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## Negotiation tactics from a toddler: Simple but effective techniques to help advance the conversation toward resolution

Think negotiation has to be complicated? A 3-year-old proves that clear goals, smart framing and persistence can win the day.

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“Let me tell you something,” my toddler asserts, holding my face in his little hands. “What is it?” I ask, knowing well that he is determined to have dessert before bedtime. “I want something cold,” he begins. “How about some yogurt?” I suggest. “Or maybe something from the freezer,” he redirects. “Ah, do you have something specific in mind?” I inquire. He lowers his voice to a whisper and responds, “ice cream,” as his mouth widens into an irresistible smile. “I ate my dinner,” he adds to bolster his cause. “Very true,” I acknowledge, opening the freezer door and letting out a cool breeze. “Which flavor would you like: vanilla, chocolate, or cookies and cream?” He takes a moment to weigh the options. “Vanilla,” he selects. “It’s my favorite.”

After exchanges like this one, I reflect on my 3-year-old’s knack for negotiation. He had an end goal in mind. He made sure to get my full attention. He redirected the conversation where he wanted it to go, and he had support for his position lined up. His thoughtfulness, focus and effort paid off. He achieved his desired result, eyes aglow and vanilla ice cream all over his face.

Some of the most successful negotiation tactics are simple, subtle and versatile. They help shape the dialogue in mediation, as the parties explore potential resolutions. These same tactics could help you work toward the best possible deal in your mediations:



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**“Let me tell you something.”** Share your client’s side of the story. Focus on the most important facts and persuasive points to prepare your mediator to articulate the strengths of your case. Address any anticipated concerns or counter-arguments, so your mediator can tackle the issues quickly if they come up in conversation with the other side. Put together a mediation brief that provides a clear and concise overview of your case and attach the key supporting materials. Keep your brief short and offer to discuss the case with your mediator ahead of time if there is additional background that would be helpful to share before your session.

**“What is it?”** Ask open-ended questions. Invite the other side to share their perspective on an issue or fill in some gaps in information. Try to gain a better understanding of where they are coming from with respect to the facts and law and where they might be headed in terms of the numbers. This exchange could reveal key evidence that did not come to light before or useful information about the other side’s bargaining position. Take into account what you learn and consider how best to address it, as you continue to evaluate your position and consider the next steps in the negotiation.

**“How about some yogurt?”** Suggest a path forward. If you have

ideas on how the parties can work closer together, share them with your mediator and discuss whether the time is right to propose them to the other side. Explore aspects of the negotiation that may benefit everyone involved, including non-monetary terms, to see if you can add value to the deal without cost or other adverse impact.

**“Or maybe something from the freezer.”** Advance an alternative that you are more inclined to accept. For example, when the other side proposes their yogurt—a number or bracket that is out of line with where you would recommend settling the case—consider countering with your vanilla ice cream—

a number or bracket that better aligns with where you see the case resolving. Send messages along with your moves to help shape the range of possibilities.

**“Ah, do you have something specific in mind?”** Remain goal-oriented, while taking into account underlying interests. While keeping your client’s end goals in mind, try to find out what the other side is hoping to achieve. Once you have an understanding of both sets of interests and goals, you may be able to suggest a way to reach the same result that works for both sides. For example, when a former employee is looking to secure future employment, the company may be willing to offer a letter of recommendation or at least a neutral reference to support his or her job search.

**Whisper.** Draw in your listener by changing your volume. Instead of raising your voice, which may be off-putting, lower your voice to emphasize an important point. Remember that your tone will affect how your message is received, and a

positive tone is more likely to elicit a better response.

**“I ate my dinner.”** Support your position. Whenever possible, point to contemporaneous documents or witness statements to demonstrate the verifiability of your assertions. Share them first with your mediator to discuss how best to raise the evidence with the other side.

**“Which flavor would you like: vanilla, chocolate, or cookies and cream?”** Offer available options. If there is more than one path forward, share the options with the other side. In cases where payment terms may be necessary, for example, after the initial payment, the payments could be smaller sums on a monthly basis or lump-sum payments more spread out. If your client is open to either, allow the other side to weigh in.

**Take a moment to weigh the options.** At each stage of the process, discuss the potential next steps with your mediator and take time to assess what makes sense for your client moving forward.

**Make your selection.** Continue the conversation until you determine the best possible deal. Then help your client decide whether to accept the deal or proceed with the litigation. Either way, rest assured that you made every effort to work toward a resolution. If the case proceeds, know that you can continue to work with your mediator and resume settlement discussions down the road.

By revisiting these simple but effective negotiation techniques, you can participate in mediation with confidence and commitment to your client’s goals. Make the most compelling case for your client but remain open-minded. Account for any new information you learn and talk over the range of possibilities when it comes to resolution. When you are clear about the result you hope to achieve but remain flexible in your approach, you should be able to work toward the best possible deals on behalf of your clients.

When my toddler sees his path forward, he likes to outline each step

and then he will remark, “That’s my plan” with a slight nod of his head and a sense of reassurance. Utilize these negotiation techniques at the opportune time and develop your plan to reach your next resolution.

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