



And So It Goes!

A Quarterly Newsletter from David M. Zacks, Esq.

My absolute favorite sporting event is the Masters golf tournament, which takes place every year in Augusta, Georgia. This year's tournament didn't disappoint, as Tiger Woods returned to form to pull off a miracle victory. Speaking of golf, I loved reliving major golfing events through the words of Dan Jenkins. Dan editorialized the Masters, as well as other major golfing stories, for *Sports Illustrated* and other publications. What set Dan apart from other golf columnists was that he had the talent to be a professional golfer and play with the likes of Ben Hogan and President George H. W. Bush.

Dan also had a keen sense of humor, even after his death, at age 90 in March. His tombstone reads, "I knew this would happen." I write about Dan in part to pay tribute to one of the great sportswriters, but also to remind readers that **very little is certain in litigation**. It is my belief that Dan would have approved of litigators using mediation to create that additional layer of certainty for their clients.

On the "QT"

Keeping peace in the family requires patience, love, understanding and at least two television sets.

Worth Reading

Never Split the Difference is a book written by Chris Voss, with the subtitle "Negotiating As If Your Life Depended on It." The author relates a story about a bank robber and how every assumption he and other law enforcement authorities made was exactly wrong. He learned that until you are absolutely sure what you're dealing with, you don't know what you're dealing with, which reminds us that as we move forward in mediation, it is essential to keep an open mind.

Going from Better to Best

Part One: Put Your Aces in Their Places

Consider having the partner in charge of a piece of litigation step aside during the mediation and settlement process.

Years ago, I represented a large resort developer in a multi-million-dollar dispute. Opposing counsel was a major New York law firm, and I noted that all our discovery disputes and pre-trial hearings were handled by one senior partner. Whenever I sat down with opposing counsel to discuss the possibility of settlement, another partner took center stage. Now that I have transitioned over the years from litigator to mediator, I can see the wisdom in such a decision in select cases. If someone other

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than the principal litigator handles the mediation, there could be both tangible and intangible benefits to the case:

1. Separating the principal litigator, who is out to win, from a person who comes in with a clean slate and no adversarial mindset or animosity creates positive value and possibly a greater likelihood of resolution.
2. There are different skill sets involved in settling a case versus litigating it in a front of a jury or judge. Think about your firm's "bench" of talent, and think critically about building a team of attorneys with diverse skills for each stage of a case.
3. Having someone take the lead in settlement with whom the other side has not been fighting for months or even years can demonstrate a genuine desire for resolution. It also affords your client the knowledge that another attorney whose forte is litigation is ready to attack in court if the matter is not resolved during mediation.

Part Two: Teaching to Learn

I was recently asked by the University of Georgia School of Law to be a guest lecturer on the topic of mediation. Teaching is a great way to sharpen your skills on a subject matter, but it is also a great way to learn from a different generation or group with a differing point of view from your own. Most of the students who attended the lecture would likely fall under the millennial generation, and it was clear that mediation and its future in the resolution of disputes will be in good hands.

I have also been invited by the State Bar of Georgia to lecture on the "sticky issues" practitioners run into in a mediation setting and how to navigate them effectively. The spotlight will be on me, but I fully expect that I will take something useful away from the audience. I always do.

The Last Word

In the novel *To Kill a Mockingbird* by Harper Lee, Atticus Finch says, "Before I can live with other folks, I've got to live with myself. The one thing that doesn't abide by majority rule is a person's conscience."

Have a great spring and summer!