

## **Part Five -- Negotiate**

It is now time to negotiate. During the negotiating process, it helps to go through the following steps to evaluate whether or not to accept, modify or reject options:

1. How well do the probable emotional, relational, financial and legal outcomes of this option address my goals, concerns and interests?
2. How well does this option address the other person's goals, concerns and interests?
3. Which option(s) can be eliminated as having outcomes that do not sufficiently meet important goals of either of us?
4. Which option(s) meet my most important goals?
5. Which option(s) meet the most important goals of both of us?
6. Which option(s) would have best chance of being acceptable to both of us?
7. What trades could we make so that each of us gets more of what we want?
8. Which option(s) would yield the maximized outcome for both of us?
9. Are there other important considerations that this option addresses?

If you decided to assess your choices based on what might or might not happen in court (the "law model"), then you may want to ask yourself these additional questions:

10. Is the likely result from a judge or jury better or worse than the option?
11. What are the financial costs, costs of attorneys' fees and expert fees, costs in time lost from work, and the mental and emotional costs to me of pursuing these issues in court?
12. How hard would it be on me, the other person, and our child(ren), if any, if we go to trial?
13. After considering all of the consequences of taking my case to court, are the benefits of different results potentially available from a judge better than the option being considered?
14. How important is it to me that I have certainty instead of risk about the outcome of my case?

The following are some tips, ideas and concepts to keep in mind to help you avoid getting stuck and to keep things constructive as you work through the negotiating process:

Time frame. Usually negotiating and settling a case takes time. Many times one or both of the parties want to have one meeting at the beginning of the case and "just get it over with." However, to negotiate effectively, you have to have enough information to be informed about your decision and this can take time. Additionally, family law disputes often take longer to resolve than other kinds of

lawsuits because emotions run high. Be patient. The process often takes longer than one person wants (and may go too quickly for the other). However, delays resulting solely from indecision can quickly drain your financial and emotional resources and can create anger and the resulting problems for future relationships. Be prepared for settlement negotiations to take months, not weeks or days.

Remember that reality is part of the mix. Solutions don't necessarily have to be consistent with the "law model," but they do have to fit into the "real world model." For example if Mrs. Smith needs at least \$10,000 per month in support to feel secure but Mr. Smith's job and the assets of the estate can only produce \$5,000 per month, Mrs. Smith's expectation of \$10,000 a month in support is not a viable solution. The negotiating process cannot change the limitations of the financial tools available to you and your family.

Face facts. Face reality as quickly as possible. If you are going to need to get a job, start taking steps toward that immediately. If the house is going to have to be sold, start working on that immediately. (Of course, remember to not take any unilateral action that would affect the other person.) Consider the benefits of doing something proactive about your situation now versus waiting to be forced to deal with it in a way that may be less acceptable to you. For example, if you need additional education to get into the job market, it is better to know that and plan for it when you are negotiating a settlement than later, when your financial deal is set in stone.

Negotiations are two-way, not one-way discussions. Negotiating is not just an "ask and receive" process. Negotiating is a trading process. You offer the other person something valuable to him or her in exchange for something valuable to you. This is the essence of negotiating.

You are ultimately responsible for your own decisions and the consequences of those decisions. At the end of the day, you are responsible for the "deal." Your lawyer's job is help you obtain all information you need to make an informed decision; to help you generate as many creative options as possible; and to help you determine the probable outcomes of choosing one of those options.

Your job is to evaluate your options, then accept, modify, or reject one or more of the available options. No decisions will be made without your participation and agreement. Your lawyer will give you the benefit of his or her experience, observations and advice, but will not decide for you. Each individual has personal values, beliefs and perspectives, and must make decisions based on how well his or her interests are addressed with any given agreement. Just because your agreement doesn't look like someone else's agreement doesn't make it wrong or bad. The only "bad" agreement is one that is made without adequate information or sufficient attention to the intended and unintended consequences associated with a particular choice. Acceptable terms of an agreement will reflect your unique situation and priorities.

## Impasse Breaking Tools, Tips and Techniques

The following are some tools, tips and techniques to keep in mind during the negotiating process.

Use the creative problem-solving model. Always try to apply the creative problem-solving model that forms the basis of many dispute-resolution processes:

1. Identify the problem. Assess the situation, issue or problem – name it, define it.
2. Brainstorm all options for solving the problem. Do not self-censor. Avoid ownership of options. Don't praise, criticize, ignore or challenge options.
3. Discuss and evaluate the likely outcomes of each option.
4. Select the most acceptable option. Select from the available options the one that satisfies most of your interests, the one that is most acceptable to you, or the one that is least destructive to you. Go through the following steps in deciding which option is the most acceptable:
  - A. Compare expected outcomes of each option to both parties' stated goals
  - B. Eliminate options that have outcomes that do not sufficiently meet important goals of either party
  - C. Narrow the options to those that meet the most important goals of both parties
  - D. Jointly determine the option that most closely meets the most important goals of both parties

Forget the word "fair" and think instead about "acceptable." When you are discussing what is fair in a transaction, perspectives and viewpoints will always be different. Think American vs. Iraqi; Republican vs. Democrat; and Rich vs. Poor. The perspective of husband vs. wife or mom vs. dad (and their lawyers) will often be different, and they will rarely agree on what is fair. The goal is not to reach a "fair" settlement – the goal is to reach a settlement that each person, from his or her own unique perspective, can deem acceptable.

Prepare, probe and propose. Before negotiating, make sure you are aware of the possibilities and limitations of the financial tools and child-related tools available to settle the matter. Do not attempt to negotiate an agreement until you feel that you have all the information you need to negotiate. Ask questions; get feedback; find out what is important to you and to the other person. Seek first to understand the other's perspective before you seek to have your own understood. Suggest solutions. What would happen if we did this? Is this something that might work? Under what circumstances would this idea work? How could we make it better so that it satisfies both of our interests?

Ask questions. When you find yourself stuck, ask a question. Good impasse breaking questions to consider are:

- a. What do you see as our options right now?
- b. What do you see happening as the likely outcome of your preferred option?
- c. What would you reasonably expect would happen with each of the options we are considering?
- d. How would the option bring you closer to reaching your goals?
- e. What is the most effective thing we can do right now?
- f. How do you see that happening?
- g. How do you see that working?
- h. If you get what you are asking for what do you think you would have?
- i. What would that option do for you?

Use questioning instead of selling. Instead of “selling” an idea or concept to the other person, ask them questions so they can evaluate their options and the consequences of those choices for themselves. (“How would you feel about \_\_\_\_\_?” or “What would it look like if \_\_\_\_\_?” instead of, “You need to \_\_\_\_\_.”)

Ask hard questions that focus on the reality of the situation:

- a. Your heart is broken, and this system doesn’t have the tools to repair it. Would you rather have \_\_\_\_\_ and a broken heart or nothing and a broken heart?
- b. What would you want if you knew for sure that you were going to lose on your position in court?
- c. I can see that you simply do not trust me. What can I do to address your feelings of mistrust? How could we structure a settlement so that you would feel more comfortable settling?

Ask how, not why. Ask questions aimed at HOW we can address this situation, not WHY we should fix this problem (or who created it).

Focus on the problem not the person. Focus on the present rather than the past, and your personal situation, rather than the universe. You can’t tend your garden very well if all your attention is focused on all the problems of the world.

Choose the least painful and least damaging result. Look at this problem like having to have unavoidable surgery. Would you rather have the surgery done using a sharp scalpel and anesthesia or using a chainsaw and no anesthesia?

Let your inner adult handle the negotiations rather than your inner child. The more emotional we get, the more childish we typically get. For instance, when people’s feelings are truly hurt they often act much like a 2-year-old. They start

lashing out, making demands and throwing some kind of fit if they are not getting their way. We need adults, not children at the negotiating table.

Don't try to translate emotions into numbers. Often people going through divorce are hurting. Reeling from feelings of betrayal or anger they struggle to make emotional sense out of the impersonal numbers appearing on a spreadsheet. Try to separate the emotions from the legal and financial business at hand. Imagine a circle with the bottom half labeled "emotional" and the top half labeled "business dealing." Negotiate when you are able to operate in the top half of your functioning, not when you are sinking below the line. There is no numerical translation for feeling hurt or betrayed. Put another way, what does \$1,000 equal in feelings? Unlike French to English, emotions don't translate well into numbers.

Suffering is not equal. Often parties will, consciously or unconsciously, be attempting to "equalize" their suffering. For example, "this divorce has hurt me so much you need to pay me extra, see the kids less, sell the house, etc., so you will feel some pain too." Because emotions don't translate to dollars, perhaps the best course is to name the problem, discuss the options, discuss possible outcomes and make the best choice you can under the circumstances. The best revenge is for you to be happy with your life.

Use the all-purpose "I" statement. An basic all-purpose "I" statement is, "I feel \_\_\_\_\_ when \_\_\_\_\_. What I would like/request is \_\_\_\_\_."

Keep handy some "I" statement starters:

- I notice \_\_\_\_\_
- I wonder if \_\_\_\_\_
- I feel frustrated when \_\_\_\_\_
- I want \_\_\_\_\_
- I hope \_\_\_\_\_
- I have a concern about \_\_\_\_\_
- I would feel better if \_\_\_\_\_

Negotiation is a privilege not a right – litigation is a right. When things get really rough, remember that negotiation is a privilege, not a right. Often, you want to end up with a result that would not be an option for you if you were in court. You need to be careful not to abuse the privilege of negotiation to the point where the other person feels forced to exercise his or her right to litigate.