

Mediation/Negotiation Tactic – Hardball

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Baseball has earned the moniker of America's pastime. It is a game of risk-taking, especially for the batter. When the baseball is pitched, the batter must instantly evaluate whether it will be a strike or a ball. The pitcher's deception makes that split-second decision much more difficult. A strike sends his teammates to the dugout, while a ball sends him to first base. The batter's dilemma: is that hardball the real deal or a decoy.

In negotiations, you often face the same dilemma when your opponent pitches a hardball. Whether it was inspired by a rational evaluation or an irrational ego, the threat is very blunt, direct, and unequivocal. It often sounds something like "we'll take nothing less than ...", or "my client will sign with another provider if you don't agree to ..." Your dilemma: is that hardball sincere or a negotiation ploy.

How do you respond? Begin by resisting your initial, emotional reaction. Your gut may suggest a four-letter word response. Sharing that blunt challenge will bring the negotiations to an abrupt end. Your opponent cannot remain at the Mediation after your gut speaks its peace, because she would be conceding that her hardball was a decoy and would lose all credibility. Rather, she will be forced, even if against her original intention, to carry through with her threat or abort the negotiations. For the time being, keep your gut quiet.

Most successful negotiations work in the rational realm, so give your mind a chance to have some input. As with all coercive negotiation tactics, one must evaluate the probabilities and alternatives. Consider first how likely the treat is to be carried out. Assess the financial, logistical and personal obstacles to implementing the threat to help determine its sincerity. Next, consider the consequences your client would suffer and discuss his ability and willingness to suffer such if the threat is carried out.

Only when you have assessed the hardball's authenticity and its potential impact on your client can you intelligently decide how to respond. A direct challenge to the hardball will end the negotiations, which may be your reasoned decision. If, however, you wish to continue toward a resolution, your best bet is to ignore the hardball and proceed as you otherwise would have. Just simply continue as if there were no declared threat. That allows your opponent the ability to remain at the Mediation without losing all posture with her client. As the negotiation proceeds and time passes, the threat will become more of a distant memory than a present crisis.

The dictionary defines "hardball" as a baseball or the use of any means, no matter how ruthless, to attain an objective. During Mediation, you may be forced to decide whether to take a swing at the hardball being pitched or to let it go sailing by. And while your initial reaction may have been correct all along, take the time to make that decision rationally. My advice: don't hit the hardball with your gut unless and until your mind gives the green light.

This article is one in a series of periodic articles concerning mediation topics such as use, legal developments, and negotiation tactics. Blane G. McCarthy is a Jacksonville civil trial lawyer and certified circuit civil mediator. For questions, comments, or suggestions on future articles, please call (904) 391-0091 or email at bgmccarthy@sprintmail.com.