

The "Goal Oriented" Approach to Mediation Negotiations

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As I have mediated thousands of cases over the last couple of decades, I have come to realize and appreciate the importance of the concepts of mutuality and trust in this process of self-



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determination. As mediator, the question becomes how to encourage the implementation of both concepts for the sake of the "bridge-building" exercise. The answer for me has been in the use of a "goal-oriented" approach to the **negotiations**.

A "goal" is defined as "a reasonable expectation to achieve a **negotiated** resolution". In recognition of the multiple sides to a **negotiation**, it is reasonable to anticipate each party has one. The chance that these "goals" are the same is slight at best.

More likely these goals are not the same, and the ultimate question is: "How different are they?" The answer requires the patience of the process that allows a claimant to move from his/her/its demand and a respondent to move from zero (or his/her/its respective demand).

The key in building both the mutuality and trust of the **negotiation** is to reach these goals at the same time.

For the claimant/respondent to be above/below his/her/its goal at the time that the other side is at his/her/its goal is not only contrary to the mutuality of the process, it usually results in the statement, "Well, if you are that high/low, we may as well not go any further."

However, if it can be orchestrated to get both sides to their respective goals in an agreed number of moves, then the bridge-building can be effected. Regardless of the initial demand (or response) the understanding is that each move has everything to do with where that party is going and nothing to do with where the other party is or has moved to.

The result is the avoidance of relationship bargaining which can destroy a mediation **negotiation** (i.e., "she moved a dollar, so we will move 50 cents"). If both sides can get to their respective goals in 3-5 moves, at that point the parties themselves will have created the figurative "reasonable ballpark" within which they can then try to identify "common ground".

Why the designated number of steps? It is not likely that either side trusts that the other will get to their “goal” in the first move. (There are exceptions.) The trust- and bridge-building usually takes a minimum of three moves; and the patience for “getting to goals” as well as the timing of a one-day mediation usually dictate a maximum of 5 moves. Of course, we have all been in a mediation that has gone into “extra innings” to as many as 15-20 moves lasting until 3 a.m.! However, these are either exceptions or are otherwise scheduled for multiple days. The latter event will still be orchestrated consistent with that timing, (i.e., to get to goals by day two, and to bring goals together in day three).

It should always be remembered that these goals are likely different and, therefore, when both sides have reached their respective goals, a reasonable “ballpark” should have been established. If so, common ground can be achieved. Because the ballpark should be based not on what either side wants, but rather on the same known facts, law, venue, and party evaluations; the goals while differing should have the same basis. If there are facts, law, venue, or party evaluations that are differing, those differences should be better understood, dialogued through facilitation, and likewise mutually re-evaluated.

Once re-evaluated, the exercise of establishing common ground can be negotiated through direct, facilitative discussions; indirect, facilitative discussions; or a Mediator’s Proposal. Whatever the method the parties elect, there is a “home plate” in every reasonable ballpark.

So, let’s play ball! Work to build trust, appreciate the mutuality of the process, and ultimately common ground can be achieved.