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Tips for Lawyers Who Want to Get Good Results for Clients and Make Money

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TIPS FOR LAWYERS WHO WANT TO GET GOOD RESULTS FOR CLIENTS AND MAKE MONEY

AUGUST 27, 2015 | JOHN LANDE | 1 COMMENT

Recently, I was asked to write a post for a state bar association blog with highlights from my article, [My Last Lecture: More Unsolicited Advice for Future and Current Lawyers](#). Then I thought, heck, I should post it here too.

Understand Your Clients' Interests. Lawyers often assume that they know what their clients want—to get as much money or pay as little money as possible. While clients usually are very concerned about how much money they would receive or pay, they often have additional interests. In virtually any kind of case, parties may have an interest in being treated respectfully and fairly, minimizing the cost and length of the process, freeing time to focus on matters other than the dispute, reducing the emotional wear and tear caused by continued disputing, and protecting privacy and reputations. Plaintiffs may have interests such as obtaining favorable tax consequences, getting non-monetary opportunities, and receiving explanations or apologies. Defendants may have interests such as receiving acknowledgments about the lack of merit of the charges, making payments in kind, stretching payments over time, sharing liability with other defendants, preventing ancillary harm (such as loss of credit rating or business opportunities), receiving favorable tax consequences, obtaining non-disclosure agreements, and avoiding future lawsuits. If you satisfy your clients' interests, they are more likely to pay your bills, hire you again, and refer other clients to you.

Pay Attention to What's Really Important in Your Cases, Not Just the Law or Winning.

Lawyers generally want to make the best possible argument and win in litigation or transactional negotiations. Typically, it's good to show the law is "on your side," get favorable agreements, and win at trial. You are likely to feel good if you can make arguments that persuade others and win trials. That's often how lawyers measure success and get good reputations. It's certainly fine to take pride in your work and want to get recognition for it. But remember that your first priority should be your clients' interests, not yours. Winning is a means to achieving your clients' ends and it shouldn't be the end in itself. Don't "win the battle and lose the war." Since clients are likely to have multiple interests, your job should be to help them achieve their highest-priority goals.

Recognize the Importance of Emotions—Especially Yours. Many lawyers seem afraid of emotions. They assume that the law is only about rational analysis of the law and the facts. To them, emotions are messy and get in the way of good legal representation and decision-making. They wish that people—especially their clients—would just put their emotions “to the side” and just be more rational. But people can’t avoid emotions and it’s foolish to try. Emotions provide a lot of valuable information, such as what is particularly important. Lawyers should particularly focus on their own fears, which typically permeate legal practice. As described in my article, [Escaping from Lawyers’ Prison of Fear](#), there is a long list of things that lawyers fear, including actions by law firm partners, clients, adversaries, and judges. Although fear is a normal—and often helpful—emotion, it can lead to serious problems including mental health and substance abuse problems. Plan strategies to deal with stress such as meditation, diligent preparation, mental rehearsals, practice in simulated settings, positive self-talk, advice from mentors, and mental health services when needed. You can also reduce stress by managing your cases cooperatively whenever appropriate.

Get to Know Your Counterpart Lawyer. Lawyers often assume that their “opposing counsel” will be hard to work with. This can be a self-fulfilling prophecy. Sometimes your counterparts will be a pain in the neck, but often they just want to be reasonable while protecting their clients’ interests. If you have a good relationship with your counterparts, you can work out problems pretty easily. If you have a bad relationship, your cases can become your own “private hell.” If you have a case with a lawyer you have never worked with before, consider getting to know each other over coffee or lunch or even just a phone call. If you do so, when problems arise in a case, your counterparts are more likely to call you and less likely to fire off a nasty email or file a motion.

Make a Habit of Preparing to Resolve Matters at the Earliest Appropriate Time. Although there are good reasons why lawyers delay moving ahead in some cases, you should generally avoid procrastinating. Lawyers know that the vast majority of cases settle without going to trial but they often feel powerless to steer clients toward negotiation. Trapped in the “prison of fear,” lawyers may worry about harming their clients if they settle before completing all possible discovery (even though most of it won’t make any difference). Lawyers (and their clients) often worry that merely *suggesting* negotiation would make them look weak, leading the other side to try to take advantage. Confident lawyers can “escape” from the prison of fear. As retired judge Robert Alsdorf says, “Being willing to negotiate doesn’t make you look weak. Being *afraid* to negotiate makes you look weak.” One lawyer said, “Sooner or later, you will need to negotiate. You need to get out in front, get the facts, get the client on board. Try to prepare a settlement letter. . . . This drives the case in the right direction. If you wait, you just get sucked into a pile of mud. If the other lawyer sends the letter, then you have to catch up.”

Be Prepared to Negotiate More than You Might Expect. In addition to negotiating final resolution of disputes, lawyers also negotiate with each other about substantive and procedural issues during litigation. For example, lawyers regularly negotiate about acceptance of service of process, extension of deadlines, scheduling of depositions, and discovery disputes. In addition to negotiating with their counterparts, they also regularly negotiate with many other people as they handle their cases. Of course, they agree with clients about fee arrangements and how to handle cases. They reach agreements with co-workers in their firms, process servers, investigators, court reporters, technical experts, financial professionals, and mediators. They also reach agreements with judges about case management issues such as discovery plans and schedules, referral to ADR procedures, and ultimate issues during judicial settlement conferences. Indeed, litigation is a continuing stream of agreements. If you treat people respectfully and understand their interests, you can reach good agreements that satisfy your clients' interests without unnecessary disputes.

Get Help From Mediators When Needed. Sometimes, despite your best efforts, you can't reach a settlement when it would be in both parties' interest to settle. Mediators can help identify and overcome the barriers to settlement. These barriers may be poor communication, strong emotions, unrealistic expectations, pressure from others (such as superiors in their business, colleagues, or spouses), or need for reassurance from a neutral professional. Sometimes, parties won't accept your advice but will be persuaded by the same analysis from a mediator. Using a mediator can save everyone a lot of money and grief.

Be Prepared to Advocate Hard and Smart. Professor Stephen Easton advises that if you determine that an issue is important to fight about, you should "fight hard, fight smart, fight with conviction, passion, and perseverance, and fight to win." I generally agree with this advice with two qualifications. First, even if you determine that an issue is very important to your client, it is important to fight about it *only after you have unsuccessfully explored ways to satisfy your client's interests without fighting*. Second, I suggest using the word "advocate" instead of "fight" because people often think that lawyers fight in unnecessarily nasty ways. Lawyers need to advocate effectively, sometimes exercising power both in negotiation and court. If you convey your willingness and ability to advocate effectively, your counterparts may act more reasonably. If you give them the choice of handling the case the easy way or the hard way and they believe you are ready to do it the hard way, they may prefer the easier way.

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ONE THOUGHT ON “TIPS FOR LAWYERS WHO WANT TO GET GOOD RESULTS FOR CLIENTS AND MAKE MONEY”

Linda Tucker

SEPTEMBER 28, 2015 AT 6:14 PM

Thanks for sharing this advice on being the best attorney for your clients. I really like that you mentioned recognizing your own emotional investment in a case. Although you may think that you aren't too emotionally invested in a case, you should always take a step back and make sure that your case seems rational, like you said. That, in my opinion, is one of the best ways to ensure that the jury will understand your case in the best way possible.

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