

BOOK *review*

Planned Early Negotiations—Another Tool to Resolve Disputes

Lawyering with Planned Early Negotiations: How You Can Get Good Results for Clients and Make Money

By John Lande. American Bar Association. 2011. \$74.95. (\$59.95 for members of the ABA Section of Dispute Resolution). 200 pp.

John Lande's new book offers another way of handling disputes that can optimize a lawyer's practice, improve productivity and satisfy clients without going to trial. It involves a process known as Planned Early Negotiation or PEN, which can be used in a single matter or as a template for an entire caseload.

Prof. Lande writes in his introduction, "Parties normally benefit from a process that treats them respectfully, de-escalates conflict, efficiently obtains the information needed to resolve disputes, minimizes legal costs, and promptly produces a result that satisfies their most important goals—or at least provides a result that they can live with." He contends that PEN can accomplish "these client friendly goals" and in so doing improve your practice by generating more referrals, job satisfaction, and income.

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Of course, negotiation is not new, but negotiating early as part of a plan may be new to trial lawyers who may be more accustomed to delaying negotiation until after discovery and motion practice have been completed. Often the delay is due to the common misperception that negotiation will produce a better result if parties wait

until the case is ready for trial, or the fear that by suggesting negotiation litigators will appear weak to their adversary. Indeed the first chapter of the book analyzes why parties and lawyers are often afraid to be the first to propose negotiation, even when they would prefer to settle.

To address the "fear factor," the book provides techniques lawyers can use to introduce the idea of using PEN to opposing counsel without

"Although lawyers know that most cases will eventually settle—often only after a process that takes too long and costs too much—they often feel powerless to steer clients toward a more productive path. If you and your clients can overcome the fear of entering negotiation, you stand a good chance of reaching an agreement satisfying your clients' interests."

losing "face" or any tactical advantage. There is also advice on presenting PEN to clients who may have concerns about their counsel's willingness to zealously pursue the client's interests and to achieve the optimum result.

Lande, the Isidor Loeb Professor of Law and the Director of the LLM Program in Dispute Resolution at the University of Missouri School of Law, makes the case that PEN, offers efficiencies that will increase client satisfaction by providing more certain results in less time and for reduced

Reviewed by Joan Stearns Johnsen

Joan Stearns Johnsen is a visiting assistant clinical professor at Albany Law School, where she teaches negotiation and directs the Securities Arbitration Clinic. She is also a mediator and arbitrator.

costs. As he points out, parties can negotiate before they complete the protracted discovery process that litigators usually consider necessary for trial. Negotiating a settlement does not necessarily require full-blown discovery. A more limited, focused

exchange of information often will suffice to solidify each party's analysis of damages and theories of liability. The book facilitates the PEN approach by suggesting informal ways to exchange information, rather than through a traditional discovery process. Using this approach obviously can save both sides time and money.

The lawyers on either side of the dispute may have concerns about the loss of revenue using the traditional hourly billing model when a case is settled early. Prof. Lande addresses this concern by offering guidelines for alternative billing arrangements that reward counsel for results. So there is no need to maximize time spent working on the case. (For ex-

ample, clients may be willing to pay a premium or bonus for an early settlement with a favorable result.) However, he points out that PEN can produce good results, even in a traditional hourly billing model.

The book is filled with helpful practice tips from seasoned negotiators Lande has interviewed—tips that may be applied to all negotiations, not only those conducted early on. It provides an introduction to using interest-based negotiation, explains when and how to enlist the assistance of professionals, such as mediators, experts, and neutral evaluators. It also provides guidance to navigate ethical issues related to negotiation, such as conflicts of interest, client-centered

decision making, and the difference between puffing and confidentiality.

The book is extremely practical, well organized and succinct. It synthesizes extensive legal and sociological theory into user-friendly practice points. There are helpful appendices, and a DVD that contains assessment guidelines, checklists and model forms. The book should appeal to litigators, solo practitioners, transactional lawyers, and anyone else who wants to learn how to negotiate.

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