____
c. Attempt to openly and honestly discuss your differences_____
d. Look for ways to diffuse the situation_____
e. Respond with anger_____

13. Do others perceive you as being:
a. Extremely emotional_____
b. More emotional than your peers_____
c. About average emotionally_____
d. Seldom emotional_____
e. Hardly ever emotional_____

14. How important is it to determine the other party’s interests?
a. Always_____
b. Most of the time, but not always_____
c. Sometimes_____
d. Seldom important_____
e. Never important_____

15. How important is it to discover if there are other issues confronting your opponent?
a. Always important_____
b. Most of the time, but not always_____
c. Sometimes_____
d. Seldom important_____
e. Never important_____

IV. Building Effective Relationships

16. Do people tend to like you socially?
a. Very much_____
b. Quite a lot_____
c. Average_____

d. Not much____
e. I think they don’t like me____

17. To what extent do you adopt a friendly tone towards the other party?
   a. Never try_____   
   b. I am uncomfortable, but I try_____   
   c. I try sometimes_____   
   d. I sincerely always try to establish a friendly relationship_____   
   e. I go out of my way to establish a friendly relationship_____   

18. To what extent is it important to be respected by others?
   a. Extremely important_____   
   b. Somewhat important_____   
   c. Important_____   
   d. Not too important_____   
   e. Doesn’t make a difference_____   

19. Are you effective leading teams?
   a. Very effective_____   
   b. Mostly effective_____   
   c. Sometimes effective_____   
   d. Seldom effective_____   
   e. Never effective_____   

20. How patient are you when dealing with others with whom you disagree?
   a. Extremely patient_____   
   b. Most of the time I am patient_____   
   c. I always try to be patient, but sometimes fail_____   
   d. I fail more than I succeed at being patient_____   
   e. I am always in a hurry to get it over with_____   

V. Assessing and Using Leverage

21. When framing your arguments you seek to assert standards, norms or themes that the other party will view as legitimate and relevant.
   a. Always_____   
   b. Most of the time_____   
   c. Sometimes_____   
   d. Rarely_____   
   e. Never_____   

22. The party with the most to lose has:
   a. The greatest amount of leverage_____   
   b. The least amount of leverage_____
23. Do you evaluate who has the most leverage going into the negotiation?
   a. Always____
   b. Usually_____ 
   c. I might weigh it_____ 
   d. Seldom consider it____
   e. Never consider it in advance____

24. When getting something you really want from another person how persistent are you?
   a. I always get what I want_____ 
   b. I usually get what I want if it’s a reasonable request_____ 
   c. I am not adverse to splitting the difference____
   d. Depends upon how the other person reacts to my request____
   e. If I have to fight for it I usually don’t want it_____ 

**Understanding the Negotiation Process:**

**Preparation**

25. How well do you prepare?
   a. Thoroughly prepared on all aspects of the transaction____
   b. Quite well prepared on key terms and conditions____
   c. Did some research____
   d. Not well prepared on all the key terms and conditions____
   e. Played it by ear____

26. When assessing the strength of your opponent do you research the following:
   a. Financial constraints____
   b. Time constraints____
   c. Negotiation Style____
   d. None of the above____
   e. All of the above____

27. When determining your negotiation strategy do you consider the underlying nature of the dispute?
   a. Always____
   b. Usually____
   c. Sometimes____
   d. Rarely____
   e. Never____

28. Prior to negotiation do you write out a thorough negotiation strategy?
   a. Always____
   b. Most of the time____
   c. Sometimes____
   d. Rarely____
Information Exchange:

29. Do you consider tailoring the way you exchange information to match the communication preferences of the other party?
   a. Always_____
   b. Most of the time_____
   c. Sometimes_____
   d. Rarely_____
   e. Never_____  

30. When negotiating with others are you conscious of the message your body language is conveying?
   a. Always_____
   b. Most of the time_____
   c. Sometimes_____
   d. Rarely_____
   e. Never_____  

31. When negotiating with others do you consciously use your tone to convey messages?
   a. Always_____
   b. Most of the time_____
   c. Sometimes_____
   d. Rarely_____
   e. Never_____  

32. How often do you ask the other side to repeat a key point you just made?
   a. Always_____
   b. Most of the time_____
   c. Sometimes_____
   d. Rarely_____
   e. Never_____  

33. To what extent do you verify the accuracy of what you are being told?
   a. I thoroughly check out all the key information_____
   b. I check out most of the key information just to be sure_____
   c. I check out some of the key information if I have doubts_____
   d. I know I should, but I don’t have time to check all the key information_____
   e. I don’t check because what they say really doesn’t matter_____

34. When conveying information you:
a. Volunteer nothing____
b. Respond honestly to questions____
c. Adopt a tit for tat approach ______
d. Sometimes reveal more than you planned____
e. Talk way too much____

35. Do you:
   a. Spend more time listening than talking_____  
   b. Spend more time talking than listening_____ 
   c. About half and half____

**Opening Offers**

36. The opening offer should be:
   a. Outrageously high____
   b. Exaggerated, but reasonable____
   c. Fair assessment of the value____
   d. Made only after through review of all the facts_____ 
   e. Insultingly low____

37. How do you feel about making the first offer?
   a. I always make the first offer_____ 
   b. I typically let the other side make the final offer____
   c. Sometimes I do and sometimes I don’t depending upon the response of the other party____
   d. Sometimes I do and sometimes I don’t depending upon the circumstances____
   e. I never make the first offer____

**Making Concessions**

38. What is your typical approach to making concessions?
   a. Rarely if ever make them_____ 
   b. Willing to make them after careful deliberation____
   c. Willing to match concessions made by the other side_____ 
   d. Willing to make more concessions than the other side_____ 
   e. Willing to make large concessions in an effort to speed resolution____

39. Do you typically anticipate the concessions that might be requested by the other side?
   a. Always____
   b. Most of the time_____ 
   c. Sometimes____
   d. Seldom____
   e. Never____
40. Do you typically anticipate the concessions that you would be willing to make?
   a. Always_____
   b. Most of the time_____
   c. Sometimes_____
   d. Seldom_____
   e. Never_____

41. How often do you give a reason for making a concession?
   a. Always_____  
   b. Most of the time_____  
   c. Sometimes_____  
   d. Seldom_____  
   e. Never_____  

**Ethical Considerations**

42. Do you consider maintaining your integrity as equally important as winning?
   a. Always_____
   b. Most of the time_____
   c. Only if the other side is playing fair_____
   d. Rarely, since most people cheat_____  
   e. Never – it’s a cutthroat world_____  

43. Prior to negotiating do you try to ascertain your opponents ethical approach to negotiation?
   a. Always_____  
   b. Most of the time_____  
   c. Sometimes_____  
   d. Rarely_____  
   e. Never_____  

44. Does your approach to negotiation differ depending upon whether the other side is or is not represented by legal counsel?
   a. Always_____  
   b. Most of the time_____  
   c. Sometimes_____  
   d. Rarely_____  
   e. Never_____  

**Obtaining Closure and Agreement**

45. Do you begin final negotiations by focusing upon areas of agreement?
   a. Always_____
   b. Most of the time_____  
   c. Sometimes_____  

46. Do you tend to use “I” statements more than “You” statements?
   a. Always____
   b. Most of the time____
   c. Sometimes_____ 
   d. Rarely_____ 
   e. Never_____ 

47. Do you ever repeat key phrases or sentences spoken by the other side to diffuse tension?
   a. Always____
   b. Sometimes_____ 
   c. Occasionally_____ 
   d. Rarely_____ 
   e. Never_____ 

**Drafting the Settlement Agreement**

48. How often do you arrive at the negotiation with a draft settlement on your laptop?
   a. Always_____ 
   b. Sometimes_____ 
   c. Occasionally_____ 
   d. Rarely_____ 
   e. Never_____
Negotiation Skills Self Assessment: Scoring Sheet

Complete the self assessment before reviewing the scoring sheet.

Scoring Sheet Instructions:

Circle your response to each of the questions on the assessment.

Add the total number of negative or positive points for each of the five columns.

Subtract the total number of negative points from the total number of positive points.

Compare your score to the rankings identified at the end of the scoring sheet.

1.   a = +1  b = +4  c = +2  d = +3  e = +5
2.   a = +1  b = +4  c = +2  d = +3  e = +5
3.   a = +1  b = +2  c = +3  d = +4  e = +5
4.   a = +1  b = +4  c = +2  d = +3  e = +5
5.   a = +5  b = +3  c = +2  d = +4  e = +1
6.   a = +1  b = +4  c = +2  d = +3  e = +5
7.   a = +5  b = +4  c = +3  d = +2  e = +1
8.   a = +10 b = +15 c = +5  d = 0   e = -10
9.   a = +12 b = +6  c = 0   d = -2  e = -10
10. a = +12 b = +10 c = +4  d = -4  e = -12
11. a = +12 b = +10 c = +4  d = -4  e = -12
12. a = -10 b = +5  c = +15 d = +10 e = -10
13. a = -15 b = -10 c = 0   d = +10 e = +15
14. a = +15 b = +10 c = +5  d = -10 e = -15
15. a = +16 b = +12 c = +4  d = -5  e = -15
16. a = +10 b = +8  c = +4  d = -2  e = -6
17. a = -15  b = -10  c = 0  d = +10  e = +15
18. a = +15  b = +10  c = +5  d = -10  e = -15
19. a = +15  b = +10  c = +5  d = -10  e = -15
20. a = +15  b = +10  c = +5  d = -5   e = -15
21. a = +15  b = +10  c = +5  d = -10  e = -15
22. a = -10  b = +10
23. a = +15  b = +10  c = +5  d = -5  e = -10
24. a = -10  b = +15  c = +5  d = -5  e = -15
25. a = +20  b = +15  c = +5  d = -10  e = -20
26. a = +5   b = +5   c = +5   d = -15  e = +15
27. a = +15  b = +10  c = +5  d = -5  e = -15
28. a = +15  b = +10  c = +5  d = -10  e = -15
29. a = +15  b = +10  c = +5  d = -10  e = -15
30. a = +15  b = +10  c = +5  d = -10  e = -15
31. a = +15  b = +10  c = +5  d = -10  e = -15
32. a = +15  b = +10  c = +5  d = -10  e = -15
33. a = +15  b = +10  c = +5  d = -10  e = -15
34. a = -15  b = +15  c = +15  d = -10  e = -15
35. a = +10  b = -10  c = +5
36. a = -15  b = +15  c = +10  d = +5   e = -15
37. a = -15  b = -5   c = +5   d = +15  e = -15
38. a = -10  b = +15  c = +10  d = -10  e = -15
39. a = +15  b = +10  c = +5  d = -10  e = -15
40. a = +15  b = +10  c = +5  d = -10  e = -15
41. a = +15  b = +10  c = +5  d = -10  e = -15
42. a = +15  b = +10  c = -5  d = -10  e = -15
43. a = +15  b = +10  c = +5  d = -10  e = -15
44. a = +10  b = +10  c = 0    d = -10  e = -15
45. a = +15  b = +10  c = +5  d = -5   e = -10
46. a = +15  b = +10  c = +5  d = -10  e = -15
47. a = +15  b = +10  c = +5  d = -10  e = -15
48. a = +15  b = +10  c = +5  d = -10  e = -15

Rankings:
+626 to +414  Excellent grasp of negotiation theory and best practices
+413 to +225  Very good grasp of theory and best practices
+224 to +24   Good grasp of theory and best practices
+23 to -292   Poor grasp of theory and best practices
-291 to -562  Serious lack of knowledge of theory and best practices
Click here to go to the Commercial Arbitration Rules

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