

Alternative Dispute Resolution

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‘And I’d Like Your Firstborn’: Handling Hardball Tactics

LEE WALLACE

THE LAWYER ON the other side has been impossible to deal with throughout the litigation. You had hoped mediation would put an end to the ordeal, but so far the other side is taking such outrageous positions that you are wondering whether you should pack up and head home.

Don’t give up! You can successfully mediate with a hardball negotiator, but you are going to have to toss the rulebook you normally use. Try these methods to get your settlement discussions back on track.

1. Set goals before mediation starts.

Before mediation begins, think through the reasons you want to settle the case and

consider your alternatives. If the other side becomes unreasonable, you need an unshakable focus on where you are headed and why, so you can avoid being sidetracked.

2. Avoid an emotional response.

Sure, you’re tempted to react emotionally, cram your papers in your briefcase and slam the door on the way out. But if you avoid the emotional response, you can stay focused on the real task: getting the case settled. A crazy demand is just a demand—it’s not a fact unless you choose to agree to it.

When you reach peak frustration levels, go back to that original goal, the one you

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Making the Case for Presuit and Early Mediation

GREGORY J. PARENT

WHERE RESOLUTION SHOULD always be the ultimate goal, early or presuit mediation may serve a vital role as a vehicle for exploring settlement in high stakes cases such as medical malpractice and nursing home litigation, where protracted costs can be avoided by all parties.

Regardless of when a case is mediated, even jaded skeptics should come to the negotiation table with a plan and pathway toward resolution, especially when such an outcome seems unlikely. Often the process of mediation causes shifts in strategy by one or more parties. When

those parties, who never contemplated seeing things differently, do not have a plan to move forward, mediations stall out. Fortunately, even in those situations, the mediation process usually provides a strong foundation of trust which may allow the neutral to capitalize on continued settlement negotiations further down the road.

While the individual methodologies may be as unique as the personalities involved, there are three basic tenets on which one can build a successful platform to explore resolution at an early mediation. They can be summarized as follows: *Evaluate, Elucidate, and Elevate.*

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