

VERDICTS & SETTLEMENTS

Negotiating in a Culturally Diverse California

By Cathy Yanni and Maureen B. Dear

California is a culturally diverse state, not only because of its population, but also because of the large variety of companies that do business in California. The residents are people of many different backgrounds including Hispanic, Asian and Indian. The new California Chief Justice Tani Cantil-Sakauye is a Filipina American woman. The newly elected attorney general, Kamala Harris, is an African American and Indian American woman. According to an article dated Nov. 13, 2010 on SFgate.com, Latinos now make up more than 50 percent of California's public school students. Our workforce is diverse and the companies doing business in California are also diverse, many with non-U.S. locations or even non-U.S. subsidiaries. Thus, the landscape of litigation has shifted to involve disputes between culturally diverse employees, employers, suppliers, financiers, and business partners. Cultural differences must be considered when negotiating resolution.

Cultural beliefs and their associated stereotypes affect the negotiation process. What are ways to facilitate better negotiations when multiple cultures are involved? Although research relating to the affect of cultural differences in negotiations is still in its infancy, there are a few general principles to keep in mind.

Avoid the "big" stereotypes. We all are guilty of adopting cultural stereotypes, and while some may be helpful, others should be avoided because they are subject to error and oversimplification. Consider a person's cultural framework, including their family of origin, genetic makeup and geographic location. What are their basic values? Look to the dominant factors relevant to their decision-making process. Keep in mind that all people are a complex tapestry and each person has an individualized way of processing information.

Some cultural traits actually do have some validity. For example, there are ways in which Western and Eastern cultures negotiate differently. Westerners tend towards individualism and Eastern cultures tend to value the common good. Many Asian cultures value con-

sensus and tend to have a longer negotiating process than a typical California mediation of four to eight hours. In Japan, it is not unusual for a mediation to last months, if not a year, with the parties meeting once a week. The structure of the mediation process itself is important — the more transparent the process, the more comfortable the parties will feel.

As an attorney, it is important to keep in mind cultural biases and how they affect dealings with clients and other parties in a negotiation. Know your clients' business, familiarize yourself with them, and learn if they have non-U.S. subsidiaries. Determine if it is a case with ongoing relationships within the United States or on a more global basis. Likewise, focus on the client. How does their cultural heritage within the framework of the business affect their negotiating style? Focus on your client's values — what motivates them, and what will it take for the case to settle? In many cases, their values, which are driven by their background, may dictate that something other than money is key to resolving the dispute.

An apology, when sincere, may bridge the gap and help to settle a case. One case that involved a Japanese bank and a U.S. company settled when the U.S. company placed an ad in a prominent Japanese publication and apologized for their actions. This is an example where one party valued an acknowledgement of the wrongdoing more than a monetary amount, and that value was the driving force in the resolution of the case.

Another example of a non-monetary solution involved an on-going business relationship, and as part of the resolution, the companies agreed to cultural awareness training. Both sides met and facilitated a training session among the sales personnel. In this case, creating an ongoing relationship and establishing ways to communicate between cultures was paramount to the resolution.

If you have a non-U.S. client, prepare them for the mediation process — keep in mind that in many countries there is no right to trial by jury and in many countries there is limited or no discovery. It is not unusual in non-U.S. countries that the time from filing a complaint to trial may be five to 10 years or longer. A frank discussion of the U.S. judicial system



can be beneficial in forming a strategy to resolve the matter. Learning how your negotiating counterpart perceives the world can aid in interpreting their behavior and provide mechanisms for avoiding an impasse. Be thoughtful and put yourself in their shoes. Educating your client prior to the mediation itself will make for a more productive mediation. A strategy that involves not only money but also other intangibles may lead to success.

Finally, as a mediator, think about what personal biases you bring to the table. Consider how the lawyers and parties view authority figures as part of a negotiation. Be cognizant of things you might say or do based on your own cultural identity that might lead to unintended consequences.

A key for a negotiation when multiple cultures are involved is to develop a sense of curiosity about the individuals and their company. Be respectful. When dealing with a multicultural mediation consider contacting the mediator to let him or her know about the cultural issues that may exist, and to explain how the clients view the mediation process and what their expectations are. Even more than in a conventional mediation, patience and flexibility will lead to a successful negotiation.

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