

HOW TO COMMUNICATE WITH CLIENTS 201: AVOIDING, MITIGATING, AND RESOLVING CONFLICT

Sarah J. Read, Presenter

Conflict, like change, will occur in your practice. If you manage it well, it can actually be a source of personal and professional growth and lead to stronger relationships. Managed poorly it will create stress and anxiety and may lead to a complaint that threatens your professional reputation. In this session we will look at what conflict is, why and how conflicts form, how you can prepare to manage those conflicts that occur, and skills that help you navigate through conflict.

DEFINING CONFLICT:

There are many different ways to define conflict. Following are some definitions to think about. As you read through them think about how you define “conflict”.

- Any difference in interests, information, values, understanding of “the rules”, or of the relationship. (Generic).
- Struggle over values, status, power, or scarce resources. (Moore).
- Crisis in human interaction that creates weakness and self-absorption. (Bush and Folger).
- Belief that your needs, values, wants, or interests are incompatible with someone else’s. (Meyer).
- Lack of skill, effectiveness, or clarity in saying what we feel, think, or want. (Cloke).
- A struggle, often unconscious, between mutually exclusive impulses or desires. (Psych., from American Heritage Dictionary Office Edition (3rd) 1994)

HOW CONFLICTS FORM:

Differences in information, interests, values, or in the understanding of the rules or the relationship create conflict. The more sources of conflict in a dispute, the more difficult the dispute is to resolve. Lawyers can experience conflict in each of these areas. For example, a lawyer may know that a local court would not approve a particular custody arrangement that a client has proposed. This is *information* that a client is unlikely to have. Sharing this information will help resolve the conflict between what the client wants and what the lawyer

knows is feasible. Fee disputes often involve different *interests* and *values*. The client might not have money to pay and the lawyer needs the money (*interests*); the client may believe a particular bill is unfair and the lawyer believes the client's questioning of the bill shows a lack of respect (*values*). A common source of conflict between lawyers and clients is a difference in how each defines the *relationship*. For example, lawyers are often task-focused and view their work as efficiently processing the case or matter while the client is more relationship focused and translates the lawyer's efforts to "get to the point" or to limit phone calls as a lack of caring about the client. Clients and lawyers may also have a very different understanding of the rules or *structure* that govern lawyers' conduct and view a lawyer's professional courtesy toward another lawyer as "weak".

As several researchers have pointed out, all communication involves elements of information (what do I know?), emotion (how do I feel?), and identity (who am I and what do I believe?). See Stone, Patton, and Heen, Difficult Conversations (2000); Scott, Fierce Conversations, (2004). When someone hears a message that hurts, upsets, or even pleases them, that person is less likely to process informational details effectively until he or she can first process the emotions. When someone hears a message that threatens their sense of self or core values, they are less likely to effectively process both feelings and information. A mismatch between levels of conversation, such as when a lawyer ignores the emotion and says something to the client like "that is not relevant, let's just focus on the facts." This mismatch can inflame a conflict and make it more difficult to resolve.

HOW YOU REACT MAKES A DIFFERENCE:

How you react when a conflict occurs is also a significant factor in managing that conflict. To effectively respond to conflict you need to know your own triggers and be willing to identify and process your own emotions. You will improve your ability to manage conflict by thinking about conflict before it occurs and having a procedure to work through when it does. Part of that procedure needs to be understanding and supporting an upset client rather than simply reacting to the specific complaint being made. This requires a fair amount of self-control which again requires self-awareness.

Without self-awareness, your chances of self-management are less than 5%, and your likelihood of accurately evaluating your client's needs (social awareness) is less than 40%. (Burckle and Boyatzis, 1999). Without practicing self-awareness and self-control you are more likely to focus on yourself, assign negative motives to your client, and justify behavior that to others seems inappropriate. By managing your reaction and using some of the skills below, you can help your clients manage their own emotions and improve the odds that the conflict can be successfully resolved, or at least not escalated. You can build self-awareness by keeping a "conflict journal" that notes throughout the day what is happening, how you are reacting, and what you are thinking and feeling. Then ask yourself, "what *could* I be thinking or feeling?" Note and analyze the differences in your responses.

PREVENTING, MANAGING AND RESOLVING CONFLICT WITH CLIENTS:

Preventing and managing conflict starts with how you organize your practice. Paragraphs 1 through 3 below address the interaction between practice management and potential conflict. Paragraphs 4 to 7 provide additional tips for managing conflict when it occurs.

1. **Planning Ahead.** Taking anything or everything that walks in the door is not a good business strategy and leaves you particularly vulnerable to difficult clients who walk in with a retainer in hand. Think in advance about what type of clients you want to work with, what type of work you want to do, and what risks you are willing and able financially to take. Having a profile of preferred work will make it easier for you to screen clients and evaluate the costs and benefits of representation. Develop forms and procedures to help you screen clients. Also plan to be paid! Set fees that will help you recover extra costs imposed by difficult clients. Develop forms and procedures to inform clients about your fees and also about how to work with your office. Review these with your prospective clients and refer to them in your fee agreements. These forms and procedures will help you both to manage client expectations and to set and enforce boundaries later. Train your staff on what to say if a client seems unhappy, how to say it, and when to alert you of a need to intervene. Build a support network that you can turn to for advice when a client turns on you.

2. **Saying No - Recognizing Who You Do Not Want To Represent.** One way to minimize conflicts is to avoid difficult or high-conflict clients when possible. In past presentations we have asked other lawyers to think of a conflict they had with a client and whether there were warning signs in the initial interview that in retrospect they wish they had heeded. A summary of those is provided as a separate attachment. Be particularly aware of a client who, especially at the initial interview,
 - Is rude and demanding;
 - Has had other counsel;
 - Has difficulty communicating with you;
 - Challenges your fee and offers to pay an absurdly low amount;
 - Defers decisions to other “advisors” like parents, a new spouse, or friends, or
 - Makes derogatory remarks about lawyers generally or the legal profession.

Although there are many reasons why you might decide to take on one or more difficult clients, when many risk factors are present you should consider saying “No” to the representation. If you do decide to work with a high-risk client you can minimize the risk of future conflict by proactively and firmly managing that client from the outset, even more so than you would a regular client.

3. Laying The Groundwork. From the initial interview on, you need to clearly define your role as the lawyer and manage the client's expectations for the representation. Make a personal connection and let them know that the attorney's job is to be an independent advisor and to evaluate and advise not only on the strengths but also on the weaknesses or problems inherent in a matter. Ask if they understand that role and agree that you should give your best advice, pro or con. You may need to refer back to this agreement at a later date. Talk with the client about how, and when, to communicate with your office. Ask about their goals and expectations for the matter and listen carefully. If there are unrealistic expectations, address those and document that you did so. Make sure the client is aware of your billing practices and expectations regarding payment. Use engagement letters that spell out the scope of work and incorporate the forms and procedures discussed in paragraph 1 above. Consider preparing a "work plan" with the client and giving the client assignments. Give the client a folder with your procedures and a brief outline of the stages of the case or a timeline for the matter. Confirm the client's understanding of what you have reviewed and allow the client to ask questions. All this provides a foundation that you can use if misunderstandings arise in the future. ("Remember at our initial interview when we discussed . . .")
4. Maintaining Boundaries. If your client shows up late or without an appointment, you do not need to rearrange your day: ask them to reschedule. If the client fails to pay you, ask for payment and do so in a timely way. If the client fails to give you information remind them that it is their case and they bear the responsibility of full participation. Remind the client of agreements made in the initial interview and follow-through on consequences outlined in your forms and procedures. If the client screams or curses at you (try to) stay calm and say something like: "You are very upset. It is difficult for me to listen when you are screaming. We can talk further when you are calmer."
5. Communicating Effectively. Be clear, direct, and straightforward in your communications, yet also consider your client's reaction and demonstrate your concern and support for the client. To lead into a difficult topic you can ask questions like "remember when we discussed the difficulties in your proof?" Or you might start with a soft statement like "I am sorry to have to tell you this".

When the client reacts, allow them to process their emotions as well as the information you have provided before moving on to another topic or pushing for a decision. Listen, reflect, and empathize.

You can also give the client choices; for example would the client like to continue talking, take a break, or reschedule and come back later? At some point you will have to help the client focus forward: "I know that we both wish it were otherwise. Let's review where we are and what might be done."

Often difficult behaviors are driven by emotions and the client may be feeling unsafe or insecure when acting “difficult”. Consider reflecting back the emotion you are seeing (“you are very upset”), and asking questions like: “what do you think would help? How can we move forward? What raised that concern?” You might also make a soothing statement like: “I’m sorry if I was unclear. . .” or “I think there is a misunderstanding.”

- 6. Responding to Conflict.** There are a number of ways people respond to conflict. These include *aggressive*, fight-based approaches like threats, emotional displays of anger, and use of force; *passive*, avoidant approaches such as ignoring what is being said, withdrawing, or denying there is an issue; and *assertive*, collaborative approaches such as tolerating and respecting differences, looking for mutual understanding, and inviting joint problem solving. The latter are often referred to as “win-win” approaches.

Not surprisingly, aggressive, argumentative approaches that seek to assign blame and identify who is “right” and who is “wrong,” inflame conflict. Never debate the client! Instead, use phrases like: “We see things differently”; “I’m sorry you feel that way”; “It’s very upsetting to you, although you had feared this would happen, it’s upsetting that it has”; “I know you don’t like my advice and yet that’s my advice. I would be happy to discuss it further with you when you are ready.”

Don’t bargain with a client who is threatening you. Instead consider a statement like: “that is a choice you can make, and I’m sorry you feel that way. I have represented you to the best of my ability and I trust that on thinking it over you will reconsider.” You can then invite the client to also reflect on identified factors and schedule a follow-up meeting. An apology, if sincerely given, also can be very effective at opening a path to resolution. This does not mean admitting error where no legal error had occurred. If you are sorry that a misunderstanding developed, or have sincere sympathy for the situation the client is now in, you can express that.

If you are very upset, and feeling threatened or angry, take a break. If you do take a break or have scheduled a meeting with the client to discuss a conflict, engage your analytical skills to help you plan for an effective dialogue. What are the sources of the conflict? At what level (information, emotion, or trust) is your client currently? What is your best alternative to a negotiated agreement (BATNA) or your worst alternative to a negotiated agreement (WATNA)? What are the options for resolution? How might you gently share your perspective? Again dialogue skills such as asking open-ended questions, reflecting what you have heard, sharing your own thoughts or feelings, and inviting your client to help you identify and think through options for resolution will help you navigate.

Be aware that resolving conflicts is rarely a linear process. Clients who are feeling uncomfortable may deflect resolution by launching into a rambling discourse, issuing threats, or aggressively blaming you. They may demonstrate avoiding behaviors like

silence or denial. They may excuse, rationalize, and point to circumstances or past events that are unrelated to the issue. When this happens don't get discouraged! Instead listen to the narrative they are developing and analyze where it differs from your own understanding and what it reveals about the source or level of conflict. By gently introducing additional facts and thoughts, you can help change a negative, self-focused narrative into a broader, more balanced one.

Each person thinks and processes information in unique ways. As a result, unintended misunderstandings and conflicts often arise as individuals work together. Too often parties in a conflict dive into debate and become increasingly at odds as each attacks a position that may not even be clearly understood. Or they leap to deliberation on a set of predefined alternatives, without exploring the differences in ways that could lead to the identification of new options. Neither of these approaches is a particularly effective or efficient way to communicate when in conflict.

Where conflicts involve more than differences in information (as most do), dialogue can help surface differences in values, expectations, or interests, that may underlie positions and demands; dissipate emotions; and ultimately, by building broader understanding, restore trust between the parties. With persistence, patience, and practice you can resolve most conflicts if you use a dialogue based approach.

7. Cutting Your Losses. If you are not being paid, the client is not cooperating, or the client is rude, demanding or otherwise very unpleasant to work with and unwilling to change, you should seriously consider ending the relationship. Give the client notice, and an opportunity to reform. Refer back to your forms and procedures and initial agreements and give the client a choice. Detail what it will take to get the relationship back on track, and if the client chooses not to do so, then he or she is choosing not to work further with you. Sometimes the best way to resolve a conflict is to reach an agreement to go your separate ways.