



THE STATE BAR OF CALIFORNIA

84th Annual Meeting

Program 138

**Dealing with Difficult Clients and Opposing
Counsel: Successful Strategies and Tactics**

**Saturday, September 17, 2011
4:15 p.m.-5:15 p.m.**

Sponsored by the Solo and Small Firm Section

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Dealing with Difficult People

by Steven G. Mehta

There seems to be no shortage of difficult people in the practice of law. Perhaps there is something in the water, or perhaps it is the economy. But no matter where you go, difficult clients or opposing counsel seem to be popping up out of nowhere. Indeed, take the case of the hypothetical mediator who had a recent encounter with an extremely difficult party who wanted to sabotage the mediation from the very beginning. The client insulted her own attorney, wouldn't let the other parties speak, accused her attorneys and every attorney in the world of having no heart or emotions and being liars and accused the mediator of lying about the merits of the case. To top off her venom, she had already reported her attorneys to the bar and at every turn was trying to avoid resolving the case. At one point, one of her attorneys walked out of the mediation. In short – she was the mother of all nightmare parties. Unfortunately for most attorneys and mediators, they have met this type of client/party at some point in their career. Therefore, it is critical to understand how to deal with such difficult clients and opposing counsel.

First, this article will identify some of the different types of difficult clients. Second, it will discuss general strategies on how to deal with difficult people. Finally, it will provide specific tools on how to deal with difficult clients or opposing counsel.

The following are the most common types of clients that can walk into your office.

- The angry or hostile client. Usually, this angry client will be very hostile towards you and others. Your staff may dread dealing with this person. Sometimes, it is unclear why the person is so angry. Be assured that this person's anger will only get worse during litigation. Moreover, some or all of that anger will spill over to you and your staff.
- The vengeful or zealous client. Typically a vengeful or zealous client will be vengeful about many things and not just the cause for what you are being hired. This person will usually make it known that they are bringing "the fight" based on principle. Many times this desire for vengeance will overcome any sense of rationality.
- The obsessed client. This client cannot stop thinking about the case, the injury, the wrong, and what can be done to address this problem. This client could easily call you several times a day to make sure that you are on top of the case. You could likely get too much information rather than too little.
- The emotionally needy client. This client is often emotionally fragile and insecure. Many times this person will be in a co-dependent relationship and is seeking to embroil you in another co-dependent relationship. This person may find it very difficult to make decisions.

- The dishonest or deceitful client. Often this client will not tell you all the information they know to be relevant or will tell you the wrong information.
- The unresponsive client. This client often wants the appearance of an attorney who is providing independent advice but in reality doesn't want your advice. This client simply wants you to rubber stamp his or her actions. Often, this client will reject your advice because it is contrary to her own. As stated by Sheila Blackford, author of *Recognizing Difficult Client Types*, "Clients often come to lawyers to determine the consequences of actions they have already taken or have decided to take." Often these clients don't want you as a lawyer, but are "forced" by others or circumstance to hire a lawyer. Beware that just as they are unwilling to accept your advice, they may also be unwilling to pay the bill for advice they do not want.

Finally, there may be a combination of these types of clients. You could end up with an angry, vengeful client that is obsessed. If that is your client, turn in the other direction and run. If this ends up being your opposing counsel, then in the famous words of the Robot in *Lost in Space*, "Danger, Will Robinson, Danger!"

Now that difficult clients have been identified, it is helpful to look at some strategies that attorneys can use to combat both difficult or nightmare clients and opposing counsel.

First, start out by examining yourself. Everyone can be difficult to deal with at times. Before you can determine whether the other person is the problem, make sure that you aren't the problem. Are you over reacting? Are you having a bad day? Why is this person affecting you? What buttons of yours are being pushed, and why? After examining whether you may be part of the communication problem or that you have misinterpreted the comments made towards you, then you will have a better idea as to whether this person is being offensive or difficult or whether it is you.

In examining yourself, it is important to understand that everybody has an instinctual reaction to act when attacked. This is hardwired in our brains from the stone age days where we had to either react to a threat (fight) or flee from the threat (flight). In modern days, the threat is usually not physical, yet the body still gives issues the same fight or flight reaction. People end up having an immediate need to affirmatively right a wrong or injustice against them. More likely, a person can end up wanting to immediately defend his or her actions or position. This is partially because the attack against a person is affecting his or her internal observation of self worth that person's standing in the community or amongst his peers.

Often people feel the need to show that they are correct and that the other person is wrong. This knee jerk reaction, however, can do more damage than good. Indeed, when having such a reaction, most people perceive that it makes them feel good; but shortly thereafter, they regret having said and done what they did in the heat of the moment.

The strategies listed hereafter are not in chronological order; but instead are different strategies that can be employed depending on the situation.

First, **PRESS THE PAUSE BUTTON**. In sports after a particularly difficult call by the referee the commentators will press the pause button on the action and show an instant replay at a slower pace. This tool is not just beneficial in sports. The pause button can be very powerful in helping to deal with difficult people. The length of the pause can depend on the situation. In the case of a minor issue, you might treat the matter with a small pause, giving yourself just enough time to think. Indeed, this is exactly what attorneys tell their clients in preparation for deposition. After the question is asked, wait for a brief second before answering. That pause can help to avoid making a huge blunder by saying the wrong thing.

In other cases, you might need a longer pause. You could simply ask for a five-minute break or ask to use the restroom; whatever excuse you need to give to allow yourself a moment to think. Once you have hit the pause button, you can then consider the comment or action, its impact on the scheme of things, and what you might want to do in response.

Take for example, the case of one mediator. In one particularly nasty mediation, when a party insulted the mediator's integrity to its foundation, the mediator simply took a moment to pause in the mediation to let the sting of the initial insult pass. Then he asked take a five-minute break while he digested the information just conveyed. Then when he returned, he simply moved the mediation forward as if the comment had never been made. Once the party realized that she couldn't get a reaction to her insulting comments, she was forced to stop making them.

Another rule to consider is that "You don't have to win every argument." As noted above, often the reason a person jumps into the fray is because she wants to prove that she is right. This is difficult for lawyers because they are trained to advocate their position. However, proving that you are right with a difficult person can simply entrench that person even further; and even though you may feel that you are right, the other person will never agree. Sometimes the best response is to let it go and have the satisfaction that you know that you are right.

Another important strategy is to employ **ACTIVE LISTENING** skills. An important sign of respect for another person is to actually listen to what that other person has to say. How many times have you been in a situation where someone has said: "You aren't listening to me." One of the most powerful tools in addressing difficult people is using active listening skills. Active listening skills include avoiding any distractions – such as that pesky Blackberry – and really trying to understand the other person's positions and concerns. All too often attorneys are already working on their response while the other person speaks. Another aspect of active listening is to ask open-ended questions that

clarify what you understand about the other person's statements. Ask whether your restatement is an accurate version of what the other person feels. Sometimes, depending on the person, you might mirror some of the nonverbal cues the person displays. Studies show that by mirroring non-verbal gestures, the other person will feel more connected with you. Ask questions that elicit more information from the other person. Depending on the person, you may have to spend a considerable amount of time using active listening skills. However, at the end of such a process you might find that the difficult person is much less difficult.

It is also important when dealing with difficult people that you try not to give that person an excuse to be even more difficult. As such, when you communicate your concerns or feelings try to avoid using terms that target the other person, such as "you" phrases which target the other person's behavior. Instead, talk about your experiences using "I" phrases, such as "I was upset when I heard the comments." This approach helps to avoid attacking the other person or accusing the other person of something.

Match communication styles. Generally, people fall into three categories: Audio learners, visual learners, or Kinesthetic (or touch) learners. You can tell which style a person favors by the language she uses. Think about whether the other person is using visual language such as color, seeing, and pictures or whether the person is using audio language such as hearing, sounds, vibrations, etc. Then try to match their language by using words that relate to those styles in your responses. For example, with a visual person you might comment, "I see your position," but with an audio person you might say, "I hear what you are saying."

If the difficult person puts you in a position where you are required to respond, ask that person what exactly he is upset about. This will help to demonstrate that you are interested in solutions rather arguing. This strategy then can allow you to incorporate active listening once the person explains to you their concern (irrational or otherwise).

Finally, if after an unreasonable attack against you, consider agreeing with a small portion of the statement. This can accomplish several things. First, it can help you avoid jumping in to defend yourself and continuing the unhealthy communication. More importantly, however, it can allow you to create something in common with the angry person and may appease their irrational anger.

These general strategies can be very useful in dealing with all types of difficult people. But what about the difficult client or lawyer? There are several specific strategies to work with these individuals.

First, there is a saying that the best client you will ever have is the one that you don't take. In other words, sometimes it is far better to not take a client than to take a client and have nightmares wondering if you are going to be called by the Bar or served with an unjustified malpractice suit. This lesson is an important one because some clients, no

matter how lucrative, are just not worth the risk and the stress. Many times if the client is difficult as a prospective client, that person will only get worse during the representation.

If you don't have the luxury of refusing to represent a certain person, establish boundaries. You can limit your involvement to specific interactions. You can also establish boundaries for when and how many calls you might take on a particular topic. One lawyer has a written guideline for all of his clients which establishes what the lawyer will and won't do in the legal process, including responding to calls on the weekend.

Third, you can establish specific requirements for your clients in the very first meeting and before you sign the retainer. Along those same lines, one of the major frustrations for attorneys is clients that have unreasonable expectations of the result and process. By providing the clients with a detailed explanation of what they can expect, and what you expect, you can minimize difficult communications.

This principle can also work very effectively with opposing counsel. If counsel is abusive to you or your staff, you can set down ground rules for future communications. If those ground rules are not honored, then you can limit your communications. For example, one lawyer lets the opposing counsel know that if there are any further abusive phone calls, then all further interactions will have to be in writing. Moreover, if the opposing counsel persists in his or her actions, then all writings will not be by fax or email, and will only be accepted and given in the mail. One lawyer has gone so far as to require that all conferences be videotaped.

Unfortunately due to the nature of the practice of law which involves conflict scenarios, there will continue to be difficult people in the practice of law. There are many strategies for dealing with difficult people. This article has only addressed a few of them. However, armed with these strategies, it is possible to substantially decrease the number of difficult interactions and the stress related to those interactions.

Research sources:

<http://www.abanet.org/lpm/magazine/articles/v36/is4/pg41.shtml>

Psychology Today. <http://www.psychologytoday.com/articles/200609/dealing-difficult-people>

Steven G. Mehta, Esq. is a full time mediator based in Los Angeles with offices in Downtown and Valencia and specializes in emotionally complex cases involving elder law, injury cases, and employment disputes. He can be reached through his website at www.stevemehta.com.

Mediation Offices of Steve G. Mehta
25124 Springfield Court, Ste. 250, Valencia, CA 91355
Tel: (661) 284-1818 Fax: 661 284-1811
Email: Steve@mehtamann.com
Offices: Valencia & Los Angeles



STEVEN G. MEHTA

MEDIATION OFFICES OF STEVEN G. MEHTA

Steve Mehta is a master of mediation. And he's good. He's very good. He has been called a 'miracle worker' and a 'magician' by colleagues who have asked him to mediate cases they couldn't settle.

"Mediation turns the power of decision-making over to the people involved," he explains. "In almost no other area of our lives do we rely on twelve strangers to make our decisions for us. Why should we do that with legal matters?"

Mehta, whose offices are located in Valencia, began his career as a trial lawyer, representing both plaintiffs and defen-

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dants. His experience litigating complex injury cases, insurance matters, employment law, elder abuse and medical malpractice has made him acutely aware of the short comings of adversary law. "There are serious problems with the jury system," he says. "You see the pain and torture people go through. And when it's over, they often don't feel closure."

Mehta's devotion to mediation as a more dignified way of resolving a conflict is inescapable. "This really is my calling.

Mediation is a tool to help people recognize their responsibility for things, to negotiate a solution and to move on with their lives. My role is to allow them to present their side, to ensure that they are heard and to help them achieve a resolution."

What, exactly, is Mehta's magic? Understanding human dynamics. "Anyone can learn the law," he points out. "Understanding people is where my expertise lies. There are two sides and two emotions to every story. I care about them both."

But there's a huge chasm between understanding human dynamics and getting two frustrated, angry parties to agree. Mehta is very definitive about what it takes to bridge that gap and bring the parties together.

"My ability to connect with each participant and develop trust is absolutely essential," he says. "Then, I need to be creative about solutions. Finding a mutually satisfying settlement is as much art as it is law. Finally, I never give up. Nothing is impossible. The impossible just takes a little longer."

In the end, there is almost always an answer. When it's over, it's a solution the parties chose. "They feel empowered. Grateful. Relieved," Mehta says. "Most importantly, they feel free to move on with their lives."

Now, that's a masterful job.

MEDIATION OFFICES OF STEVEN G. MEHTA

27200 Tourney Road
Suite 475

Valencia, CA 91355

PH: 661-284-1818

FX: 661-284-1811

www.stevemehta.com