



CritelliLaw Mediation Workbook



CRITELLILAW, PC
Iowa/New York/London

CritelliLaw, P.C. Mediation Checklist

Parts 1-6 Based on Nierenberg, The Art of Negotiation.

1. Parties, Decision Influencers and Subject Matter

- ***Our Side***
 - The Client
 - The Decision Influencers
- ***Opponent. I will be negotiating with:***
 - an individual
 - more than one person
 - an organization
 - The Decision influencer.
- ***Hidden Parties***
 - Contractual
 - Statutory
- ***What is the negotiation about: Do you and your opponent agree about the subject matter?***
 - a contract
 - salary
 - selling/purchasing
 - a law suit
 - real estate
 - personnel
 - collective bargaining
 - management, administration
 - legislation
 - enforcement
 - mergers, acquisitions & divestiture
 - inter-personal relationships
 - other

2. Issues and Positions: Issues are areas of possible disagreement to discuss with the other side. *Positions are the views each side takes on the issues.*

- ***Issues on YOUR side:***
 - Your ISSUES: (Rate them in order of IMPORTANCE)
 - Your POSITION on the issues.

- The issues held by OTHERS on your side (Rated in order of importance)
- Position taken by others on the issues.
- **Your Opponent's issues:**
 - Your Opponent's ISSUES (Rated as you Believe they would rate them)
 - What you anticipate you Opponent's Position to be
 - The ISSUES held by Others influencing your Opponent. (Rated as you believe they would rate them)
 - The Positions you anticipate the opponent's influencers to be.

3. Needs and Gambits: Gambits are specific actions you take to move the negotiation toward resolution. A three step approach: 1) Deciding on the level of approach; 2) recognizing peoples' needs at each level 3) developing ways to work FOR or AGAINST the needs.

- **Level of approach:**
 - Personal
 - Business
 - Mixed.
- **Needs:**
 - Your needs AND how to work FOR or AGAINST THEM.
 - ♦ *homeostasis - physiological needs for survival.*
 - ♦ *safety and security - safe from emotional or material harm*
 - ♦ *esteem- respect for self and others; status.*
 - ♦ *self-actualization- need to develop and use one's skills.*
 - ♦ *aesthetics - longing for beauty, aesthetic balance.*
 - Needs of others on our side and how to work FOR or AGAINST THEM.
 - ♦ *homeostasis - physiological needs for survival.*
 - ♦ *safety and security - safe from emotional or material harm*
 - ♦ *esteem- respect for self and others; status.*
 - ♦ *self-actualization- need to develop and use one's skills.*
 - ♦ *aesthetics - longing for beauty, aesthetic balance.*
 - Opponent's Needs and how to work FOR or AGAINST THEM.
 - ♦ *homeostasis - physiological needs for survival.*
 - ♦ *safety and security - safe from emotional or material harm*
 - ♦ *esteem- respect for self and others; status.*
 - ♦ *self-actualization- need to develop and use one's skills.*
 - ♦ *aesthetics - longing for beauty, aesthetic balance.*
 - Opponent's influencers and how to work FOR or AGAINST THEM.
 - ♦ *homeostasis - physiological needs for survival.*

- ♦ *safety and security - safe from emotional or material harm*
- ♦ *esteem- respect for self and others; status.*
- ♦ *self-actualization- need to develop and use one's skills.*
- ♦ *aesthetics - longing for beauty, aesthetic balance.*

4. Strategies: Strategies are tools that change a situation. A strategy is a way of handling a plan of action. "WHEN" strategies are concerned with the TIMING of a move. HOW and WHERE strategies are concerned with method and place. OTHER strategies combine elements of timing, method and place. To evaluate whether or not a particular strategy will really be effective, ask the following questions: How well does it sit with your intuition, feelings and code of ethics? What are the chances that it will provoke a negative reaction? What is the legality of the strategy? Will it really help you resolve the problem constructively?

- **Your Strategies:**
 - **WHEN STRATEGIES:**
 - ♦ *Forbearance, e.g. patience pays*
 - ♦ *Surprise, e.g. sudden shift in timing*
 - ♦ *Fiat accompli, e.g. accomplished fact.*
 - ♦ *Bland withdrawal, i.e. leave*
 - ♦ *Apparent withdrawal, i.e. leave, but have an interested party stay.*
 - ♦ *Reversal, i.e. adopt opposite position*
 - ♦ *Limits, i.e. set deadlines, ceilings, etc.*
 - ♦ *Feinting, i.e. look right, go left.*
 - **HOW and WHERE STRATEGIES:**
 - ♦ *Participation, i.e. we are friends*
 - ♦ *Association, i.e. endorsement*
 - ♦ *Disassociation, i.e. drop the old for the new*
 - ♦ *Crossroads, i.e. pressure from many directions*
 - ♦ *Blanket, i.e. shotgun-cover a wide area*
 - ♦ *Salami, i.e. smaller slices re easier*
 - ♦ *Bracketing, i.e. aim high and low to find the mark*
 - ♦ *Changing levels, i.e. use new people and approaches.*
 - **OTHER STRATEGIES**
 - ♦ *High expectations, i.e. play with expectations*

- ♦ *Agent with limited authority, i.e. agent can't go further.*

5. Climates: Negotiations involve feelings. The feelings you create, intentionally or not, affect what you communicate to your opponent, with your words, actions and body language. Becoming aware of your feelings in the negotiation can help you see which climates you are creating and which climates you could create.

- ***Your Climates:***
 - Supportive vs defensive
 - Open-minded vs closed-minded
 - Reliable vs unreliable
 - Ethical vs unprincipled
 - Capable vs weak
 - Involved vs indifferent
 - Sensitive vs insensitive
 - Cooperative vs antagonistic
 - Reasoning vs unreasoning
 - Professional vs amateurish.
- ***Climates you create for others on your side:***
 - Supportive vs defensive
 - Open-minded vs closed-minded
 - Reliable vs unreliable
 - Ethical vs unprincipled
 - Capable vs weak
 - Involved vs indifferent
 - Sensitive vs insensitive
 - Cooperative vs antagonistic
 - Reasoning vs unreasoning
 - Professional vs amateurish.
- ***Climates you create for others who influence the opponent***
 - Supportive vs defensive
 - Open-minded vs closed-minded
 - Reliable vs unreliable
 - Ethical vs unprincipled
 - Capable vs weak
 - Involved vs indifferent
 - Sensitive vs insensitive
 - Cooperative vs antagonistic

- Reasoning vs unreasoning
- Professional vs amateurish.

6. Agenda. Agenda lists the issues you want to discuss in the negotiation and indicates the order in which you want to discuss them. Deciding how you will handle the agenda is an essential part of your preparation. This includes deciding how to order the issues in the most advantageous way.

- *Order of Issues*
 - Most favorable order.
- *Opponent's Order*
 - Opponent's most favorable order.

7. Mediation Dynamics

- *Type of Mediation:*
 - Caucus
 - Transformative
- *Our Opening*
 - High - Medium- Low
 - Format: Oral - Visual - Testimonial.
- *Anticipated Opponent's Opening*
 - High - Medium - Low
 - Format: Oral - Visual - Testimonial
- *Timing:*
 - Mediator's Schedule
 - Opponent's Schedule
 - Opponent's Decision Influencer's Schedule
- *Mediator's Style*
 - Offer Runner
 - Evaluator - Mediator's Suggested Offer
 - Settlement Developer - No negotiation.

8. Settlement Memorandum

- *Confidentiality Agreement*
- *Cost of Mediation*
- *Court Approval*
- *Formal Agreement.*

Note:

This Mediation Workbook was originally developed for our use. It's not fancy, slick , or for that matter "professional" looking. It's simply a workbook and checklist that we use in preparing for our Mediations or when one of us is asked to be a Mediator.,

We share it with you in the spirit that it will make your work easier.

Nick Critelli

CritelliLaw

Mediation Workbook



CRITELLILAW, PC
Iowa/New York/London