

Tips for Lawyers Who Want to Get Good Results for Clients

By John Lande

I recently retired from teaching at the University of Missouri School of Law and wrote *My Last Lecture*¹ summarizing my advice for lawyers. As a law professor, I taught a required first-year course on lawyering and conducted empirical research about how lawyers negotiate during pre-trial litigation.

As most lawyers know, only a tiny proportion of cases actually go to trial, let alone go up on appeal. Instead, most legal disputes get settled during pretrial litigation or even before suit is filed. Of course, it is important for lawyers to be prepared to try cases if needed, which can help with negotiation. They can especially help their clients by trying to get good settlements at the earliest appropriate time, but this is easier said than done.

This article suggests some practical things you can do—and that good lawyers routinely do—to get good results for your clients. If you do so, your clients are more likely to pay your bills, hire you again, and refer other clients to you.

Understand your clients' interests

Lawyers often assume they know what their clients want: to get as much money or pay as little money as possible. While clients usually are concerned about their bottom line, they often have additional interests. In virtually any case, parties may have an interest in being treated respectfully and fairly, minimizing the cost and length of the process, freeing time to focus on matters

other than the dispute, reducing the emotional wear and tear caused by continued disputes, and protecting privacy and reputations. Plaintiffs may have interests such as obtaining favorable tax consequences, getting nonmonetary opportunities, and receiving explanations or apologies. Defendants may have interests such as receiving acknowledgments about the lack of merit of the charges, making payments in kind, stretching payments over time, sharing liability with other defendants, preventing ancillary harm such as loss of credit rating or business opportunities, receiving favorable tax consequences, obtaining nondisclosure agreements, and avoiding future lawsuits.

Pay attention to what's really important in your cases—not just the law or winning

Lawyers generally want to make the best possible argument and win in litigation or transactional negotiations. Typically, it's good to show the law is on your side, get favorable agreements, and win at trial. You are likely to feel good if you can make arguments that persuade others and win trials. That's often how lawyers measure success and get good reputations. It's certainly fine to take pride in your work and want recognition for it. But remember that your first priority should be your clients' interests, not yours. Winning is a means to achieving your clients' ends and it shouldn't be the end in itself. Don't win the battle and lose the war. Since clients are likely to have multiple interests, your job should be to help them achieve their highest-priority goals.

Recognize the importance of emotions—especially yours

Many lawyers seem afraid of emotions. They assume the law is only about rational

analysis of the law and the facts. To them, emotions are messy and get in the way of good legal representation and decision-making. They wish people—especially their clients—would set aside their emotions and be more rational. But people can't avoid emotions, and it's foolish to try. Emotions provide valuable information, such as what is especially important. Lawyers should particularly focus on their own fears, which typically permeate legal practice. As described in my article, "Escaping from Lawyers' Prison of Fear," lawyers may fear a number of things, including actions by law firm partners, clients, adversaries, and judges.² Although fear is a normal and often helpful emotion, it can lead to serious complications like mental health and substance abuse problems. Plan strategies for dealing with stress such as meditation, diligent preparation, mental rehearsals, practice in simulated settings, positive self-talk, advice from mentors, and mental health services when needed. You can also reduce stress by managing your cases cooperatively when appropriate.

Get to know your counterpart lawyer

Lawyers often assume opposing counsel will be hard to work with. This can be a self-fulfilling prophecy. Sometimes your counterparts will be a pain in the neck, but often they want to be reasonable while protecting their clients' interests. If you have a good relationship with your counterparts, you can work out problems pretty easily. If you have a bad relationship, your cases can become your own private hell. If you have a case with a lawyer you have never worked with before, consider getting to know each other over coffee or lunch or even a phone call. As a result, when problems arise in

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a case, your counterparts are more likely to call you and less likely to fire off a nasty e-mail or file a motion.

Make a habit of preparing to resolve matters at the earliest appropriate time

Although there are good reasons why lawyers delay moving ahead in some cases, you should generally avoid procrastinating. Lawyers know that the vast majority of cases settle without going to trial, but they often feel powerless to steer clients toward negotiation. Trapped in the “prison of fear,” lawyers may worry about harming their clients if they settle before completing all possible discovery (even though most of it won’t make any difference).³ Lawyers (and their clients) often worry that merely *suggesting* negotiation makes them look weak, leading the other side to try to take advantage. Confident lawyers can escape this prison of fear. As retired judge Robert Alsdorf said, “Being willing to negotiate doesn’t make you look weak. Being *afraid* to negotiate makes you look weak.”⁴ One lawyer I interviewed said, “Sooner or later, you will need to negotiate. You need to get out in front, get the facts, get the client on board. Try to prepare a settlement letter.... This drives the case in the right direction. If you wait, you just get sucked into a pile of mud. If the other lawyer sends the letter, then you have to catch up.”⁵

Be prepared to negotiate more than you might expect

In addition to negotiating final resolution of disputes, lawyers also negotiate with each other about substantive and procedural issues during litigation. For example, lawyers regularly negotiate about acceptance of service of process, extension of deadlines, scheduling of depositions, and discovery disputes. They also regularly negotiate with many other people as they handle their cases. Of course, they agree with clients about fee arrangements and how to handle cases. They reach agreements with coworkers in their firms, process servers, investigators, court reporters, technical experts, financial professionals, and mediators. They also reach agreements with judges

about case management issues such as discovery plans and schedules, referral to ADR procedures, and ultimate issues during judicial settlement conferences. Indeed, litigation is a continuing stream of agreements. If you treat people respectfully and understand their interests, you can reach good agreements that satisfy your clients’ interests without unnecessary disputes.

Get help from mediators when needed

Sometimes, despite your best efforts, you can’t reach a settlement when it would be in both parties’ interests to settle. Mediators can help identify and overcome barriers to settlement. These barriers may be poor communication, strong emotions, unrealistic expectations, pressure from others (such as business superiors, colleagues, or spouses), or need for reassurance from a neutral professional. Sometimes, parties won’t accept your advice but will be persuaded by the same analysis from a mediator. Using a mediator can save everyone a lot of money and grief.

Be prepared to advocate hard and smart

Professor Stephen Easton advises that if you determine an issue is important enough to fight about, you should “fight hard, fight smart, fight with conviction, passion, and perseverance, and fight to win.”⁶ I generally agree with this advice with two qualifications. First, even if you determine that an issue is important to your client, it is important to fight about it *only after* you have unsuccessfully explored ways to satisfy your client’s interests without fighting. Second, I suggest using the word “advocate” instead of “fight” because people often believe lawyers fight in unnecessarily nasty ways. Lawyers need to advocate effectively, sometimes exercising power both in negotiation and court. If you convey your willingness and ability to advocate effectively, your counterparts may act more reasonably. If you give them the choice of handling the case the easy way or the hard way and they believe you are ready to do it the hard way, they may prefer the easier way.

Conclusion

Based on my experience teaching law students and giving continuing legal education presentations to practitioners, I am convinced that most lawyers are primarily motivated to help their clients. Although this may seem obvious to lawyers in everyday practice, it differs from common images of lawyers being more interested in their own egos, fame, and fortunes. Of course, such lawyers do exist and they can be hard to work with. But even when you have cases with them, there are things you can do to reduce unnecessary conflicts and get good results for your clients. In doing so, you are likely to feel greater professional satisfaction, reduce your stress, and still make a good living. ■

This article was previously published on my blog at <http://www.indisputably.org/?p=7443>.



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ENDNOTES

1. Lande, *My Last Lecture: More Unsolicited Advice for Future and Current Lawyers*, ___ J Disp Resol ___ (forthcoming 2015) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2640261>. All websites cited in this article were accessed October 17, 2015.
2. Lande, *Escaping from Lawyers’ Prison of Fear*, 82 UMKC L R 485, 485–491 (2014) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2416839>.
3. Lande, *Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money* (2d ed) (ABA Publishing, 2015), pp 6–12.
4. Lande, *Good Pretrial Lawyering: Planning to Get to Yes Sooner, Cheaper, and Better*, 16 Cardozo J Conflict Resol 63, 94 (2014) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2405625>.
5. *Id.* at 74.
6. Easton, *My Last Lecture: Unsolicited Advice for Future and Current Lawyers*, 56 SC L R 229, 237 (2004) <http://www.innsocofcourt.org/uploaded/global/files/2004_winning_essay.pdf>.