

The Bad Back Martial Artist's Guide to Overcoming Obstacles in Negotiation

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Negotiations Fundamentals

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Hapkido is a traditional martial art. It is not the UFC sport as seen and practiced on pay per view. “Hap” means harmony and union, “Ki” means the core of energy and power, and the last letter “do” means way of skills and procedures. The art itself encompasses training of evading, kicking, striking, and self-defence. There are thousands of techniques that take a life time to master, practice and incorporate. It contains techniques described as soft techniques and hard techniques such as joint locking and striking. The art itself starts with stages of fundamental of colored belt techniques, culminating in a black belt, with a lifetime thereafter. This learning takes the fundamentals of the martial art in the colored belts and applies them in the higher belts to be creative, improvisational and to be modified based on real situations. This paper is designed along with the premise that Interest Based Negotiation Theory is a fundamental basis for any practitioner. However, the longer one practices, the more one learns that creativity and improvisation are a great part of the strategy in a negotiation. The paper will begin with some fundamental basic “*negotiation belt negotiation techniques*” to overcome obstacles in negotiation leaving it to the practitioner to continue the lifelong journey of negotiation learning.

NEGOTIATION DEFINED

There are many ways to resolve a dispute. Negotiation is the process of resolving dispute when one is dependent on another to meet the needs of ourselves. It solves disputes between the participants and does not require the intervention of a third party arbitrator or judge to decide. The parties to a dispute usually have interlocking goals and need each other, in varying degrees, to accomplish objectives. However, as negotiators, we often do not always act in ways that rationally will bring resolution or meet the objectives we are seeking. We often get stuck on trust issues, fail to see what is the true nature of the conflict, reactively devalue offers, get entrapped in the conflict and fail to work toward any solution. Given the overbooked nature of our current court system, a unique opportunity exists for lawyers to become problem solvers and advocates for their clients. If we use the core training or negotiation theory, combined with negotiation nimbleness to overcome impasse, we can meet the joint goal of advocating for our clients, and solving problems for our clients.

A further design feature negotiation is the client’s right to choose the settlement arrived at between the parties. Proponents argue that these processes provide the client with the most ability to control outcome.¹ In contrast, to the extreme right, court based adjudication utilizes a third party decision

¹ Richard Shields, Judith P. Ryan, and Victoria Smith, *Collaborative Family Law: Another Way to Resolve Family Disputes* (Scarborough: Thomson Canada Limited 2003) at 28.

maker, providing the client with little control over the outcome. Mediation moves further to the left on the continuum, as it involves a third party, but the third party has no decision making ability. Further to the left falls negotiation as it involves the party's ability to retain complete control over the outcome.² The client is encouraged to take responsibility for the ultimate decision. The rationale behind this client centered approach is that the client is the owner of their problem, and therefore, any decisions are for the client to make. The theory indicates that the satisfaction derived from a solution must take into consideration both legal and non-legal consequences. With the guidance of a lawyer, the client is in the best position to assess these non-legal consequences. The clients under this model are best suited to consider risk and decide based on variable outcomes.³ Settlements can be creative based on the client's needs and can be context and client specific. Advocates of this model of negotiation indicate that only through this direct client negotiation can such settlements be realized.⁴ This does not mean the lawyer abdicates from advising the client from the full range of decision making, but simply that the client is briefed on all of the options, the implications and the lawyer's own preferences and biases.⁵ The client can then make the ultimate choice rather than a third party decision maker. Thus, one of the design advantages to negotiation.

Some key drivers or obstacles that get in the way of settlement are identified in this paper are set **out in order of belt color:**

White Belt: Communication Barriers:

Orange Belt: Breakdown in Trust

Purple Belt: Competitive versus Cooperative Strategies

Blue Belt: Control Ourselves and Emotion

Brown Belt: TBD

Red Belt: TBD

Black Belt: TBD

² Richard Shields, Judith P Ryan, and Victoria Smith, *Collaborative Family Law: Another Way to Resolve Family Disputes* (Scarborough: Thomson Canada Limited 2003) at 28.

³ David Binder, Paul Berger, Susan C. Price, Paul R. Tremblay, *Lawyers as Counselors: A Client Centered Approach* (St. Paul: West Publishing Company, 2004) at 4-7.

⁴ Julie Macfarland, *The New Lawyer: How Settlement is Transforming the Practice of Law* (Vancouver: UBC Press, 2008) at 149.

⁵ Julie Macfarland, *The New Lawyer: How Settlement is Transforming the Practice of Law* (Vancouver: UBC Press, 2008) at 143-144.