

Handling Bad Behaviour and Difficult Personalities at Mediation

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HANDLING BAD BEHAVIOUR AND DIFFICULT PERSONALITIES – at MEDIATION

Lawyers have a long-established reputation of being difficult and behaving badly. Some might say that lawyers are inherently difficult and often behave badly because it is expected (even required) of them in order to effectively advocate for their clients.

The poor reputation of lawyers is undeserved; and good lawyers recognize that effective advocacy is never uncivil. However, I suspect that most lawyers have encountered difficult personalities and bad behavior (rudeness, yelling, refusing to acknowledge someone), especially during direct negotiations on contentious issues. Therefore, it is useful to have strategies for how to deal with personalities and behaviors that are less than civil.

Some people (lawyers, adjusters, plaintiffs and defendants) approach Mediations with no interest in forging mutually beneficial agreements. They are only interested in getting what's good for them and they don't mind abusing other people in the process. They play hard ball. When someone will not truly engage in the Mediation process, it is helpful to have strategies that will keep you from getting manipulated or drawn into mirroring bad behavior. When you meet with someone at Mediation who doesn't want to engage, you can protect yourself and your client without adopting their bad behavior.

John Patrick Dolan, an attorney and Certified Specialist in Criminal Law in Palm Springs, California, is a recognized expert in the field of negotiation and has spoken about and published strategies for how to deal with opposing parties in negotiations. I have adopted the following strategies from his published works and would encourage a review of his book: *Negotiate like the Pros, The Essential Guide to Effective Negotiating*, by John Patrick Dolan.

Always Maintain Your Standards

If a person approaches negotiations aggressively out of ignorance, you may be able to win them over eventually. Most people don't really want to make enemies; they just fear being cheated. If you can demonstrate to them that you're interested in a fair deal, they will usually drop the aggressive routine and work with you.

Never compromise your own standards, even when tempted by an impossibly difficult counterpart. Keep in mind the saying, "When you fight with a pig, you both get dirty – but the pig likes it." In other words, even if you win, you've lost by stooping to their lower level. So maintain your own high standards.

Don't Fight Back Directly

Fighting with others is always difficult and usually less productive than working together to produce an acceptable agreement. When you're pitted face-to-face with an aggressive counterpart, don't resist their attack by being belligerent or aggressive in return. If they insist on their position, don't counterattack with yours. Try asking them, "Why do you feel that's the only option?" or "How do you think that will affect my client?" By asking them to provide an honest explanation for why their offer is reasonable, you force them to think about both sides of the issue.

When the other side attacks your position or your ideas, ask for more specific input. Ask them to explain exactly what they don't like about your position or your offer. By inviting their criticism, you force them into working with you.

Use the Mediator

The Mediator is an impartial person with no links to either side of the negotiation. He/she can help to guide the process.

The Mediator can shift the negotiations from positional bargaining (which is usually unhelpful) to interest-based bargaining. By viewing all sides objectively, the Mediator can work toward agreements that take into account everyone's interests and help prevent one side from manipulating the other.

End the Mediation

When you can't persuade your counterparts to negotiate honestly and openly, and a Mediator can't help, then abandon the negotiations, at least temporarily. Sometimes deals aren't meant to be made. Sometimes you can strengthen your position by walking away from the negotiations. Sometimes both parties need to reconsider what they really want and what they are willing to give.

Certainly, walking away is a last resort, but if the other side continues its bad behavior, it might be the only option. Importantly, the way you walk out makes a difference. As an example:

"Obviously we're getting nowhere. Let's take some time to rethink things and if either of us comes up with a new idea we can meet again."

With these parting words, either party can call another meeting without weakening their position and, most importantly, you leave options open.

When you maintain your high negotiating standards and protect yourself by not directly fighting back, you maintain a mature level of communication. If that doesn't work, ask the Mediator to help more directly with the process, but keep in mind that you can always appropriately end the Mediation, as a last resort.

- **Don't reward difficult behavior by responding likewise.**
- **Don't React.** Take time to cool off and gather your emotions. The most natural thing to do when faced with a difficult person or situation is to react. Give yourself time to think and remain focused on identifying the real needs and interests of the other party and your client.
- **Attack the Problem, Not the Person.** Keep an objective eye on the problem and detach any feelings about the person presenting it. Try to understand what the actual problem is and generate possibilities for settling it. Don't attack the other person. Be hard on the problem and soft on the person.
- **Show respect, try not to interrupt, and avoid using hostile words that inflame**
- **Practice Direct Communication.** Speak directly to the other party. Be clear about points of agreement, about purpose, and about needs.
- **Give Timely Feedback to difficult behaviour.** **Difficult behavior is not always intentional** and the person may be unaware that his or her behavior is causing a problem or may not understand the impact of their behavior. By giving timely feedback about specific behavior - misunderstanding can be avoided and expectations clarified. Example: "I feel frustrated when you interrupt me when I am speaking. It appears that you are not prepared to consider what we are saying. I would appreciate it if I could finish with what I am saying."
- **Above all - rise above the bad behavior of others and maintain your high standards of negotiation.**

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