



# Five Psychological Strategies Every Attorney Should Know About Negotiating

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Jennifer B. Grippa, Esq.  
Miles Mediation & Arbitration

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Picture your last mediation. Chances are you started with an extreme position, stubbornly holding to it while hiding your true views about the strength of your case, and made small concessions only to keep the negotiation going. Many lawyers resort to this style of “positional bargaining” as described by Fisher and Ury in their popular book, “Getting to Yes.” Recognizing that the people behind the conflict are humans and that humans are emotional beings, tapping into the emotional intelligence of your opponent can make the difference in whether a negotiation ends in success.

As any litigator knows, conflicts and lawsuits can bring emotional and sometimes irrational thoughts. Invoking psychological skills to better understand who your opposing party is, what they want and how to influence them to do what you need them to do can be important to resolving your client’s conflict. Next time you find yourself in a heated negotiation, try these five tactics to influence a behavioral change to get voluntary compliance by all sides.

## **De-escalate the Situation**

How often have you seen both sides at a mediation refuse to step into a room together? They may not want to participate in a joint caucus. They may have no desire to hear their opponent's opening remarks or come face to face with their adversary. Some go so far as wanting separate routes to the restroom to avoid the chance of crossing paths (yes, this actually happens). The parties may be tense, angry, volatile or otherwise emotionally charged. In addition to their distaste for one another, their respective counsel may also be at odds, having previously engaged in bitter letter-writing campaigns or acrimonious motion practice.

An important first step is to de-escalate the situation and calm your adversary down. You can do this through active listening. Active listening is not a passive activity. It takes work. And it is more than just listening to your adversary's position. The goal is to silence your own thoughts, arguments and responses that are running through your head. Instead, make it your sole mission to focus on the opponent, what they have to say and, more importantly, what they actually need. You want the opposing party to feel safe, to feel heard and comfortable enough to open up about what they really need (financially, emotionally or otherwise). When you discover what your opponent actually needs, you are better suited to find a solution to the parties' problem. Through active listening, you can bring down the emotions and bring back rational thinking. Knowing what the other party needs and why they need it is key to knowing where to start with crafting a solution.

## **Build Rapport**

Next, build rapport through both a showing of respect and the use of both verbal and nonverbal communication. Too often, a poor choice of words or an unsympathetic tone can unnecessarily escalate negotiations. Showing respect, on the other hand, can make a big difference in how your opponent behaves. The words you choose and your tone of voice are important. Use words and tones that demonstrate you understand and respect their position despite the fact that you do not agree with it. Your verbal and nonverbal cues should send a message of respect. This includes avoiding harsh words and tones, crossing your arms, frowning, fidgeting, rolling your eyes, slouching or appearing tired or bored. Instead, use communication cues that help build trust and rapport like establishing good eye contact,

smiling, head nodding, keeping an open and relaxed posture and/or using open-handed gestures. If the opposing party feels he/she is being heard and understood, it will go a long way toward influencing a change in behavior.

### **Demonstrate Empathy**

Empathy is being able to understand your opponent's perspective and vocalize that understanding. You need to be able to see the dispute from their angle and be tuned in to what they are feeling. Again, you do not need to agree with their beliefs. But when you pay attention to your opponent, ask them questions and find out how they feel and their mindset behind those feelings, you demonstrate an ability to know where they are coming from and why. Being able to think from the opposing party's perspective and articulate their point of view during your communications gives your opponent the perception that they are in control. When they feel heard and understood, they are more apt to let down their barriers and open themselves to a meaningful discussion on options for a potential deal.

### **Provoke Your Opponent to Articulate Needs**

Once you have the opposing party calm and feeling safe, get them talking. The more they talk, the better the chance you have of uncovering their true needs. Once you know what they actually need (not just what they say they want), you will be better prepared to find a solution. Ask open-ended questions and let them talk and talk and talk some more. Suppress your own ego and desire to think about your own position or rebuttal. Let the opposing party feel like they are in control. Negotiating a consensual agreement depends on both sides exercising self-determination and making the final decision to accept the terms. When the opposing party feels safe and in control, then the real conversations begin.

### **Influence Your Adversary**

Once you are in the door and having real conversations, your tactical negotiation skills will have more influence. You have given your adversary the perception of control, and you can use techniques like anchoring, framing, bracketing and loss aversion to subtly affect the opposing party's perception and decision-making. Knowing and understanding what is driving the opposing party's needs, you will be better prepared to think of solutions that solve the problem. Keep in mind that it isn't always about the money. Relationships, status, self-esteem, autonomy, privacy and other nonfinancial needs can be at play.

Emotions in disputes are not roadblocks or things to be dealt with; rather, they are the means through which you can identify and influence the emotions of others to build the consensus you need to create resolution. So next time you find yourself trying to strike a deal with a combative party, look beyond their stated position (their wants and demands) and dig into their motivations (their fears, worries and hopes). Use those to find a solution that meets the needs of both sides.



*[Jennifer Grippa, Esq.](#) handles complex disputes in a range of areas at Miles Mediation & Arbitration in Atlanta.*