

Contract Negotiations and Contracts for APNs

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SNSFE is an “A-V” rated* business law firm established in 1967. SNSFE represents closely-held businesses and entrepreneurs and individuals from start-up to succession planning in 3 core practice areas: corporate/transactional, general and commercial litigation, and commercial banking.



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- Named an Illinois *Leading Lawyer* and featured on Sky Radio's *America's Best Lawyers*



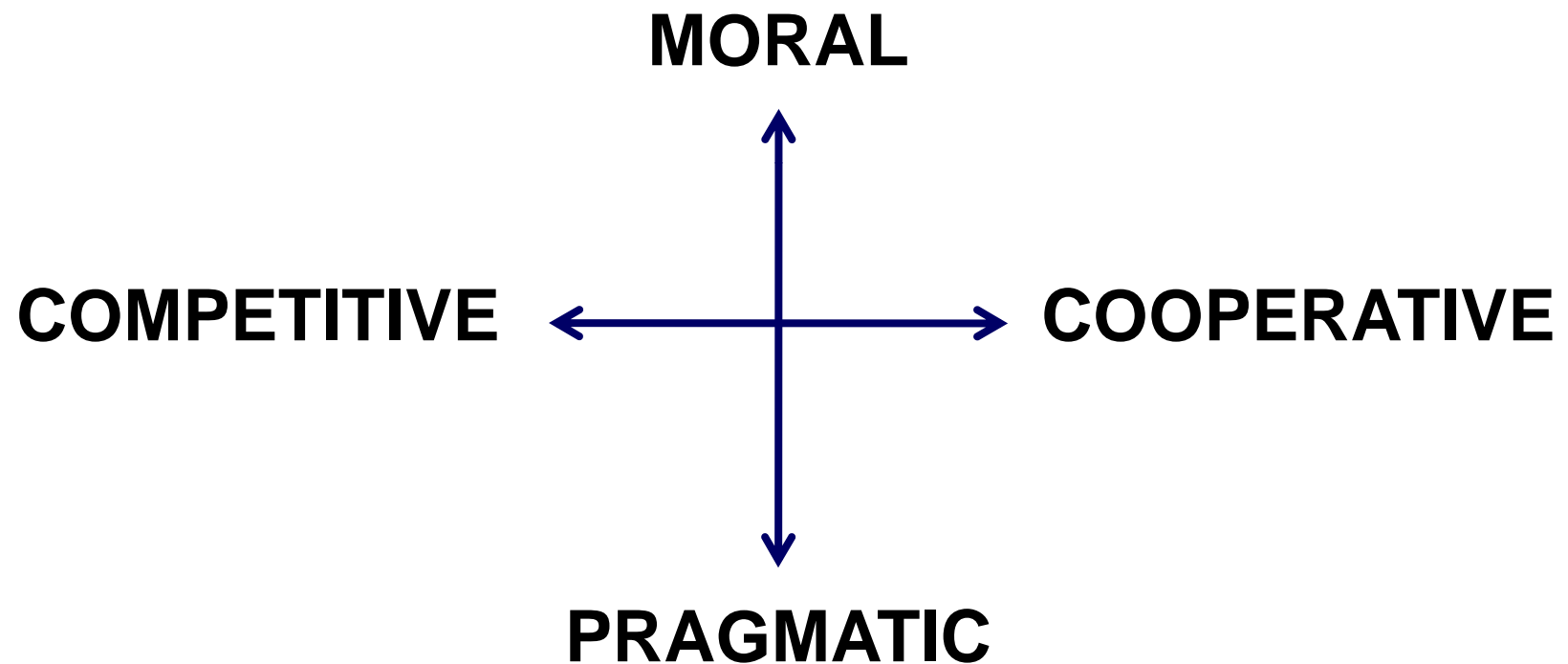
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* A-V Rating: Martindale-Hubbell is the facilitator of a peer-review process that rates lawyers. An “A-V” rating is the highest rating for “Legal Ability” and “General Ethical Standards.”

Background in Negotiation

FOUR PATHWAYS TO PROBLEM SOLVING



4 Pathways to Problem Solving

COMPETITIVE

Hard bargaining with substantive winners and losers, while maximizing one's own gains.

(Weakness: at worst, ruthless, retaliatory, predatory)

4 Pathways to Problem Solving

COOPERATIVE

Integrative negotiation focusing on themes such as mutuality, reciprocity, communication and free exchange of information.

(Weakness: susceptibility to cheaters disguised as cooperators)

4 Pathways to Problem Solving

MORAL

Begins with an ethical or moral proposition-creating a higher ground-acting on principle

(Weakness: too easily transformed into smugness, sanctimony and fanaticism)

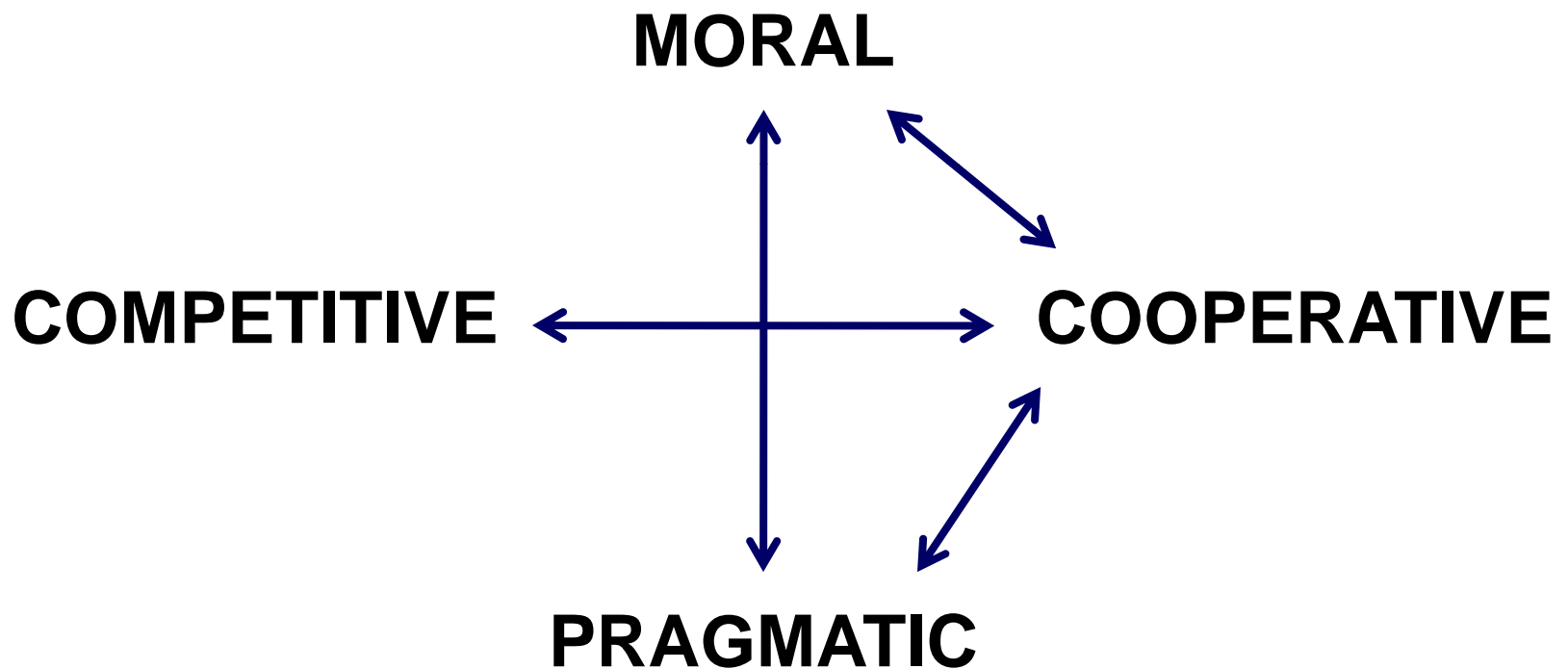
4 Pathways to Problem Solving

PRAGMATIC

Focus on the problem not the people-focus on interests and possibilities and use objective criteria to create a rational process that leads to a more easily negotiated result.

(Weakness: rationality can be cold and overlook shared hopes, fears, hurts, joys)

FOUR PATHWAYS TO PROBLEM SOLVING



Negotiating Win-Win Business Deals

4 Common Negotiating Myths

Myth #1: Negotiating involves competition.

Reality:

Negotiations involve exchanging information and resources in order to satisfy the different and sometimes conflicting needs of 2 or more parties.

Negotiating Win-Win Business Deals

Myth #2: Negotiating involves bargaining.

Reality:

- Bargaining is competitive; negotiation is cooperative.
- Bargaining focuses on who is right; negotiating focuses on *what* is right.
- Negotiating creates long-term deals and relationships; bargaining agreements never last because the losing party always insists on the chance to come back and get even.

Negotiating Win-Win Business Deals

Myth #3: Negotiating always involves compromise.

Reality:

Nobody wins in compromise because both sides end up getting less than they want or need.

Negotiating Win-Win Business Deals

Myth #4: Effective negotiations involve the use of tactics, trickery and manipulation.

Reality:

- Honest, ethical negotiators never try to manipulate or deceive the other side.
- Tactics should only be used in self-defense.

Five Rules of Negotiation

FIVE RULES OF NEGOTIATION

1. The person who speaks first sets the tone for the negotiation.
2. The person who asks the most questions determines the content and the direction of the negotiation.
3. Never argue. No one ever won an argument. Always question for understanding.
4. People do things for their reasons not yours.
5. The person who listens the most will have the greatest effect upon the outcome of the negotiation.

5 Rules of Negotiation

The person who speaks first sets the tone.

- Opening remarks must be scripted.
- Prepare a two or three sentence script and rehearse it.
- Anticipate questions and prepare and rehearse answers to those questions.
- Bring positive emotions and expectations- people who expect more get more.

5 Rules of Negotiation

The person who asks the most questions determines content and direction.

- Do your homework.
- Dumb is smart and smart is dumb.
- Who else is a party to this negotiation?
- What are the critical concerns and issues?
- Take the wind out of their sails on any negative: you take a negative out of play by putting it on the table first.

5 Rules of Negotiation

Never argue.

- When negative emotion enters, conversation continues but communication stops.
- Talk facts free of negative emotion.
- Pause/break to calm emotions. (Know yourself.)
- If necessary, use forbearance. A concession may follow in a later session.
- Never send an important email until someone else has read it-use a cold reader.
- Call them to tell them you are sending an email to go over together.
- Always present proposals in person.

5 Rules of Negotiation

**People do things for their reasons,
not yours.**

- Do your homework.
- You are not prepared until you can state their concerns and their case as well as or better than they.
- You are not prepared until you can answer their questions and address their issues.
- Find out what they want and show them how you can help them get it.

5 Rules of Negotiation

**The person who listens most will
always have the greatest impact
upon the outcome of the negotiation.**

- Listen completely.
- Evaluate what is said and what you observe.
- Only then respond.

Six Steps to a Better Deal

1. Understand the other side.

Need to know:

- Any existing time, industry and/or financial pressures
- Their organizational goals and objectives
- Their specific goals for the negotiation
- Their options if they don't make the deal with you
- The personal goals of the negotiator
- Who makes the final decision on the deal

2. Plan your approach.

Identify 3 different deal scenarios:

- Best possible outcome
- Worst acceptable outcome
- Expected outcome

6 Steps to a Better Deal

In planning your approach, always prepare 2 other key elements:

- Walk-away point – your bottom line
- BATNA – “best alternative to a negotiated agreement”

3. Build the relationship.

- Research who they are, how they operate, what they value, what they need.
- Ask questions – who, what, how.
- Validate your research.

4. Solve their problem.

- Match your capabilities and experience to what you have learned.

5. Fill the basket.

6 Steps to a Better Deal

To fill the basket:

- Gather as much information as possible about both sides before starting the negotiations.
- Identify items of value for both sides and list them in order of priority.
- Add or remove items from the basket relative to the movement or the numbers.

6. Make the numbers work.

When trying to arrive at the final numbers:

- Clarify the rules for how the deal will be structured.
- Strive for as much communication as possible.
- Question all assumptions.
- Show how you are different.
- Focus on the risks as well as the benefits of doing business with you.

The Art of Making Concessions

GUIDELINES FOR CONCESSIONS

1. Give yourself room for concessions. Remember:
 - Do not bargain with yourself.
 - Begin with your strongest position.
 - Concessions the other party doesn't see have no value.
 - Always frame things positively.
2. Make people work for every concession they get. Never make a concession the minute you know you can make it.
 - Use time-with time comes uncertainty and with uncertainty comes value.
3. Do not make the first concession on a major issue.

GUIDELINES FOR CONCESSIONS

4. The best time to get a concession is when you give one: *“If I can do that for you, what will you be able to do for me?”*
5. Never accept the first offer.
6. Avoid patterns in concession making.
7. Keep each concession small, make them slowly and make each concession progressively smaller.
8. Don't assume you know what concession the other party wants.

GUIDELINES FOR CONCESSIONS

9. Try to determine all demands before you make a concession: *"In addition to that, what other items do you need?"*
10. Don't make a counter offer to an unrealistic offer.
 - Help me understand how that is a credible offer.
 - Help me understand how you arrived at that offer.
11. Never make a concession unless you can explain what new information you have that has allowed you to change your position.
12. Know your bottom line and keep it in focus.

Avoiding the Deal-Killers

Avoiding the Deal-Killers

- Going too fast
- Failure to establish or to keep in focus your walk-away position
- Assuming the other side looks at the deal the same way you do
- Taking a short-term view
- Proving the other person wrong
- Using loaded terms
 - fair, reasonable, but

Avoiding the Deal-Killers

- Failure to conduct your internal negotiations (when negotiating as part of a team)
- Negotiating against yourself
- Improper use of concessions
- Not knowing when to stop

Dealing with Hardball Negotiators

Dealing with Hardball Negotiators

When faced with a hardball negotiator:

1. Take a hard look at all the implications of the deal and what you stand to gain from it.
2. Hold fast to your bottom line.
3. Don't get caught up in an auction mentality.
4. Watch out for individuals who just want to win.
5. Know how to respond to tactics.

Improving Your Negotiating Skills

Improving Your Negotiating Skills

- Role play before every negotiation.
- Understand the real meaning of “win-win.”
- Avoid using tactics.

Improving Your Negotiating Skills

- Listen twice as much as you speak.
- Practice, practice, practice.
- Never want anything so badly that you won't accept something else.
- Never want something so badly that you won't walk away.

Contract Format

Checklist

Checklist for Contract Formation

1. Parties: Identify the parties

- In the employment context the parties are employer and employee
- In the independent contract context the parties are principal and independent contractor
- Principal may be organized as:
 - Sole Proprietor
 - Professional Corporation
 - Partnership
 - Limited Liability Company (LLC)
 - Limited Liability Partnership
- Independent Contractor/Employee
 - Select your business entity – may be one of the above. Generally, LLC is best and most flexible

Checklist for Contract Formation

2. Terms of employment/description of service

- Scope of services – describe in sufficient detail
- Collaboration: A collaboration agreement and an employment or professional services agreement (for independent contractors) are not the same thing. You will likely need both. If the state regulations change and you are allowed to practice without a collaboration agreement - this is good. All you will need is an employment or a professional services agreement (if you are an independent contractor vs. an employee).
- Licensure to be maintained
- Billing/assignment
 - Records
 - Charge and accounts receivable

Checklist for Contract Formation

3. Term

- Why a definite term?
 - An agreement for an indefinite term is an “at will” agreement in Illinois (and in most states).
 - An “at will” agreement is terminable with or without notice, for any reason or for no reason at all.
- At will contracts – generally the common law default for any contracts not for a specified term
- You must insist upon a definite term
- Renewal – best alternative is an automatic one year renewal absent notice of termination

Checklist for Contract Formation

4. Termination

- By principal
 - For cause – may be without notice
 - For convenience – for example, for purely economic reasons, always with prior notice (90-120 days)
- By independent contractor
 - Notice – What's fair given the circumstances?
- Winding down
 - Severance compensation, if any: If termination may be for convenience and with short or little notice, insist upon compensation for the time notice would have covered.
 - Account/billing settlement and follow up
 - Terminate assignment of billing rights

Checklist for Contract Formation

5. Compensation – know your market(s)
 - Compensation base – the first item in the basket
 - Call and/or overtime
 - In-house call
 - Remote – minimums and “pager” time
 - Time and timing of payment
 - Productivity bonuses
 - Vacation
 - Sick days
 - Holidays
 - Pension/profit sharing or 401(k) plan – matching contribution

Checklist for Contract Formation

6. Expense reimbursement – identify your overhead and make certain you cover it

- Insurance
 - Professional liability insurance
 - Health/dental
 - Disability
 - Long term care
- Independent contractors and some employees can secure trade-offs for base compensation
- Travel expenses
 - Auto/depreciation
 - Auto insurance
 - Gas or mileage

Checklist for Contract Formation

6. Expense reimbursement (*contd.*)

- Professional license renewals
- Professional association dues
 - State
 - National
- Continuing education
 - Tuition
 - Travel and lodging
 - Paid time off for CE

Checklist for Contract Formation

7. Non-compete/non-solicitation and related covenants

- Generally, employers and principals want to extract a non-compete agreement, commonly called a *covenant not to compete*. If you cannot avoid the non-compete, seek limits:
 - Time (one year or less)
 - Geography – smallest area possible
 - Except all providers with whom you have a pre-existing relationship
- Propose a fair alternative: a non-solicitation agreement. You agree not to solicit patients/customers/clients or other employees or contractors for a set period of time, usually one to two years.

Checklist for Contract Formation

7. Non-compete/non-solicitation and related covenants (*contd.*)

- Non-competes – avoid them
- Non-solicitation agreement – the fairest alternative
- Confidentiality and trade secret protection – common and fair

8. Boiler plate

- Uses
- Importance

Checklist for Contract Formation

8. Boiler plate *(contd.)*

- Dangers

- The Integration Clause

- What it is – a clause which typically reads as follows:

"This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and, except as specifically provided for herein, supersedes all prior discussions, representations, amendments or understandings of every kind and nature between them."

- When you want one – in this context, rarely
 - When you don't – when any promise made to you is not to be reduced to writing and included in your employment or professional services agreement. A writing or letter agreement outside the contract will not survive the integration clause.

Checklist for Contract Formation

8. Boiler plate (*contd.*)

- Dangers (*contd.*)
 - Applicable Law
 - Where you live
 - Where you practice
- Attorneys' Fees
- Read and think about every clause in the contract.

CONCLUSION

Questions?

For more information, please contact:

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Thank you!

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