

How To Beat Men In Negotiations

By Ellen Malow

Introduction

Negotiations are used in every facet of our lives — business and personal. As attorneys, we constantly negotiate with our colleagues, opposing counsel, clients, mediators, and the court. The same skill set that we utilize as professionals can also be effective in dealing with family, friends, and significant others.¹ This article will first highlight some situations where women need to recognize that there is an opportunity to negotiate. It will then focus on capitalizing on our negotiation skills to effectively compete with our male counterparts.

Seize the Opportunity

We have heard for years that significant salary discrepancies exist between men and women. One would assume that by the 21st century the gap would be closed or at least narrowed. Disappointingly, recent studies indicate that this problem still exists across the board in all professions. Researchers have found an answer as to why men get paid more than women, for the same job. Why? Women don't ask for a raise.² There are many reasons why this occurs. Rather than outline each of these circumstances, this author prefers to focus on the solution.

Women need to be assertive about their performance and accomplishments. Women should ask for bonuses and raises at *every* appropriate opportunity. Specifically, women should not wait until year end to ask for a raise. If an attorney brings in new business, she should negotiate a bonus at the time the business is landed. She should consider requesting a percentage of the fees generated if the case is handled on an hourly basis. If the case is on a contingency fee, she could seek a portion of the fee recovered. Women attorneys should price themselves competitively with their male counterparts. Female attorneys should have the same hourly rate as male attorneys with the same level of experience.

Overall, women need to expand the scope of situations that provide an opportunity to seek additional compensation and advancement. The only way for women to even approach salaries received by their male counterparts is to take a proactive approach in their profession.

Born to Negotiate

There are natural skill sets inherent to women that help them win at negotiations. Some of the

traits unique to women include: rapport building, empathy/sympathy, creativity and listening skills.

Rapport Building

"Women may go about negotiation in different ways than men, but they're more than likely to make everyone feel like a winner. Women, for example, not only focus on relationships between negotiators more often than men do, they also consider the history behind the controversy at hand, reports Boston psychologist Deborah Kolb, Ph.D. Contrary to what experts believed in the past, these differences work to women's advantage. Women, for example, often pay attention to subtle cues that indicate how well negotiators are getting along, unlike men, who focus more on the task at hand. Men usually see negotiation as a contest of wills."³

These skill sets give women an advantage over men because most negotiations involve parties who have an ongoing relationship. The preservation of such a relationship is critical. For example, a woman who is negotiating with opposing counsel who employs these techniques is more likely to have continued positive dialog on any future negotiations. In almost any type of dispute, there is an ongoing relationship that should be preserved. There are a multitude of examples including: a divorce case involving children, a breach of contract action between buyers and sellers, a discrimination suit by an employee against his employer, and a business entity dissolution. A woman's negotiation style can help maintain ongoing relationships without causing undue harm.

Creative Solutions

"Women are more likely to be creative in developing solutions. Rather than focus on traditional or expected outcomes such as cash-for-release, women may suggest apologies, or training for managers, or bringing in a third party to provide some needed services. Such creativity can break deadlocks and focus the discussion on the issues that really matter to the parties."⁴

In a wrongful termination case an employee may feel offended by the way the employer treated his departure from the company. Although he may assert a monetary claim against the employer, it may be that an apology can go a long way toward resolving the dispute. This solution is one more likely to be suggested by a woman.

In a mediation involving a wrongful death, compensatory damages do little to alleviate the pain and suffering of the family. One creative solution that has been used is to create a memorial in the name of the decedent.

Empathy/Sympathy & Listening Skills

Women lawyers face a challenge not encountered by their male counterparts. If a woman acts aggressive she may be labeled a "bitch." In a book about female lawyers, Mona Harrington interviewed successful female attorneys who said they were more successful when they were not being as aggressive and confrontational as possible but instead listened, observed and better "read" opponents. In taking depositions, they got better results by adopting a "quiet, sympathetic approach" (instead of grilling and attacking) so that witnesses tended to forget that the attorney deposing them was their adversary.⁵ Another way women can lull an adverse witness into being more comfortable is by using their natural rapport building skills.

This author learned one of the best lessons from a male partner during a three week long trial. Rather than being aggressive during the cross-examination of an adverse witness, the male partner suggested a more subdued approach. Using this approach, it enabled the jury to focus on the witness' adversary nature rather than the attorney. It is important to prepare your own client for your strategy in using this style so they do not wrongly assume you are not being zealous.

"Women generally are better than men at negotiating without the intrusion of egos. Women understand male (or competitive) egos, and the accompanying needs for recognition, control, and winning. Use this knowledge to your advantage."⁴ There are times during mediation when the parties may be stalled in their negotiations. In this instance, men are more likely to draw a line in the sand and end the negotiations. This behavior may work to the detriment of all parties.

Conclusion

The time has come for women to recognize that there are innumerable opportunities to negotiate in every aspect of their lives. This article highlights some concrete examples to immediately implement in your profession. These same strategies should be considered in your daily life. With eyes wide open, women can now profit from their intrinsic abilities to excel at negotiations. By recognizing the opportunities to advance and utilizing the skills that give them an edge over men, women can beat men at negotiations.

FOOTNOTES

¹ Miller and Miller, *A Woman's Guide to Successful Negotiating* (2002).

² Babcock and Laschever, *Women Don't Ask—*

Negotiation and The Gender Divide (2003).

³ *Women At The Table*, Psychology Today (September 1992).

⁴ Calvert, Cynthia Thomas, *Negotiation Skills for Women, Raising The Bar* (The Women's Bar Association of the District of Columbia) (Fall 1999)

⁵ Harrington, Mona, *Women Lawyers: Rewriting the Rules* (1995)



Ellen B. Malow is a trial attorney with extensive experience in toxic torts, employment, commercial disputes, products liability, personal injury and pharmaceutical litigation.

Ellen's experience includes cases where she has served as one of the lead trial attorneys in a mass tort case against a large chemical company; as lead counsel on a double death case of two drowned minors on behalf of one of the defendants; she has achieved numerous dismissals of an international/national chemical company client from multi-party toxic tort suits; has been granted numerous summary judgments in various matters, obtained dismissal of a discrimination case in federal court on a sanctions motion, and developed substantial business for an international oil and gas client, including a multi-party toxic tort matter alleging multi-million dollar damage claim for residents of a community. Her successes include cases where the plaintiff has been awarded sums in the millions of dollars. Ellen is licensed to practice law in Georgia and Texas and is an experienced mediator and arbitrator across many practice areas. She is certified as a trained Mediator and Arbitrator having completed a mediation training program, a mediation observation program, a divorce mediation training course, a divorce practicum and arbitration training class. Ellen is certified with the Georgia Office of Dispute Resolution and is approved as a mediator in the following court systems: Cobb, Clayton, Fulton, Gwinnett and the Sixth Judicial District.

Ellen is a member of the Georgia Association of Women Lawyers, the ADR division of the American Bar Association, the Georgia Bar, the Atlanta Bar Association Section on Dispute Resolution and Small Firm and Sole Practitioner, Association for Conflict Resolution and Business Network International.

Ellen volunteers for the Susan G. Komen Foundation for breast cancer as well as Conquering Cancer. She enjoys jogging, rollerblading, yoga and traveling as well as being an avid reader.