



# LEGALLY SPEAKING

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## How to keep the goalposts from moving

A football season lesson in legal negotiation

By Kristi Paulson  
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Fall brings with it a familiar rhythm — crisp air, team rivalries, and the return of football season. Whether you're in the stadium or watching from your couch, there's something universally frustrating about a game where the rules seem to shift. Imagine the chaos if a first down suddenly required twelve yards, or the end zone moved mid-play. It would be infuriating, confusing — and unfair.

Yet in legal practice, that's exactly what happens when one side starts moving the goalposts.

### The tactic behind the metaphor

In negotiation, "moving the goalposts" refers to the strategy — intentional or not — of shifting expectations, demands, or definitions of success during the negotiation process. It often starts subtly: an opposing party agrees to settle if certain conditions are met, but when those conditions are delivered, new ones emerge. It can look like a client who keeps changing their desired outcome, a lawyer who keeps revising their bottom line, or a judge who feels like the facts keep shifting on the eve of trial.

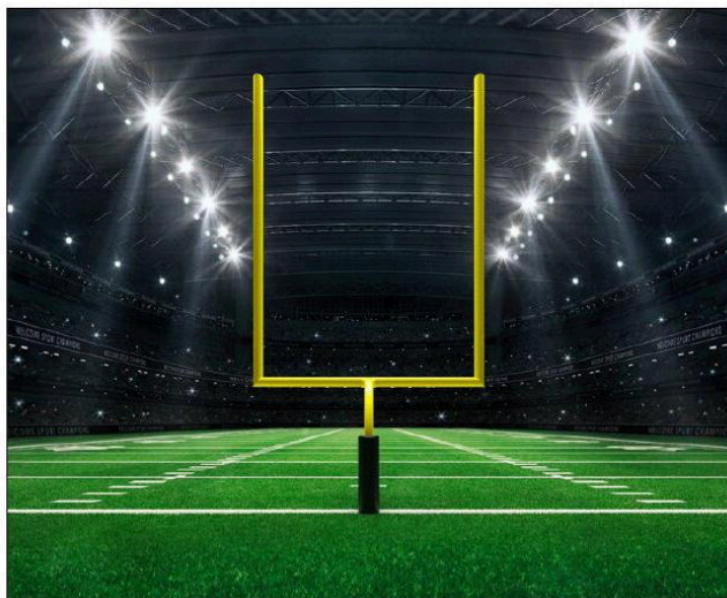
Whether it's a settlement conference, a motion hearing, or a mediation, the result is the same: frustration, mistrust, wasted time.

### Why it happens

There are a few common culprits:

- 1. Unclear initial goals:** When the parties haven't truly defined what resolution looks like, it becomes easy to shift.
- 2. Emotional undercurrents:** Anger, grief, or fear can cloud judgment, causing parties to say "yes" in the moment but backtrack later.
- 3. Power plays:** Some lawyers (and clients) use shifting expectations as a control tactic, deliberately destabilizing the other side.
- 4. Lack of internal alignment:** Sometimes a lawyer thinks they have authority to settle, only to discover their client has moved the goalposts from the sidelines.

These pitfalls explain why mediation requires settlements to be reduced to writing, signed by the parties, and expressly stated to be legally binding. That safeguard exists to keep shifting expectations from undoing progress and to



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ensure the deal sticks.

When these factors collide in practice, even a straightforward resolution can unravel. Consider a civil construction dispute: Both sides agreed the only issue left was final payment for a completed project. During talks, defense counsel offered to settle for \$75,000, and the plaintiff accepted. Everyone left believing the case was resolved. But by the next day, the defense returned with new conditions — a broad mutual release and language disclaiming fault, terms never raised before. The plaintiff felt ambushed, trust evaporated, and settlement collapsed.

The breakdown wasn't inevitable. It was preventable — with something as simple as a follow-up email confirming the \$75,000 agreement. That single step could have anchored expectations and held both sides accountable. Without a shared written understanding, each party revised the story to its own advantage. And when clarity is missing, the goalposts don't just move—they vanish, taking with them any chance of resolution.

### Key Takeaways:

- **Put it in writing.** A signed, binding document removes ambiguity and prevents later disputes.
  - **Confirm immediately.** A quick follow-up email or term sheet can lock in the deal.
  - **Protect trust.** Clear documentation reduces the risk of ambush and keeps negotiations moving forward.
- Psychological insight:** People sometimes move goalposts because of deeper forces: loss aversion (fear of giving up too much), fear of finality (discomfort with closure), or a need for control (the sense that shifting terms keeps power in their

hands). Recognizing these drivers helps lawyers address the behavior without taking it personally.

**Client counseling angle:** It's not always the other side. Sometimes your own client starts shifting expectations midstream. That's why setting clear definitions of success during intake — and revisiting them periodically — is so critical. A candid reminder of what "winning" looked like at the start can prevent disappointment later.

### What lawyers and judges can do about it

As with football, good communication is the playbook that keeps the game fair. Here are some concrete ways lawyers and judges can stay ahead of the moving goalposts:

- 1. Define the end zone:** At the outset of any negotiation, clearly articulate your client's goals — and encourage the other side to do the same. Use plain language: "What would resolution look like to you?" Then write it down. Having a shared definition of success minimizes later rewrites of the game plan.
- 2. Document progress:** Summarize agreements in real time. If a number is floated, if a term is agreed to, or if a deal seems imminent—memorialize it. This isn't about rigid enforcement; it's about anchoring expectations.
- 3. Call out the shift:** Don't shy away from calling out a moving goalpost. Do it respectfully and without blame:

*"Just to clarify, we had understood that [X] would be acceptable, but now it seems we're discussing [Y]. Can you help me understand what changed?"*

Naming the shift invites transparency

and discourages gamesmanship.

**4. Use the neutral's playbook:** If you're in mediation, let the mediator do some coaching. A skilled neutral can reality-test expectations and identify whether the goalpost is truly moving—or whether it was never firmly planted in the first place.

**5. Set limits on replay:** Relitigating settled issues wastes everyone's time and erodes momentum. Judges can curb this by setting clear parameters in scheduling orders and discouraging duplicative motion practice. Lawyers can protect their time (and their sanity) by putting old issues to rest: "We've already resolved that issue. Let's not bring it back onto the field." Just like in football, once a play is reviewed and ruled, the game moves forward — not backward.

**6. Judge's perspective:** Judges notice when lawyers keep the game moving efficiently. Attorneys who avoid unnecessary replay, summarize clearly, and stay consistent often gain credibility. Over time, that credibility can be just as valuable as a favorable ruling.

These strategies aren't just theoretical — they become critical when expectations begin to unravel after apparent progress. In one parenting-time negotiation, both parties agreed on a week-on/week-off schedule. The discussion was productive, the tone cooperative, and by the end of the session, it seemed like the matter was resolved. But just a few days later, one parent suddenly insisted that all exchanges be supervised and claimed the agreed-upon schedule no longer worked. The shift not only caught the other side off guard — it threatened to undo the entire agreement.

In that moment, counsel had to draw a clear boundary. Rather than renegotiating on the fly, the attorney calmly brought the conversation back to center: "Let's revisit what we confirmed. If you're asking to reopen the schedule, we'll need to set the entire matter for hearing or mediation again. We're not amending portions piecemeal." That firm but respectful stance reestablished structure and protected the work already accomplished.

It's a reminder that boundaries aren't barriers to settlement — they're often what hold resolution in place.

### When moving the goalposts is the strategy

Sometimes it's not an accident. You'll run into opposing counsel — or even a client — who seems to thrive on ambiguity, constantly revising demands, adding new issues, or shifting expectations. For these players, the moving goalpost isn't a



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misstep — it's a tactic.

So how do you respond when shifting expectations aren't a mistake but a strategy? Here are five ways to keep control of the game:

**1. Recognize it as a pattern:** When someone consistently changes their position, recognize that this may be their go-to strategy. Instead of reacting with surprise or frustration each time, approach with calm predictability: *"Given our past conversations, I'd like to confirm where we're landing today and note that for both sides' clarity moving forward."*

**2. Shrink the field:** Narrow the scope of discussions. Rather than chasing every new issue, set limits.

*"Let's resolve the parenting time schedule today. If you'd like to discuss property, we can schedule that separately."*

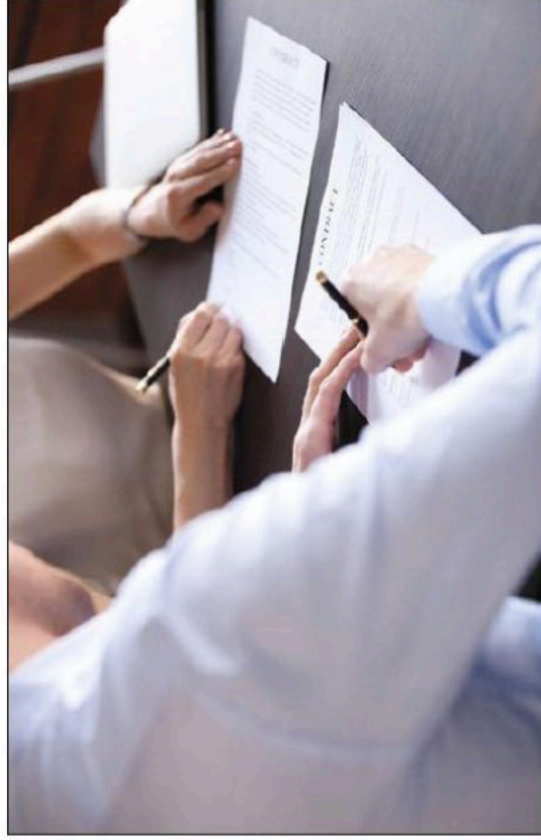
Focused conversations reduce the opportunity for manipulation.

**3. Don't play the same game:** Stay grounded. Maintain your own clarity and consistency. Reaffirm your client's goals and reflect them back often:

*"Here's what we said success would look like — has that changed?"*

This re-centers the discussion and helps resist being dragged off course.

**4. Bring in the referee:** When necessary, get judicial guidance or mediator support. If the goalposts keep moving in court, consider requesting a pretrial conference or clarification of issues. Judges value efficient, fair play—and most can spot stalling or manipulation from the



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press box.

**5. Set your own boundaries:** Not every issue requires a counteroffer. Not every shift deserves a response. Know when to say:

*"We're prepared to proceed on the terms as outlined. If your side is not, we'll regroup when there's more clarity."*

You don't have to chase every ball. Again, this isn't just theory. In a recent multi-defendant tort case, one defense attorney repeatedly changed their theory of the case. The defense began by denying liability outright, then shifted to blaming a co-defendant, and later requested an apportionment hearing — each time forcing the plaintiff's team to regroup and reassess. It quickly became clear that this wasn't a strategy rooted in evolving facts, but rather in keeping the opposition on their heels.

## The bigger picture: Trust and resolution

Moving goalposts erode trust — and trust is the quiet foundation of every successful negotiation. Without it, even the

most reasonable offers fall flat. Worse yet, the party playing fair begins to wonder whether resolution is possible at all.

Lawyers and judges share a responsibility to keep the game fair. That means noticing when the rules are shifting and steering the conversation back to what matters most: resolution, integrity, and clarity.

## Final whistle

In football, there are rules to protect the game's integrity — penalties for off-sides, instant replay for disputes, referees to ensure fairness. In law, the rules aren't as clearly enforced unless we choose to enforce them ourselves.

So, as the season unfolds, keep your eyes on the goalposts — not just the other team. Don't let shifting demands turn your negotiation into a scrimmage. Plant your end zone early, keep the communication honest, and help both sides walk off the field with dignity. When you hold the goalposts steady, you don't just protect your client — you protect the integrity of the game itself.

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