

The Unexpected Offer and Reactive Devaluation

Imagine you received a call from opposing counsel, who unexpectedly made a settlement offer. You automatically discounted or “**devalued**” that offer, even though it was within a previously acceptable range. Your reaction might have been influenced by the litigation style of opposing counsel or the timing of the offer. Either way, there’s an explanation for your reaction.

If you placed less weight on the offer, then you probably experienced the psychological phenomenon known as “**reactive devaluation.**” This term **refers to the tendency that we have to evaluate an offer depending on the source—“devaluing” an offer which comes from an adversary, even if an identical offer would be acceptable if extended by a neutral.**

I suggest that the same phenomenon often occurs when an offer arrives unexpectedly. With that offer, our suspicions may take over. There are **many barriers** to resolving conflicts. Some are virtually insurmountable, while others, such as reactive devaluation, can be managed.

By the time a lawsuit has been filed, one side typically views the conflict as having reached a “zero-sum” situation where a concession by one is a gain for the other. When an offer is made in this setting, the tendency is to think that your adversary has discovered an unfavorable fact or changed their view based on something directly related to the case.

While this is a possibility, it’s also possible that something unrelated to the lawsuit occurred. While you should attempt to find out what motivated the offer, also keep in mind your prior evaluation and the client’s interests at that point in the dispute.

The case belongs to the client. And continuing to litigate might not be worth the cost. **When the unexpected offer arrives, ask:**

- (1) What if this offer had been made after I solicited it?**
- (2) What would I have thought had the offer arrived a week before a mediation?**
- (3) What if this offer had been transmitted to me by a mediator?**

After answering these questions, call your client and discuss the offer. **While litigation is often a zero-sum game, being aware of certain psychological barriers, such as reactive devaluation, can help you better serve your clients.**

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