

The Threatened Walk Out

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The Threatened Walk Out

The threatened walk out is a beginning mediator's worst fear. After all, how can you continue a mediation session if one party walks out? Admittedly, it's tougher if you're the sole mediator with two unrepresented parties because you're torn between chasing the walk-out and calming down the remaining party. The good news is that the threatened walk out is generally more of a cry for help than it is an actual desire to leave the mediation session. Once you understand what the threatened walk out is about, there are things you can do to help make sure it doesn't happen.

Why do participants threaten to walk out? Threatening to walk out is an example of a party's disregulated state. Walking out could also be a defense against dissociating (*i.e.*, it's a last-ditch effort to calm down). It may also be sadness energized or a sign of agitated depression, both of which should be taken very seriously.

You're most likely to see this kind of behavior at the beginning and end of the mediation. The beginning of the mediation is when tough material first surfaces and as the agreement comes into focus, it becomes clear that closure is near. As much as people may say that they want the conflict to be over, many may fear the future, post-conflict life. When the conflict is gone, what will be left? It may be a housewife who is fearful of rejoining the workforce, or a businessperson who will have to confront an uncertain financial future. Without the conflict to take up his or her time, he or she will have to face reality, which is sometimes an incentive to stay in the conflict.

By threatening to walk out, the party may believe that stepping out of the room also means stepping away from the problem, either avoiding the conflict or garnering all of the attention in the group. When clients threaten to walk it, it's

important for the mediator to help the client calm down. As a mediator, you'll be both physically and emotionally with the client, following the client physically out of the room as well as not allowing the client to be alone.

Prevention can go a long way to avoiding walkouts. Although the mediator may be taking the temperature in the room, calling breaks and working every mediator move in the book to avoid having one party walk out, walk outs and threats of walk outs happen. In a perfect world, you'd never deal with a walk out, but it happens to every mediator once in awhile.

Symptoms that a client is too agitated to continue may include (but not be limited to) such behaviors as crying, slamming the table, twitching, incessant sniping, and other clearly agitated behaviors.

The first, and most basic, move, is to call a caucus. A caucus allows you to follow the person walking out and to help him or her calm down before leaving the premises. Even if you can't get the participant back into the mediation room, you don't want him or her getting into a car and unleashing frustrations in rush-hour traffic. The caucus will give him or her a chance to calm down, and it gives the mediator a chance to find out what triggered the walk out reaction. If the participant wants to be left alone, you can talk about what might help him or her regain composure.

In caucus, you'll ask the upset party, "what can you do to make yourself feel better?" Your first focus is on helping the agitated party calm down. Acknowledge his or her pain or fear in the underlying conflict. Get the client to make a commitment to get a grip in him or herself. Ask them what has worked in the past, and let them choose what they think might work. Don't suggest a method for self-soothing until after the client has made his or her own suggestions and decided that they won't work. Make sure the client is out of ideas before you make your first suggestion. Suspend the negotiations until the party has calmed down and self-soothed. Expect a relapse, but hope for progress.¹

When caucusing with a client who is threatening to walk out, you can point out that the client is free to walk out of the mediation session, but that in making the choice to walk out, the client is making an affirmative choice to proceed in a different way. The client needs to consider what the next choice of how to proceed will be *before* walking out of mediation, because rejecting mediation means choosing litigation or another path. Encourage clients to gather all the

¹ While we'd been practicing something similar without a formal name, Diana first learned about the technique called Self Soothing from Forrest S. Mosten in his Advanced Family Law Mediation training at the Los Angeles County Bar Association Dispute Resolution Section seminar in May 2004.

facts about how next to proceed before actually walking out of the mediation: know what you're choosing, not just what you're rejecting.

The second problem a walk-out causes is that you've left the other client in the room alone while you've been dealing with the party threatening to walk out. If you've got a co-mediator or the remaining party is represented by counsel, they haven't physically been alone, but be mindful that spending too much time with one party without checking in with the second party can derail the mediation process as much, or more, than the walk out itself.

The client who has not threatened to walk out is typically very understanding of the need to caucus and that [at least at the moment] most of the office's resources may be devoted to keeping the other party in mediation. The threatened walk out is not limited to just one client at a time, however. It's not unusual for the threatened walk out to spark a competition of who can walk out first. This is another instance where the co-mediation model works in a way that other single-mediator models can prove more challenging, particularly when parties are unrepresented.

When you're not co-mediating and there's a threatened walk out, you may also be able to call upon another office employee, ideally a Dispute Resolution Associate (DRS). A Dispute Resolution Associate has attended a 40-hour beginning mediation class, and so he or she can also help in this situation. For a DRS to step in without having been part of a session is difficult, but at least as a trained mediator the DRS has an idea of what might be going on and what to do next. At the very least, he or she can keep the waiting party company while the mediator attends to the party threatening to walk out.

Throwing the Hail Mary Pass: If the client can't be talked into finishing the mediation session or returning to mediation at all, there is still a chance to help him or her through this low point in the process. It's at this point you could suggest that the client consider Collaborative Law, arbitration, private judging or another ADR process. You can reality test as to what the next legal step will entail. You can refer the client to an accountant or mediation friendly attorney. You can even suggest a different mediator who might be more suited to the case. Remind the client that many, many couples start mediation, find it's premature or not working, and several months later decide to come back. Reassure the client that the mediation door is always open. The walk out caucus gives you a chance to salvage some or all of the client's ability to resolve the case without litigation, even if that resolution doesn't include your services.

Clients threatening to walk out of a mediation session are always challenging. There's no substitute for taking the temperature continually in the mediation process, but threats of walking out still happen. Knowing what's behind the threat and how to help the client calm down enough to rejoin the mediation while



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considering how to continue to engage the client who didn't threaten to walk out will help you the next time you're confronted with the walk-out scenario.