

Ten Keys to Resolving Your Dispute—Without Making a Judge or Jury Do it For You

By Monte Vines

Conflict is inevitable. Disputes arise in all aspects of life, from business dealings to your family's estate and everything in between. If necessary, our legal system will provide a judge or jury to resolve your disputes for you through a trial in court. Most disputes get resolved without a trial, often without a lawsuit being filed. And that's the way it should be. But many people find it difficult to resolve disputes, and they reach a resolution only after putting themselves through unnecessary grief, expense, delay and missed opportunities along the way.

For over thirty years, I've helped people and companies resolve their disputes, both in and out of court. I've seen people do things that get in the way of reaching a good, timely resolution. I've also seen how people can facilitate the process, get a good resolution, get it sooner, and get on with their lives or their businesses. I've distilled these observations down to ten key actions. If you put them to use in your own disputes, they will often help you achieve a good and timely resolution.

1. Keep your lines of communication open. This can be hard to do in the midst of a dispute, but it is critical. Without open communication you cannot effectively work through most disputes.

2. Don't view the other party as an enemy (unless they really are). There is a tendency in human nature to reciprocate and treat someone the same way they are treating you. So you have an opportunity to set the tone for

working through the dispute by treating the other party with respect and with concern for their rights.

3. Make sure you have your facts straight. Many disputes arise from a misunderstanding of the facts by one or more of the parties. But getting the facts straight can be hard to accomplish. It is common for people to jump to conclusions about the facts, assuming that they or their employees did what they should have done and that the fault must lie with others. Spend time and effort finding the facts or confirming what you think the facts are. You may not be able to do this without help from your adversary or from others, since they may be in possession of the necessary documents or information. Getting the parties to a common understanding of the facts is a big step toward reaching a good resolution.

4. Know what legal footing you stand on. Many disputes arise from a misunderstanding of the parties' rights and obligations under the law. Sometimes the law is simply not what one party thinks it is or what they think it should be. Sometimes their contract has terms in it they had forgotten or never understood well at the outset. If you can't agree on a resolution yourselves, a judge or jury will have to do it for you and they will apply the law as the basis for the resolution. So a party who thinks he is in the right according to the law will expect any agreed resolution to favor him. If both sides believe they are in the right, an agreed resolution is quite difficult to achieve. Make

sure you correctly understand your rights and obligations first, and then you can deal with any misunderstanding your adversary may have.

5. Recognize the reality that there are usually two (or more) sides to a dispute. This does not mean that both sides are correct or have equal value, but there often are legitimate arguments that can be made for each side. Make sure you understand your adversary's position and the basis for it. If you don't, your discussions may be like ships passing in the night, never really addressing the points you each consider important. You need to deal with your adversary's points head on, so you need to really understand what they are.

6. Speak the truth. Nothing shuts down progress toward a good resolution like discovering that one's adversary is lying about something. If a party is found to be lying about one thing, it puts everything else he says in doubt and undermines any sense of good faith in the discussions, making a good resolution much harder to reach.

7. Deal with it sooner rather than later. Disputes rarely get easier to resolve with age. Don't put yours on the back burner and hope it goes away while you work on something "more productive." Deal with it. Make it a priority and make sure someone has responsibility for it. And don't think you can deal with it by turning it over to your lawyer and washing your hands of it. It's still your dispute, and your lawyer will usually need you to be involved to get it resolved well.

8. Be realistic and creative. You need to understand the practical position both parties are in—financially, operationally, personally, etc. Even though the facts and the law support your side of the dispute, if the other party has practical advantages over you then you may not be able to effectively pursue the resolution you should have. Likewise, if the other party has practical limitations on what it can offer then you simply may not be able to get the particular

resolution you should have. But there may be very different ways to resolve the dispute that are possible for your adversary to accomplish. Be willing to consider other options. The freedom to craft a creative resolution is one of the great benefits of resolving disputes without a trial.

9. Consider the costs and recognize the risks. Disputes are costly, in many ways. You certainly need to resolve them, and it is worth an investment of time and money to do that. But resolving them through a trial is often the most costly way. Trials are complicated procedures. Attorney fees and other trial expenses can be substantial. The amount of time and effort from everyone involved can be surprising, and trials are often very stressful experiences. If your dispute arises in the context of a relationship, like a business or family relationship, consider the cost of a relationship further damaged or destroyed by a hard-fought trial compared to the possibility of preserving or repairing the relationship through an agreed resolution. And relying on a trial to resolve your dispute has inherent risks. You put the resolution in the hands of others—others who may not see things the way you expect them to, who can't possibly know your situation as well as you, and who won't have the flexibility to come up with creative solutions.

10. Make a compelling case for your position. Take a realistic position that is well-supported by both the facts and the law, and then make the case for that position by a compelling presentation to your adversary. If you have kept your lines of communication open, treated the other party with respect, worked to get your facts straight, understood the law involved, acknowledged any legitimate arguments of your adversary, kept your discussions honest, addressed the problem in a timely fashion, recognized the practical position of the parties, and considered the costs and risks of a trial, then you have created the conditions in which your argument can be

persuasive and is more likely to lead to a satisfactory resolution.

So what is the role for your lawyer in this? These keys apply whether or not you have a lawyer involved. Most disputes in life get resolved without lawyers on either side. But if it's difficult for you personally to apply these keys, or if the stakes in the dispute are substantial, or if you are not sure about the law involved, or if your adversary isn't taking the dispute seriously and you need to get his attention, then get your lawyer involved. In addition to advising you on the law, your lawyer can be very helpful in objectively determining the facts, especially if those facts are in the possession of others. While you may be upset with your adversary and find it hard to communicate with them or to do so with respect, your lawyer should be able to do that in a professional way. It is often easier for your lawyer to be objective about the dispute than it

is for you, and one of the most valuable things your lawyer can do for you is to be frank with you about any weaknesses in your position. And, of course, if your adversary has filed a lawsuit over the dispute, or if you need to file suit, then you need your lawyer involved.

Finally, these keys are not a formula guaranteeing a good resolution. Disputes are the product of human relationships, which are both variable and volatile, and an agreed resolution must come out of that same context. Sometimes you simply cannot get a good resolution by agreement, and in those cases a trial may be your best option. But applying these ten keys as you work to resolve your dispute will usually help you get to a timely and satisfactory resolution.

You may have a dispute going right now. Apply these ten keys and watch them help you achieve a good resolution.



Monte Vines is an attorney with Adams Jones Law Firm, P.A. in Wichita, Kansas. He assists clients in resolving their legal disputes, either through court litigation or where no lawsuit has been filed. The disputes he handles are primarily over business and commercial matters, trust and estate issues, real estate problems and other general civil law matters.

ADAMS JONES LAW FIRM, P.A.
1635 N. Waterfront Parkway, Suite 200
Wichita, KS 67206-6623
Phone: 316.265.8591
www.adamsjones.com

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