

## CLE Handout | *Getting to Yes! Negotiating to Win* | Nov. 18, 2022

### Negotiation Refresher

#### The Four Pillars:

1. Separate the People from the Problem
  - Learn to manage emotions
  - Be aware of identity issues
  - Keep your tone and language positive
  - Listen to the other side
2. Focus on Interests, Not Positions
  - Ignore positional bargaining
  - Ask questions, including “why” and “why not”
3. Invent Options for Mutual Gain
  - Avoid premature judgments and give this one some time to develop
  - Don’t assume there is a single answer
  - Don’t assume the size of the pie is fixed
  - Their problem is your problem
4. Insist on Using Objective Criteria
  - Negotiate the criteria, not the outcome
  - Frame it as a joint search for the criteria
  - “Fair” can be a powerful word
  - If done correctly, outcome becomes obvious to both sides
  - Probably the hardest pillar to consistently implement

**Tip:** The order of the pillars matters. If one of them doesn’t seem to be working, consider readdressing an earlier pillar.

#### **BATNA:** Best Alternative to a Negotiated Agreement

- Every party has a BATNA. Be aware of them.
- If the other party is unrealistic you might need to remind them of their BATNA. Do it gently if possible.

**Agents must learn to juggle negotiations.** Because you are an agent you are engaged in at least two negotiations simultaneously. One is with opposing counsel. Another is with your client.

#### **Building trust**

- Reputation matters
- **Tip:** If a client doesn’t seem to trust you, you might need to expressly acknowledge your own interests and theirs, including areas where your interests are not perfectly aligned. State your commitment to their interests.

**Paraphrasing:** A powerful tool to build your listening skills