
Dealing with the Difficult Lawyer During Negotiations

LISA L. DECECCO

Dealing with difficult lawyers is a topic familiar to all of us. One natural reaction is to be difficult in turn, but fighting fire with fire tends to result only in a very big fire. Similarly, refusing to negotiate at all leads to trial, which ill suits the needs of most clients.

There must be a more effective means of dealing with the lawyer on the other side when he or she is being difficult. Lisa L. DeCecco suggests some positive, yet effective, means of settling a case with a difficult lawyer on the other side of the negotiating table.

The negotiations process is replete with impediments that often make striking a favorable deal for your client difficult. For example, the facts of your case might not be particularly favorable, or the legal principles upon which you base your client's settlement position might not be as strong as you would prefer. Even your client can sometimes impair the negotiations process if he or she is difficult to deal with. When opposing counsel obstructs the negotiations process, however, negotiating a settlement becomes not only more arduous, but unpleasant as well. Although there may be little that you can do to alter the behavior of opposing counsel during settlement, your reaction to that behavior can change the dynamics between the two of you and help to make the experience more bearable for you and more productive for your client.

Negotiating with your opponent involves many of the same principles that govern other interpersonal interactions. The way you respond to opposing counsel's unpleasant behavior could dilute the impact of your opponent's tactics and help you to negotiate more effectively. When the behavior of opposing counsel during negotiations is blatantly obnoxious, his or her actions can be compared to the tantrum of a small child. Opposing counsel may raise his or her voice, use an offensive tone, or convey his or her message using inappropriate language. Opposing counsel often uses such tactics to intimidate you and to gain control over the session.

During negotiations, some opponents behave in ways that are less openly aggressive than angry outbursts, but that can affect you just as powerfully. Because much of the negotiating process involves a balance of power between you and opposing counsel, he or she may employ maneuvers that are intended to diminish your effectiveness and control. For example, opposing counsel may attempt to disrupt the negotiations process by interrupting you when you are speaking. He or she may behave toward you in a patronizing manner, pointing out his or her age and experience in the field or making use of inappropriate gender or ethnic connotations.

It is also common for family law practitioners to become so enmeshed in a client's position that they begin to adopt the client's thoughts and feelings as their own. The opponent who launches a personal attack against you or your client may not be separating the issues in the case from personal issues. These behaviors may be meant to make it difficult for you to focus on your agenda, to shatter your confidence in your settlement position, or simply to wear you down. Such tactics can cause you to lose your focus and become entrenched in defensive posturing.

You can respond in a number of ways to opposing counsel's overly aggressive behavior or inappropriate actions, keeping in mind the effect your reaction is likely to have on the negotiations process that impacts your client. For example, tolerating opposing counsel's inappropriate behavior may allow the settlement process to become so unpleasant for you that you might, consciously or not, desire to end it as quickly as you can. This can cause you to make concessions on behalf of your client that you otherwise would not make.

On the other hand, responding in kind to your opponent and becoming equally unpleasant is likely to lead to an abrupt end to the negotiations process, which will not benefit either party in the case. Giving yourself a moment to evaluate the situation before reacting will help you to respond to your opponent in a way that preserves both your professional demeanor and the possibility of continued negotiations.

You may also be able to negotiate over opposing counsel's diatribes as though you have not noticed the behavior. However, you must deal with remarks or behavior that affect your ability to negotiate effectively. You need to recognize opposing counsel's tactics for what they are and bring the discussion back to the issues at hand, reinforcing your confidence in the position you are taking on your client's behalf. In doing so, you will convey to your opponent that you will negotiate the merits of the issues in the case and that inappropriate attacks or comments have no place in the negotiations. Pointing out to your opponent that outbursts of anger and animosity serve no useful purpose and will not assist in reaching a settlement might diffuse the effectiveness of his or her tactics. Discussing with your opponent some ground rules for the negotiation sessions could save you both a great deal of time and get the settlement process moving on a productive track.

If your opponent refuses to change his or her tactics and continues to disrupt the flow of productive negotiations, an effective response may be to end the negotiation session. Make it clear to your opponent that you are interested in negotiating in a way that will produce positive results for the parties, and that engaging in disruptive tactics will not further the goal of reaching a settlement. Although termination of negotiations should be your last resort, it may cause your opponent to negotiate with you in the future, in this case or other cases, in a more productive way. He or she will know that such behavior will not be tolerated and that you will only discuss settlement of the case in a civil and professional manner.

Your opponent may also try to create a situation designed to make you uncomfortable in ways that are more subtle. Opposing counsel may attempt

to minimize the importance of your settlement position by not paying attention to you when you are speaking, by turning his or her attention to papers on the desk, or by not making eye contact with you. These actions are designed to cause you to question whether your position has the validity you thought it did. Pausing until you have secured your opponent's attention will reassert your position in the balance of power. It is important to demand basic courtesies from your opponent.

Other examples of more subtle behavior that can impede your effectiveness in the negotiations concern physical surroundings. When you are negotiating in opposing counsel's office, for instance, you may be offered a chair that is lower than your opponent's chair. Accepting this chair will leave you feeling small and insignificant. Your opponent may also seat you with your back to an open doorway, which he or she faces, making you feel uncertain and ill-at-ease. Your seat in the room could be facing a window with open curtains, leaving you blinded by the glare of sunlight. Whether these actions are deliberate or not, point out to your opponent that you are uncomfortable and choose a different chair or ask to have the blinds drawn to eliminate the glare of sunlight. You must strive to equalize the balance of power between you and your opponent for the negotiations to proceed effectively. When you rectify what was an uncomfortable situation, you will negotiate for your client more confidently and from a position of strength.

Settlement negotiations can be made difficult for many reasons directly related to the issues in the case. Do not permit your opponent to change your focus on the negotiations and impair the settlement process with inappropriate outbursts and tactics designed to provoke your anger or to intimidate you. You are unlikely to change the person with whom you are negotiating. You may, however, alter the process through which the negotiations take place by communicating to your opponent that you will not yield to offensive tactics and that you will negotiate using principles of reason, professionalism, and civility.