

organizational or individual clients paid us for the years of negotiating about ATM access. Instead, at the end of each negotiation, we sought our attorneys' fees from the banks as the ADA allows. The nature of the collaborative law process could have caused our clients to forfeit rights under fee shifting statutes, leaving us without compensation.

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Without a complaint on file, we had engaged in negotiation with a certain kind of opening letter, a defined ground rules document, and a non-adversarial way of sharing information. We had found a cost-effective and productive method for introducing expertise, one that honored the knowledge and experience of our clients as well as traditional experts. And we had intentionally adopted an *attitude* of collaboration in doing our work. The early bank cases had evolved into negotiations with a particular structure. Structured Negotiation.

We made it official in June 1999, including the term in the first Structured Negotiation opening letter sent after the early bank cases. Since that time, with clients across the United States, I have negotiated more than 60 cases in the process. Other lawyers and clients have relied on the method too. Adhering to the elements of Structured Negotiation has made this possible.

## **Elements and Stages of Structured Negotiation**

The idea of resolving a complex—or even a simple—claim without a lawsuit on file can be intimidating. Even though well over 90 percent of cases filed in the United States settle, most lawyers doubt that settlement discussions can begin in earnest without a lawsuit. Even access to a mediator seems viable only after a complaint is filed and money has been spent on discovery and motion practice.

When a complaint is served, the parties enter upon a well-worn path. It is strewn with procedural tools—some useful, many cumbersome and expensive—that are designed to lead to claims resolution. The process starts with a deadline for the defendant's response to the complaint. When information is needed to pursue or defend a claim, decades-old mechanisms are available: depositions, interrogatories, requests for site inspections, and production of documents. Court rules and legal opinions govern all aspects of expertise, from who can serve as an expert to how that person's skills and knowledge can be introduced—and attacked. A judge or magistrate can be called upon if rules are not followed, or whenever parties cannot reach agreement on their own.

But in Structured Negotiation there is no legal complaint. What makes the recipient answer the letter that begins the process? How is relevant information exchanged without discovery rules and a third party to enforce them? How do experts share their knowledge without affidavits, depositions, and

trial testimony? How can parties reach resolution without a judge, magistrate, or arbitrator making decisions, or without a mediator prodding them toward settlement?

Twenty years of practicing Structured Negotiation have answered these questions. From preparing a case to enforcing a settlement agreement, the components and strategies of Structured Negotiation make it possible to resolve civil claims without discovery, judges, motion practice, conflict-induced stress, or lingering ill will between parties.

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The Structured Negotiation roadmap comprises seven stages. The elements of each stage lead to satisfied clients and enforceable settlement agreements. The language of Structured Negotiation (Chapter 2) and the Structured Negotiation mindset (Chapter 16) infuse each element at every stage, moving the case toward resolution.

### **Stage One: Preparing a Structured Negotiation Case (Chapters 3, 4, 5)**

- ✓ Determine if case is suitable for Structured Negotiation
- ✓ Discuss collaborative approach with clients and agree on strategy
- ✓ Establish formal lawyer–client relationship
- ✓ Arrange for co-counsel if desired
- ✓ Draft opening letter

### **Stage Two: Establishing Ground Rules (Chapter 6)**

- ✓ Evaluate initial response to opening letter
- ✓ Inaugurate positive relationships among all counsel
- ✓ Explore willingness of would-be defendant to engage in alternative process and explain advantages
- ✓ Negotiate and execute the Structured Negotiation Agreement (ground rules document)

### **Stage Three: Sharing Information and Experts (Chapters 7, 8)**

- ✓ Request and review documents and answers to written questions
- ✓ Arrange and attend meetings and feedback sessions
- ✓ Conduct site visits
- ✓ Integrate expertise (of traditional experts and clients)

**Stage Four: Moving Negotiations Forward (Chapters 9, 10)**

- ✓ Dismantle assumptions to move negotiating partners toward resolution
- ✓ Create (and value) small steps toward a big goal
- ✓ Protect negotiating turf

**Stage Five: Handling the Unexpected (Chapter 11)**

- ✓ Add new claims or claimants
- ✓ Expand (or temporarily reduce) requested relief

**Stage Six: Drafting Settlement Agreement (Chapters 12, 13)**

- ✓ Begin drafting process
- ✓ Develop contract language to conquer fear
- ✓ Consider possible incremental steps
- ✓ Think broadly about remedies
- ✓ Negotiate about money
- ✓ Decide if a mediator (or court approval) is needed or desirable

**Stage Seven: Post-Settlement Strategies (Chapters 14, 15)**

- ✓ Implement media strategies (and other ways to honor negotiating partners)
- ✓ Monitor and enforce settlement agreement
- ✓ Handle breaches

Together, these elements comprise Structured Negotiation, a valuable tool in the toolbox of claims resolution.