Conflict Competency

Moving from Avoidance to Opportunity

By Julie Hagen Showers

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The criticality of a lawyer's communication is highlighted in the Preamble to the Model Rules of Professional Conduct (MRPC), which states in part:

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

Note that in each role - advisor, advocate, negotiator and evaluator – communication plays a core role in the lawyer's ability to discharge their duties effectively, thereby meeting and maintaining professional standards. Lawyers explain, inform, consult, argue, report and persuade. They facilitate, mediate, negotiate, educate and advocate. To do these things well, a lawyer must be a highly skilled communicator.

This requirement is addressed quite specifically in Rule 1.4 of the MRPC, which states:

Rule 1.4: Communications
Client-Lawyer Relationship
(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The Rules also make clear that as Advisors to our clients, our communication must be more comprehensive than mere recitation of law. Model Rule 2.1 provides that "[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Lawyers must in all professional functions be competent, prompt and diligent. Preamble to the MRCP, Subsection 3. Lawyers must maintain communication with our clients and must do so honestly. Lawyers are subject to discipline for conduct involving dishonesty, fraud, deceit, or misrepresentation. MRCP Rule 8.4. In some cases, the perception of dishonesty or misrepresentation is rooted in misunderstanding rather than malfeasance.

And yet, in law school, very little is taught about how to communicate effectively, particularly in the face of conflict, which is often, after all, a lawyer's bread and butter. Ironically, lawyers often consider themselves experts in conflict. Unfortunately, that perception is usually based in an inflated confidence in one's ability to argue a particular point into perpetuity – a skill actually far less necessary than the ability and commitment to listen well, understand deeply, address both spoken and unspoken concerns and speak clearly, as well as kindly.

In reality, the failure to communicate with clients is a leading cause of malpractice claims. Trained to focus on the conflict between the client and the opposing party, lawyers often don't see the conflict emerging with their own client until it is too late. A small investment in more effective conflict resolution skills can not only avoid an undesired report to the Bar but will pay dividends in the form of stronger client relationships, better and more satisfying client

outcomes and – equally as importantly – better law firm or organizational management.

Communication Conflict: Crisis or Opportunity

For most of us, interpersonal (as opposed to ideological or positional) conflict represents an unwelcome, unpleasant event or course of events best avoided. Unfortunately, conflict is also an inevitable byproduct of being human, especially in a dynamic, complex, resource-constrained workplace. Following our natural inclination to avoid or ignore conflict rarely results in the conflict disappearing. Instead, it festers, eating away at the fabric of relationships, reducing productivity, decreasing the health and well-being of those affected and ultimately creating a toxic environment. The costs of even relatively minor unaddressed conflict in the workplace are quite notable, and they include decreases in work quality and effort, lost time due to absenteeism, and high costs related to rapid turnover. The good news is that instead of adopting a strategy of hope—e.g., "I hope the conflict will go away"—a few simple changes can improve the ability to engage with conflict effectively and lead to better substantive outcomes.

What Causes Conflict

In essence, conflict is caused by *difference*. Typically, however, the most difficult workplace disputes are not over substantive business decisions, but rather, they are about differences in the values, interests, perceptions, and communication styles of the persons involved in that business. Communication style in particular—the "how," rather than the "what"—is thought to be responsible for between two-thirds to three-fourths of all conflict. When differences in lived experience, social identities, cultural affinities, and personal abilities are added into the mix, conflict in the workplace clearly is inescapable. The question is how effectively an organization will respond to conflict when it does occur.

Individual and organizational discomfort with conflict exacerbates the problem by decreasing the likelihood that prompt action will be taken. Changing the way that conflict is perceived and reframing the challenge that it represents are the first steps toward responding more effectively. Recognizing that the tension of difference is a necessary part of human interaction is essential. Accepting conflict as a functional part of relationships allows identification of differences to be approached as opportunities for growth and learning rather than sources of anxiety and awkwardness.

Common Sources of Workplace Conflict

Although many hold the impression that their specific workplace is uniquely dysfunctional, the truth is that many problematic sources of conflict are present to a greater or lesser degree in nearly all organizations, regardless of sector, industry, or circumstance. Some of the most common include the following:

- stress
- excessive workloads
- scarce resources
- personality clashes
- poor communication
- disrespectful behavior
- poor performance
- inadequate training

- ineffective leadership
- lack of recognition
- gossip
- inconsistency
- hurtful humor
- sarcasm
- ineffective feedback or nonconstructive criticism

As stated, the issue is not so much whether these things are present but the way in which an organization responds, or fails to respond, to them. Identifying the problem is often easy; effectively responding is often elusive.

There are numerous reasons for this inadequacy. First, most people are very uncomfortable with difficult conversations involving personal differences. When asked to describe how they feel when contemplating becoming embroiled in an interpersonal conflict, the first words that people often say are "anxious," "awkward," and "apprehensive." Again, these feelings are easy to understand. Most people have not received any specific training in conflict resolution, and therefore, they don't prepare effectively (or at all) for a predictably challenging conversation or situation.

Often, group norms can make managing conflict more difficult. A culture that suggests that those who raise concerns are simply not smart, strong, or competent enough to "make it" in a business that requires toughness is a culture that guarantees that problems won't get raised. What doesn't get raised can't be effectively addressed, unless and until, of course, the situation deteriorates to the point that an implosion of some kind occurs in a way that can no longer be ignored.

Additionally, in today's workplace, the stressors on employees are significant. As a result, individual needs and demands may prevent people from being willing to get involved in situations, particularly if they believe that to do so is someone else's responsibility. Finally, fear often defeats a desire to take action. Fear can take different forms, including the fear of hurting someone's feelings by offering needed critical feedback, the fear of being perceived as making trouble or being difficult to work with, and often, the very real fear of retribution. In almost every workplace, there are ways in which a truly motivated person can make others' lives miserable if the person chooses to do so, often stopping short of what would be recognized as unlawful retaliation.

No workplace conflict conversation can be complete without at least a nod to the role of email in fostering ill will. In part, this is because the use of communication technologies is associated with reduced adherence to social norms. J. Suler, *The Online Disinhibition Effect*, Cyberpsychology & Behavior, 7, 321–326 (2004). http://dx.doi.org/10.1089/1094931041291295. What this means, of course, is that people will say in an email what they would never say to someone's face. They will not only say it, but they will often copy it to the entire department, increasing the harm to the target of the nasty message as well as the discomfort for all those who are appalled at what was said but unsure how (or if) to respond.

Emails or texts also provide fewer nonverbal cues, and no instant feedback, to assist the reader in determining the actual intention of the sender. K. Byron, *Carrying Too Heavy a Load? The Communication and Miscommunication of Emotion by E-Mail*, The Academy of Management Review, 33, 309–327 (2008). http://dx.doi.org/10.5465/AMR.2008.31193163. These factors add up to unnecessary, eminently avoidable conflict. Yet, the difficulty of engaging in direct, face-to-face conversation on sensitive topics leads many nearly exclusively to electronic communication despite these recognized risks and limitations.

A Better Approach: Practical Tools for Skill Development

Just as with learning in other areas, people can develop conflict competency. Reflecting and behaving in ways that will manage and resolve conflict before it escalates are skills that all individuals can pick up.

Checking Narratives and Reframing Issues

Parties to a conflict come to a discussion with at least one common need: the need to tell their story and be heard and understood. Because both parties share that need, however, the desire to satisfy that need interferes with the ability to hear and understand the experience and perspective of the other party. A commitment to seeking to understand before seeking to be understood goes a long way to increasing the odds of a positive outcome in a conflict. In particular, the party who holds greater power (formal authority, structural power, power related to resources, to name a few) should be encouraged to make this effort intentionally and exercise patience.

Active listening also has the effect of helping people to check and reframe their own understanding of and narrative about the problem at hand. Instinctually and unconsciously, most people make an immediate leap from things that they can see and hear (what someone says or does) to conclusions about things that are invisible, including the other person's motivation, intent, or values. Becoming aware of this tendency and actively controlling for it are extremely beneficial both in avoiding and resolving conflict. The ability to elicit an accurate narrative often changes the way that a party feels about the situation, which, in turns, changes how the person behaves. It is a simple concept to understand, but one that becomes quite difficult in practice. The first step to becoming more conflict competent is to begin a conversation by asking about things that are tangible, things that were heard or seen, and asking for clarification of intent, rather than beginning with judgment in the form of a conclusion. Making an observation and asking questions to gain understanding is much less likely to trigger a defensive or combative response than a comment likely to be heard as an accusation.

Effective Behaviors for Resolving Conflict

Conflict competent individuals engage in certain effective conflict resolving behaviors and thought processes.

Active Listening and Perspective Taking

Active listening and perspective taking refers to seeking genuinely to understand another person's position before communicating any opinion about that position's accuracy or reasonableness.

Reflective Thinking

Once someone has shared his or her perspective, it is helpful actually to take time to consider whether it can help inform or even change an otherwise competing viewpoint. It takes practice to review one's own strongly held positions and opinions, but reflective thinking is a worthwhile effort that can diminish the conflict between parties.

Delayed Response

Often people feel pressure to respond to a question or challenge immediately. It can be more effective to say, "I can see you feel very strongly about this. I'd like to take some time and think

about your concerns rather than give you a knee-jerk response." That gives time to evaluate the situation thoughtfully and time to determine how to communicate, if necessary, an unfavorable answer or divergent opinion respectfully.

Expressing and Recognizing Emotions

Expressing emotion in the workplace is often treated as taboo. Notions of professionalism seem somehow to require the unrealistic separation of logic and emotion, with the latter being left at the office door. Realistically, emotion—anger, sadness, frustration, anxiety, resentment, disdain—will intrude regularly. Recognizing and naming those emotions helps ensure an accurate understanding of what someone else is experiencing. Owning and being willing to share one's own emotions can often help others be more understanding and responsive to expressed needs.

Preparing for a Difficult Conversation

This checklist can help determine both whether and how to initiate a difficult conversation. Before initiating conversation or engaging the other parties, ask yourself the following questions and consider what they intend to uncover:

- **What really happened?** Am I seeing the situation objectively? Participants unavoidably bring a biased lens to conflicts. It is well worth the time that it takes to ask a trusted colleague or resource if he or she recalls or perceived events in the same way. It can be surprising to hear that someone else had a very different understanding of the situation.
- **What was my role in what happened?** Often, people attribute the existence of conflict nearly exclusively to the other party or parties involved. Interrogating how one's own conduct might have contributed is less intuitive, but it can be highly instructive. Sometimes, one party contributes simply by remaining engaged when it would be more constructive to end a conversation, or to refuse to engage in a conversation if certain conditions aren't met and maintained.
- **Is it worth my attention?** Plenty of behaviors can be distracting, odd, or annoying. In the workplace, however, attention should still be paid to how serious, how disruptive, that annoying behavior truly is. Quirks, small unintentional acts, or unconscious habits can often be tolerated if they are put in proper perspective. Employers promise environments that are free from violence, harassment, and discrimination, but not free from people who annoy you.
- **What is the effect on my work or on our work?** The clearest way to know whether addressing a problematic behavior or situation is worthwhile is to assess its effect on the work of the unit. The less significant the effect, the less need to discuss. Linking a problem to its effect on the work makes it more difficult for others to dismiss the issue or deny its relevance.
- **What is my goal in the conversation?** If the goal in addressing a conflict is to vent, to shame, or exclusively, to blame, it is highly likely that the conversation will not go well and that nothing will be resolved. If the goal is actually to improve a working relationship so that parties can move forward productively, then the approach taken has to be directly correlated to that goal.
- **Am I prepared?** When would be the best time and place? What is my attitude? Many times it is very helpful to allow a short time to pass before responding to a triggering

event. Waiting often leads to a more balanced perspective regarding the event itself and increases the likelihood that the discussion can be approached in a more constructive manner. Preparing in advance for a difficult conversation is key, as is ensuring that the conversation takes place at a time and in a space that creates the best possible atmosphere for effective dialogue. Typically, this means a private, quiet space that is unlikely to be disturbed and scheduling the conversation at a time when other stressors are reduced. Finally, taking responsibility for controlling one's own attitude increases the probability of a positive outcome.

- **Should I seek assistance before addressing?** There are resources of all kinds—print, electronic, personal—that can help position a situation for success. It can be incredibly helpful to take advantage of these helpful resources rather than trying to tackle a stressful issue all alone.

Conclusion

The presence of conflict in any organization can be presumed, and the experience of work-related conflict is one that almost no one manages to avoid. It is important to recognize that conflict, while potentially uncomfortable, can provide opportunities for learning, growth, and improvement, both individually and organizationally. Conflict competency comes with thoughtful reflection, intentional effort, and mostly, lots and lots of practice!

Resources

Bernard Mayer, *The Conflict Paradox* (Jossey-Bass 2016).

K. Patterson et al., *Crucial Accountability* (McGraw Hill 2013).

Robert I. Sutton, *The No Asshole Rule* (Business Plus 2007).