

## Front Seat or Back Seat During Negotiations?

Today's question is not: Should I, the shrewd executive or entrepreneur, retain an attorney? I addressed this question in an earlier post, **“When negotiating executive compensation, do you need your own counsel?”** As I explained in that post, you, the shrewd executive or entrepreneur, should strongly consider obtaining outside counsel before entering into any significant personal negotiation, whether with your soon-to-be employer, or alternatively, with your soon-to-be ex-employer. Today's question is: Should my attorney be negotiating for me or should my counsel be taking a back seat during negotiations?

Whether you just received the best offer of your life or the devastating news that your employment has been terminated, you may be in an excited, and perhaps even a vulnerable, state. You may want your attorney to handle all negotiations on your behalf, but that might not be the best choice.

Whether to let the other side know you are represented and how involved your attorney should be in the negotiations is a case-by-case judgment call. There are times when your attorney should handle negotiations on your behalf, but more often than not, it may be better for you, the executive or entrepreneur, to handle the key terms of your deal with the employer's/investor's principal, leaving your attorney to act as “shadow counsel.” In many cases, you doing the negotiation will get you further in terms of deal points and expedite the negotiation process, thereby, maximizing your chance of realizing what you want from the negotiation. This is often the case even where the principles strongly dislike each other and even in situations where one person has fired the other.

You might be thinking, “Then why do I need an attorney?” Even though your attorney will not be visibly driving the negotiation process, in many cases, he or she will be playing a key role as your shadow counsel, assisting you so that you maximize your chance of an optimal negotiating outcome. Look to your attorney for sage business and legal advice to guide you through the negotiations. While your attorney might not physically be at the negotiating table, he or she should have helped you develop your roadmap to success.

There are, of course, times when your attorney should be out front negotiating on your behalf. One example, during complex transactions, such as a merger and acquisition, it may be best for your attorney to negotiate on your behalf. A second example, if there is significant dysfunctionality in the principal-principal relationship, you may be better off having your attorney negotiate for you.

Even when your attorney has been shadow counseling you, he or she will often become lead “late-stage negotiator.” Once you and the principal on the other side have agreed on the key business terms of your deal, your counsel will probably become directly involved in documenting the deal and negotiating the legalese of the transaction. While this step may take even longer than your initial negotiations, it will hopefully end with

signatures on the dotted line. And, if you've retained a skilled practitioner, in many cases the wait will be worth it.