By Steven G. Mehta

How to Calculate an Opening Offer

Identifying the right offer can make the difference in settlement negotiations

ne of the most common questions about negotiation and mediation is whether there is a secret to making initial offers or demands. The issue of making an opening offer, although seemingly simple, is fraught with complexities that depend on the circumstances of the case. As such, it is impossible to make a definitive statement or apply only one formula for making an opening offer. Instead, the opening offer depends on a balanced judgment of numerous factors.

First, an attorney must consider what type of relationship is involved in the case. The evaluation of this relationship is critical because making the wrong initial move could hamper or inhibit further discussions. It is important for an attorney to ask the client whether the dispute involves a one-time transaction (as in personal injury litigation) or a relationship that must continue in the future, such as a business or family relationship. The opening offer can vary based upon the value of the relationship. For example, if the parties in an employment case want to continue their relationship, both sides may be inclined toward a moderate or cooperative initial stance to try to preserve the relationship. Studies have shown that when parties are more familiar with each other, they are more inclined to start with moderate demands or offers and make greater concessions. On the other hand, if the case involves, for example, an employment relationship that has definitely ended, the parties may be inclined to make a more aggressive or competitive opening move.

After determining the value of the continuing relationship, if any, it is important to develop sufficient information about your position, the other side's position, and the motivations of the parties. A British study evaluated how much time effective negotiators spent evaluating the common interests and concerns of the other side. The study revealed that effective negotiators spend four times more time than average negotiators evaluating the motivations and interests of the other side. They do so in order to ascertain shared concerns and interests. The study also showed that better negotiators spent twice as much time as the average obtaining information, testing for understanding of the positions, and clarifying issues. With this in mind, before making an opening offer, prepare yourself with enough information to arrive at the optimum amount.

After you have determined the value of the relationship and obtained sufficient information to make an informed judgment of the potential value of the case, it is important to shoot for the stars. Regardless of other factors, it is always good strategy to have strong expectations of success. By asking for the impossible, you may obtain the best possible deal. This principle is confirmed in several studies that demonstrate that, in negotiating and in less formal social encounters, the higher a person's expectations are, the better are the results that person will obtain. One study of this phenomenon involved two sets of negotiators, with the one difference between their initial conditions being what was considered a satisfactory result. The negotiators that were given the higher expectation consistently outperformed the others.

How Optimism Works

This does not mean that you can make an outrageously high or low offer. The optimistic offer must at least be supportable by some presentable evidence or argument. It is not necessary to be able to support your initial position with your best argument, but it is necessary to support your offer with some argument or evidence. The difference between an outrageous and an optimistic offer is that the former cannot be supported and the latter is supported by an optimistic evaluation of the facts. For example, in an employment case for sexual harassment, the defendant may open with an offer in the range of four or five figures. This position may be supported by the fact that many employment cases are settled or won outright by the defense for similar sums.

The principle of optimism in offers or demands is also supported by additional sociological and psychological research. For example, researchers have shown that all people are affected by the concept of anchoring. When given a set of numbers, people will adjust their expectations based upon the first numbers they hear. One study demonstrated that when people were presented with a string of numbers and asked to guess their sum, people estimated that the sum was

higher when the group of numbers was shown to them in highest-to-lowest order rather than lowest-to-highest. When the demand and the offer in a case are realistic, they may anchor the expectations of both sides to a more moderate number.

Knowing when to compete and when to cooperate is very important in determining the outcome of negotiations, and opening offers and demands are an extremely important part of this balance of forces. Moreover, getting as much information as possible and setting optimistic goals can mark the difference between a successful negotiation and a highly successful negotiation. Thus, the secret to making an opening offer is to make a good judgment of the circumstances and act accordingly.



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