

5 KEY TAKEAWAYS

The Lawyer's Obligations to Ethical Conduct and Professionalism in Negotiations and Mediations

Kilpatrick Townsend's [Brian Gaudet](#) and [Katie Barton](#) and [David Zacks](#) of Zacks Resolution recently participated in a panel at the annual **Susan A. Cahoon Annual Ethics and Professionalism Seminar** hosted by [Kilpatrick Townsend](#). The panel discussed how a lawyer's obligations to ethical conduct and professionalism extends well beyond the courthouse and how these topics regularly arise in the context of negotiations and mediations.

Mr. Gaudet and Ms. Barton provide their 5 key takeaways from the seminar:

1

Take time to get to know your opposing counsel and, when practical, discuss disputed issues in person. Judges want to see more of that.

2

If you have copied your client on an email to opposing counsel, that could be construed to be consent for opposing counsel to "reply all" and include your client on the reply. There is not uniform agreement among the jurisdictions on this but that is only one reason to BCC clients and not CC them.

3

Statements in negotiation that something is top dollar or a bottom dollar limit are statements of fact and may support a claim of misrepresentation. Words should be chosen carefully.

4

Communications with and from mediators - who are also lawyers - may be subject to the same ethical rules applied to lawyers generally.

5

Whether one party is obligated to tell the other party that a contract clause in a contract being negotiated is potentially unenforceable under a particular state's law is a hot-button issue. In almost all cases though, before making a decision, you should consult with your client.

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