

Case of Dana and Jan Putnam - Instructions for Negotiation Plan

Lawyers must write a memo for your file so that you can be as prepared for the ultimate negotiation as possible. You should draft the memo before your meeting with your client on _____ and then make any appropriate revisions based on your meeting. Drafting this memo before your meeting should help you identify issues to discuss with your client.

Use headings from the format below. In deciding what to include and how to present it, consider what would be most effective in helping you prepare for the negotiation. Some of your responses may be as short as a single sentence and some will need several paragraphs. This memo should be no more than about 5 double-spaced pages.

Lawyers must email a copy of the memo by _____.

If you have any questions, please let me know.

Format for Negotiation Plan

Description of Dispute and Legal Case

1. **Factual Summary.** Include a brief chronology of events, description of key undisputed facts, and description of key disputed facts.
2. **Critical Legal Issues.** List key legal issues that the parties are likely to disagree about. Write a paragraph for each key legal issue. In each paragraph, summarize each side's position each issue and the likely court decision on each issue (e.g., court "almost certain" or "likely" to rule that X" or the court ruling is "uncertain and would probably depend on Y"). Include a few key cites for each issue.
3. **Appropriate Result.** Plaintiff should include an itemization if appropriate. Defendant should state what relief, if any, would be appropriate if the case is tried.
4. **Discovery Status.** Identify additional information needed, if any, to be ready for trial.

Settlement Analysis

5. **Interests of Your Client.** Summarize what is most important to satisfy your client and motivate him or her to settle this case.

6. **Interests of Other Party.** Summarize what you assume is most important to satisfy the other party and motivate him or her to settle this case.
7. **Information Strategy.** List key information that, in negotiation, you want to: (a) provide to the other side, (b) avoid providing to the other side, and (c) get from the other side. The memo should list separately items in each of these three categories.
8. **Barriers to Settlement.** List obstacles to settling this dispute and tactics that might overcome the barriers.
9. **Key Elements of Negotiation Strategy.** Based on the preceding analysis, summarize a plan that you think would be most likely to achieve your client's key interests. Considering that a successful negotiation is likely to require one or both sides to change their perspectives, what can you do that is most likely to change the other side's perspectives.