



Negotiation is an Art Form by Jodi L. Wyman

Negotiating is often called an art form. Some people are born with a talent for it, others have to study and practice to improve their skills. Either way, it is crucial in many aspects of life. Most people understand that some bargaining ability can be helpful when buying a vehicle or a house or looking for the best interest rate on a loan. Saturday morning bargain-hunters practice their negotiating skills at yard sales. But those same skills are important in many legal matters as well.

Litigation cases such as lawsuits and divorce proceedings usually involve money. One side wants to get as much money as possible, and the other side wants to pay as little as possible. There are a whole host of legal issues involved in deciding how much money is to be paid, but ultimately the cases often come down to who has to pay what.

If you breached a contract, you can owe the other party money for that breach, but how much? When you divorce, you could owe spousal support to your spouse, but how much?

These answers are usually given by a Judge. He or she will preside

over a trial and then decide how much money is paid. The majority of cases however settle out of court. And that process involves negotiation.

Lawyers can give their clients legal opinions on the likely outcomes in court, but they can never give absolute guarantees. Two different Judges may have a different take on the evidence. Witnesses do not always say what they were expected to say. Evidence crucial to the case may be ruled inadmissible by the Judge. The law could change mid-way through the case. There are never any certainties when a case goes to trial and the decision is left up to a Judge.

For this reason, many litigants want to try and control the outcome by reaching a settlement. As well, they can save themselves huge sums of legal fees and a great deal of stress.

Usually the problem with negotiating in lawsuits and especially family law matters is that so much emotion is involved. Most lawsuits involve people who feel they have been mistreated, injured, disrespected or cheated out of money.

Sometimes the other party is a former friend or even a family member. Clients often tell their lawyers that it is the “principle” of the matter. They want to cause hurt to the other side, or to feel they have “won”.

This emotional factor is present even more so in family matters, where former spouses are attempting to negotiate. All the anger and bitterness and resentment from the breakdown of the marriage can get in the way of working out a fair settlement.

A lawyer is doing their client a disservice if they do not encourage at least a serious attempt at settlement. There is too much at risk to not at least try. As much as possible, litigants caught up in court matters should try to get the emotion out of the picture. They have to put egos and hard feelings aside and try to think rationally, consider the pros and cons of the case and the settlement offers. But this is often easier said than done.