



Self-Represented

Information and Tips from a lawyer to non-lawyers

How to succeed without a lawyer and save thousands of dollars

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The meaning of "Without Prejudice" Communications in the Legal Context

The term "WITHOUT PREJUDICE" as used in the legal context, has nothing to do with racial or other form of discrimination.

Sometimes your lawyer- if you are not self-represented- will send you copies of his letters to the other lawyers. These letters may be marked, "WITHOUT PREJUDICE". The reason your lawyer marks these letters "WITHOUT PREJUDICE" is to ensure that they are classified as privileged and therefore prevent their disclosure to others or their admissibility to court.

The rationale behind these "WITHOUT PREJUDICE" communications is simple: it is to encourage the opposing parties to a dispute to communicate freely and candidly for the purpose of effecting a possible settlement or compromise of their claims.

If you are self-represented involved in a legal dispute, and you want to send out letters or e-mail marked "WITHOUT PREJUDICE" ensure that the content of your letters or e-mail clearly conveys some transparent message or intention to settle a particular dispute; otherwise, such communication not only is not privileged, it may also prove to be highly prejudicial to your case and eventually may hurt you, financially or otherwise.

To be on the safe side, you never admit liability or responsibility in your letters to others, even if you may have done something wrong or your conduct was negligent, unless you are prepared to face the consequences.

As an example, you may wish to open your letter with the following paragraph: "Without admission of liability or responsibility, I am prepared to discuss a reasonable settlement of our dispute for the purpose of a just, expeditious and least expensive resolution of this matter. I am offering you \$..... which is open for acceptance until tomorrow 11:00 p.m. Please respond to this offer prior to its expiration, so that this matter is resolved to our mutual satisfaction".

You should also label your letters "WITHOUT PREJUDICE" right on the top.

Remember, however, that the mere words "WITHOUT PREJUDICE" printed on your letter or e-mail do not make your document privileged or protected from disclosure as evidence at trial. It is your intention and the content of the letter

or e-mail that govern whether or not these communications are privileged. Be careful, therefore, not to engage in personal or scandalous attacks designed to intimidate your opponent.

If you genuinely desire to settle a dispute and your intentions are made abundantly clear in your letter or e-mail, do not worry if you forgot to write on top of the letter the words "WITHOUT PREJUDICE". The privilege will be imputed in your letter. Similarly, even if one of your letters does not contain an offer or some proposed compromise, you are protected from having your letter disclosed to the court, if your letter forms part of a series of negotiations designed to effect settlement. You are best protected however, if you always put on the heading of your letter the words "WITHOUT PREJUDICE" when you are communicating some honest desire to settle or compromise a dispute.

Remember also that if you or your opponent makes a proposal for settlement "WITHOUT PREJUDICE" and you or your opponent repudiates the acceptance of the offer or fails to carry out the terms of the settlement, the privilege which was attached to these communication will no longer exist, and these documents may find their way in the litigation that may follow from such repudiation.

WITHOUT PREJUDICE communications have also a generalized meaning which applies to adjourning court cases, re-scheduling the closing of real estate transactions, corresponding about real estate transactions, or even dismissing actions.

The reader ought to be aware that the particular meaning of "WITHOUT PREJUDICE" may be subject to different applications and interpretations across Canada, the United States and U.K.

The reader should also keep in mind that the rule for the exclusion of evidence based on "WITHOUT PREJUDICE" communications is very complex, is subject to exceptions, qualifications and disqualifications, and is dependant of the vagaries of circumstances or intent of the parties.

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