

**Bridge the Gap Mentoring Program  
Introduction to Difficult Clients  
Resource 33**

Resource 33 is intended to facilitate a discussion about how to deal with “difficult” clients.

- Discuss why lawyers should be concerned about difficult clients.
- Share with the new lawyers an example of a difficult client you had, how you handled him or her, how the difficult relationship affected the representation, what you might have done differently, etc.
- Identify characteristics of difficult clients of which the new lawyer should be aware at the earliest contacts with the potential client, as well as how to factor that into accepting the potential representation.
- Identify client behaviors that occur during representation which indicate your client is angry or dissatisfied. Provide suggestions of the best and most professional ways to address the client and handle his or her anger.
- Review the chapter, *Handling a Difficult Client without Losing the Client or the Case*, from Nelson, Noelle C. *Connecting with Your Client*. American Bar Association, 1996.
- Discuss the importance of talking to the client as early as possible about expectations of the representation, the scope of the representation, and the fee arrangement. Explain how discussing these (and other) issues can help to prevent misunderstandings and disagreement in your attorney-client relationship. See Poll, Edward. “Manage Expectations Through Collaboration.” *Law Practice Today*, Oct 2010.
- Discuss a lawyer’s heightened responsibility to a client who is mentally impaired. Scott, Todd C. “The first thing we do...Identifying Violent Clients and Defusing Dangerous Situations.” *GP Solo*, Jan/Feb 2011. 52-55.

Resource 33

**Resource 33**

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**Manage Expectation Through Collaboration**

Printable Version

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**Effective communications at every stage of the client relationship will help ensure that you keep clients rather than watch them walk out the door dissatisfied.**

Without clients there is no reason to be a lawyer. Lawyers don't practice law, they serve clients. It's essential that the client knows what the lawyer is doing, and that the client approves of the tactics to be taken to achieve the client's goals. If clients do not believe that a lawyer is serving their best interests, they will take their business elsewhere. Effective lawyers find out not only what clients need, but also what they want. The skills of a lawyer and the way in which services are delivered to the client must be in tune with what the client wants and needs to have.

There are four stages or levels of client expectations, each defining progressively more complete integration and understanding in the legal services relationship:

- **Level One: Satisfaction.** This is the minimum threshold of client expectations in a legal services relationship and is synonymous with communication. Law firms that don't communicate with their clients to learn what clients want, how they want to receive it, and what the clients' future needs will be will have dissatisfied clients who soon leave.
- **Level Two: Exceeding expectations.** This goes beyond mere satisfaction. Of course, for the next matter, the client's expectations would be higher. And, if the lawyer performs at this level, the client will be satisfied. No longer exceeding expectations. This may represent a communications failure by the lawyer.
- **Level Three: Earning loyalty.** The standard of this level is time, where the firm maintains client relationships measured in years and even decades. Communication is the foundation here as well – sometimes clients contact the law firm first when new needs arise, other times their lawyer offers a new service or idea that the client hadn't expected.
- **Level Four: Collaboration.** This is the culmination of all three levels. Lawyer and client work together to assess needs and develop a proactive, interactive law approach, making recommendations to each other about actions and decisions that are mutually beneficial.

The specifics of what defines a collaborative relationship will be different for each client, but every lawyer can do much to shape such a relationship, and thereby manage client expectations successfully, by using the following tactics.

**Start on the Right Foot**

It is a fundamental business and professional necessity that lawyers have a signed engagement letter for a new client, stating each party's responsibilities for making the engagement a success. The first key to meeting the client's expectations is to incorporate all essentials in the engagement letter, by obtaining as much information as possible about the goals and desires of the client. Such information would cover parties, issues, anticipated strategies, desired outcomes and how much the client wants to pay. Going through this process of detailing and negotiating to prepare the engagement letter should prevent situations where clients have unrealistic expectations or demands, or believe that the firm's estimates – whether of time or outcome or costs – are ironclad guarantees.

**Avoid Unreasonable Clients**

Discussing engagement terms will frequently uncover the client that will in the future express irritation with delay, who will chronically complain about everything, who will demand constant or instant attention, or who expects unrealistic or abnormal hand-holding. Beware of clients who cannot or will not agree to what they want their lawyer to accomplish. Telltale warning signs of future problems are clients who cannot articulate what they want to achieve, suggest that they know better than the lawyer what needs to be done, nitpick over budgets or insist that their matter is "life and death." Such clients will often be future sources of last minute complaints or emergencies that at best are irritating and at worst can result in errors under pressure.

**Be Reasonable, Not Cheap**

The seller of any service must understand costs, set profit targets and gauge market demand. The fee decision ultimately is a matter of the seller's choice, but the buyer – the client – must not only agree to but also understand the fee. Clients may expect the best possible results for the least possible cost. Help them to understand Rule of Professional Conduct 1.5, which states that, "a lawyer shall not make an agreement for, charge, or collect an unreasonable fee." Deciding a reasonable fee involves answering certain questions. Is the amount of the fee proportional to the value of the services performed? Do the lawyer's skill and experience justify the fee? Does the client understand the amount and nature of the fee and consent to it? Do not get onto the slippery slope of letting the client dictate what the fee should be. If the fee should be low, then is \$200 per hour, for example, too high? If so, is \$150 per hour too high? The lawyer's true obligation is not to be cheap, but to be fully committed to a collaborative client relationship that builds trust over the long term. That way, clients see the lawyer as valuable, not expensive.

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### Consider a Performance Guarantee

No lawyer can ethically guarantee a result. To do so comes under Rule of Professional Conduct 7.1's prohibition of false or misleading communication, which the ABA's commentary says includes "lead[ing] a reasonable person to form an unjustified expectation" about results. However, lawyers can guarantee a certain degree of effort – which does not violate the code, because it deals with factors within the lawyer's own control. Such a "guarantee" reduces clients' feelings of risk, so that they feel comfortable moving ahead with an engagement. Establishing a budget at the start of an engagement can do this by showing clients that their lawyers are sensitive to their needs and giving the client a sense of what to expect. It's only a short step from this level to guaranteeing satisfaction with the level of service and offering to make adjustments in the fee if necessary if the client were dissatisfied. Of course, don't make this guarantee without being prepared to stand behind (and in front of) the effort made.

### Visit and Listen

Not enough law firms ask their clients "how am I doing?" As a result, many lawyers, unfortunately, never figure out that their client is unhappy. Sending simple, regular status reports can do much to communicate with clients and show what is being done for them. However, status reports only convey information from the lawyer to the client. Far more important for managing client expectations is to find out what clients themselves think, and the best way to do that is to visit the client periodically. Far too often lawyers are apprehensive about what to say or do in making such visits, but the real goal is to get clients to talk about their business and to listen to what they are saying. Managing client expectations is possible only when those expectations are clear. When clients get the chance to talk about their plans and objectives, they begin to think of their lawyer as a long-term friend. When asked questions about their business in an open, non-judgmental way, clients will answer frankly because they are addressing what is most important to them. Clients want to speak about themselves but they appreciate the lawyer's respect in taking the trouble to learn more about them. It creates a win-win dynamic that builds mutual confidence and collaboration.

### Provide Solutions

Law firms can get ahead of client expectations by offering something that competitor firms don't or can't, and creating something new that clients need or want. This is what marketers call a unique selling proposition (USP). The USP is a way for the firm to demonstrate value, not just represent cost. Providing solutions gets attention – and gets rewarded. Clients may send out an RFP that signals they are looking for their current firms to do something to justify continuing the relationship. A firm can establish its USP by going outside the RFP and suggesting ways of managing an IP portfolio more effectively, offering to submit electronic invoices that itemize and detail services provided, demonstrating how to pare back litigation discovery costs by reducing depositions, or showing how to use extranet and knowledge management technology for sharing information more effectively. This gets away from competing on price, moving client expectations away from "what does it cost me" toward "what does it do for me."

### Build Trust and Loyalty

Being a qualified lawyer is not the key to managing client expectations. The very first Rule of Professional Conduct (1.1) asserts that "a lawyer shall provide competent representation to a client." But competence is actually a pretty low benchmark. Clients see lawyers as competent. Based on a skill level, clients typically can't tell the difference among lawyers. Each lawyer with a law degree and license from the State is assumed to be as competent as the next lawyer.

The lawyer's true obligation toward what clients expect is to be fully committed to a collaborative relationship that builds trust over the long term. Communicate regularly with clients. Demonstrate a clear understanding of their values as individuals and (if appropriate) as organizations. Seek out their opinions, ask them what they want to accomplish, explain the reasons behind the advice they receive. Such collaborations don't just manage expectations – they shape expectations and builds the trust and loyalty that are essential to an enduring relationship.

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**"THE FIRST THING WE DO..."**

**Identifying  
Violent Clients  
and Defusing  
Dangerous Situations**

*By Todd C. Scott*

**D**espite the frantic attempts to warn her that she was in imminent danger, Terri Melcher, a lawyer operating a solo family law practice in suburban Minneapolis, Minnesota, never foresaw the violent situation that was about to explode in her law office.

Rushing into her firm and shouting, "You're not going to mess with me anymore—I'm going to kill you," Sheikh Nyane, the former spouse of Melcher's client in a child custody case, chased Melcher throughout her office and began a viscous attack on the attorney that ended

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after Nyane had stabbed Melcher nearly 30 times in her head, face, and body.

Melcher survived the June 11, 2010, attack—partially because the assailant responded to her pleas to spare her life, and perhaps also because early in the attack, a two-inch tip of the blade used in the assault broke off in her skull, preventing the stabs from penetrating for the duration of the assault. Shortly afterward, Nyane turned himself in to local police, with the knife in hand, admitting to authorities that he was upset with Melcher because she had represented his former spouse in child custody proceedings.

Violent attacks committed against attorneys by clients and related parties enraged over their legal matters is nothing new. Every year, lawyers are attacked with deadly force by assailants who were involved in the attorneys' legal activities prior to the attack. There are no criminal statistics that show lawyers are

in any greater danger than the general public from violent attack; however, recent trends in the practice of law indicate that more lawyers are at risk to violent attack than ever before. As more women enter the practice of law, and more lawyers establish solo practices, lawyers are feeling more vulnerable—especially as highly charged legal disputes involving bankruptcy, child custody, and marriage dissolution are on the rise. Adding to the tension, reduced judicial budgets require parties involved in legal disputes to wait longer than ever before to have their matters heard—greatly testing the patience of a group of legal participants known for having little or no patience.

Attorneys have taken notice of reports involving dozens of lawyers who were killed or critically injured after being shot, stabbed, or beaten in their office, their home, or in close proximity to their local courthouse. Lawyers often ask what can

**The reaction for women being denied access to their children is usually sadness. For men, it is anger.**

they do to avoid becoming the victim of a violent attack, or whether exposure to a potentially violent assault is unavoidable and inherent to the practice of law.

"Earlier in my career I worried more about my criminal defense clients," says solo attorney Ann Barker from Owatonna, Minnesota. But any fears about potential violent acts from her criminal clients diminished as Barker eventually saw that clients have few opportunities to act out violently while in custody or under the constant scrutiny of law enforcement and court personnel. Barker eventually found herself realizing, "I am this person's last best friend, and they are not about to harm me."

Now, the individuals that sometimes concern Barker are those involved in family law disputes. Opposing male clients who seem highly emotional and are not represented by counsel worry Barker the most. As a precaution, Barker, who is tall, will usually conduct her business with these parties using an imposing voice and will typically carry herself in a manner that says, "Don't bother me." Court deputies are accustomed to her occasional requests for an escort to her vehicle if she is concerned about a party in a legal matter, and she is careful to make sure that the doors to her law office are locked whenever she is alone on the premises.

Barker's precautions for maintaining her personal safety are based on years of encountering upset individuals embroiled in gut-wrenching legal disputes. Despite having witnessed the different ways various types of people react to their stress and frustration, Barker sees some similarities in certain personality types that at times will put her feelings of caution on high alert.

"The reaction for women being denied access to their children is usually sadness," says Barker. "For men, it is anger."

#### **They Attack You for One Reason: to Hurt You**

On September 29, 2003, as solo attorney Richard Hendrickson was kneeling and reaching into his briefcase to serve a motion in a Minneapolis courthouse seeking to declare Susan Berkovitz a frivolous litigator, Berkovitz aimed a .38 caliber pistol

within inches of the area below Hendrickson's right ear and fired the gun.

The bullet went into Hendrickson's neck and bounced off his vertebrae, tearing its way forward and ripping through a secondary artery while leaving a trail of fragments near the base of his skull. Hendrickson fell on his right side and could only lay there helplessly, bleeding, as he heard four more shots that Berkovitz had fired at his client, Shelley Joseph-Kordell, in a nearby women's restroom.

"The human mind is an amazing thing," remarks Hendrickson as he recalls the moment he should have died on the 17th floor of the Hennepin County Government Center.

"Your brain tells you, 'you're being shot,'" says Hendrickson, and time slowed down to the point where it felt like Hendrickson could count seconds between the moment he saw in his peripheral vision a glimpse of the pink dress Berkovitz was wearing, to when the flash of the muzzle occurred as the gun discharged, to eventually the moment when Hendrickson felt a pain beyond anything he had ever known.

"It was as if [Minnesota Twins great] Harmon Killebrew had stepped up next to me and swung a bat into my neck like he was aiming for the bleachers."

At about the same time Hendrickson and Kordell were rushed to a nearby trauma center for treatment for their gunshot wounds, Berkovitz was found, unarmed, on another floor of the 24-story county building and apprehended by law enforcement authorities. Hendrickson, who couldn't speak for several days after the shooting owing to his injuries, inquired in writing about the condition of his client Shelley Joseph-Kordell. When a concerned nurse declined to give him a report on Kordell and offered that he get more rest, Hendrickson knew immediately that his client had been killed.

Hendrickson and Kordell had been worried about Berkovitz long before she attempted to take both of their lives in the downtown Minneapolis courthouse. The months leading up to the shootings were filled with multiple hearings involving the guardianship of Berkovitz's father. Berkovitz, who was upset that her cousin

Kordell had been named conservator/guardian of her father, proceeded to harass and intimidate Kordell and Hendrickson in a variety of ways.

Berkovitz was a serial litigator. In the months prior to the shootings, she filed multiple motions attacking the legitimacy of the Kordell appointment in Ramsey County, where the matter was first venued. Court personnel cringed during her frequent visits to the filing clerk's office and while attending to the constant needs of the pro se claimant, knowing that her motions would likely be found without merit and summarily dismissed. With every motion she filed and lost, her anger got more palpable. "Her frustration was that she kept losing," says Hendrickson.

The system was in the process of shutting her off, but it's a long process. The court began to put more limits on what Berkovitz could do. First she was no longer allowed to conduct business in the probate office, and then she was no longer allowed to call the office at all. After the court declared that she could no longer file anything without prior approval of the assistant chief judge, Berkovitz had had enough and started bringing actions against Kordell and Hendrickson in nearby Hennepin County.

On the day that Shelley Joseph-Kordell entered the Hennepin County Government Center for the last time, she had expressed great reservation about appearing at a harassment hearing requested by Berkovitz that both Kordell and Hendrickson knew was frivolous. Kordell recognized that Berkovitz's behavior was growing increasingly bizarre, and she suspected that Berkovitz was the cause for the dead animals that mysteriously began appearing in her yard behind her townhouse. Kordell was anxious and requested that a security guard accompany them to the hearing. Hendrickson complied by arranging for an unarmed security escort who met them as they entered the government center.

Upon arriving on the 17th floor where the hearing was to be held, both Hendrickson and Kordell noticed Berkovitz and chose to stand in an area of the hallway out of Berkovitz's line of vision. Kordell, feeling very agitated, went to a

nearby restroom where the security guard stood watch outside the door. Nobody seems to know where the security guard went once the shootings began. Immediately after shooting Hendrickson, Berkovitz entered the nearby women's restroom and shot Kordell four times, creating six bullet wounds in her arms, head, chest, and neck.

Looking back on the incident, Richard Hendrickson does not feel he could have done anything more to prevent the attack from occurring.

"Over the course of my law practice, I had seen a number of Susan Berkovitz types—irrational, unstable, mentally ill," says Hendrickson. He saw it as part of his job to advise his clients that dealing with bizarre and unstable people is sometimes part of the process, and the way to handle it was to continue with the legal proceedings and let the court decide.

"Besides," says Hendrickson, "What could we do about it? We would have liked to have her committed, but the sense was that she never really crossed a line."

Hendrickson does, however, recognize bizarre client behavior much sooner now than he did in the past, and he takes it much more seriously.

"Now," Hendrickson adds, "an attorney also has to know when to get out of a situation." He acknowledges that nearly every attorney will routinely be required to deal with "goofy" individuals, but the client is depending on the attorney's gut instinct to recognize when the warning signs have reached a dangerous level. "Trust your gut," says Hendrickson. "If it's not right, or scary, or beyond bizarre, don't dismiss it."

Hendrickson always knew that he would return to the practice of law after recovering from his injuries. Lawyers concerned about angry and intimidating parties will occasionally call Hendrickson for advice. He reminds lawyers that the world is full of dangerous people. Although Berkovitz had a range of emotional problems that led to her committing the assault, there were also a few strangers who attended the post-trial motions simply to show support for Berkovitz's defense. The reasoning of the defense was that

**Trust your gut. If it's not right, or scary, or beyond bizarre, don't dismiss it.**

The goal of self-defense is not to “win,” but to get away safely.

## TOOLS FOR COOLING CONFRONTATION

There are certain elements of escalation common to nearly all serious confrontations. The following tips from *Scenarios in Self-Defense*, by Mary Brandl and Anita Bendickson, are designed to counter these elements and make it more difficult for a confrontation to keep escalating.

**Strong body language.** Have a strong “base” position (i.e., with legs slightly apart so the body forms a pyramid) where it is easy to take a deep breath.

**Tone of voice.** A quieter voice when trying to keep a situation from escalating is usually the best course. In a situation that has escalated to extreme, sudden loud behaviors might startle the aggressor enough to buy you some time and enable you to get to safety.

**Emphasis of voice.** Be aware of what you are saying and the possible negative effects from too much use of a questioning voice. If a verbal response is called for, using commands and statements in a firm but non-challenging tone is perhaps your most valuable response for ending a situation.

**Distance.** It is very important to keep distance from the aggressor. Attackers need to be close to attack and will use ploys to get within “handshake distance.” Moving or backing away does not have to look like you are backing down.

**Never turn your back on a hostile person.** Be aware that it is easier for an upset person to physically escalate if you have your back to him or her.

**Oblique angles.** To approach or stand straight-on toward a person can have a very different effect than using a slight angle. Be aware of the situations where each might be useful and how a straight-on approach can appear as a challenge.

**Eye contact.** To look at someone in a way that makes them feel acknowledged without being too intrusive or possibly provoking, use a more diffuse kind of eye contact. You can do this by looking at the more general area of the person’s face rather than looking just at the eyes.

—Adapted from *Scenarios in Self-Defense* (BPS Communications, 1989); used with permission from the co-author, Mary Brandl.

Hendrickson deserved to be shot because, as a lawyer, “He had it coming.”

“They attack you for only one reason. To hurt you,” says Hendrickson.

### Defusing a Dangerous Situation

The attack on Richard Hendrickson and his client Shelley Joseph-Kordell was unusual in that it was committed by a woman. According to data by the U.S. Bureau of Justice Statistics, personal assault crimes are typically committed by men ages 15 to 30. What wasn’t unusual about it was that a handgun was used in the assault. Handguns have replaced edge weapons, such as knives and razors, as the most common weapon used by a perpetrator in an assault.

Hendrickson, who doesn’t like guns, feels that a handgun in his possession at the time of his assault would have done nothing to aid in his defense. Instead, Hendrickson believes that lawyers have a better chance of avoiding an assault by a violent client if they recognize the potential for danger early on and steer clear of the situation.

Mary Brandl, an educator in self-defense and co-author (with Anita Bendickson) of the book *Scenarios in Self-Defense*, agrees with Hendrickson. To Brandl, self-defense involves employing any available means for safely avoiding or escaping a potentially dangerous encounter. It needn’t involve fighting or a direct physical encounter. The goal of



self-defense is not to “win,” but rather to get away from a potentially dangerous situation safely.

“Without realizing it, people take on more risks based upon a false sense of their past success,” says Brandl. Lawyers such as Hendrickson might have taken on cases thinking, “This doesn’t feel right, but I’ve handled tough cases like this before.” According to Brandl, legal professionals need to assess the level of danger in a matter by “judging what is going on in *that* situation, not how it compares to your past success.”

Brandl, a fourth-degree black belt in *shotokan* karate, began developing a specialized self-defense course for legal, insurance, and government professionals when she realized that in many occupations, work involving dangerous confrontation was sometimes the norm.

“You just can’t teach an individual involved in child welfare enforcement to leave every time they are involved in a confrontation,” says Brandl. Brandl also works with health inspectors, insurance claims adjusters, child support enforcement officers, financial assistance representatives, and others in occupations where giving someone bad news is frequently part of the normal routine.

Brandl’s self-defense advice focuses on both nonverbal and verbal tools to counter the escalation that is common to nearly all serious confrontations. Brandl especially advises professionals to understand the importance of nonverbal tools for de-escalating confrontation, as most human communication does not involve words and is more based on how we focus our eyes and control our body movement, and how well we are paying attention to the feelings of the situation. (For more on these nonverbal tools, see the sidebar at left.)

Brandl’s number-one rule for cooling off a difficult situation is to avoid all arguments. Sometimes just restating the same thing during a difficult conversation with slight variations is the best course; in a confrontation, the aggressor often tries to get a rise out of you in order to draw you into an argument.

If you need to engage in a discussion with someone bent on having a confrontation, Brandl recommends talking about

common goals with the aggressor and redirecting his or her thoughts by making suggestions or asking a question. Acknowledging the problems of aggressors can be done by simply restating their problem back to them, and sometimes this can go a long way toward easing a difficult situation.

If you think you may be in a situation where you are about to be attacked, Brandl advises using tactics that disrupt the attack scenario. Most attackers have developed a scenario—either consciously or unconsciously—of how their attack will proceed. By disrupting the attacker’s scenario, you put yourself on even ground with the attacker, and you take away his or her assurance that the attack is going well. Assessing the seriousness and purpose of the attack will help you determine what means to use to disrupt the attack—whether physical, verbal, or other forms of attack resistance.

Plan what you would do if you were cornered in your office by an angry, confrontational client. It is important to prepare an escape path and plan how to contact security and notify others in the office that a dangerous situation is erupting. Draft a plan to secure the safety of everyone in the office, and communicate this plan to all who work on-site. It is essential that everyone knows the plan to prevent chaos when a dangerous situation unfolds.

### **“The First Thing We Do, Let’s Kill All the Lawyers.”**

This immortal line from Shakespeare’s *Henry VI, Part 2*, indicates how longstanding and deeply embedded is the idea that society would be better off if all lawyers were dead. Although legal professionals are usually accustomed to lawyer jokes, websites such as [www.deadlawyers.com](http://www.deadlawyers.com)—which features a smiley logo accompanying news about murdered attorneys—are sobering reminders of the extent to which some individuals will go to intimidate lawyers.

Lawyers must look out for each other’s safety and offer guidance and advice, understanding that any one of them could be in the same frightening situation involving an enraged client. Looking out for the safety of our legal colleagues is crucial for the welfare of lawyers, their clients, and all with whom they work.

**Lawyers must look out for each other’s safety and offer guidance and advice.**