

Conflict Resolution Revisited

By Tish Vincent

During my three years of law school, I witnessed the faculty become disenchanted with the school's dean. As a student of human behavior, I have cultivated a lifelong interest in group process. While earning my master's in social work, I was responsible for submitting a process recording of every group I conducted or observed. Social work students were expected to study and identify the dynamics and personal coping skills of group participants, including our own, and we were accountable for tracking interactions and using them to understand the dynamics of the group.

I could not help but fall into this process during law school as I observed the dynamics of a group comprised of highly educated, highly competitive, highly paid academicians as it found fault with its leader. The process was a microcosm of political processes that play out in any academic discipline or professional culture, but it was my first chance to observe the process with a group of lawyers.

The process continued for approximately 18 months, after which the dean went on sabbatical and never returned. Several of the professors who led the charge against the dean formed a search committee to find his replacement. My observation of the process ended when I graduated, but recalling the behavior of the faculty informs my understanding of groups of lawyers in conflict even now.

Groups of individuals working together in any employment or professional staff setting will experience conflict. Conflict is natural, normal, and can be productive. It cannot be avoided. Yet just as individuals need to learn the difference between healthy and unhealthy coping strategies for dealing with stress, groups of individuals need to learn to identify the difference between healthy and unhealthy strategies for coping with conflict.

Merriam Webster's definition of conflict that best fits this analysis is a "mental struggle resulting from incompatible or opposing needs, drives, wishes, or external or internal demands." When individuals find themselves bound together by employment, family, citizenship, or any other social group, conflict is inevitable. Individuals react to events, plans, and bylaws differently. Some form of conflict resolution will be necessary.

We will examine two types of conflict resolution: benign and malignant.

Benign Conflict Resolution

For the purpose of illustrating benign conflict resolution, consider a hypothetical situation in which two attorneys decide to open a small firm together. They agree about many issues—the business structure of the firm, administrative staff, letterhead, and even the firm that will do their marketing. They are confident about their new endeavor and enthusiastic about their future until the issue of the location of their office surfaces and a decision needs to be made.

One of the attorneys feels very strongly that they need to reduce costs and make do with the least expensive office available as long as it is in good repair. The other attorney feels strongly that they need a location that projects a message of success and is

convenient for potential clients. Both attorneys believe their preference will protect the firm's future earnings; both are entrenched in the belief that they are correct, and their initial attempts to discuss the matter lead to arguments and hard feelings.

As attorneys, these individuals share a competitive conflict style. People like this tend to decide quickly, believe they are right, and have the power to persuade others.¹ Since both are self-confident and certain, how can they resolve this conflict peacefully? To resolve the conflict, our hypothetical attorneys will need to move toward a more collaborative approach. When individuals feel heard and understood, they are more likely to hear and understand the opinions and preferences of others.

In our benign conflict resolution scenario, the attorneys talked to others about the conflict, developed some curiosity about the other person's viewpoint, listened actively, reflected this understanding, and tried to incorporate all viewpoints in determining the solution. Searching for office space took longer than anticipated, but eventually they found a stylish, reasonably priced office located in a high-traffic area. Both attorneys felt their needs had been met and, more importantly, they discovered a positive process for working through conflicts.

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Malignant Conflict Resolution

To illustrate an example of malignant conflict resolution, consider a scenario in which two managing partners at a big law firm are disagreeing about dealing with a percentage partner who has been accused of sexually harassing a new associate. They agree that the percentage partner is a valued member of the firm, the new associate looks like a promising addition to the firm, the work of the attorneys involved is suffering, and the accusations and problems are damaging staff morale. They are in a heated conflict regarding who is to blame for the problem.

Managing Partner A believes the percentage partner is a person with bad boundaries who is after every pretty young attorney he meets and that the only solution is to fire the guy. Managing Partner B believes the young associate dresses inappropriately and behaves seductively around any percentage partner she works with, and has heard she had wrongly accused an attorney in another firm of similar behavior. He believes the firm should have a serious discussion with the associate and let her go if she won't change her behavior. The discussion gets ugly. Partner A pushes her solution on Partner B, and Partner B pushes back. Soon, everyone in the firm is upset by the war raging between the two partners.

Our hypothetical scenario develops into a virtual war. At the office, Partner A talks about Partner B in disparaging terms, personalizing the conflict and accusing him of being sexist. She takes it outside the bounds of reason and attacks his gender, politics, and religion. Partner A finds some coworkers who agree with her. In time, she leads them into a full mutiny and leaves the firm, establishing a new firm that advertises as a defender of women's rights.

Partner B is enraged. He rarely misses a chance to say something negative about Partner A to anyone who will listen. He feels victimized and wrongfully treated, and believes that gives him justification to speak ill about Partner A and her new firm. His beliefs that fed the original conflict are reinforced, and he begins to see every attorney working at the new firm as painted with the same brush. Acrimony abounds and the original conflict lives on.

Best Practices When Conflict Arises

When conflict arises, the parties involved should identify their conflict styles. Kenneth Thomas and Ralph Kilmann describe five conflict styles:

- competitive
- collaborative
- compromising
- accommodating
- avoiding²

We all have a natural tendency to develop one of these styles, and we revert to it when conflict arises. Spend a few minutes thinking about your own style and identify which one it is.

Think about our hypothetical situations. Which style do the attorneys searching for an office use to deal with their conflict? Which do Partners A and B use in dealing with their conflict?

Tools for resolving conflict emphasize a five-step process:

- (1) Develop an understanding of the conflict with an expectation that a resolution is possible.
- (2) Become a detective about both sides' interests and needs.

- (3) Identify something both sides of the conflict want.
- (4) Develop possible solutions with both sides present.
- (5) Agree on a solution, formalize it, and celebrate it.

Alternative dispute resolution offers mediation, arbitration, and negotiation to individuals locked in conflict. The processes discussed here are not that formalized but rely on many of the same principles.

When parties negotiate in good faith, possibly with the assistance of a neutral third party, they can usually reach an agreeable resolution. There are times, however, when a solution cannot be reached. This is often the case at work; perhaps the conflict involves our boss or a problematic coworker. We try everything possible to come to an understanding and settle ongoing conflicts to no avail. Someone keeps behaving badly and we dread going to work.

Disruptive Professionals

As lawyers and judges, we are often in positions of power and on equal footing with our opponents. When unresolved conflict festers, it can lead to exhibiting unprofessional behaviors. Unprofessional behaviors are best identified with the metaphor

of playground bullying. Disruptive professionals may bully, resort to name calling, gossip, or engage in character assassination. They direct angry tirades at others and cultivate dissent. Disruptive professionals cultivate cliques and exclude those who disagree with them or are different from the members of their clique.

Unprofessional and disruptive behaviors in the medical profession have been studied and various challenges inherent in addressing such issues have been identified. Many individuals feel insulted when asked to consider professional versus unprofessional behavior because they believe they act in a professional manner. Measuring professional behavior is difficult. It is easier to measure and identify unprofessional behavior.

As people learn in their graduate programs, externships, and clerkships, they often are exposed to unprofessional behavior that is accepted and admired. Unprofessional behavior causes deterioration in the integrity of the system in which it occurs. Many leaders have no training or notions about how to intervene when persons in positions of power or authority behave in an unprofessional manner. Often, where one disruptive professional is found, enablers and protectors can be found covering up and justifying that behavior. Familiarizing ourselves with the existing work on dealing with disruptive professionals allows us to learn from others and consider how legal professionals can increase awareness of their behaviors when interacting with other professionals when a conflict exists.³

When conflict arises between equally powerful attorneys and judges, unique solutions are necessary. Scholars have identified procedures for intervening in conflicts between disruptive professionals and others. We draw on their work to establish a process that may prove helpful here. The Vanderbilt University School of Medicine has identified the following pyramid of interventions with a disruptive professional:

- Most professionals behave in an appropriate manner and there is no need for a discussion about their behavior.
- At some time, any professional may have an isolated outburst of unprofessional behavior or be accused of one. At this

level, other professionals in the system need to be educated and ready to have a “cup-of-coffee conversation.”⁴

- A pattern of unprofessional behaviors evolves and is noticed or reported by a number of peers, the public, or authority figures. A peer or authority figure needs to present the pattern to the professional in question and perform an “awareness intervention.”⁵
- Despite an awareness intervention, a few professionals may persist in their pattern of unprofessional behaviors. An authority intervention is called for and an improvement and evaluation plan is developed for such individuals.
- If a disruptive professional persists in his or her negative patterns, it is necessary to institute disciplinary action with possible reporting to regulatory entities who oversee licensing and fitness to practice.

Vanderbilt has established a program to educate and train its teams of professionals to increase awareness of professional and unprofessional behavior and intervene with informal conversations or awareness interventions. The training itself spurs professionals to evaluate their own behaviors and have the confidence and skills to effectively discuss incidents with their peers.⁶ The training also creates a culture of professionalism that encourages discussion and conflict resolution.

Conclusion

The hypothetical benign conflict resolution in this article is an example of a spontaneous conflict resolution process that resulted in an agreement. The attorneys in question put their competitive natures aside, collaborated, listened to one another, and found a workable compromise. The conflict did not careen out of control and cause increasing levels of trouble.

The hypothetical malignant conflict resolution careened out of control, took hostages, and resulted in wreckage for those involved. Partner A and Partner B allowed their competitive natures to fuel a disagreement that escalated over time. Disruptive,

unprofessional behavior abounded. The original conflict went unresolved and lives on in two separate firms that distrust and despise each other.

The attorneys in the second situation were incapable of resolving their conflict because the main characters acted in an unprofessional and disruptive manner. The behavior of the percentage partner and the associate could be viewed as unprofessional and disruptive, but for the sake of discussion we will focus on Partners A and B. In my observation of the faculty at my alma mater and its conflict with the dean as well as in the second hypothetical, the perils of the competitive style in conflict resolution are evident. When highly intelligent, educated, experienced, entitled professionals fight with each other with a win-at-all-costs mentality, unprofessional behavior increases. When collaborative conflict styles can be adopted or encouraged by neutral third parties, diverse solutions can present themselves.

It is time for the legal profession to learn about disruptive and unprofessional behavior and healthy conflict resolution. As a profession, we need to create a culture that recognizes and values professional conduct. ■



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FOOTNOTES

1. Mind Tools, *Conflict Resolution: Resolving conflict rationally and effectively* <http://www.mindtools.com/pages/article/newLDR_81.htm> (accessed August 19, 2012).
2. *Id.*
3. Hickson, Pichert, Webb & Gabbe, *A complementary approach to promoting professionalism: Identifying, measuring, and addressing unprofessional behaviors*, 82 *Academic Medicine* No 11, 1040–1041 (2007).
4. *Id.* at 1042.
5. *Id.*
6. *Id.*