

## **NEGOTIATION SKILL # 9: USE THE TIMING OF THE MEDIATION STRATEGICALLY**

Litigation is exhausting and expensive. What's more, it can take years to get to "justice". The unfortunate reality is that even after years and thousands of dollars in litigation, most legal disputes get resolved without trial--eventually.

***You don't have to lose control once you are involved in a legal suit if you do this.***

This week, the purchasers, sellers and their brokers chose to mediate a real estate dispute before filing for arbitration. It was complicated, because NONE of the putative defendants had yet been named, and some were very reluctant to attend and participate in a mediation. In fact, one of the would-be plaintiffs chose not to attend, and furthermore had a family member represent the family instead of investing in the time for his outside counsel to attend. Others were not subject to the Arbitration clause and thus would perhaps not be "at the negotiating table" in the initial lawsuit at all.

To be transparent, the matter did not settle in the 1/2 day hearing they had allotted. But the parties now have a better idea of the possible range for settlement and can each assess the value--in time and money of moving forward with the litigation. They are working on assessing the risks and benefits of settling at a number which appeared to be attainable as a global resolution and their trusty mediator will be circling wagons for the next few days as they consider all available options.

What's more, they have now engaged a knowledgeable neutral third party, who, with a little reality testing, could offer a proposal for settlement that may work well before the case goes through the expensive process of filing, answers and discovery.

In another matter, I served as an arbitrator in a 3 day hearing on age discrimination in employment. After the second day, I inquired whether the parties wished to engage in settlement discussions. To my surprise and their relief, the matter was settled within 5 hours on the final day of trial. No further risks or expenses or uncertainties

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plagued either side and I was relieved of the difficult task of drawing the line in the sand and giving a verdict for one, including possibly awarding costs and fees to the prevailing party in an amount which may have overshadowed the case value altogether.

In my humble opinion, it is never too late nor too early to discuss the possibilities for settling legal disputes.

Click [here](#) to read Jan's past Settlement Strategies.

*P.S. I am pleased to have published an Article in this month's Consumer Attorneys Association magazine, "Advocate" called, "Getting the most out of your 'at BATT'S'. You can read the article here: [Advocate Article JFS](#)*