Introduction

Negotiation is a fact of life and negotiations occur every day, from the initial job interview, to increased space or staffing, to working with vendors. Very few of us are born negotiators, but with a few suggestions and a little practice, anyone can learn how to negotiate successfully. The most productive negotiations usually occur in an environment in which all the parties approach the situation before them as a mutually advantageous venture.

This AALL Resource Guide was created to help guide law firm decision makers and librarians through the steps of negotiation to achieve mutually satisfying results. It will help you to:

- Prepare for the negotiation process by completing an eight-step checklist.
- Keep the lines of communication open.
- Work through difficulties to achieve the desired results.
- Strengthen your negotiation skills.

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Today’s economy has caused law firms and legal departments to rethink how they practice law and to consider the changes that will need to be made as a result. Legal information professionals are faced with challenges and opportunities to help their firms and departments develop strategies and procedures aimed at improving efficiencies – conserving time, energy, and financial resources – and encouraging collaboration. Understanding the client’s perspective is an important issue that impacts how legal services are priced. Working more efficiently and reducing costs can increase the client’s perceived value, providing a competitive advantage.

All of these elements are taken into consideration by legal information professionals as they prepare project plans, consider contract renewals and manage staff and space. Through thoughtful planning and consideration, creative agreements can be reached allowing both parties to experience satisfaction and value. Successful negotiation leads to agreements that hold up; leaving both parties happy and stronger in their relationships with each other.

The business of law is a reality that firms need to face in order to survive. Every member of the law firm or legal department will be required to do their part to run the firm like a business and negotiation is critical for every business. Today’s legal information professionals have the training and experience to negotiate projects, contracts and agreements that result in a win-win strategy for all.

Negotiation
A discussion that leads to a win-win agreement

Law Librarians are Key Negotiators

With the aggregate of information-related costs often reaching nearly 5% of a law firm’s total budget, it is imperative that the firm’s key negotiator on legal information issues be the person with the critical knowledge base. As the staff member most knowledgeable about the firm’s information resources and needs, the information professional should lead or actively participate in any and all negotiations involving information decisions and services. The most effective law firm negotiating team would include the head of the library and other chief negotiators in the firm. These may include the office administrator, the managing partner and/or the partner who oversees the library. By keeping the negotiation team small, there is a better chance of reaching consensus.

A signed contract represents a commitment to work together to create value; it is the beginning, not the end, of a relationship. Librarians recognize that the best deal is the one that works well in practice, serves the needs of both sides, and provides the greatest value and service for their firms.

Working in the modern law library provides countless opportunities to put negotiation skills to the test – human resource needs, space allocations, vendor relations and contract leveraging. Librarians are natural problem solvers, and their professional training provides the foundation for positive and successful negotiation:

- Understanding needs
  Answering reference inquiries requires the librarian to ask a series of probing questions to uncover what the patron is really looking for. This process is similar to the give and take of negotiation.

- Dealing with People
  Diverse library clientele provide librarians with experience in dealing with all kinds of people, some with their own hidden agendas.

- Finding Information
  Research skills that librarians practice every day help in gathering information necessary for effective fact-based negotiation.

- Organizing Information
  Librarian training expedites the negotiation process by keeping things organized, on track and focused.
Negotiation Begins

Principled negotiation suggests that you look for mutual gains and where interests conflict, look for independent fair standards. No party should see a benefit in using manipulation, intimidation, or techniques designed to obscure the truth. All parties should come to the table well-informed about their own needs, and if possible have a good sense of what the other side might be expecting. Everyone should obtain what they are entitled to while behaving decently and fairly.

Preparation, planning, research and organization are essential to successful negotiation. Having more information at hand offers more options for negotiators to explore, and increasing the options facilitates principled negotiation. This involves deciding issues on their merits, analyzing both sides' needs, sharing information, and jointly exploring various options. The goal: a mutually beneficial and satisfactory agreement that leaves both sides with the desire to do business again. Negotiations based on interests, rather than positions, offer greater opportunities for success.

By contrast, positional bargaining – negotiation in which each side works to achieve its own self-serving, predetermined goals – can lead to intransigence and deadlock. Negotiating based on positions can become a contest of wills. The manipulative and strong-arm tactics some people employ to achieve their desired position can clinch the deal – or kill it, but such tactics usually damage the relationship, often severely.

Before you begin negotiating, it is important to find out as much as possible about the other side’s participants, whom you will be negotiating, their positions, goals, needs, and concerns, their authority, the schedule and time frame and the identity of the final decision-maker.

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Before you begin negotiating, it is important to find out as much as possible about the other side’s participants, expectations, and concerns. Conduct due diligence. Prior to meeting with the other party know the people with whom you will be negotiating, their positions, goals, needs, and concerns, their authority, the schedule and time frame and the identity of the final decision-maker.

Follow the steps below to ensure you are well-prepared to be an effective negotiator:

Step 1: Analyze Needs and Goals
Define your goals and objectives. What do you need that you don’t currently have? How have you met the need in the past? How will obtaining this improve your service? How much did you use last month or last year? What are the alternatives? How do alternatives compare? These are just a few questions to answer before beginning negotiations. Contemplate the other side’s concerns and issues. Gain as much information as possible about the other side through research and discussions with others. The better you understand their perspective, the easier the negotiation will be. However, understanding their point of view isn’t the same as agreeing with it!

Step 2: Separate Your Emotions from Process
Set aside emotions such as anger, frustration, anxiety, fear, resentment or uncertainty, so that they do not interfere with resolving the problem. Avoid attacking or blaming the other side, as this will only make them defensive and less open to agreement. Turning the process into a question of right or wrong impedes the achievement of a mutually agreeable solution.

Step 3: Review Your History
Examine previous and current contracts, review notes from previous negotiations, and solicit feedback from others who were involved in past negotiations. Analyze usage. This is important for print materials, online research, space planning, and other items under negotiation. Know what you have, how it’s used, and how you currently pay for it.

Step 4: Identify Interests, NOT Positions
Focus on common interests and areas where you already agree – this provides incentive to find common ground in other areas. Prioritize interests. Consider the other side’s interests and look for interests behind positions. Exchange ideas and information with the other organization prior to the first negotiation meeting. Develop a low priority for you, to meet a high priority for your counterpart.

Step 5: Create Options
Create alternative solutions to avoid positional negotiation. Recognize that there can be more than one option. Be flexible and innovative. Brainstorm possible solutions with colleagues within and outside your organization. Create what neither of you could do on your own. For more ideas, review case studies and literature on specific types of negotiations, e.g., salary, benefits, workplace conditions, construction, service contracts, or sales and licensing agreements.

Step 6: Develop Your Best Alternative To a Negotiated Agreement (BATNA)
What will you do if an agreement is NOT reached? What alternatives are outside the negotiation? You negotiate to obtain something better than what you would have without negotiating. What is your best alternative? That is the standard to measure against.

Step 7: Develop Objective Standards
Compile unbiased, factual data to be used as a basis for evaluating terms and explaining alternatives. Consider what others in the industry do. Consider precedent. What did we do the last time this happened? Why is a particular solution preferred? Look at benchmarks.

Step 8: Hold Preliminary Meetings or Discussions
Exchange ideas and information with the other organization prior to the first negotiation meeting. Develop a relationship not just with the people with whom you’ll be negotiating, but also the people with whom they work. Propose various options for mutual gain and ask the other side for their preferences, with the clear understanding that neither side will assume a commitment has been made. Propose that the other side participate in creating new options. People are more likely to agree to a solution when they participate in creating it.
During the Negotiation

In the time preceding the face-to-face session, most of the negotiator’s activities center on gathering information. At the moment that the session begins, the negotiator’s focus must be on the process – keeping conversation flowing, picking up body language clues, and mentally documenting things that are said or done that seem to impact upon the desired goals of all parties. Be patient; tolerate the need for the other side to “vent” and then engage.

Game Plan for a Successful Negotiation

- **Bring your background notes** to the actual session.
- **Prepare an outline of your key points** and periodically look at it during the negotiation.
- **Prepare an outline of your “give-away” points** and periodically look at it during the negotiation.
- **Take the leading role** at the very beginning of the negotiation by stating the purpose of this particular meeting, and recapping anything relevant from the past that might be important to note. Be prepared to build or maintain a relationship.
- **Be innovative and aim high** – it never hurts to ask for something not in the contract; you might get more than you expected.
- **Listen very carefully** and avoid misunderstandings. Look for interests behind positions. Prioritize interests – both yours and the other party’s.
- **Definitions** – be sure important terms are clarified to your satisfaction.
- **Verbally review where things stand** at appropriate points or pauses.
- **Don’t let prolonged silence** or even temporary “time out” requests concern you or throw you off.
- **Remain calm at all times** (e.g., breathe deeply); never openly display anger, annoyance or frustration.
- **Keep negotiations on track** and do not get distracted by small talk or off-topic comments or conversation.
- **Speak up immediately**, but courteously, if anything is said that does not conform to your understanding, or does not seem correct to you.
- **Make sure everyone knows his/her responsibilities** for the next step or follow up just before you are ready to conclude.

- **Documentation** – maintain an audit trail. Terms or changes should always be in writing (email can be okay).
- **References** should always be checked.
- **Contract date** should reflect the actual start date.
- **Leave lines of communication open**; the need may arise for further discussion or future negotiations.
The end of the negotiation marks the beginning of the negotiators’ reflection time. Evaluating the negotiation session with your team after the other participants leave can help clarify key elements of the conversation and enhance understanding of what took place. A strategy for going forward often becomes apparent in this postmortem session. For this reason, it is important not to overlook the value of personal and group debriefings.

Learning to negotiate effectively can reap great rewards for the negotiators, the points of view advocated and the relationships that are being built. Negotiation should not take place in a vacuum, but must be a process with clear goals, based on information. Librarians bring relevant professional skills to the table, and they also bring the knowledge of how information fits into the business of their organizations. Librarians, working with the other decision makers in the firm, can work to achieve positive results. We hope this Guide proves to be a useful tool in attaining them.

Know when to walk away from a negotiation; know your BATNA (best alternative to a negotiated agreement). Observe how others negotiate, both inside and outside your organization; discuss their negotiation experiences. Develop your techniques through training and practice; take advantage of available information and training programs.

Conclusion

Learning to negotiate effectively can reap great rewards for the negotiators, the points of view advocated and the relationships that are being built. Negotiation should not take place in a vacuum, but must be a process with clear goals, based on information. Librarians bring relevant professional skills to the table, and they also bring the knowledge of how information fits into the business of their organizations. Librarians, working with the other decision makers in the firm, can work to achieve positive results. We hope this Guide proves to be a useful tool in attaining them.

How to Become an Effective Negotiator

Get the big picture.

Strengthen your communication skills.

Do not interrupt.

Deal with relationship issues head-on. Avoid antagonistic or hostile responses or body language.

Don’t blame the other party for your problems.

Respond honestly and concisely to their questions.

Use facts and the principles of fairness to persuade others.

Be flexible and take a broad approach; be open to a wide range of alternatives.

Look for trade-offs that can turn potential into reality; consider options for joint benefit.

Recognize that each side has multiple interests.

Brainstorm possible solutions; solve the right problem.

Build consensus; start growing support early.

Reframe the process; consciously change the game by not reacting to the other party. Shape the negotiation process as well as the outcome.

Help others save face; it builds the groundwork for trust.

Build trust and encourage the other side to participate in dialogue.

Don’t close a deal until you have all the information you need and you are ready to close.
Licensing Contracts – a Checklist

- **Pricing/discounts** – Is pricing openly published and if not, why? What metrics are used to determine the pricing (enterprise, number of users, records, content, etc.)? Does this pricing metric fit with the firm’s business model? Does it provide a point for negotiating custom pricing? Are payments made monthly or annually? Are there circumstances that would allow for discounts?

- **Hidden or Added Costs** – Is any additional equipment required? Installation or consultant fees necessary? Travel/expense costs? Is training included? What about upgrades – are they included in the pricing or an additional cost?

- **Term of Contract** – Is it possible to get a better rate for a longer commitment? If you agree to a longer term, negotiate for an opt-out clause. Is there an automatic renewal?

- **Service and Support** – What level of support is available and for what hours? Who delivers the support – what are the qualifications? How is support delivered – phone, online, in person?

- **Training** – Who provides? Is it adequate? How frequently is it available? Is it included in the contract or is it an additional cost?

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Impacting Costs Through Negotiation

Knowing that one of their online service providers wanted to negotiate a flat rate agreement, the library team at the New York office of Skadden, Arps, Slate, Meagher & Flom LLP did their homework before meeting about contract terms. Recognizing the vendor’s motivation and the significant research volume involved, the team reviewed the firm’s three-year usage pattern and came to the table with a target monthly fee in mind.

The firm’s negotiating team, which included the director of finance, the controller and the law library director, presented their information and started at a reasonable but lower price point than they were willing to accept. Using humor but standing firm on their requests, the negotiators stayed in the driver’s seat and wound up with a contract close to their target price, additional services for the firm, the opportunity to track and compare usage month to month, and even an escape clause.

Ultimately, both parties walked away from the table with a handshake and a feeling they had benefited from the negotiation.

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A valued library staff member receives a job offer from another firm. The library manager convinces management to approve a significant counteroffer by presenting the staff member’s value to the firm – years of service, knowledge of attorneys and practice areas, cooperative style, commitment to working long hours when needed. The result: after interviewing the staff member to determine his/her job satisfaction and needs, the manager presents a counteroffer higher than the new opportunity and is able to retain the employee.

A firm move requires planning a new library, plus satellite locations, with space at a premium. The library director develops a collection database and space solutions that could be applied across several new office libraries. To determine space requirements, the library staff identifies how the library would change in the future – by interviewing practice groups, reviewing resource use, and considering options for space saving electronic formats. The team fights hard to add staff work areas and training space, knowing that information specialists’ skills and Internet training would be critical to the library of the future. The result: effective, efficient libraries across the firm – 10% larger space in the new libraries to accommodate additional staff.

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“The greater danger for most of us lies not in setting our aim too high and falling short; but in setting our aim too low, and achieving our mark.”

Michelangelo Buonarroti
Bibliography


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