

Private Tête-à-Tête In Settlement Negotiations Big Groups Don't Settle Cases, Individuals Do

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What happens when each side's negotiating team has spent considerable effort working on a settlement and an impasse is imminent? A good strong mediator is needed to help break this impasse. Some mediators are more facilitative and others are more assertive. I am always a fan of the steel hammer in a velvet glove approach - soft and gentle as possible, hard as steel when necessary. One technique that I have used to break these log jams is to create a private tête-à-tête with the two most committed individuals involved - one person from each side that will meet privately, and sometimes secretly, with me.

You've heard the old adage that a camel is a horse designed by a committee? This is the problem with "group think". It is important to have "buy in", create constituency protection and everyone's voice needs to be heard. But often that approach will only get you so far. The last ten yards really have to be accomplished in a private committed way where parties are free to brainstorm and to say things that may not be politically correct. As a dealmaker-mediator, I specialize in making deals. Facilitating settlements is only one approach. The art of deal making is an entirely different skill set.

First, I privately speak with the individual that I have selected to be the representative of the group. This may not be the titular head of the group, but it will be someone who is committed to the process and has some access to power. I then help him or her create the necessary political protection before they would obviously be willing to venture out into the negotiation solo. I do this with all sides of the conflict. Then I create a private meeting usually over a meal. Having a meal breaks the ice and a simple act of breaking bread creates a more relaxed atmosphere easing some of the tension. In this process I set forth five ground rules:

- 1) Everybody commits that any statements made by anyone will not be binding on their constituent organizations during this exploratory process.
- 2) Nobody rejects anything out of hand. Everything stays on the table.
- 3) We all commit to confidentiality.
- 4) We are sensitive to each other's political realities.
- 5) Any deal has to be vetted.

I then create a structural framework for a possible deal. When the parties feel protected enough that they can explore options, we begin thrashing out the details. As you know, the devil is in the details. Something that may look unacceptable at first later becomes acceptable because something has been given in exchange. By staying open to all possibilities within a protected environment, fruitful analysis and discussion can occur.

Don't be afraid to allow the process to take as long as necessary. Many people have the artificial notion that mediation is a one-day process and that if it does not result in a settlement, it was somehow unsuccessful. Parties need to realize that it took more than a day to create the conflict they are now trying to resolve. I have worked on many large

multi-party cases over months as we thrash out and finalize a deal. The gestation period for a human birth is nine months. The gestation period for an elephant is two years. When you're working a deal, you're never sure what kind of baby you're birthing!

Patience and persistence are the absolute hallmarks of any good dealmaker. It is essential in this process to use an experienced dealmaker-mediator not just a facilitator. You will need to have someone who is strong enough to set the boundaries, hold the space so that these discussions can occur and break through the resistance and log jams when necessary. Having an advocate for each side protected by an independent advocate for resolution who has no stake in the outcome, is instrumental in the success of this approach



Heshia Abrams, Esq. is a nationally acclaimed attorney mediator for over 25 years, known for crafting highly creative settlements in very difficult cases. She has created settlements worth over \$500 million in the past year alone. She specializes in creating innovative solutions for complex or difficult matters in commercial, Intellectual Property and "Deal Mediations", which is driving a complex business deal to successful signing. She has the unique ability to work with big egos and strong personalities. Heshia has successfully mediated for thousands of parties and was an innovator in the mediation field serving on the legislative task force that drafted the landmark Texas ADR law. She mediates, consults, and negotiates on behalf of private parties throughout the country and internationally. She has worked in the UK, Thailand and India and with parties from all over the globe in complex patent licensing deals. She taught mediation and negotiation at the 2001 International Symposium on Negotiation and Conflict Resolution, in The Hague. She is on the national panel for Dow Corning Implant cases, and is the Chair of the Texas Bar Intellectual Property ADR Committee. She has been appointed Delegate to the Fifth Circuit Judicial Conference, 1988, 1990, 2002, speaker 2005, elected as a fellow of the Texas Bar Foundation in 2006 and received the Brutsché Award for Excellence in Mediation from the Association of Attorney Mediators.

For further information, see www.HeshiaAbramsMediation.com.