

THE TOP FIVE THINGS EVERY LAWYER SHOULD KNOW ABOUT HOW TO BE AN EFFECTIVE DEAL-MAKER

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Wise advice about deal-making, from an article in the *Practical Lawyer*:

1. Keep the focus of the deal in perspective.

Don't lose sight of the client's overall goal by focusing on legal technicalities. Remind yourself to evaluate whether you are losing sight of the forest through the trees by negotiating any provision too thoroughly and missing its true significance in the context of the overall transaction.

Prioritize which points are truly significant business or legal issues and which are just nice to have but not essential.

The goal is to get the deal done; improving the contract is just part of the job. You are not paid by the number of issues you spot or the number of points you win. You are paid based on spotting the main issues and helping the client extract as much protection on those issues as possible.

2. Remember that the deal is about the clients and the business and not about the lawyers.

Separate your and your adversary's personality from the issues. Your role is to facilitate the best result for the person that pays your bill.

Give every lawyer the benefit of the doubt to earn your trust or disdain. Never underestimate anyone. Never overestimate anyone, either. Judge the adverse lawyer only on the merits of what he or she says.

3. Try not to concede points too early or too late.

Making concessions too early is likely to make the other attorney think that he or she can get more concessions from you, not that you are willing to cooperate, and that he or she should make concessions to you. On the other hand, if the concession is offered too late, it may be perceived as woefully inadequate.

4. Always Try Win-Win.

Even if the other side is just plain wrong on many if not all of the issues, let them win something. If you can sprinkle a few concessions to your adversary, provided your munificence is relatively meaningless, everyone wins.

Find out why the other side needs something and see if it can be accommodated without disrupting your client's needs. This helps to create win-win situations. Further, accommodation should win reciprocal good turns and facilitate the transaction.

When you receive an extensive markup of a draft, understand the other side's reasons for the changes or deletions. Find out whether there exists a fundamental misunderstanding of each side's needs or whether a rationale for the deletion makes sense. If the changes do not fundamentally alter the deal or conflict with the goal that your client has in mind, consider conceding them as the most effective way to move the deal.

5. When a question goes beyond a narrow legal issue, do not shrug your shoulders and say, "It's a business decision."

Offering your opinion makes you part of the client's team and no one will be fairly faulted for offering a reasonable opinion about a matter.

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