Bridge the Gap Mentoring Program
Dealing with Others on Behalf of Your Client
Resource 35

Resource 35 is intended to facilitate a discussion about appropriate ways (including ethical concerns, etiquette, etc.) for dealing with others on behalf of your client.

- Discuss a lawyer’s particular ethical obligations in dealing with:
  - Opposing party and counsel. See Rule 16-304 NMRA (find at http://www.conwaygreene.com/nmsu/ipext.dll?i=templates&fn=main-h.htm&2.0 or http://www.law.cornell.edu/ethics/nm/code/) and in the The Lawyer’s Creed. (Resource 2)
    - The tribunal. See Rule 16-303 NMRA.
    - The media. See Rule 16-306 NMRA.
    - A legislative body or administrative agency in a non-adjudicative hearing. See Rule 16-309 NMRA.
    - A person represented by counsel. See Rule 16-304 NMRA and Rule 16-402 NMRA.
    - A person unrepresented by counsel. See Rule 16-403 NMRA.
    - A third party. See Rule 16-404(A) NMRA.
  - Discuss a lawyer’s duty to be honest with other parties and the court in all dealings with them. See Rule 16-401 NMRA and Rule 16-303 NMRA.
  - Discuss the importance of dignified, honest, and considerate transactions. Discuss the importance of reputation and how a lawyer’s conduct dealing with others in a case affects his or her reputation. See The Lawyer’s Creed (Resource 2).
  - Discuss what do to do if you receive a document relating to the representation of other counsel that you should not have received. See Rule 16-404 (B) NMRA.
  - Share “best practices” with the new lawyer on how to appropriately deal with others on behalf of your client.
  - Share with the new lawyer “war” stories of attorneys who have ultimately harmed their client because of their incivility and lack of consideration in dealing with opposing counsel, the judge, or the jury.
Civility and Negotiations

By David J. Abeshouse

Civility is—and should be—a core negotiation issue. The degree to which one employs ordinary civility in negotiations often has a marked effect on the bottom-line result. It also can make life more pleasant, even in fundamentally adversarial situations, essentially the norm for business litigators and transactional lawyers. An example of what not to do is the opposing counsel who—instead of working together to resolve a dispute or problem in customized, mutually acceptable fashion—prematurely blurs out, “I'll see you in court.” This knee-jerk reaction usually fails as a negotiation tactic, for many reasons:

- It reflects a lack of analytic forethought and a tendency for emotional outbursts, two aspects that make this lawyer a less-than-formidable adversary.
- It essentially obliterates the possibility of counsel working together for the mutual benefit of the clients, who likely could achieve through a tailored settlement a result far better for both sides than any court would order. Because the vast majority of business litigations settle before trial, it is a fair bet that the parties will end up in some sort of settlement negotiations, regardless.
- Over time, this lawyer will develop a reputation as a loose cannon and a temperamental, petulant, unprofessional person to whom others would not refer clients. Opposing counsel often serve as a good referral source for future business because they have seen firsthand what the lawyer can do in the trenches.
- Finally, to the extent that this lawyer's own client learns of his reaction, the client may become dissatisfied with a lawyer who seems out of control and willing to put his own emotional needs ahead of the client's best interests.

In a hearing before an arbitrator, the less civil party often merely is endeavoring to overcompensate for unfavorable facts or law, whereas the more civil party in a dispute often feels no need to descend into incivility. Indeed, obstreperous counsel thus inadvertently acknowledges implicitly that he or she likely has a less than wholly legitimate case on the facts and/or law—not something a lawyer seeks to communicate to the one who is judging the case and will issue the final determination.

Don't lose your temper. Rather, lose the temper, yelling, and foul language. Although “venting” might improve your mood, it rarely works to your advantage in negotiations. Yes, occasionally it may tend to intimidate; however, the same result likely could be achieved in those instances without the expletive-laden, high-decibel diatribe. Most often, it will cause a diminution in credibility and respect.
And that's a price not worth paying for the occasional negotiation advantage it arguably might afford. Indeed, a prompt apology for an emotional outburst might gain more ground toward a good working relationship and achieving the negotiated goal.

Employ common courtesy and civility as a matter of routine. Make it a part of your natural way of dealing with others, and you will see how effective it is, both in terms of results and in your quality of life. Sure, there are times when the need for some more forceful language and volume may be indicated, but this should be the exception rather than the rule. (The rarity of your outbursts will also increase their impact.) And by refusing to respond in kind when someone personally offends you by words or actions, you refrain from lowering yourself to their level, and that in itself is a laudable goal. Even the matter of responding to e-mails and telephone voice mail messages encompasses these tenets of common courtesy and civility—prompt response by you encourages similar treatment by your counterpart. The more the enlightened use these means of conducting legal and business negotiations, the more likely their use will spread. How much better things would be if this became the usual mode for the majority.

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A resolutionarySM looks at the situation, and from the perspective of standing in the clients' shoes, tries to design the best process—a process that will get to resolution quickly without making things worse. Learn more about how your firm can incorporate these 10 principles into its culture. It should result in more satisfied clients and employees.

Very few firms or law departments have the luxury of a lawyer operating as a full time manager. One of the occupational hazards, especially of litigators, is to bring the adversary mind set into the management process. This can lead to some very poor results. In this column my aim is to provide 10 principles that make up the "Attitude of Resolution." This attitude is much better suited to managing, motivating, empowering and getting the most out of others. I have also come to believe that in most situations this attitude will engender satisfied clients and more satisfactory relationships, the key to all accomplishment and productivity.

During my second year of law school I had my first "real" lawyer's job. I was an intern at a local legal services clinic. On my first day I was handed 25 cases to work on. This would be my "job" for the semester. Three weeks later I asked the managing attorney for more cases. When he asked about the first 25 he gave me, I told him I resolved them.

He was very surprised—and very curious. He asked how I did it. I told him I reviewed the files, spoke to the clients, thought about a fair outcome and what needed to be done, called the attorney or agency on the other side and reached a satisfactory resolution.

I knew nothing about being a lawyer! I had no idea whether the cases were difficult, needed to take a long time or had to be handled in any particular way. With a beginner's mind, I found the solution that worked best for all concerned. Simple? It was for me.

I spent the next 12 years becoming a successful lawyer—and becoming less effective at resolving matters. Then, feeling frustrated, anxious and fearful, I stopped practicing law. I spent the next 15 years unlearning—recovering what I knew about resolution when I started, discovering its component parts and learning how to teach and model it for others.

I found that the most effective judges and lawyers understand people's real concerns. They know what to honor and what to respect. They know how to frame situations and condition people's expectations. They embody a tradition that accommodates competing concerns and builds consensus. Winning or losing is not the point of their work. Their game is resolution, and getting people back to their lives. They are "resolutionaries SM."
8. What future relationships are essential? Who will continue together? (They are thinking of the long term.)

About the Authors
Who is that person who needs immediate attention? (They are concerned with others' resources and damage control.)

What's the best, worst, and why will you want to use it? (They understand that the best way to get to a piece of the pie is to give someone else a piece of the pie.)

Stewart Levine, Esq., A Certified Commercial Arbitrator, Family Mediator, and Collaborative Attorney. He is the author of the award winning “Getting to Resolution: Turning Conflict Into Collaboration” and the recently released “Book of Agreement” that has a chapter on conflict resolution strategies.

Stewart is also a writer of columns for the ABA Journal and The ADR Advisor.

When you probe and listen to the underlying concerns of the other side, accommodation and satisfaction for everyone is possible. Solutions can be invented to accommodate the interests of both sides. Sometimes, strong partisan advocating for each side is the best way to understand all parameters of a situation.

You must know the difference between advocating strongly and being adversarial. Many lawyers operating today ignore the difference. Remember that effective resolution comes from relationships created from an honorable attitude. Unfortunately, the past few years "Rambos" tactics have become commonplace. We all should be well advised to read the best-seller "Everything I Need to Know I Learned in Kindergarten."

The core competency of the resolutionary is the ability to lead people to a new vision that returns them to the real business of their lives, without the ongoing internal chatter of continuing conflict. The job of the resolutionary is to lead the client to resume collaboration and cooperation.

The solutions of the resolutionary reestablish the working relationships that are essential for business, family or government activity. They provide options that contribute to the present and future quality of our lives.

Conclusion
Your initial, automatic reaction may be that law is based on an adversarial model, and to suggest otherwise would undermine the system. I suggest that lawyers exist to facilitate the machinery of our institutions—commercial, government, political and charitable. If we are better able to facilitate through collaboration, then that is the way to proceed.

Given the levels of professional unhappiness, client complaints, citizen frustration and costs of conflict, we have little to lose and a huge upside potential. In the great majority of situations, clients will be happier, societal transactions will move forward with less friction, and lawyers will reap the benefit of deeper levels of personal and professional satisfaction as they accomplish their work with, not against, other lawyers.

We have an opportunity to rebalance ourselves as conflict resolvers. We can be the solution, not part of the problem. In so doing we will restore pride in the calling we answered.

Shifting a basic premise on which a system is based is no simple matter. But if we miss what people are asking for, we will miss a golden opportunity.

What a Resolutionary Embodies
Resolutionaries have the following qualities and abilities. If you aspire to being a resolutionary, it's time to start cultivating these qualities:

- **Collaboration** — They treat everyone respectfully and are always open to learning.
- **Sense** — They make the complex simple.
- **Confidence** — They know the value they contribute; they act on their assessments.
- **Creativeness and innovativeness** — They design what they need to get the job done.
- **Empathy** — They have compassion; they honor and legitimize everyone's concerns.
- **Fairness** — They understand that tomorrow is another day; winning is not everything.
- **Faith and trust** — They know the situation will be resolved.
- **Open** — They create trust and the presence for people to open up into.
- **Getting to the core** — They have an uncanny ability to see the core of the conflict.
- **Honesty and integrity** — This generates trust in everyone; they walk their talk.
- **Intelligence** — They are smart and aware of what's really going on.
- **Judgment** — They have experience and a sixth sense of what will work.
- **Life experience** — They have high mileage (bad, gray or possessing an old soul).
- **Listening skills** — They listen with their entire presence and hear what isn't said.
- **Control of the process** — They know process is integral to resolution.
- **Open mind** — They are not committed to a particular resolution.
- **Practicality** — They try whatever works.
- **Care for people** — They know it's always a relationship problem.
- **Tolerance for conflict** — They remain centered, grounded and fair in the storm.

**Author's Note:** ResolutionarySM is a service mark of Stewart Levine. The term was first articulated by a satisfied client in 1991 who, after a very delicate matter, looked at me and exclaimed "you are a resolutionary."

http://apps.americanbar.org/lpm/lpt/articles/mba09061.shtml

4/22/2011
Take the matter to someone more senior and ask them how to handle it.”

B. ADVICE FOR EVERYBODY WHO SPENDS TIME IN COURT, WHETHER YOU REPRESENT THE UNITED STATES, “THE PEOPLE,” THE STATE, OR CLIENTS

1. Handling judges. Get out your kid gloves!

a. Get to know judges’ styles.

All judges are different! Ask other lawyers in the firm (or other prosecutors in the office) for their impression before you argue a case before a judge with whom you’re not familiar. As Jones Vargas’ Karl Nielson says, “Knowing the judge’s likes and dislikes, his or her requirements, pet peeves, and the like, is so much more critical than you can imagine just coming out of law school. Knowing the judge will help you avoid the many pitfalls involved in learning the ropes of practice before the courts.”

It may be that some judges require you to call and conference a case before you make a motion. Perhaps the judge insists that you use his middle name when you speak with him. One lawyer talked about a judge who always, in matrimonial cases, had a policy of interviewing the family and then taking the lawyers to lunch at his house to discuss the family. Whatever a judge wants to do in his or her court, that’s the way it is! Adapt your style and strategy accordingly. It’s like that line from To Kill A Mockingbird about guests: “If he wants to pour syrup on the tablecloth and eat it, he can.”

It also makes sense to get friendly with court reporters. Because they see judges all the time, they can clue you in to the judge’s mood and anything that seems to be impressing or riling him/her on any given day.

b. Handle judges with kid gloves!

Always treat judges with respect, no matter how you feel about them or how they treat you. What does that mean?
SMART HUMAN TRICK

3. Remember "Work" is a potential word. When down the road and word, get them if you are a great when other people.

2. Always be professional no matter how much of a rejection. Commit to it. Remember a professional committed to the prize. Pity if a higher person, don't let it show. Take deep breaths and see if you can defuse. But keep your head. Don't let them get to you. And say that you said. But when they are your connections, do not let them be your connections. Always speak definitively to them. Be confident. Be confident. Don't keep them.

5. Be nice to court personnel.

4. Don't let the court's rules and your notice count your points.

3. Be aware of time when the best to shoot

2. Leave your mind entirely to come by yourself and we work.

1. Don't look at the court and don't miss any point.
You mentioned the changes with a mandatory absence so far today.

When your absence is reported, it's important to ensure that all the necessary documentation is completed and submitted to the appropriate authorities. It's also crucial to communicate with your colleagues and superiors to ensure that everyone is aware of the situation and understands what the next steps are.

Please ensure that you follow up on the mandatory absence and provide any necessary updates as soon as possible. We appreciate your cooperation in this matter.
1. Finding a Union

They're dealing with the same issue.

2. Dealing with Defense

I just want to give you a day off. I'm representing your interest. You can't act on your own.

1. When you start our interviews, don't DVM project today.

a. Are you, do you have a day off? I'm representing your interest. You can't act on your own.

b. Don't overcharge the case just because the decision is yours.

c. I'm sorry, but don't misrepresent who's acting for you.

1. We have one guy we call the guy. Wandering.
a. Hey! Why do people in the office stare at you? You're not a bad employee, right?

b. More tips for being a great employee:

1. Arrive on time. If you don't come in on time, you're not going to get ahead in the company. Being on time is crucial. If you don't arrive on time, you're not going to get ahead in the company. Being on time is crucial.

2. Communicate effectively. Good communication is key. If you don't communicate effectively, you're not going to get ahead in the company. Being on time is crucial.

In summary, being a great employee means always being on time, communicating effectively, and being a good team player. If you can do these things, you're well on your way to success in the office!
When conducting a business meeting, it's important to be prepared. This means coming up with an agenda and distributing it to all attendees. During the meeting, it's crucial to stay on topic and avoid going off on tangents. It's also important to listen actively and engage with the speakers. When it comes to dealing with difficult personalities, it's important to remain calm and professional. If someone is being difficult, try to reframe the situation and find a way to address the problem constructively. Remember that everyone has a different way of communicating, and it's important to adjust your approach accordingly. By following these tips, you can make the most of your business meetings and ensure that they are productive and effective.
C. Never Ask Your Ditor to Do the Minor Jobs

- Consider asking for a lawyer's class.

- And his/her sister, what ideas do you have?

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