

Mediation: It's Not Just For Wimps Anymore



**Patricia M. Weaver,
Esq.**

*Principal
Paley, Rothman, Goldstein,
Rosenberg, Eig & Cooper,
Chtd.*

Remember the staring matches you had as a kid? The whole object was to avoid being the one to blink first. Whether you had a terrible itch or Mother Nature was calling your name, you had to show that you could hold out and withstand the pain longer than the other guy.

In some ways, that attitude still provides the backdrop for many a business dispute, particularly once the dispute is in litigation. Yet, if your goal is exercising smart business judgment, that approach doesn't make much sense. Why face escalating legal bills and the continued risk of an uncertain court decision simply because you don't want to be the first one to suggest a mediated settlement? Savvy business owners and managers are realizing that they can and should be proactive in exploring mediation to resolve their disputes. They don't hesitate to tell their legal counsel, upon developing the legal arguments and evidentiary basis of their case, to expeditiously pursue mediation.

Mediation, either pre-litigation or during pending litigation, offers a host of advantages:

- You have the ability to design creative win/win solutions through a wide array of variables and outcomes, which exceed a court's ability to simply determine a winner and enter judgment.

- No one can force you to do or agree to anything you do not choose.

- Similar to the courtroom, the mediation session allows you to be heard by a neutral third party. All statements made in a mediation session are confidential and inadmissible in court so you have greater freedom to discuss the case openly without prejudicing your legal position should you not reach an agreement.

- While it is often wise to have legal counsel attend mediations with you, an early resolution of your dispute can save you significant legal fees, expert fees, and other costs of taking the case through trial.

As a litigation attorney at Paley Rothman, I have participated in countless mediations over the years, sometimes as mediator and sometimes as counsel to one of the parties. As a mediator, my ability to understand and resolve the psychological dynamic driving the conflict is often as valuable as my ability to understand and assess the merits of the legal arguments. As such, I draw on my Bachelor's Degree in Psychology as much as I do my 15 years of litigation experience.

I recently attended a seminar with over 100 local judges and lawyers to exchange thoughts on mediation. The universal theme was that mediation is not for wimps. It is, instead, for smart and sophisticated people who want to minimize the cost and disruption that litigation often produces. Do not be afraid to blink; requesting mediation is a sign of nothing but sound business judgement.

Patricia Weaver is a principal and a member of the firm's litigation and appellate practice groups who acts as mediator or legal counsel for many business or personal disputes. She can be reached at 301-951-9360 and at tweaver@paleyrothman.com.