

The Kalon Law Firm, LLC
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The Kalon ADR Center. Create Value, Not Conflict.

THE LUMINIS: INSIGHTS FROM THE KALON ADR CENTER

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3 Ways to Get Better Results in Mediation

Most cases settle, sometimes through direct negotiations, oftentimes through a mediation. For counsel for each party, the goal in a settlement should be to create as much value as she can for her client.

By “value,” I mean not just a settlement for the most amount of money (for the plaintiff) or the least (for the defendant); I also mean optimizing her client’s other interests, which may include an early resolution (rather than waiting for a trial verdict, perhaps an appeal, a petition for certiorari, and an affirmation, or remand), avoiding the stress and uncertainty of trial, or bringing into the discussion matters which are inadmissible at trial.

Here are three ways you can create value for your client in a mediation:

1. Know Your BATNA

A core principle I learned at Harvard’s Advanced Mediation Workshop is your BATNA: your Best Alternative To a Negotiated Agreement. For example, if you know a trial of your case will result in a \$100,000 verdict, your BATNA is \$100,000. That is, if you don’t settle the case, your alternative is a trial, which will result in a \$100,000 verdict.

Your BATNA is not “the best result you would get a trial” (a common misunderstanding). Your BATNA is simply the most likely result at trial. A BATNA is “what will most likely happen if you don’t settle.”

Accordingly, in a mediation, you should (as plaintiff), only settle the case for \$100,000 or more, or (as defendant) only settle for \$100,000 or less.

If there are other elements of value you seek, such as an early settlement or avoiding the stress of trial, as plaintiff, you could settle for less than \$100,000, since a settlement of \$90,000 would also give you an early settlement and no trial.

Another element to consider is the uncertainty of your BATNA calculation. You can't be sure the verdict would be \$100,000, so you should have some flexibility on that number.

The key is to enter the mediation with a BATNA in mind and use it as an anchor point for your negotiating.

2. Concede and Seek Concessions

If you want someone to give you something, start giving them something.

In a negotiation, if you make a small concession, your opponent is more likely to make a concession in your favor. Better to take the lead, which puts you in a greater position of power. The key is knowing what to concede. Your first concession should be something you probably won't win.

For example, as a defendant in a tort case where the plaintiff broke her arm when she fell, you may concede the fall caused her arm to break. That is obvious, and may not even seem like a concession, but if you volunteer that admission, you not only have credibility, you pressure your opponent to return in kind with her own concession.

3. Realize What Value You Are Creating

Another core principle I learned at the Advanced Mediation Workshop is negotiating based on interests, not positions. This is the idea in the seminal book, "Getting to Yes."

Most lawyers make the fundamental mistake of negotiating from positions, never realizing they should be seeking to create value by negotiating for their clients' interests.

For example, if, as a defendant, if your client is exposed to punitive damages, your client's interest is a settlement covered by his insurance policy. His interest is not a settlement for the smallest sum possible, risking a failed settlement and a trial, where he might be hit with a punitive award.

I recommend writing down a list of your client's interests so you know what you are really negotiating for.

I hope these three ideas will help you get better results.

Want to Set Up a Mediation With Us?

If you have a case that you are unable to resolve, we can help you reach an agreement with your opponent, create value for your client, and close your case, avoiding the expense, time, and uncertainty of trial (a resolution method of last resort). We use Doodle to conveniently set up hearing dates and can set dates within a forty-five day window.

If you need a date immediately, we will work with you to make it happen.

Contact Christopher P. Kriesen at Ckriesen@kalonlawfirm.com

OUR GIVE BACK:

The Kalon ADR Center gives 10% of its revenue to a fund for graduates of the Hartford Youth Scholars to help further their education needs.

THE PEOPLE OF THE KALON ADR CENTER



Attorney Kriesen is the founder and principal of Kalon. He has been practicing law as a trial and appellate lawyer for over twenty-years. He completed Harvard Law School's Advanced Mediation Workshop at the Program on Negotiation. He serves as an Attorney Trial Referee, Factfinder, and Arbitrator at the Hartford Superior Court. He completed an eight-class, one-year program at the Stanford GSB. He holds a Juris Doctor from The University of Connecticut School of Law.





Demetra Turi is a member of Kalon's founding team. She manages business operations at The Kalon Law Firm. Prior to joining the firm, she gained more than 27 years of experience at an insurance defense firm in Hartford. Her many roles there included legal assistant, IT manager, bookkeeper, and billing manager.

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