

Dealing with the Difficult Client, Difficult Opposing Counsel, Or Difficult Pro Se Party

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First Things First. The first step in dealing with difficult people is to understand how you react to different kinds of challenging personalities. Here are some typical reactions and more positive ways to respond:

Outrage. If your blood pressure rises every time you interact with difficult people, think of them as a hassle, not a horror. Be assertive, not aggressive. Stand up for yourself by sticking to the facts without getting personal. Remember, if you respond with anger, you will become the difficult person.

Obsession. If you continually obsess about difficult relationships, you may be under the impression that you can change people. Challenge your inner demand for fair or kind treatment, and recognize that some people will always be obnoxious. Once you lower your expectations, you can reduce an obsession to a healthy annoyance.

Hurt feelings. Acting wounded can fuel a difficult person's negative behavior. Difficult people take advantage of those who need approval. Change your emotion from hurt to indifference.

Choices. You essentially have four choices when dealing with difficult people:

You can stay and do nothing. This can be dangerous, because the frustrations will build up and get worse over time. What makes people difficult isn't that they're temperamental or vicious. What they say or do becomes difficult only when it triggers something in us that makes it hard for us to keep our bearings and deal with the actual problem.

You can walk away. Sometimes. Ignoring obnoxious behavior is usually the best way to deal with it. However, not all situations are resolvable, and you have to stand up for yourself or your client, in which case you start early preparing for litigation. Still, you don't want to get caught in the other person's power struggle. Resist their traps by being aware of your own temptations to defend yourself unnecessarily.

You can change your attitude. Making attitude changes will set you free from your reactions to difficult people. Stay calm and keep yourself level-headed. Most times, their troublesome behavior is habitual and repeated with everyone they know. They are not trying to make you crazy; that's just the way they are.

You can change your behavior. If you are trying to change a difficult person, your energies are being used in the wrong direction. Changing the way you deal with difficult people will force them to learn new ways to deal with you. Developing more effective communication skills (see below) is a more effective course of action. The most important thing is to not become them, under any circumstances.

The Classic Difficult Types

The Bully is critical, condescending, angry, blaming, abusive, and intimidating. When the bully sees that her tactics are intimidating, she will go in for the kill.

Tactic: Avoid a battle and give her time to blow off steam. Try not to be defensive, but instead repeat back what is said, moving the anger away from you and toward the message. Remember, though, that the client may think you are weak if you appear intimidated or don't effectively deal with the bully. Rules change if the bully is the judge.

The Fox relishes the competitive adversary role and is always looking for an opportunity to stir up trouble or to gain an advantage. Unsurprisingly, he is suspicious of your motives, as well.

Tactic: Bring reality into the discussion and force him to deal with results, not irrelevant appearances. You have to confront the fox with the facts.

The Time Bomb is basically quiet and sullen, then he explodes, surprising everyone.

Tactic: Be patient and don't react to intense emotions. Remain detached and respond analytically. Do not ignore or be abrupt, or he may seek revenge.

The Histrionic is shallow, dramatic and craves personal attention. While entertaining at times, she can become a real drain on your time and emotions.

Tactic: Don't believe her exaggerated view of the situation. If she's a client, get support to back up her story and instruct her on appropriate behavior. If she's opposing counsel, flattery might actually get you somewhere.

The Paranoid is suspicious and distrustful of others. He usually has a central issue, which may be distorted ("She's out to get me"), and every conclusion follows from this.

Tactic: Stick with the facts and do not attempt to argue or reason with him.

The Whiner is a pessimistic bump-on-a-log and resists change.

Tactic: Don't get caught in his negativism. Take the non-aggressive approach and put him into the role of problem solver.

The Stone Waller is passive aggressive and often indifferent.

Tactic: Ask questions that require more than a yes or no answer. Set time limits to silence, and be persistent.

The Ultra-Agreeable cannot bear conflict and says what she thinks you want to hear. She really, really wants you to like her.

Tactic: Make honesty nonthreatening and be on the lookout for unrealistic commitments and inconsistent statements or twisting of facts. You want her to think analytically, not emotionally.

The Know-It-All is narcissistic and condescending. He tends to be a poor listener.

Tactic: Allow him to express his thoughts and let it go-- unless he is the judge and his conclusion is dispositive. Avoid unnecessary conflict. Compliments and flattery are effective. Once he is focused on the issue, offer an alternate perspective for him to consider.

The Fake Know-It-All wants you to respect him, but he doesn't want to do the homework.

Tactic: State the facts and give him the opportunity to save face.

The U-Turner changes what was originally agreed to, creating confusion and distrust.

Tactic: Give him time and get it in writing. In fact, he was never confident in what he said in the first place.

The Dependent cannot function on his own and will constantly ask for help. The classic high maintenance client.

Tactic: Give only legal advice; all personal decisions must be made by the individual. Make him take ownership of his problem and the consequences of his decisions.

The Perfectionist is preoccupied with the minutiae and nothing you do is good enough.

Tactic: Don't let him tell you how to do your job and don't bother with reasoning when he's unreasonable. Emphasize there is often more than one right way to do things.

The Procrastinator is usually a frustrated perfectionist, only less obsessive-compulsive.

Tactic: Explain to her the consequences of her inaction, like not giving you enough lead time to advance her interests; after all "perfect is the enemy of good."

The Rambler cannot focus on a question, problem, or instruction. She has to tell her story over and over with plenty of irrelevant details and things that "bother" her regardless of relevance. Sometimes, however, the rambler comes up with useful facts mixed in with the chaos.

Tactic: You may have to listen to a lot of venting and express sympathy. Then try to get her to focus on what she wants as a final result with a promise to fill in details later.

In a Category All Its Own: The Sociopath

Two to four percent of the global population is made up of sociopaths. A sociopath has no conscience, no sense of right or wrong, no empathy, no ability to understand emotion. Worse, while they can mimic emotion, they see other humans as mere pawns, to be used for their benefit or amusement. Common traits and behaviors of sociopaths:

- Glibness and superficial charm
- Manipulative and conning
- Grandiose sense of self
- Pathological lying
- Lack of remorse, shame or guilt
- Shallow emotions Incapacity for love
- Need for stimulation
- Callousness/lack of empathy
- Poor behavioral controls/impulsive nature
- Early behavior problems/juvenile delinquency
- Irresponsibility/unreliability
- Lack of realistic life plan/parasitic lifestyle
- Criminal or entrepreneurial versatility

Tactic: Be Aware and Beware. A sociopath, especially one with intelligence and good looks, can be very destructive. Sociopaths are typically very likable. They make us believe that they reciprocate our loyalty and friendship. This makes it easy for them to “play us.” If you find yourself often pitying someone who consistently deceives you or others, and who actively campaigns for sympathy, chances are you are dealing with a sociopath. If you have a conscience, you cannot beat them at their own game, so your best bet -- if it’s a client-- is to run. Fast. If avoidance is impossible, never trust them at his/her word. Document all your agreements, and have them witnessed. Do not let them run up a bill; you will be exploited and never paid. Never agree, out of pity or for other reasons, to help a sociopath conceal his or her true character. When s/he says, “You owe me,” you don’t.

Strategies for Effective Communication

Seek first to understand before trying to be understood. Analyze the situation. What is really going on? Try to put yourself in the other’s shoes. Once you are in dialog, ask probing questions and carefully listen to fully understand. Active listening skills will help here. This stage involves sorting out emotions from the facts.

Adjust your communication style. This strategy involves understanding your communication style and that of the other person and how those styles conflict and/or complement one another. Over time, learning how to manage one’s communication

style and identify the styles of others can speed up problem solving and move both of you to a clearer understanding more quickly.

For example, when talking with someone who is direct, stick to the point and don't beat around the bush. Adjust to their comprehension level, but do not patronize. Be clear, even if the message is unpleasant. Don't repeatedly reword the same idea, unless you're not understood. You will usually gain your listener's attention by presenting your view logically, systematically, and not sugar coated.

Effective Verbal Communication. You can also try to use appropriate language that would make difficult people less defensive. Keep a few simple phrases in your back pocket:

“Maybe it's possible to...”

“Let me see if I understand you. What I hear you saying is...”

“Would you be agreeable to...”

“Sounds like we're at an impasse, but maybe we can change direction...”

“Your Honor, may I be heard on that point?”

Dangerous misconceptions about communication:

Don't assume that people listen when you are speaking to them. Just because people say they are paying attention doesn't mean they are.

When someone says, “I understand,” he or she may not. People retain only a fraction of what they hear, especially when they are in distress. Handouts, follow-up letters, and signed agreements are vital.

Don't assume that saying something over again ensures that your listeners will understand it. They may still be digesting what you said five minutes ago.

Don't conclude that saying something over again loudly will be even more effective than just saying it over and over.

Give positive, non-verbal feedback.

Appropriate body language can help the other person feel comfortable. Lean forward, nod occasionally and use reflective facial expressions. Decreasing your eye contact, crossing arms, and a lack of facial expression only creates increased tension or hostility. Honest, sincere motives typically will bring about the

appropriate non-verbal expressions. Make sure that your expressions are genuine.

Take notes. Especially when people are upset or complaining, taking notes communicates interest and caring, and tends to reduce the other party's concerns. Tapping on a computer bothers some people, but handwritten notes usually do not.

Reach an agreement. Summarize what you both have agreed to – both your mutual understanding and your commitment to a plan of action.

Scenarios.

Difficult Client(thankfully, not yours). Just prior to scheduled mediation with your client (a defendant in a non-dischargeable adversary proceeding) and the plaintiff, you receive a phone call from the plaintiff's attorney, complaining that he was receiving several multi-page e-mails from his client daily, indicating that she changed her mind and did not want to mediate. Having enjoyed a professional relationship with opposing counsel for numerous years, you both agree to keep the mediation meeting on track. During mediation caucuses with the plaintiff and her attorney, the plaintiff is at first very charming. Your relief doesn't last long, however, as she eventually berates her attorney, claims she is blameless and your client is totally wrong, and refuses to take responsibility for any of the conflict. When you attempt to discuss the difficult legal and factual issues, she tries to deflect the issues by changing the subject, having emotional outbursts, and accusing her attorney. When her attorney is surprised and challenges her about an apparent fabrication of new facts, she again berates him.

Solution? Separate the people from the problem. If the mediator doesn't suggest physical separation of emotional litigants, you can do so. A negotiating party has two interests in any negotiation – the merits of the dispute and the relationship with the other party. Be firm on the problem and soft on the people. Generally, concessions can be made on the process of the negotiation – the environment, the timetable and other procedural details – while holding firm on the important items at stake. Remember that the relationships you create and the way you treat others may have a more profound impact than the specific issues of the dispute. Everyone's main goal is usually to have the matter concluded.

After 10 hours of mediation, you settle the case. When it comes time to enter into the written settlement agreement, however, the plaintiff changes her mind and refuses to sign. Over the next two days, you have many telephone conferences with the plaintiff's counsel. The client has again bombarded him with lengthy e-mails rearguing all the issues and complaining about what a poor job he did. Counsel tells you his client is driving him crazy and that she owes him a lot of money.

Solution? Working with opposing counsel, suggest he focus on the costs of trial, the time it would take, and the possibility that the judge might find for the defendant on a strictly legal basis– not whether the plaintiff was right or wrong. If she doesn't have to accept any personal responsibility for the conflict and she is able to save face, resolution is more likely.

Difficult Client (yours). As experienced debtor's counsel, a potential client comes to your office with the hopes of keeping his house from imminent foreclosure. Although his mortgage payment history is sporadic and he hasn't made any payments for the past 15 months, he's convinced the heartless loan servicer and too-big-to-fail lender have conspired to foreclose on his home since the day he refinanced the mortgage at the height of the real estate boom. Also, since the servicer has not provided him with proof that it has possession of the original note and mortgage, he believes the note is void and does not need to be repaid. He asks that you defend him in the foreclosure action, as well as file counterclaims against both the servicer and the mortgagee. Oh, and he doesn't believe the municipality has the constitutional right to collect real estate taxes either.

Warning! For the vengeful client, cost is not a consideration; it is the principle of the matter. There has been a great wrong. Now you've been selected as an instrument in correcting it. There may even be a gotcha your client can take advantage of. If you have a high sense of idealism, you're a natural fit and will find it difficult to resist the siren song that could lure you onto the rocks of legally unjustified or unethical behavior. Also, such a client may be reluctant to pay you for your participation in further injustice if he loses, and of course, why should justice have a price tag if he wins?

Believing you can help him modify the mortgage or at least stay in the home a bit longer, you enter into a retention agreement. After discussing his personal finances further, you both agree that chapter 13 is the best solution. The foreclosure action will be stayed (or it will after you file a motion to reinstate the automatic stay, since the debtor has already filed two unsuccessful petitions aided by two other attorneys earlier this year) and the debtor will be given an opportunity to obtain a fresh start. After the bankruptcy case is filed, however, your client refuses to consider any options other than total elimination of the note, with ownership of his home free and clear.

Solution? Reasoning with the client is highly unlikely. And even if presenting a baseless claim or argument appears to benefit the client (because it may cause delay or may not effectively be counteracted), a lawyer is never justified in crossing that ethical or Rule 11 line. When withdrawing from representation, make sure you take all reasonable steps to protect the client's interest, including giving reasonable notice to the client, allowing time for employment of counsel, providing documents to which the client is entitled, and refunding any unearned fee. In certain instances, withdrawal from representation may require court approval. Consult with your bar association's ethics specialist for additional insight. Under no circumstances should you try to dissuade the client from filing a complaint against you.

Difficult Opposing Counsel. The day before your client’s deposition, you are informed by a partner in your firm that the attorney taking the deposition is routinely– and quite notoriously– harassing toward deponents and their counsel. This attorney regularly persists in ignoring objections (and instructions not to answer) of opposing counsel; making unmeritorious objections; disobeying court orders; refusing to resolve discovery disputes with opposing counsel; and making unjustified motions to compel discovery.

Solution? Prepare your client to maintain his composure and to never respond to a hostile remark with another hostile remark. Your and your client’s conduct at the deposition should be objective, reasonable, and open. As a bully, opposing counsel’s aggressive rhetoric, insults, or inflammatory charges are intended to infuriate and embarrass you and your client. Unfortunately, it likely will not help a potential future settlement to tell the judge how “uncooperative” or “obstructive” opposing counsel has been. Don’t go overboard and become a shrinking violet, however. In some cases, it is useful – and even necessary– to respond assertively. However, by controlling your feelings and leaving out hostility, you should be able to maintain the professional relationship and your personal integrity.

Difficult Pro Se Party. A secured creditor retained you to file a motion for relief from the automatic stay to continue with the foreclosure of the pro se debtors’ house. After receiving the motion, the debtor wife calls your firm and says she doesn’t understand the motion. She offers to send you copies of her bank statements and cancelled checks to prove that she’s made many payments to the lender over the years. She starts to cry and asks what she should do to save her house.

Solution? Most pro se parties are ill-equipped to engage in the complexities of the bankruptcy system and their confusion often evolves into frustration. Per ABA Model Rule 4.3, when a lawyer knows that the interests of the unrepresented person are in conflict with those of his client, the only legal advice he can offer is the advice to obtain counsel. However, the Rule does not prohibit the parties from negotiating terms of a settlement, so you are not prohibited from explaining the factual and legal issues. If the matter is ultimately heard before the court, remember that judges also must engage in a balancing act when determining how much guidance to give a pro se litigant on substantive law or how to treat a meritorious case when the pro se litigant has failed to comply with court procedures – all while remaining impartial to both the represented and pro se parties. Generally, courts are more lenient in pro se cases regarding procedural and evidentiary matters and, as opposing counsel, you don’t want to appear unreasonable-or worse, a bully.

Upon receipt of the motion, the debtor husband calls your firm and, even over the telephone, it is clear he is agitated. At one point during his diatribe he makes threats to cause harm to himself if he loses his house.

Solution? What, if any, ethical obligations do attorneys representing adverse parties have to a mentally ill or distressed, pro se litigant? An attorney may feel an obligation to a personal moral code to notify a family member, the authorities, or other professionals involved of a dangerous situation.

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