



An apology

Can it help or hinder a settlement?

BY NANCY NEAL YEEND

An apology can hasten a settlement or bring discussions to a quick close. It all depends on who is giving the apology and the level of sincerity perceived. There are five elements to consider when apologizing: the speaker, words, tone, acknowledgment and prevention. It goes without saying that any successful apology needs to be spontaneous and unprompted.

Speaker

An apology needs to be made directly to the individual impacted and by the person who caused the incident. If an attorney apologizes on behalf of his or her client, the apology is rarely accepted, and settlement discussions will often end.

Attorneys are frequently concerned that if the client makes an apology, then there may be legal consequences, and that the apology is considered an admission of guilt. Better to acknowledge, up front, when there is a wrong. This often catches the other team off guard, and tends to move the negotiations towards settlement. Many apologies are made privately during direct negotiations, and not put in writing. If an apology is made during mediation, then the mediator should not be a messenger delivering it to the other side. The apology must come directly from the person making the apology.

When an attorney discusses the possibility of the client making an apology, it is wise to address the five elements of an apology, but not have the client practice the apology to such an extent that it no longer sounds sincere. Over-rehearsed apologies are a waste of time.

Words

According to many who have written on the topic of apologies, the words used have a significant impact on the listener. It does not matter if the apology is from an attorney to his or her client, or between disputing parties, the key words

include “*I apologize*” and/or “*I am sorry*.” Both phrases indicate that the person offering the apology recognizes that they made a mistake.

If someone says, “*I regret*,” then the apology is weakened. Invariably the listener feels that the person “*regrets*” getting caught and is not sorry for what they did. The apology is therefore discounted or may fuel the flames of the controversy. The person offended may need time to absorb the apology, and depending on the severity of the harm, may need even more time before they can consider forgiveness. It should be remembered that one should never include a request for forgiveness in an apology. This too can diminish the value of the apology. Leave forgiveness to the responder.

Tone

How the words are delivered, facial expression, eye contact, and overall body language combine to set the tone of the apology and must match the sincerity of the words. If the person apologizing smirks, does not look directly at the person to whom they are apologizing, leans away or otherwise displays a gesture that can be interpreted as insincere, the apology will be a wasted effort. Tone with its accompanying body language and mannerisms must mirror the sincerity of the apology.

Acknowledgment

People who make an apology need to not only indicate that they are sorry for what happened, but also acknowledge that they were responsible for the incident. Starting to apologize and then inserting an excuse diminishes the value of apology.

When someone says, “*I am sorry, and it would not have happened if the sun was not in my eyes*,” or “*If I had better support staff*,” it just increases the frustration and anger of the listener, and any benefit of the apology is lost. Explanations or excuses must never be combined with an apology.

Prevention

The final portion of the apology includes a pledge that what happened will not be repeated. Specific information of what changes will be made or have already been instituted must accompany the apology. Including how the event will be prevented in the future enhances the sincerity of the apology and increases the probability of a settlement. An apology might include something like, “*I am very sorry for what happened, and want you to know that I have changed our entire process, so that nothing like what happened to you will ever happen to anyone else*.”

Prevention takes many forms and, depending on the situation, might include changes in training or oversight of personnel, firing of the individual who caused the problem, bringing a structure to code, or installing a safety device. In some situations, when the action being apologized for is so involved or egregious, the person who was harmed may even be retained as a consultant to advise on what changes need to be made or to evaluate the changes.

The unprompted, heartfelt and sincere apology has the greatest benefit by being stated, in person and directly to the wronged individual. It includes an acknowledgment for causing the problem and identifies how the situation will be prevented in the future. The words used and the tone must reflect genuine sincerity, and not sound like an over-rehearsed statement.



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