

# Without Prejudice May Not Be So

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I have been involved in many cases that have settled as a result of a "without prejudice" offer.

I remember a particular client who I settled a case for by making a without prejudice offer. He was so impressed by the whole without prejudice thing that he started putting those words on all his emails and letters to me, including when he sent me cheques to pay my bills.

Maybe he was playing with my mind.

If so it worked, because I am obviously still a little haunted by it.

I remember one year he sent me a Christmas card and I read it 25 times looking for the words "without prejudice".

They weren't there, but he did include a disclaimer in case Christmas and the new year didn't quite turn out to be consistent with the wishes he was expressing. Anyway, I give the win to him.

Without prejudice negotiations are a great tool to use when you are involved in a dispute. You can make offers that are essentially off the record and you can put pressure on your opponent to settle - because if they don't, they may have to pay your costs.

But be very careful with the information that you reveal in without prejudice negotiations.

I say this because in many cases without prejudice negotiations are only off the record so far as the litigation is concerned. They potentially can be used elsewhere - think media, think internet.

And if the information revealed is not of a truly without prejudice nature - meaning a genuine attempt to settle a dispute - it might still be used in the litigation against you.

My overall message this week is be careful with information. In the information age even without prejudice information can be prejudicial to you.

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