



**MICHAEL R. DILIBERTO, ESQ.**



## **Are We There Yet?**

Your case settled at mediation. Now, each side wants the first shot at preparing the settlement agreement to draft the terms they want. This process can be complicated in multiple-party negotiations where many eager volunteers vie for the job. So how do you manage this process?

The “single negotiation text” technique can bring order to this important task, suggests Professor Donald G. Gifford (University of Maryland School of Law):

1. The mediator drafts a proposed agreement and asks the other negotiators for their suggestions and criticisms. No one is asked to accept the proposal, but only to make comments and suggestions.
2. After receiving the specific suggestions and criticisms from the group, the mediator redrafts the proposal, taking into account the parties’ feedback and suggestions.
3. The mediator then resubmits the revised draft to the parties. The process of soliciting criticism and redrafting begins again, and may recur three or four times, or more.

This works because no single negotiator usually perceives the single negotiation text as becoming a better document at every step of the process. A negotiator may see one round of modification to the text that results in a substantial improvement for her client (sometimes at the expense of other parties), but that the next set of changes benefits other parties. However, because the parties all desire to reach agreement, each may tolerate changes that modestly diminish their own interests as the process moves along. Eventually, a final draft is presented to the parties for their possible acceptance.

This technique was used at the Camp David peace talks with Egypt and Israel in 1978. The U.S. prepared the single negotiation text, followed by 23 more drafts during 13 days, until the last version was accepted by both sides.