

25 WAYS TO MOVE THROUGH IMPASSE

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1. Break down the issues into smaller parts and identify which issues are the most difficult and which are the easiest. Then work together on what issues could be dealt with first. Sometimes the easiest are good to do first to establish momentum, other times it's good to address the difficult ones first.
2. Focus on areas upon which parties have already agreed. Summarize on white board or flip chart so they can see what they have achieved already. Use momentum of past successes and highlight the differences already surmounted to motivate the last leap and demonstrate how little it is by comparison.
3. Set aside a small to mid-sized reciprocal issue until you reach the point of impasse, and then pull it out as a final bargaining chip to bridge the last gap.
4. Inquire for specifics as to why a particular alternative is unacceptable in order to discover the underlying interests that might be addressed with other non-economic solutions.
5. Make a list of the parties' priorities and interests in order to identify what is common to both, and list them for both parties.
6. Caucus with each party separately to explore hidden agendas and willingness to compromise and to discover if the bottom line is really the bottom line.
7. Brainstorm, out loud and with the parties contributing, some non-economic negotiation elements: apology, confidentiality agreement, continuing business relationships, introduction to other business partners, shared custody.
8. Switch players - have attorneys meet without parties, parties meet without the lawyers, stay in joint session for the duration of the mediation. Find out what information you can in this new permutation and how you can use it to settle the case.
9. Role play - have each attorney and/or party make a presentation of what the other side's perspective of the case may be or what their side's weak points are.
10. Test for emotional investment in a particular issue by asking what it would take to get the interested party to surrender that issue.
11. Ask each party what would change for the better if they were able to reach a solution today. Get them to taste how sweet a resolution would be.
12. Push the envelope by asking "What if?" Narrow the gap by saying "If I can get the opposing party to offer \$X, by how much are you willing to alter your position?"
13. Tell the parties you are stuck and ask them how they would propose to resolve the case.
14. Confront one or both sides about what they are doing and the likely results of continuing that way. Make them understand that a resolution that day is in their best interests.
15. Identify issues that seem to be in the way: money, respect, prestige, trust, hurt, etc., and ask the parties to comment on how important each is and what seems to be most in the way of breaking the impasse.
16. Ask each what they stand to lose if they don't settle this day.

17. Take a break to recharge and give the parties a chance to reflect without the pressure of session.
18. Explore splitting the difference.
19. Test the margins of their max/min by asking if they would pay/give up another \$100 to make the case go away.
20. Ask the parties if they want to end the mediation so they can appreciate the money and time they have already invested and become motivated to settle.
21. Explore having them agree to a high-low provision.
22. Explore delayed payment, installment payments, or other “structured” method that may avoid the distaste and impact of an immediate lump sum payment.
23. Explore a contingent agreement that will not go into effect if a specific future event happens/doesn't happen.
24. If asked, create a mediator's proposal if all else fails.
25. Baseball mediation – have each party pick a number and the mediator select one of those two. The parties will then pick their very bottom line number out of concern that the mediator will pick the other party's number. Also a last resort.



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