

TIMELESS TRUTHS FROM GETTING TO YES, NEGOTIATING AGREEMENT WITHOUT GIVING IN

Fisher, Roger; Ury, William; Patton Bruce. Getting to Yes,
Penguin Books (2011 rev. ed.)

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What is Mediation?

“Mediation” means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement.

In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.”

Sec. 44.1011(2), Florida Statutes (2021)

“Mediation is a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and nonadversarial process intended to help disputing parties reach a mutually acceptable agreement.”

Rule 10.210, *Florida Rules for Certified & Court-Appointed Mediators* (Aug. 2021).

What is the role of the mediator?

“Mediation” “The role of the mediator is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute. The ultimate decision-making authority, however, rests solely with the parties.”

Rule 10.220, *Florida Rules for Certified & Court-Appointed Mediators* (Aug. 2021)

What is Negotiation?

“Negotiation is a basic means of getting what you want from others? It is back-and-forth communications designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed (as well as some that may simply be different.”

Getting to Yes, supra at Introduction.

Positional negotiation occurs when each side takes a position, argues for it, and makes concessions to reach a compromise.

Getting to Yes, supra at page 3.



Problems with positional negotiating:

1. Ego becomes involved
2. Parties become concerned with “saving face.”
3. Becomes a contest of will.
4. **The more attention that is paid to positions, the less attention is devoted to meeting the underlying concerns of the parties.**
5. **Hard on the people, soft on the problem.**

Getting to Yes, supra at pages 5 – 11.

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1. Negotiators (PARTIES & COUNSEL) are people first!
2. People are creatures of strong emotions!

Getting to Yes, supra at page 21.

Human needs:

1. Security
2. Economic well being
3. A sense of belonging
4. Recognition
5. Control over one's life

Getting to Yes, supra at page 50.

People factors:

1. Perception – the reality as each side sees it.
2. Emotions, ie. fear, worry, anger. This category includes feelings.
3. Communication – whatever is said by one side, the other is likely to hear something different.

Getting to Yes, supra at pages 24-34.

Perception

*“Most misunderstandings in the world could be avoided if people
would simply take the time to ask,*

*What else **could** this mean?” – Shannon L. Alder*

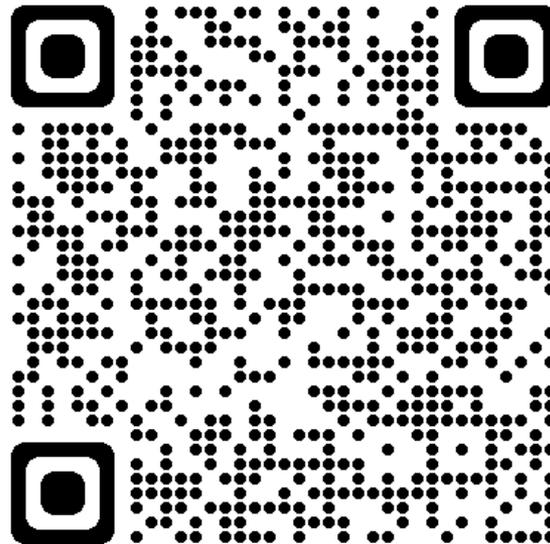
Emotions



Stress



Understanding Stress



Holmes TH, Rahe RH. The Social Readjustment Rating Scale. J Psychosom Res. 1967; 11(2):213-8.

The Holmes-Rahe Life Stress Inventory

<https://www.mdapp.co/holmes-and-rahe-stress-scale-calculator-253/>

How do people often feel and behave when they are under a lot of stress?

Anxious

- Afraid
- Trembling
- Unable to sit still
- Unable to relax
- Scared
- Fear of losing control
- Changes in breathing

Angry

- Shaking
- Changes in breathing
- Unable to relax
- Pacing
- Restless
- Tense
- Heart pounding

Beck Anxiety Inventory

<https://www.colleaga.org/sites/default/files/attachments/BAI-Beck-Anxiety-Index.pdf>

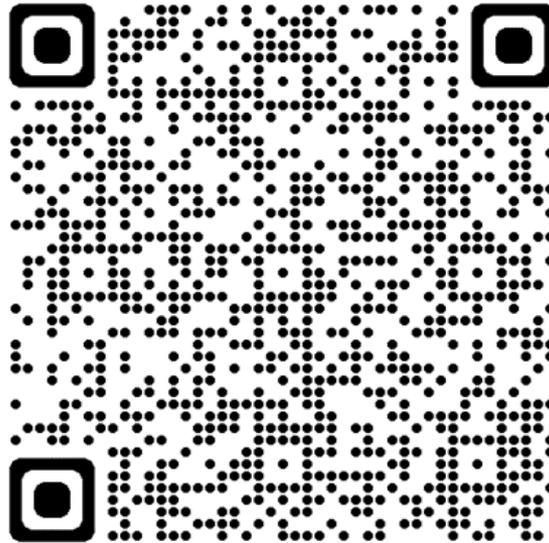
Communication

- Basics
- Barriers
- Skills and Techniques

De-escalating a Crisis



The National Alliance on Mental Illness: Navigating a Mental Health Crisis Please refer to page 7.



<https://www.nami.org/Support-Education/Publications-Reports/Guides/Navigating-a-Mental-Health-Crisis>

What *Not* to Do

- Make judgmental comments
- Overreact
- Argue or try to reason with the person

The National Alliance on Mental Illness. (2018). *Navigating a Mental Health Crisis*. Arlington, Virginia; The National Alliance on Mental Illness.

De-escalation Techniques

- **Calm** voice
- **Listen**
- **Express** support/concern
- **Ask** how you can help
- **Keep** stimulation level low
- **Offer** options instead of trying to take control
- **Be patient**

The National Alliance on Mental Illness. (2018). *Navigating a Mental Health Crisis*. Arlington, Virginia; The National Alliance on Mental Illness.

Negotiation Styles. What is your style? Hard or Soft?

1. Hard – contest of wills, wants to “win,” takes extreme positions causing the other side to do the same making resolution more difficult.
2. Soft – Avoids conflict, gives in to reach agreement. Ends up feeling exploited and bitter.

Getting to Yes, supra at Introduction.

PRINCIPLED NEGOTIATION: A BETTER WAY!

“The method of principled negotiation developed at the Harvard Negotiation Project is to decide issues on the merits rather than through a haggling process focused on what each side says it will and won’t do. It suggests you look for mutual gains whenever possible, and that where your interests conflict, you should insist that the result be based on some fair standards independent of the will of either side. The method of principled negotiation is hard on the merits, soft on the people. It employs no tricks and no posturing. Principled negotiation shows you how to obtain what you are entitled to and still be decent. It enables you to be fair while protecting you against those who would take advantage of your fairness.”

Getting to Yes, supra at Introduction (emphasis added)

THE FOUR ELEMENTS OF NEGOTIATION:

People: Separate the people from the problem.

Interests: Focus on interests, not positions.

Options: Invent multiple options looking for mutual gains before deciding what to do.

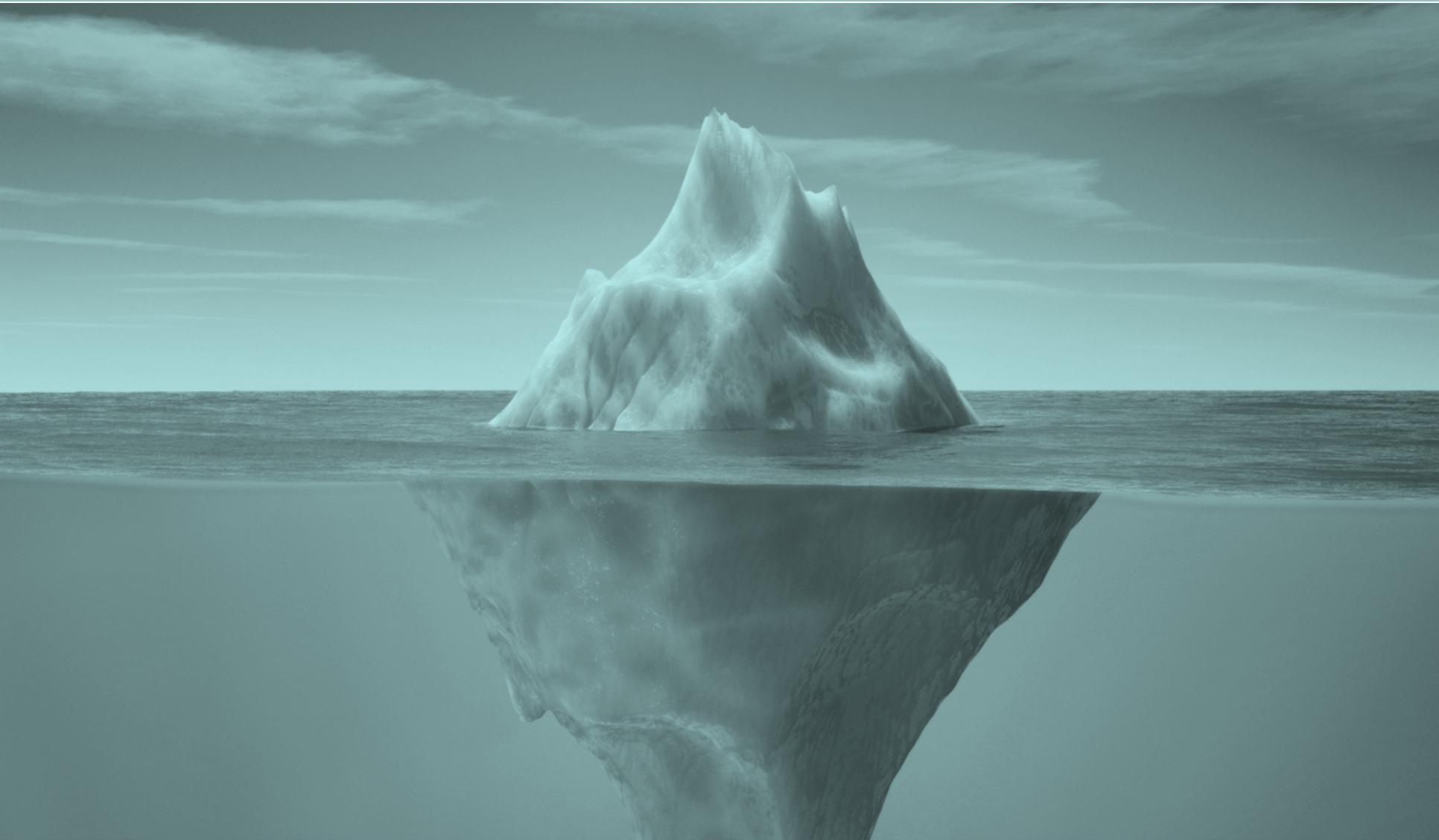
Criteria: Insist that the result be based on some objective standard.

Getting to Yes, supra at page 11.

“We are creatures of strong emotions who often have radically different perceptions and have difficulty communicating clearly. Emotions typically become entangled with the objective merits of the problem. Taking positions just makes this worse because people’s egos become identified with their positions...[h]ence, even before working on the substantive problem, the “people problem” should be disentangled from it and addressed on its own...[s]eparate the people from the problem.”

Getting to Yes, supra at page 12.

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Invent options for mutual gain beforehand. Negotiation need not be a zero-sum process.

Id.

Select a standard for the result that is independent of the will of either side, ie. market value, expert opinion, custom or law. Perhaps the Jury Verdict Reporter in certain cases.

Getting to Yes, supra at page 14.

The 3 stages of negotiation:



1. Analysis
2. Planning
3. Discussion

Id.

Analysis stage – The mediator is simply trying to diagnose the situation, gathering information, organizing it, and thinking about it. The mediator will want to consider the people problems of partisan perceptions, hostile emotions, and unclear communication. The mediator will also want to identify the interests of all both (or more) sides. The mediator will want to note options already on the table and identify any criteria already suggested as a basis for agreement.

Id.

Planning stage - During the planning stage the mediator deals with the same four elements a second time, both generating ideas and deciding what to do. How do you handle the people problems? Of the interests, which are most important? What are some realistic objectives? The mediator will want to generate additional options and additional criteria for deciding among them.

Id.

Discussion stage – As the parties communicate back and forth, differences in perception, feelings of frustration and anger, and difficulties in communication can be acknowledged and addressed. Each side should come to understand the interests of the other. Both can then jointly generate options that are mutually advantageous and seek agreement on objective standards for resolving opposed interests.

Id.

Points to Remember:

- Encourage parties to put themselves in the other side's shoes
- Encourage parties not to assess blame (when possible)
- Say things the parties (and their counsel) want to hear
- Make sure the parties participate in the process – creates buy-in
- Try to understand each side's emotions, ie., fearful, worried, angry
- Recognize and acknowledge core concerns
- Recognize emotions as legitimate
- Allow people to vent
- Don't react to emotional outbursts
- Look for shared and complimentary interests

Getting to Yes, supra at pages 27 – 45.

Best
Alternative
To
Negotiated
Agreement

Know each side's **BATNA**

Getting to Yes, supra at 99.

WINNERS / LOSERS / A LITTLE BIT OF EACH

A wise agreement can be defined as one that meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and when applicable, takes community interests into account.

Getting to Yes, supra at page 4.



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Dynamic legal nurse consultant and credible expert witness who is an experienced nurse and educator, with formal training in Nurse Paralegal Studies and Board Certification in Psychiatric-Mental Health Nursing. Providing supportive medical-legal services for both civil and forensic casework, to include medical malpractice and negligence, nursing home abuse and neglect, and psychiatric-mental health care litigation. Excellence in making complex medical issues easy to understand for legal professionals, their clients, and members of the jury.

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