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# Tina Fey Has 4 Rules to Improve Your Practice

by Jay Reeves

4-5 minutes



Improv actors and attorneys have a lot in common.

Both have to be quick on their feet and good under pressure. Both need a sense of humor. And most important, both have to be able to work – and play – well with others.

Improvisational techniques are used in the classroom for educational purposes and in major corporations to promote teamwork. Professors at MIT's Sloan School of Management and Duke's Fuqua School of Business [teach it in MBA courses](#). It's even used in psychotherapy as a way to break through a patient's mental and emotional blocks.

In her best-selling book [Bossypants](#), actress Tina Fey offers four improv principles that can be used in your practice:

## **Rule 1: Start With “Yes”**

This shows agreement and respect. It opens the door to innovation, progress and solutions. Saying “no” brings the curtain down.

“When you’re first interacting with a potential or new customer, they may start by sharing with you a description of their situation and the challenges they face,” [says one business CEO](#). “Your immediate temptation may be to solve them immediately or at least suggest alternatives for them to try. Accepting their reality means avoiding this temptation and instead agreeing and letting them share the issues they’re most impacted by. You will get your chance later.”

Saying yes doesn’t mean you necessarily agree with what was said. It simply acknowledges that you get what the other person is trying to communicate. Later you can say “no,” or “maybe,” or “not now.” But starting with “yes” begins the relationship on a positive note.

### **Rule 2: Add “Yes, And”**

This takes the conversation to a deeper level. It drills down to reveal hidden needs and motivations. It provides continuity to keep things on course.

“The second rule of improvisation is not only to say yes, but YES, AND,” Fey writes. “You are supposed to agree and then add something of your own. If I start a scene with ‘I can’t believe it’s so hot in here,’ and you just say ‘Yeah’ we’re kind of at a standstill. But if I say, ‘I can’t believe it’s so hot in here,’ and you say, ‘What did you expect? We’re in hell!’ now we’re getting somewhere.”

### **Rule 3: Make Statements**

A series of questions is an interrogation. A series of back-and-forth statements is a discussion.

“Don’t ask questions all the time,” Fey writes. “If we’re in a scene and I say, “Who are you? Where are we? What are we doing here? What’s in that box?” I’m putting pressure on you to come up with all the answers. In other words: Whatever the problem, be part of the solution. Don’t just sit around raising questions and pointing out obstacles. We’ve all worked with that person. That person is a drag.”

#### **Rule 4: There are No Mistakes, Only Opportunities**

Sometimes what looks like a flub is actually good fortune in disguise. Example: an accident at a glue factory led to the invention of Post-It notes.

“Just like improv, not every project will go as planned,” says [one business coach](#). “You can take the amateur approach; stop the scene, destroy the momentum, and start over. Or you can be a pro; adapt to the change, make it your own, and do something greater.”

There’s no script to practicing law. You never know what lies ahead. By using improvisational skills, you can be ready for whatever happens next.

Sources:

- CNN <http://www.cnn.com/2010/BUSINESS/02/18/improvisation.business.skills/index.html>
- Tina Fey, Bossypants [https://www.amazon.com/dp/B0047Y0FGY/ref=dp-kindle-redirect?\\_encoding=UTF8&btkr=1](https://www.amazon.com/dp/B0047Y0FGY/ref=dp-kindle-redirect?_encoding=UTF8&btkr=1)
- American Express Open Forum <https://www.americanexpress.com>

[/us/small-business/openforum/articles/how-tina-feys-improv-rules-can-boost-your-business/](#)

- My Careertopia <http://www.mycareertopia.com/tina-feys-rules-for-improv-and-the-workplace/>
- DSI Comedy Theater <http://www.dsicomedytheater.com/>
- Thinktopia <http://thinktopia.com/2011/04/29/tina-fey%E2%80%99s-4-rules-of-innovation/>

# The Lawyer As Counselor

by Jack W. Burtch Jr.

In my second year of law school, I began working for a well-known Nashville defense lawyer. He was in his early sixties then, as I am now. One day he said, “JB, I want you to go to the county health department, find all the pamphlets on mental health, and bring them back here.” Thinking this was somewhat unusual, I asked the reason for his request. “Because many of my clients have trouble accepting reality,” he said, “and I want to find out why.” Sometimes simply bringing clients into reality is our job.

When I look at my law license with its faded signatures, I see the words “Attorney and Counsellor at Law.” For many years, only that first word registered. I was a lawyer. That meant I represented clients in their causes. Within the bounds of morality and legality, I helped them achieve their goals by zealous advocacy. I listened to what they wanted and tried to make it happen for them.

Yet as the years went by, I began to notice something unexpected. In my practice in labor and employment matters, I could now see that certain types of situations tended to produce certain types of problems. Although each client’s case was unique, I began to see patterns in both causes and solutions. This wasn’t true for every problem, of course, but it was for many. It then dawned on me that I might know more about how a situation would play out than those who had been enmeshed in it from the beginning. I was suddenly able to predict how a group of employees might respond to a new management directive. I now realized the larger trajectory of an executive’s career could be forecast by examining a few recent assignments and duties.

## Creating Opportunity out of Disappointment

For me, the counselor’s role came into focus about fifteen years ago when an executive called and asked for an appointment. “I don’t know why I’m calling,” he said, “but I’ve talked with some

friends, and they strongly suggested I come and talk to you.” I didn’t know why he was calling either, but I was certainly intrigued. And after we had chatted for about half an hour, I started to see the picture. Here was a successful executive in a large organization who was being nudged toward the sidelines. To me, the signs were obvious: more responsibility for “special” projects; less line accountability; exclusion from meetings he once led; less informal interaction with top management. I thought he was on the way out, but he didn’t have a clue. So, in the nicest possible way, I told him what I saw and suggested that his time with this company might be coming to an end. After his initial, emotional reaction, he sat very still for some minutes. Then he looked up and said, “They want me out. But they don’t know I’m now onto their game.” He paused again and asked, “How can we use what we now know to get what we want?” In the shortest time I’d ever seen, this client was ready to turn disappointment into opportunity. We met again to develop a strategic plan, and a few months later my client walked out of his office for the last time, as a happy man. Any lawyer who has practiced for a long time has had similar experiences. Situations that seem mysterious to our clients often appear clear to us. This is not because lawyers are smarter, or have better insight, or are gifted with legal clairvoyance. It’s simply because the experienced lawyer has been down this road before and the territory is familiar. Notwithstanding the vagaries and complexities of human character and motivation, people often react to given situations within a range of somewhat predictable responses. The longer we practice, the more familiar we are with those likely responses.

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### Capitalizing on Industry Knowledge

In academic legal counseling terminology, the lawyer's accumulated past experience in a particular field is called "industry knowledge." This term refers to the information gathered by working through the same types of legal problems over and over again. Land-use lawyers know how land developers tend to react when interest rates drop; criminal lawyers know that experienced criminal defendants have different fears than people charged for the first time; trial lawyers know that eyewitness testimony isn't always right.

Experienced lawyers armed with industry knowledge have an advantage others do not. These lawyers can advise clients about legal issues and at the same time offer the benefit of their experience. Experienced lawyers can suggest what types of approaches tend to work best and what good outcomes might result—often to the surprise of clients who haven't considered these options before.

### Practicing Legal Counseling

I did my first actual legal counseling by accident. Or at least I didn't know I was doing it; only hindsight made it clear. I was the new associate in a large law firm. Everyone on the labor team, including my boss, was out of town.

The union employees of a client company had gone on strike and were picketing the plant. This was expected and not considered a problem. However, early one afternoon I got a phone call from the manager of the trucking company next door to the plant. Some pickets had moved over to the trucking site, and the unionized truck drivers were refusing to cross the picket line. The truck facility was functionally shut down. Its manager told me to go to court and get an injunction to make the pickets go away. I got the facts from him as best I could and did some quick legal research. Because the company on strike owned the trucking company and was arguably in a related operation, I didn't think an injunction was likely. In fact, there was a good chance that losing an injunction could actually worsen the trucking company's current situation. I told the manager what I had found out, and he told me I was wrong.

Late that afternoon, I drove over to the truck yard. A small band of pickets was patrolling the entrance. In the middle of the yard was a large trailer. The name of the company being struck was painted, in large letters, along its entire length. I suggested to the manager it might be a

good idea to move the trailer off the property, since it looked like a billboard supporting the struck company. He thanked me for my thoughts, again told me to get an injunction, and ushered me out the door.

The next morning, I got a call from the irritated general counsel of the parent company in New York. He said if I didn't have the fortitude to get an injunction, my boss would. So I went back over to the yard to get affidavits for an injunction hearing. After finishing up, I said to the manager, "Just do me a favor. Move the trailer and see what happens." He humored me and hooked the trailer up to a truck. As it headed out the gate, the pickets followed in a line, looking for all the world like a small parade. Clearly, the men were picketing the trailer, not the truck company.

### Practicing Client-Centered Counseling

At the time of that strike, I was a new lawyer. I wasn't a legal genius, but I had blundered onto the revelation that not every legal problem has a legal solution. While I had not done any intentional counseling, I had proposed an alternate way to achieve the client's goal without going to court. Fortunately the trucking client's goal was clear, but that's not always the case.

In order to discern client goals, the lawyer has to somehow get inside the client's head and view the issue through the client's eyes. In modern legal counseling theory, this is known as "client-centered counseling." It focuses on the client's needs, desires, values, and attitudes. This theory sees it as the lawyer's duty to present various options that address the issue based on the client's orientation.

Client-centered counseling derived from the psychological theory developed by Carl Rogers. Rogers believed that human beings seek to become self-actualized—to achieve their full potential. The counselor's job is to show empathy, respect, and understanding so clients can make healthy decisions for themselves and develop their own potential to the fullest extent.<sup>1</sup>

In legal theory, the client-centered approach was first introduced by Binder and Price<sup>2</sup> in the late 1970s. This approach has also been referred to as the "autonomy" or "informed consent" approach.<sup>3</sup> Binder and Price introduced this model as an alternative to what they deemed to be the "traditional" approach.<sup>4</sup> Other names for this approach are the "paternalist" and "best interest" approach.<sup>5</sup>

**Practicing Traditional Counseling**

There is no evidence the traditional approach is a single coherent model. Instead, it seems to be a much looser concept: simply the way professionals interact with laypersons. Different lawyers practice different ways, depending on their own experience and what seems to work best for them and their clients. It has not been until recently that theories, methods, and approaches to client counseling have even been discussed. Before, lawyers often relied on the approach they learned from their mentors.

*The practice of law is dynamic; different situations require different approaches.*

The traditional approach is probably just a romanticized view of the way some lawyers once practiced law. It stands in contrast to the new approaches and theories of professional interaction. In truth, the successful practice of law probably requires a pragmatic mixing of different theories. More accurately, it requires a little of each theory, depending on the particular situation and the particular client. The practice of law is dynamic; different situations require different approaches. Attempting to invent a universal method or strategy to be applied to every situation likely will result in disappointment.

When the Binder and Price model was first presented in 1977, it received substantial criticism — much of it justified — from the practicing bar. Decisions, Binder and Price argued, should be based on alternatives that bring the “greatest client satisfaction.”<sup>6</sup> They said that lawyers cannot really know what value clients place on different consequences and what alternatives will bring the greatest satisfaction. Therefore, ideally, all decisions should be left to the client. A close reading of this approach led many to conclude that Binder and Price fundamentally believed lawyers should not give legal advice. The lawyer’s only role, under this theory, was to evaluate the legal and nonlegal consequences of different courses of action so the client could make the best choice, according to the client’s desires.

Possibly in response to some of this criticism, Binder and Price pulled back from this view in later editions of their textbook. However, they were careful to do so without compromising their allegiance to client-centered counseling.<sup>7</sup>

**Balancing the Merits of Counseling Styles**

If part of the value an experienced lawyer provides is industry knowledge, then using the client-centered approach to practice presents certain challenges. Broadly speaking, most clients’ problems can be broken into two categories: their specifically legal concerns and their more general, nonlegal concerns.

For example, a customer on the East Coast may want to sue a supplier for damages because the widgets he ordered did not meet specifications. It is clearly the lawyer’s job to identify the elements supporting a breach-of-contract or -warranty theory. But if a recent upheaval in the widget market has reduced the number of possible suppliers to two and the only other supplier is located on the West Coast, the customer’s nonlegal concern could become paramount. Anything that disrupts relations with the current supplier now could produce even more adverse consequences over the long term.

Experienced commercial lawyers will view this as one problem with two components. The first component, what the law requires, is the most straightforward. Commercial lawyers have so internalized these rules that they are able to analyze the legal elements without much conscious thought. The second component of this issue is more challenging and thus more interesting. An experienced commercial lawyer will remember the approaches that worked for other clients in similar situations. Without telling the client what to do, this lawyer can draw on years of experience to develop possible courses of action. This blended counseling style works, because lawyers, even unconsciously, integrate their legal and nonlegal knowledge to give effective advice. Few problems have purely legal solutions.

It is a lawyer’s job to honor all the client’s concerns — legal, economic, social, emotional — in developing a strategy that yields the best solution to the problem under the existing circumstances. To do this, the lawyer has to ask pointed questions to figure out what the problem really is, even if the client doesn’t know or doesn’t want to reveal it. (Few clients will freely admit they want to disinherit a child because they did not approve the choice of marriage partner. They will find a more palatable excuse.) Solutions to nonproblems aren’t solutions. Only discovering the real problem will uncover the real solution.

Of course, lawyers never have enough information to produce certainty in any result. We negotiate deals, structure business transactions, and draft complex agreements to solve the errors

of the past and control events in the future. We assume that the way humans have tended to behave in certain circumstances in the past will continue into the future. Otherwise, how could we believe that, in most cases, our deals, structures, and agreements will work as intended?

### Honoring Our Calling

Law is a multidisciplinary profession. Our work represents an integration of skills as we craft the strategies, plans, pleadings, and documents that are our tangible work product. Surely our clients are partners in these efforts. It is, after all, their problem, not ours. While we may be empathic listeners, we need to be detached from their problems to provide an impartial perspective.

Some may argue that by emphasizing the counseling role of the lawyer we are straining the boundaries of our profession. Most of us were not trained as clinical psychologists. Only a few hold a master's of business administration degree. Lawyers who think they can do it all risk being seen as arrogant. But on the other hand, taking too narrow a view of the lawyer's role deprives clients of the very service they hired us to give.

Clients call lawyers because they experience a problem that requires legal expertise to resolve. If their problems didn't have a legal component, the clients probably wouldn't have come to a lawyer in the first place, or the lawyer would have referred them elsewhere. But few real legal problems have only legal components. The other issues are there, even if they aren't immediately visible, and they need to be taken into account.

Giving good legal advice means the lawyer must listen closely in order to appreciate and understand the client's particular concerns and values. Good legal advice also requires the lawyer to draw on personal experience, skill, and knowledge to formulate the strategies and solutions that will help achieve the client's goals.

We have a reminder of our calling near at hand. Just look up at the license hanging on your wall. It reads "Attorney and Counsellor at Law."

Endnotes:

- 1 See, e.g., CARL R. ROGERS, *COUNSELING AND PSYCHOTHERAPY* (1942).
- 2 DAVID F. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977).
- 3 See William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 MD. L. REV. 213, 213 (1991).
- 4 See BINDER & PRICE, *supra*.
- 5 See Simon, *supra* note 2 at 213.
- 6 See BINDER & PRICE, *supra* at 148.
- 7 DAVID F. BINDER, PAUL BERGMAN, SUSAN C. PRICE, & PAUL R. TREMBLAY, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (2d ed. 2004).

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Written by Allison Wolf

Mary starts each day by choosing her top three priorities. Inevitably, by noon at least one of those priorities has been swept aside in favour of something more urgent coming in.

This is just a small example of what our lives are like these days. Change is upon us continuously. Changes in technology, in the marketplace, in our clients' businesses, and at our firms call for us to develop our ability to respond creatively to our environment.

Improvisation is about performing in the moment. It is about being fully responsive to the world around us. We see the opportunities and respond to them. Like the surfer who adeptly rides the wave, the way to thrive in today's business climate is to adopt the stance of the improv artist.

As a teenager I loved improvisational theatre and spent many weekends training with an improv theatre troupe. Then came the night of our first competitive performance on the big stage. I was utterly terrified. The terror got to me and after that first performance I left the company. Now years later I have been reflecting about what I learned through that experience and how it applies to thriving in our modern legal environment.

Here are 5 lessons from improv theatre that we can apply in our professional lives.



### **1. It is all about “yes”**

There is only one rule in improv that is hard and fast – always say yes. If your partner jumps on stage and says “your grandmother has mononucleosis” you don’t respond “sorry sir you are mistaken, it is just a common cold.” Rather you go with the premise and build on it. “Yes, and I don’t think Grandfather gave it to her.”

The magic is in the moment of following the yes, building on it, and creating something new. This premise is equally valid in our business lives. What we say yes to, particularly when it moves us into new territory, opens up great opportunity for learning, growth, and everyday magic to occur.

When the opportunity knocks and it feels in your gut like something good – say yes to it. Take the risk.

This does not mean saying yes to things you think you “should” say yes to such as taking on that file because senior partner asked you to even though you are already swamped, or doing something because it is the “right thing to do” even though you will hate to do it.

Say yes to things that align with your purpose. For instance, say you want to meet new people and expand your network; when a colleague invites you to attend an event with her where you will know no one, say yes. You might feel shy and a little uncomfortable at first but the experience is likely to carry you in a direction you would like to go.

“Yes, and” is also essential for creative brainstorming and innovation. In law we all quickly master the ability to pick apart ideas and find fault. “This won’t work.” “Yes I hear why you say that, but...” The word but functions as an eraser of value.

**Try this:**

Watch how many times you and your colleagues wield the negating “but” in your next meeting. Then try spending a week focusing on saying “yes, and” instead. Notice the impact.

Say yes to a new experience, or something just out of your comfort zone. Notice what you learn.

### **2. Show up**

Improvors understand the power of just showing up. A group of performers come together and create stories simply by showing up and being present. I believe it was Woody Allen who famously said: “80% of success in life is showing up.”

In legal practice it is all too easy to choose not to show up. For most of us, most of the time, there is a huge volume of work and seemingly not enough hours in the day to do it. This becomes a reason for choosing to skip lunch, miss that event, stay late, and essentially not show up for much beyond the demands of the billable hour. This is a mistake. I have heard more than once the reflection “I thought if I just kept my head down and worked hard I would be successful.”

I heard some great advice on the advantages of showing up from a commercial litigation associate last month. He was presenting at a roundtable on business development and offered the following experience:

“I used to decide if I would attend the CLE based on the topic of the presentation that month. Then I realized the value was simply in attending, sitting at a table, and meeting the other lawyers in the room. I will often have a chance to connect with my contacts and usually meet new people. Showing up for events like this has helped me grow my practice.”

Try this: Next time you are about to choose “not to show up” for something meaningful, think again, and attend.

### **3. I feel fear and discomfort and that is ok**

What I wish I knew at 16 was that stage fright was natural and part of the territory. It didn't mean I wasn't cut out for theatre sports. I gave up something I loved because of feeling scared.

The lesson I learned is that it is ok to feel fear. Acknowledge fear and then keep going. If you have a voice in your head that tells you, as it did my young self, “you aren't good enough,” question the thought. “Is it really true that I am not good enough? Might this not help me get even better? Is this not something important to me?”

For example I am always nervous just before public speaking. No matter how many times I present the anxiousness is always there. I have learned that it goes with the territory and carry on.

My mother is a very introverted woman. She recently attended a memorial service held for a friend of hers who passed away. No one stood up to make any remarks. She was scared to speak up but knew it was deeply important. She took action. My mother stood up and moved

to the front of the room and delivered an impromptu speech honouring her friend's life. This encouraged others to speak up and changed the entire tenor of the event.

Try this: Next time you feel an urge to try something but are discouraged by a feeling of fear, of possible failure, or a worry of being disappointed if you don't succeed, proceed forward. Notice what happens. What do you learn? What opportunities opened up?

#### **4. Follow your purpose**

In improv we are there with a purpose: To have fun, to entertain, and to tell a story using whatever parameters the audience has set for us.

My mother was attending the service to honour her friend's memory. In that moment of silence in the room, she followed that purpose. She said yes to the opportunity, set aside her fear, and acted.

Purpose in this instance does not mean the grand purpose of your life – as many of us don't have a clear fix on what that is for us. Rather it is a simpler concept of pausing and thinking about what is important to me now? Is it a commitment to spending time with family? Or maybe to put some focus on business development? Sometimes the opportunity will align with a goal or objective we are focused on. When this happens, welcome the interruption to your plan, and say yes.

#### **5. Pay attention**

One of the skills that rapidly gets honed in improvisational theatre is attention. On stage the action moves quickly. Characters take on names, a story line unfolds, and as a performer you have to closely attend to the other players and to the audience. What I and the other performers notice and respond to is what establishes the sketch.

The same is equally true in our lives. In her book *Improv Wisdom*, Patricia Ryan Madson reflects: "what we notice becomes our world."

Shift your attention from yourself to others. If you are preparing a presentation ask not "what am I going to say?" Instead, try asking: "what do I want the attendees to learn and experience? If I put myself in their shoes, what will make this topic engaging?"

If you are feeling nervous, place your attention on helping the attendees rather than on your performance. Focus on who is in the audience. What they are wearing? Move your attention away from self to the environment and people around you.

If your day is like one endless session of beat the clock then you likely have your attention on your screen and are losing track of the world around you. If that is the case, create a small oasis in your day for wider attention. Go for a ten minute walk and notice your environment. How does the air feel on your skin? The pavement beneath your shoes? What are you seeing, hearing, smelling? What are you tasting? Experience full attention.

If you are a person (like me!) who can't remember people's names, try this: Make improving your ability to remember names your attention training ground. Pay attention when you meet someone new. If they are wearing a name tag read the name tag. Say their name in your head, or out loud in conversation. See how well you can do and try focusing on this every time you have the opportunity and your ability to remember names will improve.

**Parting thought**

Improvisation skills aren't just for the actors, they can benefit us all. In fact, we are all improvising every day. Most important is to actively live our lives. To make choices that serve our values and commitments. To say yes to, and show up for those things that are most important to us.

*Editor note: This article was one that I wrote for SLAW.ca June 9, 2014. It's a favourite of mine so I have posted it again here at AWAL for readers who missed the Slaw appearance.*

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[#improvisation](#) [#responsive](#) [#say yes](#) [#show up](#)



Holding conversational spaces



What are you thinking?

## About the author



### Allison Wolf

I am the founder of AWAL and one of the most senior coaches for lawyers in North America. I have helped countless clients over the past fifteen years, develop thriving legal practices and before that served as director of marketing for award-winning law firms. My specialty is uncovering the thinking traps and gaps holding clients back and helping them acquire the mindsets, skills, and habits for growing successful and rewarding legal careers. After a career in legal marketing and business development with law firms in Beijing, New York, and Vancouver, I was trained as a coach in 2004 at Royal Roads University and now coach clients from across North America. You can reach me at [allison@shiftworks.ca](mailto:allison@shiftworks.ca) or learn more about my coaching practice from the coaching section of the Attorney With A Life Website.

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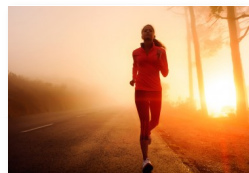


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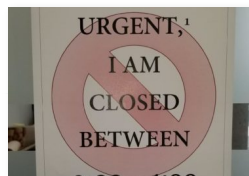
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Dealing with Distractions

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## *Effective Client Counseling as a Younger Attorney; Young Lawyer*

The Legal Intelligencer (Online)

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TLI PM Legal Alert

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### **The Legal Intelligencer**

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### **Body**

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"Counseling lies at the heart of the professional relationship between lawyer and client," Paul Brest, "The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers," (Issues 3&4)(Summer/Autumn1995).

In fact, counseling is part and parcel of effective legal representation. This is particularly true in the area of -employment law where the relationship between employer and employee is fraught with varied legal and interpersonal challenges. Employment attorneys are often called on to provide quick answers to a myriad of questions:

- Should I terminate this employee?
- Should I grant this request for leave?
- What will happen if I take this course of action?

Providing such relatively on-the-spot advice can be daunting for an attorney with years of experience. This task is further complicated where a younger attorney does not have the advantage of client credibility that more seasoned attorneys possess. Younger attorneys may encounter clients that are reluctant to heed their advice. While it is true that client counseling -becomes easier as an attorney gains experience, there are a number of ways to ensure effective client counseling as a young attorney in area of law.

Understanding Client Objectives

## Effective Client Counseling as a Younger Attorney; Young Lawyer

An attorney is charged with -solving -specific problems for clients while -simultaneously taking stock of and addressing client concerns. Clients have varied and often competing interests-economic, legal, social and emotional; to effectively represent a client and build capital with a client you need to explore these interests through -active listening and asking the right questions. An attorney's ability to actively listen is one of the most important skills in a lawyer's toolbox. At times, clients are less forthcoming in their goals and motivations (which are not static) and their true intentions must be carefully identified from the words that they use. Asking the right questions and thoughtful listening provides an opportunity to ferret out less critical -motivators and identify true objectives.

To illustrate, client X, who has an employment-related legal issue calls you and says the following: "These eight employees are not meeting my performance expectations. They are draining my profitability and their work is abysmal. I would like to terminate them for poor performance."

After a few follow-up questions and -corresponding responses you gather that the company is in a difficult financial situation and the motivation behind the potential separation is largely economical. You then state, "What I am hearing is that the -business' profitability is a concern for you" and explore the possibility of other solutions, perhaps a reduction in force if the circumstances so warrant. Having -accurately identified a concern that was not necessarily explicitly stated will earn you credibility and assist in building a rapport with the client that will aid in effective client counseling.

### Engage Clients

Younger attorneys have a tendency to sit quietly in the -passenger seat and allow more senior attorneys to lead the charge on a matter. If you have thoughtful and helpful observations and suggestions, do not shy away from sharing those -impressions. You will feel more comfortable sharing these observations if you are well prepared. Prepare for all client interactions by -reviewing and analyzing case files, -demonstrate mastery of relevant facts, update legal research to determine any new decisions of note that may impact the -client's case. Speak up on calls and during in-person meetings, share your insights, and engage the client in discussion about their business. While doing so, be careful not to engage in puffery or try to "sound like an expert." Be yourself.

### Play Devil's Advocate

Like most people, clients do not want to be told where they went wrong or how they could have handled a situation differently. An engaging and less off-putting way of achieving the same goal is to play devil's advocate. First, walk through the client's scenario and point out all the helpful facts and strong legal defenses. Then play devil's advocate and discuss the scenario from the other side's vantage point. Engage your client in this exercise and ask the client to counter the helpful facts and strong legal defenses you previously highlighted. This exercise allows you to educate the client on legal issues without detracting from your role as a zealous advocate.

### Draw On The Experiences of Your Colleagues

Effective client counseling does not have to take place in a vacuum. Sound legal advice requires that attorneys draw on -personal experience or the experiences of colleagues, legal knowledge and skill to craft creative strategies and solutions that will help achieve client goals. Seek out advice from your colleagues and ask them for suggestions in strategic counseling.

### Know When To Defer



Finally, if you are unsure about an issue or do not have an immediate answer to a client question, do not misstate the law or guess, tell the client that you will look into the issue and get back to the client. Very seldom will you be asked a question that -requires an on-the-spot answer. It is expected and customary to tell a client that you will get back to him or her after you have had an opportunity to research the issue. Fewer things are more unsettling than a needless quick and incorrect answer.

In conclusion, preparedness and honesty is key to effective client counseling. Arm -yourself with helpful information, engage with clients, seek advice from -colleagues, and most importantly, listen actively to -clients. .

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