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Confidentiality agreement

A defendant's fear that the settlement in the present case will cause many other individuals to file claims and seek similar settlements often constitutes a formidable barrier to a settlement. This fear can sometimes be overcome and a settlement reached through the parties' entering into a confidentiality agreement as part of the settlement which imposes severe sanctions for violating confidentiality.

Propose a change in language or in the interpretation of language

In some contract or lease disputes, resolution can be achieved through an agreed change in language or an agreed interpretation of language as part of a settlement package. Thus, in a manufacturer-supplier contract, where a supplier is sued for failure to expressly comply with a contract term requiring the supplier to "ship the goods within ten days of the date of the purchase order," a settlement might, in part, consist of changing the contract to read "ship the goods on the tenth day following the date of the purchase order unless that day is a non-business day, in which case, the goods will be shipped on the next business day." The new language could then be interpreted to permit the supplier to ship goods on a Tuesday following a three-day holiday weekend, whereas a strict reading of the old language would have required goods to be shipped on a Saturday, one of the non-business days in a three non-business day weekend.

Split the difference

As a final gesture to avert a failed settlement attempt, mediators often suggest, where the final bargaining bracket is relatively narrow, that the parties split the difference. You must be careful not to make this suggestion until all efforts to close the bracket have been exhausted.

The Creative Problem Solver’s Handbook for Negotiators and Mediators, Volumes 1 and 2, are available from the ABA Web Store. [http://www.abanet.org/abastore/](http://www.abanet.org/abastore/)

Get To Know Your Leaders

You know the name, now get to know more about Professor John Lande, Dispute Resolution Section Council member.

As part of our on-going series of questions and answers with Council members of the Section, we asked Council Member John Lande to answer some questions about his corner of the ADR field.

What is your current position?

I am the Isidor Loeb Professor and Director of the LL.M. Program in Dispute Resolution at the University of Missouri School of Law.

How did your ADR career develop?

That’s a long story. Here are the Cliff Notes. Growing up, I was uncomfortable seeing destructive conflict and I always thought about how problems could be solved more constructively. When I was an undergraduate, I took a course in sociology of law and was fascinated to read sociological studies about how disputes were really handled. I went to law school because I wanted to help solve social problems and was more attracted to cooperative than adversarial approaches. After I graduated in 1980, I practiced traditional representation for two years and didn’t like it. I took several mediation trainings and opened my own practice in Oakland, California, so that I could practice mediation. In 1989, I entered a Ph.D. program in sociology so that I could use my knowledge from practice and research to teach and help improve dispute resolution processes. I have been teaching and writing about ADR since 1995 and have been at Missouri since 2000.
What were some of the challenges you had to overcome in your ADR career?

The lack of structure in the dispute resolution field presented challenges and opportunities. When I started to practice in the 1980s, there wasn’t an established career structure or market to be a mediator, so people had to create them to a great extent. We were figuring out how to practice and attract people to use the process. That was both scary and exciting.

In the world of legal education, there is ambivalence about ADR. Some faculty appreciate its importance and others doubt its importance or whether it is even “real law.”

There are limited opportunities in both ADR practice and teaching. For me, overcoming these challenges has required determination, patience, persistence, openness to unexpected challenges and opportunities, respect for others’ perspectives, and good luck.

How did you get involved in the Section?

My friends, Lela Love and Jack Hanna, suggested that I work on the conference planning committee, which I did for two years. I also worked with Jack Cooley and Bruce Meyerson to develop a policy statement on good-faith requirements for mediation, which was the subject of one of my articles. Then I was nominated to serve on the Council and I was an active member of the Task Force on Improving Mediation Quality, chaired by Wayne Thorpe and Rachel Wohl. I have also been active on the Collaborative Law Committee, chaired by David Hoffman and Larry Maxwell.

What is the most valuable advice anyone ever gave you about ADR?

Be open to reality and the complexity of ADR. Have a balanced perspective. Don’t be an uncritical cheerleader or relentless critic.

What do you tell law students who are interested in a career in ADR?

First, do a candid analysis of your abilities, interests, and limitations. Then, take a long view, listen to others, volunteer to help in the field, be patient, persistent and open to changing your perspective, and have a sense of humor.

Although the field has grown tremendously since I took my first mediation training in 1982, it is still hard to make one’s place in our field because there are a limited number of specifically-designated “dispute resolution” work opportunities. Such opportunities do exist but they typically require extensive education, training, and experience. It’s important to recognize that much “alternative” dispute resolution activity is done by people who don’t specialize in it, such as lawyers, police, employees in government, business, and non-profit organizations, teachers, etc.

People may want to look at the University of Missouri Law School website with frequently asked questions about developing careers in dispute resolution, at http://law.missouri.edu/csdr/lml/careers.html.

Bibliography of Recent Dispute Resolution Articles

The comprehensive bibliography includes domestic and international books and articles published on ADR from January to September 2009. Professor Lawrence D. MacLachlan, Director of Research & Instructional Services at the University of Missouri - Kansas City School of Law, has generously compiled this bibliography as a service to Section members.

To access the updated bibliography, click here.