

# Developing Your Best Alternative to a Mediated Agreement

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## BATMA



### Your Best Alternative to a Mediated Agreement

(Adapted from the Harvard Negotiation Institute's BATNA:  
Best Alternative to a Negotiated Agreement)

- ☞ Negotiation concept, preparation stage
- ☞ What if' this case doesn't settle now
- ☞ Shifts the emphasis from producing agreements to making good decisions
- ☞ Rejected offer, when compared to BATMA, is considered a success, not failure

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## The Questions



What if ...

- ☞ Settlement conference fails
- ☞ Case is fully investigated
- ☞ Settle later
- ☞ Litigation initiated
- ☞ Case dropped
- ☞ Demands are lowered/raised



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## Can Mediators Help Parties Develop Their BATMA?

- ☞ Should mediators help the parties develop their BATMA?
- ☞ What are the risks and rewards of having a well thought out BATMA?
- ☞ When should one's BATMA change?
- ☞ Under what circumstances would a party accept a negotiated settlement that was worse than their BATMA?

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## BATMA Preparatory Steps

1. Know a good outcome for your side and the other side
2. Look for opportunities to improve your value, remove or reduce constraints
3. Look for opportunities to destroy their value, cast negative net over terms or conditions
4. Learn as much as you can about the other sides "settlement culture"
5. Have a "reservation price"
6. Estimate their reservation price



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## BATMA Prep Steps Continued

7. How important is the future relationship
8. Who else will be impacted by the agreement
9. How important is the issue in dispute
10. Sharpen your pencil
11. Who will be the real decision makers
12. Remain flexible as circumstances change



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## Develop Auto BATMA

☞ Wish to purchase a new 2011 Ford Mustang, fully equipped with leather and wood interior, technology package, spoiler, moon roof, upgraded stereo, customized paint treatment, and extended warranty. List price is about \$55,000

☞ Your current car is a 2006 Toyota Camry with 45,000 miles, in excellent condition (after the recall repairs)

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## BATMA Considerations

- ☞ Do not know what will happen
- ☞ Cost in dollars of each scenario
- ☞ Opportunity costs of each scenario
- ☞ Emotional costs of each scenario
- ☞ Improve your BATMA with new alternatives
- ☞ Weaken their BATMA



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## When to End a Mediation

☞ Their best choice for strategic and practical reasons may be to end the mediation and fight the dispute in court or walk away

☞ No party should agree to something that would be worse than their BATMA

☞ Knowing and guessing another's BATMA is both science and art



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## Other Reasons to End a Mediation



- ☞ BATMA will not help if:
  - ☞ Bad faith
  - ☞ Lack of capacity
  - ☞ Disruptive to process
  - ☞ Demands not ethical or illegal
  - ☞ Dispute over a matter of law, not facts
  - ☞ Limited authority to settle dispute

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## Case L (Part 1)



☞ You are the Complainant, currently a GS-K, who applied for a one grade promotion to a GS-L. You were interviewed and not selected. You filed an EEO complaint based upon sex. The last four similar selections were all of the opposite sex. You do not have an attorney. However, you did consult with an attorney who said your chances for success before an EEOC judge were about 50%. You do not know the qualifications of the other individuals interviewed but not selected.

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## Case L (Part 2)



You are the agency representative. The complainant applied for a one grade promotion to a GS L. He/She was interviewed and not selected. He/She filed an EEO complaint based upon sex. The last four similar selections were all of the opposite sex. He/She is not represented by an attorney. The agency attorney believes the chances for success before an EEOC judge will be about 50%. You believe the qualifications of the other individuals interviewed but not selected exceed those of the complainant.

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