

WHAT KIND OF NEGOTIATOR ARE YOU? © Law Office of Patricia Lee Connors

Cooperative or Aggressive, Effective or Ineffective

It is common knowledge in the legal community that the vast majority of lawsuits filed never get to a finder of fact. Those claims which settle short of trial most frequently do so as a result of negotiation. In spite of the importance of the negotiation process, approaches to negotiation frequently seem to reflect the personality of the negotiator much more than any reasoned analysis of what approach will be most effective. Is there a uniformly effective approach to negotiation? Is there a best strategy? The results of at least one researcher indicate that two basic negotiation patterns or styles exist, and that neither guarantees effectiveness. Effectiveness as a negotiator appears to be tied instead to what the negotiator does with the style he or she uses.

Gerald R. Williams, Professor of Law at Brigham Young University, and lecturer at the Harvard Program on Negotiation, has spent over twenty years analyzing negotiation styles and patterns of attorneys. As part of his research, Williams set out to determine if there was a pattern or style for effective negotiation. With the assistance of three social scientists, Williams interviewed and obtained questionnaire responses from 600 practicing attorneys located in Denver and Phoenix. Williams identified the single most important product of this research as a “description of characteristics of effective, average, and ineffective legal negotiators.”

The Aggressives and the Cooperatives

Two basic negotiation patterns emerged from the research results: the cooperative and the aggressive negotiator. These two patterns were utilized by virtually all negotiators, whether they were effective, average or ineffective, but the cooperative pattern was used much more frequently. Study participants identified nearly two-thirds of their negotiation opponents as cooperatives, while one-quarter were described as aggressive. The remaining 11% appeared to follow no pattern. Of those identified as cooperative, over half (59%) were described as effective, while only 3% were described as ineffective. Of the aggressive negotiators, only a quarter were described as effective, while a third were identified as ineffective.

Since the two basic patterns appeared across the effectiveness continuum, Williams concluded that the negotiators use of the style, not the style itself was the key to negotiating success. He observed that the lack of identity of either style with effectiveness might indicate that some people will naturally incline toward one approach or the other. Williams also noted that a refusal to acknowledge the validity of the opposing style could blind the negotiator to important knowledge about how people will operate in the negotiation setting.

Objectives and Traits for All Effective Negotiators

Study participants were asked to identify objectives and traits of the negotiators within both the aggressive and cooperative style. For those effective negotiators of both styles, maximizing the client's settlement was a common objective. Objectives of the effective cooperatives also included engaging in ethical conduct, getting a fair settlement and meeting the client's needs. While the effective aggressive's additional objectives were to obtain a profitable fee and to outmaneuver the opponent.

The study identified nine specific traits in common among effective negotiators of both patterns. These effective negotiators were identified as prepared, honest/ethical, perceptive, realistic/rational, convincing, and self-controlled. They derived satisfaction from utilizing their legal skills; they adhered to the customs and courtesies of the bar, and they were perceived as effective trial attorneys.

Non-effective Objectives and Traits

The study also compared the objectives and traits of effective and ineffective negotiators for both styles. The ineffective cooperatives were identified as having the same objectives as the effective cooperatives, but their objectives also included maintaining a good relationship with opposing counsel. The ineffective and effective cooperatives also shared many traits, but unlike their successful counterparts, ineffective cooperatives were described as trustful, sociable, friendly, obliging, gentle, adaptable, patient and forgiving. While the effective cooperatives were described as fair-minded, realistic in their opening position, accurate in their evaluation of the case, willing to share information, skillful at probing the opponent's position and unwilling to use threats, the ineffective cooperatives did not share these traits.

Interestingly, both ineffective and effective aggressives held the same objectives: maximizing settlement, obtaining a profitable fee, and outmaneuvering the opposition. The major traits which distinguished the effective aggressive negotiators from their ineffective colleagues were the effective negotiators' careful timing of actions, knowledge of the opponent and the opponent's position. Unlike effective aggressives, ineffective aggressives were described as unprepared on the facts and law, hostile, quarrelsome, headstrong, egotistical, intolerant, and irritating.

Dealing with Those Aggressives

Williams' research indicates only a quarter of your opponents in negotiation will be aggressives, and only a quarter of those will be effective. Whether effective or not, aggressives can make negotiation more challenging, so Williams has some advice, based upon the aggressives' objectives and traits, for dealing with this style.

- Be prepared to demonstrate the credibility of your facts and recognize that aggressives will try to ignore or refute them. Aggressives set their expectations by how far you will let them go.
- Adopt a favorable opening position and clearly communicate a willingness to learn more and develop a mutually agreeable solution.
- Avoid making unilateral concessions and make any concessions slowly.
- Respond to direct requests for concessions by acknowledging the other side's interest in question, restate the question to buy time, elaborate factors weighing against granting the request and condition any concessions on your client's approval.
- Distinguish between aggressive behavior and the merits of the deal.
- Meet every aggressive move with a counter-move, cushioned with a "softener" fostering a positive negotiating climate. Show empathy, acknowledge their point of view, indicate you are open to changing your mind if the facts are convincing, and promise to be fair.
- Be prepared and look prepared.