

Enjoying mediation: Focus and flow for negotiation success

By Tamara Lange

Good lawyers understand negotiation theory whether they've studied it or not. Negotiating stops being a skill or a separate activity. It's integrated into the way they work, think, and relate, so it feels natural: part personality and connectivity, part diligence and analysis, part *je ne sais quoi*. Of course, it's serious business. But it's also invigorating—fun!

When we're doing anything well, we feel engaged, active, alive. Professor Mihaly Csikszentmihalyi famously defined this state of being as "flow." He interviewed people across many domains—sports, art, music, academics—and found a common thread. When people of high skill bring intense concentration to a sufficiently complex task, they can enter a state of being in which self-conscious thoughts drop away, goals are clarified, and there's a feeling of effortlessness, like being carried along in a stream.

Negotiating in a mediation involves getting into a flow state while engaging with others in a high-stakes, high-conflict environment. Easier said than done! An inexperienced negotiator may feel bored when the mediation process seems simple and anxious when the going gets tough. A highly skilled negotiator typically feels relaxed or in control when things seem easy and moves into a flow state when faced with a challenge. Whatever your level of experience, you can maximize the likelihood of getting into flow by paying attention to the nuances in the conversation, looking out for potential



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pitfalls, and keeping alert for new information and unforeseen complexities.

The power of negotiating in flow

A lot of advice on how to be an effective negotiator in mediation boils down to this: Notice when you're not in flow and refocus your attention on the immediate challenge and your specific goals. Of course, a mediation is dynamic, so the immediate challenge is always shifting.

Preparation: Work with your client to identify their core interests and goals for the mediation. If you view this as a simple task, you won't be in a flow state. Go back to basics and listen to the client's current description of what happened, what

they want, and why it matters. Assume there's something more there than you understood when you wrote your last brief. Mediators have countless stories about surprise issues that held the key to resolving seemingly intractable conflicts.

Curiosity: Negotiating in mediation involves some special techniques, such as brackets and mediator's proposals, and it's important to understand these tools. But, at its root, negotiating effectively is like every other communication challenge we face in life. If we're present, focused, and prepared, we become curious. When we're curious, we have room internally to be generous in our assumptions about the other lawyers, the other parties, the mediator, and our own

clients. We're focused on our goals instead of the obstacles presented by our opponents.

One way to develop this muscle is to think of a time when your perception of someone changed radically because of new information. Perhaps you learned that someone you envied was failing a class, that a school bully was being abused at home, or that an unkempt colleague was undergoing cancer treatment. When you start to feel irritation rising, use that old experience as a reminder. Imagine a few good reasons the client or lawyer on the other side might be behaving this way. Then ask yourself: What might they need to understand about you or your client to see you in a different light?

Listening and observing: The better you are at watching someone's face and wondering about what's important to them, the more skillful you'll be as a listener. Don't spend all your time taking notes or looking at the camera; look at people's faces. Humans understand one another's emotions in no small part because we unconsciously mimic other people's facial expressions, feel in ourselves the emotions that correspond to those facial expressions, and then attribute the feelings to the other person. If you're mediating in caucus and can't see the other side, watch your mediator carefully during your conversations. Pay attention to what's not being said. Ask questions. Your mediator is carrying not just a verbal message or a counter-proposal from the other room, but a bevy of information about what's happening with the people in the other room. This is invaluable to your ability to get the best deal you can for your client.

Persistence: Many mediations are quick; everything goes smoothly. But sometimes the process unfolds in fits and starts. Things begin to

move and then seem to freeze up. For a visual on this, check out frazil ice flows. In the spring, a slurry of ice and water flows down Yosemite creek, repeatedly condensing into a solid mass that dams up the creek. It's impossible to tell how much water is underneath the seemingly static river until it shifts and moves again. Like frazil ice, the landscape in a mediation is often changing. Don't mistake a temporary freeze in the process for a true impasse that requires you to go to trial. Follow up.

Mediator selection: It's important to have a mediator with a robust toolbox who listens carefully, understands the law, and communicates well with both lawyers and clients. But the best mediators aren't successful because they have a secret method for breaking impasse or because they're smarter or more persuasive or better prepared. They have a more fundamental trait in common: flow. By bringing intense focus and energy into a previously closed system of conflict, their very presence creates momentum.

Learning to flow

Being in flow results in a lack of self-consciousness, so we don't tend to notice when we're in a flow state. But we can pay attention to the things that disrupt flow and use them as cues to refocus our attention on the work we're there to do. If we're distracted, if we're irritated by the other side or frustrated about the mediation process, if we're anxious about how we're being perceived, or if we're stressing about the outcome, we're not bringing full concentration to the task at hand. As soon as we notice these reactions, we have the opportunity to shift gears and refocus.

Over time, by paying attention to what pulls us off center, we can retrain ourselves to maintain the intense focus and energy characteristic of a flow state. If you've never been in a flow state while working, consider how it feels to be in flow doing something else you love: running, skiing, praying, writing, playing music. As the ability to focus intensely increases, a flow state becomes more accessible in other activities, including at work. And the more of our lives we spend in flow, the eas-

ier it is to stay in the stream and to keep it moving. Ultimately, it leads to better outcomes for your clients and more joy in the process.

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