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GAIN THE EDGE! NEGOTIATING TO GET WHAT YOU WANT

December 22, 2021

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GAIN THE EDGE!

NEGOTIATING TO GET WHAT YOU WANT



Agenda

- 8:30 A.M. Registration**
- 9:00 A.M. Introduction – The “Car Negotiation Story”
- 9:10 A.M. Discuss Latz’s Golden Rules of Negotiation, including:
- Setting aggressive – yet realistic – goals
 - Information is power – so get it!
 - Increasing leverage by strengthening your alternatives
- 10:30 A.M. Refreshment Break**
- 10:45 A.M. Negotiation Ethics – Part I, including discussion of Stalking Horse Scenario and its:
- Morality – is it right or wrong?
 - Ethics or Legality – does it cross the legal or ethical line?
 - Effectiveness – does it work?
- 11:15 A.M. Discuss Negotiation Strategies, including:
- Using objective criteria with “tough negotiators”
 - Using timing to your advantage
- 12:00 P.M. Lunch Break**
- 1:00 P.M. Discuss Negotiation Strategies, including:
- Designing offer-concession strategies
 - Controlling the agenda
- 1:30 P.M. Prepare to Negotiate Simulation, including:
- Learning information-gathering techniques
 - Analyzing interests vs. positions
 - Creatively generating options
- 2:00 P.M. Negotiation Simulation
- 2:30 P.M. Analyze Negotiation Simulation, including
- Evaluating Lessons Learned – what worked and what didn’t
- 2:45 P.M. Refreshment Break**

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NEGOTIATING TO GET WHAT YOU WANT



Agenda Continued

- 3:00 P.M. Discuss Negotiation Strategies, including:
- Problem-Solving vs Competitive Strategies
 - Impasse-Breaking Strategies
 - Countering “Negotiation Games”
- 4:00 P.M. Negotiation Ethics – Part II, including discussion of The “False Promise” Scenario and its:
- Morality – is it right or wrong?
 - Ethics or Legality – does it cross the legal or ethical line?
 - Effectiveness – does it work?
- 4:30 P.M. **Adjournment**

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December 22, 2021

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GAIN THE EDGE![®]
NEGOTIATION STRATEGIES FOR LAWYERS

WEBCAST BOOKLET

by Martin E. Latz, Esq.
Adj. Prof. of Law–Negotiation 1995 - 2005
Arizona State University College of Law

Indiana Continuing Legal Education Forum
December 22, 2021
Indiana

LNI's faculty for this program

“Marty Latz is one of the most accomplished and persuasive negotiators I know.”

George Stephanopoulos, Host - ABC's *This Week*

Martin E. Latz, Esq.



- **Adjunct Professor of Law for Negotiation, Arizona State University College of Law 1995 - 2005**
- **Founder and CEO, Latz Negotiation, a national training, e-learning and consulting firm**
- **Developed and taught negotiation training programs for over 100,000 lawyers and business professionals around the world since 1995**
- **Negotiated for The White House nationally and internationally on the White House Advance Teams**
- **Appeared as a negotiation expert on CBS, CNN, MSNBC and FOX and has been cited in Politico, CNN.com, The Economist, The Globe and Mail, and many others.**
- **Author, *Gain the Edge! Negotiating to Get What You Want* & *The Real Trump Deal: An Eye-Opening Look at How He Really Negotiates***
- **Negotiation columnist for various newspapers since 1999**
- **Harvard Law School, *cum laude***

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Presentation Outline

for

LATZ NEGOTIATION INSTITUTE'S

***GAIN THE EDGE!*[®]**

NEGOTIATION STRATEGIES FOR LAWYERS

NEGOTIATION LESSONS

“CAR REPAIR STORY”

Your Negotiation Challenges

What negotiation issues have you found most challenging?

LATZ'S FIVE GOLDEN RULES OF NEGOTIATION

RULE 1 INFORMATION IS POWER – SO GET IT

A. Get Information to Set Your Goals

In any negotiation, first find sufficient information to determine your goal(s). Then design a strategy to support it.

PRACTICAL TIPS AND TACTICS FOR GOAL-SETTING

1. Set aggressive and specific goals – don't just “do the best you can”

RESEARCH: Goal-setting is more effective when you set specific goals.

Which is more effective?

“Do the best you can”

vs.

“Get me \$425,000 and a corner office”

2. Expect to succeed

Passionate, positive attitude makes a difference

3. Commit in writing

B. Develop an Information-Bargaining Strategy – Ways to Get and Share Information

The more you learn about what both sides have and will agree to, the better you'll do.

1. Get *substantive* information – facts, interests and options
2. Get *strategic* intelligence – investigate reputation/past tactics
3. Answer questions *strategically* – information to/not disclose

TOP FIVE INFORMATION-GATHERING TACTICS

1. Do the “big shmooze” – “The Liking Principle” (Cialdini)

RESEARCH: We're more likely to say yes and share information with those we like!

2. Ask questions. Ask questions. Ask questions.

RESEARCH: Effective negotiators ask at least 2 times more questions than others.

3. Use the “Funnel Approach”

a.

b.

4. Employ the “power of silence”

5. Ask “why” – get to interests, not positions

RULE 2

MAXIMIZE YOUR LEVERAGE

A. Determine Level of Needs (both sides)

How much do you – and they – want it?

B. Do the BATNA (Plan B for both sides)

Best Alternative To a Negotiated Agreement

1. Why?

- a. Tells you when to walk

Prevents you from making an agreement you should reject

- b. Tells you when to sign

Accept agreement only if it's better than your best likely alternative

2. How?

- a. BRAINSTORM alternatives to take if you don't/can't reach agreement
- b. CONVERT better alternatives into practical possibilities
- c. SELECT the best – and measure other offers against it

NEGOTIATION ETHICS

Scenario #1: The Stalking Horse*

Facts: A house buyer asks friends to help artificially manipulate the seller's expectations of a fair and reasonable sale price.

Morally right or wrong?

Ethical under the rules?

Effective as a strategy?

* Additional information on these scenarios or similar fact patterns, including case and book citations in which some of these were originally cited and/or derived, is found at page 24.

RULE 3

EMPLOY “FAIR” OBJECTIVE CRITERIA

Issue: What is “fair and reasonable”?

A. Find Powerful Independent Standards

1. Market-value power
2. Precedent power
3. Tradition power
4. Expert- and scientific-judgment power
5. Efficiency power
6. Costs and profit power
7. Professional or industry standards power

RULE 4

DESIGN AN OFFER-CONCESSION STRATEGY

Issue: What to do regarding *timing, speed* and *size* of offers and concessions?

A. Know Your Offer-Concession Patterns

1. Most negotiators enter the offer-concession stage too soon

Beware of the premature offer.

2. The Timing Pattern

The longer you wait to start and between moves, the less eager you appear, and vice versa.

3. The Size Pattern

Early concessions include relatively larger moves and later concessions often include relatively smaller moves.

4. Center movers

B. First Offer Issues

1. Whether to start

a. Advantages to making first offer

(1)

(2)

(3)

b. Disadvantages to making first offer

(1)

(2)

(3)

When in doubt – don't start out!

2. Where to start and how to move

*High realistic expectations
and
Tapering concessions*

C. Psychological Expectations Underlying Offers and Concessions

1. Do the Dance
2. The Reciprocity Rule (Cialdini)

RESEARCH: We try to repay – in kind – what others provide to us.

RULE 5 CONTROL THE AGENDA

Issues: **If** and **when** and **how** subject matters get addressed affects your results!

A. Prepare an Agenda to Start

1. **When** to meet (strong leverage?) and for **how long**
2. **What** to discuss and in what order (prioritize)
3. **With whom** to meet (decision-maker?)
4. **How** to meet (in person, e-mail, etc.)

Relationship and efficiency impact!

5. **Where** to meet (the turf battle)

B. Negotiate the Agenda

C. Manage the Timing and Deadlines – *Deadlines Drive Deals!*

AGENDA CONTROL TIPS AND TACTICS

1. Use the “Power of the Pen”
Prepare a written agenda
2. Just Do It
3. Don’t let them see you sweat
The perception of patience pays

STRATEGIC NEGOTIATION PLAN
BEAUTI-REST V. SLEEPWELL

RULE 1
INFORMATION IS POWER – SO GET IT!

A. Set Appropriate Goals (Be Specific and Aggressive)

1. What are our and their goals – what is a “win” here?

B. Get Critical Information (information bargaining strategy)

1. What key facts are involved so we can evaluate this?
2. What are the fundamental needs/interests/core values and beliefs/motives/drivers involved – why are we and they here?
3. What options may satisfy our and their interests?

RULE 2

MAXIMIZE YOUR LEVERAGE

A. How much do you – and they – NEED a deal?

B. Do the BATNA twice (Plan B for both sides)

Best Alternative To a Negotiated Agreement

1. What is our Plan B(s) and what do we know of their Plan B(s)?
2. What can we do to strengthen our Plan Bs/weaken theirs?

RULE 3

EMPLOY “FAIR” OBJECTIVE CRITERIA

A. What powerful independent standards/criteria can we use?

B. What standards/criteria will our counterpart possibly use?

RULE 4

DESIGN AN OFFER-CONCESSION STRATEGY

- A. What do we know of any offer-concession pattern/tradition?**

- B. First offer/first counter advantages and disadvantages?**

- C. Where should we move initially, does it satisfy our interests, and what standards are we using to evaluate and decide?**

- D. What elements of our offer/move might we concede and why, while still accomplishing our goals?**

RULE 5

CONTROL THE AGENDA

A. What's our agenda relating to:

- *When?*
- *What to discuss/in what order?*
- *With whom?*
- *How?*
- *Where?*

B. What deadlines, if any, exist or should exist?

ANALYZE *BEAUTI-REST* v. *SLEEPWELL*

Exchange confidential instructions.

Results?

Lessons Learned?

1.

2.

3.

MAKING LATZ'S GOLDEN RULES WORK FOR YOU

USE A SITUATION-SPECIFIC STRATEGY

Generally, two different negotiation strategies:

A. Competitive Strategies

Strategies and tactics intended to undermine the other negotiator's confidence in his/her bargaining position and strengthen his/her perception of your position.

1. Characteristics of Competitive Strategies

GR1 Substantial information bargaining—share a little and get a lot

GR2 Open conflict on leverage issues

GR3 Minimal reliance on independent standards

GR4 Most aggressive offer-concession moves and tactics

GR5 Overt and biased agenda-control tactics

B. Problem-Solving (PS) Strategies

Strategies focused on building trust, relationships and relatively open communications that enable parties to jointly work to find mutual solutions to problems.

1. Characteristics of Problem-Solving Strategies

GR1 Mutually share critical information openly and liberally. Actions and atmosphere confirm trust and a valued relationship.

GR2 Leverage downplayed, but still there

GR3 Frequently *rely* on independent standards

GR4 Least aggressive offer-concession moves and tactics

GR5 Mutually agreeable agenda and agenda-control tactics

C. Factors Affecting Negotiation Strategy

1. The Relationship Factor

The more you see potential interests satisfied with a future relationship, the more likely you should use a problem-solving approach.

2. The Number Factor

As the number of interests and issues increases, so does the likely success of a problem-solving approach.

3. The Zero-Sum Factor

The more zero-sum type issues exist – where more for one side necessarily means less for the other – the more likely you should use Competitive Strategies.

4. The Mutuality Factor

Will they problem-solve?

FOILING COMMON NEGOTIATION “GAMES”

1. Good Cop/Bad Cop
2. The Nibbler
3. The Blowup or Verbal Attack
4. The Flinch
5. The Threat
6. Boulwarism (First/Firm/Fair/Final)
7. The Higher or Limited Authority
8. The Context Manipulator (time/location/setting)
9. Power in Numbers
10. Feigned Irrationality

TOP TEN IMPASSE-BREAKING STRATEGIES

1. Get or share more information
2. Switch objective criteria
3. Prioritize needs and interests
4. Brainstorm options
5. Set deadlines
6. Temporarily put aside the issue
7. Take a break
8. Move up the chain
9. Pick a fair alternative process (mediation, arbitration)
10. Concede

STRATEGY QUESTIONS?

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NEGOTIATION ETHICS

Scenario #2 – The “False” Promise

Facts: A lawyer misleads another lawyer regarding the intentions of his client with regard to a product being purchased. Yet, the lawyer protects his client in the contract such that his representations prior to the written agreement – while false – might not give rise to a cause of action.

Morally right or wrong?

Ethical under the rules?

Effective as a strategy?

MARTY’S “PEARLS OF WISDOM”

Please fill out evaluations, including negotiation column sign-up.

Appreciate written comments!

And learn more with us on:



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THANK YOU!

Additional Information on Scenarios

Scenarios #1: The Stalking Horse

I derived this scenario from a similar negotiation situation that actually occurred in 1997 in New York City and is described in G. Richard Shell's book *Bargaining for Advantage: Negotiation Strategies for Reasonable People* (Viking 1999), at page 224. Shell cites the following article for this scenario: Tracey Rozan, "A Hot Market Leads to Cold-Blooded Dealing," *The New York Times*, May 25, 1997, Sec. 9, page 1.

Scenario #2: The "False" Promise

This scenario was described in G. Richard Shell's book *Bargaining for Advantage: Negotiation Strategies for Reasonable People* (Viking 1999), at page 213, and derives from a case Shell cites, *Turner v. Johnson & Johnson*, 809 F.2d 90 (1st Cir., 1986).

BEAUTI-REST v. SLEEPWELL NEGOTIATION

Confidential Facts for Lawyers Representing Beauti-Rest Mattress Corporation

Your client, Beauti-Rest Mattress Corporation, manufactures and sells mattress sets. One of the three largest U.S. mattress companies, Beauti-Rest's gross income for this past fiscal year was \$400 million. Beauti-Rest has two manufacturing plants, a large new one in Columbia that produces finished mattresses, and a smaller, older plant in Charleston that manufactures bedsprings and frames. Its Columbia plant acquires most of its matching bedsprings from its Charleston plant, but recently Beauti-Rest has also purchased bedsprings from other companies due to decreasing output in its Charleston plant. The equipment at the Charleston plant is becoming obsolete, and eventually the plant will be closed. Beauti-Rest currently sells approximately 250,000 mattress sets/year.

It costs Beauti-Rest \$30 per unit to build queen size bedsprings at its Charleston plant and six months to produce a large shipment of bedsprings. Although Beauti-Rest pays \$35-\$45 per bedspring unit from outside manufacturers, the turn-around time for large orders from outside vendors is much quicker.

Due to this situation, Beauti-Rest intends to phase out its Charleston plant in 5 years and build a new plant in Charleston to handle its current and future bedspring needs. A new plant will cost Beauti-Rest \$10 million and will give it the capacity to build 300,000 bedsprings/year.

On August 16 of last year, Carl Maloney, one of Beauti-Rest's senior purchasing agents, spoke on the telephone with Chuck Barkle, a sales representative for Sleepwell Manufacturing Company, a two-year-old Columbia-based business that produces bedsprings and frames for mattress manufacturing companies. During this conversation, Maloney asked if Sleepwell could produce 10,000 units of a regular length, queen size bedspring on a "rush" basis, in time for Beauti-Rest to flood the regional market during the November-December holiday bedding sales season.

Maloney chose to deal with Sleepwell, even though Sleepwell was a relatively new business, because Sleepwell has the most modern bedspring manufacturing operation in this region. Barkle stated that Sleepwell could fill the order on a "rush" basis and quoted a price of \$40 per unit (at a total price of \$400,000 for the 10,000 units). Maloney agreed to Barkle's price and faxed Sleepwell a standard Beauti-Rest order form setting forth the agreement. The order form explicitly stated that the bedsprings ordered by Beauti-Rest were "regular length, queen size" bedsprings. Barkle signed the order form and faxed it back to Beauti-Rest later the same day.

Relying on this agreement, Beauti-Rest produced a new line of regular length, queen size mattresses at its Columbia plant and began an aggressive advertising campaign for the November debut of its new line. However, when the bedsprings arrived from Sleepwell in October, Beauti-

Rest discovered Sleepwell had shipped 10,000 units of an *extra-long*, queen size bedspring. These bedsprings were useless to Beauti-Rest; an extra-long bedspring is almost never used in the trade. It is an unusual design that can only be used for a very large mattress (possibly for a professional basketball player). Beauti-Rest thus immediately returned the shipment and refused to pay for them.

It was too late to remedy the problem when Beauti-Rest received the faulty bedsprings because a new “rush” order could not be filled in time for the holiday bedding sale season. As a result, Beauti-Rest’s advertising campaign was wasted, Beauti-Rest was clobbered last year by its major competitors (Swealy and Swerta), and it had 10,000 mattresses that were virtually useless without matching bedsprings. Beauti-Rest retained your firm to sue Sleepwell for breach of contract, and instructed you to seek \$1.5 million in damages (primarily for lost profits).

You filed and served the complaint a week ago, and yesterday you received a call from Sleepwell’s lawyer (the overall delay in filing was due to unrelated business reasons). The lawyer informed you that Sleepwell plans to file a counterclaim for \$400,000, contending that Maloney requested 10,000 “extra-long” bedspring units during his initial conversation with Barkle. Although you view Sleepwell’s potential counterclaim as frivolous, you agreed to meet with the lawyer to discuss settlement. Your client has informed you it is Beauti-Rest’s policy to attempt to resolve all disputes early in the litigation process and has authorized you to discuss settlement with Sleepwell.

You and your client believe you have a very solid case. It is unlikely a jury will believe Maloney would order 10,000 units of such an unusual sized bedspring. Plus, if he had ordered “extra-long” bedsprings, you would have concurrently manufactured 10,000 extra-long mattresses, not regular length mattresses. The written agreement also refers to “regular length” bedsprings.

John Stacton, the CEO of Beauti-Rest, has only one concern about the case. He has learned recently that Sleepwell’s financial position is not as good as he thought when he approved Sleepwell for the contract. A \$1.5 million judgment against Sleepwell would probably put it into bankruptcy.

John Stacton has authorized you to get the best deal you can get for Beauti-Rest.

BEAUTI-REST v. SLEEPWELL NEGOTIATION

Confidential Facts for Lawyers Representing Sleepwell Manufacturing Company

Your client, Sleepwell Manufacturing Company, is a two-year-old Columbia-based business that produces bedsprings and frames for mattress manufacturing companies. While a relatively new company, Sleepwell has been able to compete with more established bedspring manufacturers because of its new, high-speed manufacturing equipment.

One of Sleepwell's recent customers was Beauti-Rest Mattress Corporation, one of the three largest U.S. mattress companies (Swealy and Swerta are the other two largest). In comparison to your client, Beauti-Rest is a very large company. Its gross income for this past fiscal year was \$400 million. According to your client, Beauti-Rest has two manufacturing plants in your area, a large one in Columbia that produces finished mattresses and a smaller one in Charleston that manufactures bedsprings. Apparently, Beauti-Rest's Columbia plant acquires most of its bedsprings from its Charleston plant, but Beauti-Rest also frequently purchases bedsprings from other companies.

On August 16 of last year, Chuck Barkle, Sleepwell's sales representative, received a telephone order from Carl Maloney, a purchasing agent for Beauti-Rest. Maloney asked for 10,000 units of your queen size bedspring. Beauti-Rest needed them on a "rush" basis, in time to flood the regional market during the November-December holiday bedding sales season. Barkle negotiated a price of \$40 per unit (at a total price of \$400,000 for the 10,000 units), and promised to fill the order on a "rush" basis. This is a good price as you sell most of your queen bedsprings at \$35-40/bedspring.

According to Barkle's notes, Maloney asked for the "extra-long, queen size" bedspring. However, the order form Beauti-Rest faxed later in the day described the model as the "regular length, queen size" bedspring. Barkle signed the form without noticing the discrepancy and faxed it back. Barkle had already sent the "rush" order instructions to the plant to construct the extra-long bedsprings. Sleepwell thus produced 10,000 units of the extra-long, queen size bedspring and shipped them to Beauti-Rest in October. Beauti-Rest immediately returned the shipment and refused to pay for the bedsprings.

Sleepwell thus lost a huge account and was stuck with 10,000 units of the extra-long queen bedsprings. Unfortunately, the extra-long bedspring is almost *never* used in the trade. It is an unusual design that can only be used for an especially large mattress (possibly for a professional basketball player). Sleepwell has not had much luck in unloading the 10,000 bedsprings. It cost \$20 per unit to build them, the same cost it takes to produce most of Sleepwell's bedsprings. If the units are scrapped, your client could get about \$5 per unit.

This case was written by Martin E. Latz, Founder of Latz Negotiation Institute (LNI), 6242 East Shangri La Road, Scottsdale, Arizona 85254. Telephone: 480.951.3222, E-mail: Info@LatzNegotiation.com; Website: www.LatzNegotiation.com. This case may not be reproduced, revised or translated in whole or in part by any means without the written permission of Martin E. Latz of Latz Negotiation Institute (LNI). Please help to preserve the usefulness of this case by keeping it confidential. Copyright © 2021 by Latz Negotiation Institute (LNI). All Rights Reserved.

Your firm was asked recently to represent Sleepwell in suing Beauti-Rest for \$400,000, seeking specific performance of the original oral agreement to sell extra-long bedsprings. You were preparing to file a complaint against Beauti-Rest for \$400,000 when, about a week ago, Beauti-Rest brought suit against Sleepwell, claiming that Sleepwell breached the contract. Beauti-Rest is seeking \$1.5 million in damages, claiming it lost profits in that amount due to Sleepwell's breach.

A few days ago, Kevin Johnston, Sleepwell's CEO, called you to discuss the case. (The overall delay in his contacting you is due to unrelated business reasons.) Johnston has no doubt Beauti-Rest's lost profits from last fall are approximately \$1.5 million. However, he also has confidence in Barkle, who is an outstanding sales rep who would not be confused about receiving an unusual order for "extra-long" bedsprings.

Despite this, Johnston confided that Sleepwell is in a precarious financial condition. Although it has the potential to build up to 300,000 bedsprings per year in its Columbia plant, it produced only 30,000 bedsprings this past year, and the lost revenue from the failed Beauti-Rest sale has significantly hurt it. Sleepwell's plant and equipment is currently worth \$5 million, and Sleepwell has only \$1 million in equity invested in it. Thus, bankruptcy is almost a certainty if the litigation is protracted. Johnston thus asked you to try to avert the impending disaster by attempting to settle the matter and has authorized you to settle for the best deal you can get, as soon as possible.

Yesterday, you called the lawyer representing Beauti-Rest. You explained that you are planning to file a counterclaim for specific performance of the oral agreement and the \$400,000 due to Sleepwell under the contract. Beauti-Rest's lawyer replied that Sleepwell's potential counterclaim is frivolous, and Beauti-Rest's claim is "air-tight," because the order form signed by Barkle explicitly called for "regular" length bedsprings. However, the lawyer also said it is Beauti-Rest's policy to attempt to resolve all disputes early in the litigation process and suggested the two of you meet.

Based on your research and analysis, you are not optimistic about Sleepwell's chances in the litigation. Despite Johnston's confidence in Barkle, the chances are slim a jury will believe Barkle's testimony that Beauti-Rest would order 10,000 units of such an unusual sized bedspring. Additionally, the written agreement appears clear.

INDIANA RULES OF PROFESSIONAL CONDUCT

Rule 1.2. Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the objectives of the representation if the client consents after consultation.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Rule 4.1. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose that which is required by law to be revealed.

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Rule 4.3. Dealing with Unrepresented Persons

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably

should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Rule 4.4. Respect for Rights of Third Persons

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(a) Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in conduct, in a professional capacity, manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors. Legitimate advocacy respecting the foregoing factors does not violate this subsection. A trial judge's finding that preemptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

Amended Dec. 21, 2001, effective April 1, 2002; amended Sep. 30, 2004, effective Jan. 1, 2005.

(b) Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[4] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Adopted Sep. 30, 2004, effective Jan. 1, 2005.

SUGGESTED NEGOTIATION READINGS

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and

The Real Trump Deal: An Eye-Opening Look at How He Really Negotiates (Life Success Press, 2018)

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COHEN, Herb, *You Can Negotiate Anything* (Bantam Books, 1980)

CRAVER, Charles B., *Effective Legal Negotiation and Settlement, 5th Edition*
(Matthew & Bender, 2005)

DAWSON, Roger, *Secrets of Power Negotiating, 2nd Edition* (Career Press, 2001)

FISHER, Roger, William Ury and Bruce Patton, *Getting To Yes: Negotiating Agreement Without Giving In, 3rd Edition* (Penguin Books, 2011)

MNOOKIN, Robert, *Beyond Winning* (Harvard University Press, 2000)

MOVIUS, Hallam and SUSSKIND, Lawrence, *Built To Win* (Harvard Business School Press, May 2009)

SHELL, G. Richard, *Bargaining for Advantage: Negotiation Strategies for Reasonable People*
(Viking, 1999)

URY, William, *Getting Past No: Negotiating Your Way From Confrontation to Cooperation*
(Bantam Books, 1991)