

Lawyer as Problem Solver: Joint Alternative Dispute Resolution Committee's Top Ten Tips

by Deborah Wood Blevins and William T. Fitzhugh



Once upon a time, lawyers were viewed as problem solvers in their communities. Communities sought out lawyers to serve in leadership roles in their churches, city councils, and school boards not because they were fierce warriors, but because they knew how to identify and solve problems. Solving problems and helping clients design strategies for conflict resolution are now fundamental skills. Here are some tips to keep in mind whatever your area of subject matter expertise.

- 1. Recognize your own bias:** Lawyers are not always the most humble of people. We think our perspective is the correct one. Obviously. We tend to treat clients paternalistically — telling them what is best for them. In order to identify and resolve problems, we need to get out of the way. With a client-centered approach, lawyers should have some recognition that the way they want it done might not be the best way for a particular client. This does not mean that we abdicate our responsibility to educate clients about their rights and responsibilities. But it does mean we recognize that we do not always have “the answer.”
- 2. Focus on the client:** Problem solvers do not impose their goals or biases onto a client’s case. Problem solvers provide legal advice in the context of the client’s values, relationships, and concerns. Often clients do not come into our office with the experience to articulate their own needs. Question them about what they mean so you understand their needs and interests. In a family law matter, a client may state that they want primary or full custody. When you ask what they mean by that or what that means to them, you might find out that they want to be able to move out of state with the children. By teasing out their true needs and interests, you enhance the client’s autonomy to make decisions based on their values, not your values.
- 3. Ask genuinely curious questions:** One of the most valuable skills a lawyer can have is knowing how to ask genuinely curious questions. In litigation, lawyers are trained to cross-examine witnesses with questions designed to box in the witness. There should be only one possible answer! Ours! The lawyer is delivering the information and the witness affirms it. Outside of litigation, problem solvers ask genuinely curious questions. Sometimes we ask broad questions. Sometimes the questions should be direct. The goal of the question is to have the person an-

swering it deliver their information, not ours.

4. **Paraphrase:** Clients need to feel heard. We can let them know they have been heard by paraphrasing what we hear back to them. Particularly in articulating goals, paraphrasing ensures that clients have been heard correctly. For example, we can tell the family law client, “What I think I hear you saying is you want to move out of state with the children so that you can be near your family.”
5. **Develop a game plan:** You have to know where you want to go before you start a trip, but you also need a map to know how to get there. Problem solvers help design a strategic map to help clients meet their goals within the context of the legal framework. Some cases need to be litigated or arbitrated because the client needs an impartial decision maker; some may be resolved through collaborative law or alternative dispute resolution because the client needs to communicate with the other side. Some need a hybrid, where early litigation sets the stage for meaningful negotiation.
6. **Listen to the other side:** Communication specialists often speak of the 70/30 Rule of Communication: You want to spend 70 percent of your time listening, and 30 percent of your time talking. Problem solvers know that the best solutions are ones where both sides have their needs and interests met. Often asking the right question is key:

At a recent alternative dispute resolution competition for law students, one team was caucusing with the mediator when they said that they just were not sure what the other side’s goals were. “Why don’t you ask?” the mediator suggested.

Team: “Great idea. Let’s suggest that we don’t have a supplier for the widgets. Maybe then they will tell us what their goals are!”

Mediator: “Perhaps you could ask them.”

Team: “Ok. We just aren’t really sure what their needs are so maybe they will tell us when we refuse to supply the widgets.”

Mediator: “Or you could just ask them directly.”

7. **Listen to the neutral:** Most judges and mediators are not trying to outwit you, rather they may be trying to help you. Whether you are in litigation, mediation, or arbitration, chances are the neutral is trying to reach (or help your client reach) the best outcome. This is particularly true in family law where the lives of children are involved. The neutral provides a different perspective — and perhaps some good ideas.
8. **Provide perspective:** On July 24, 2006, Daniel Gilbert, a professor at Harvard, wrote an essay in the *New York Times* entitled “He Who Cast the First Stone, Probably Didn’t.” The message of the article is that we tend to remember the pain inflicted on us more than we remember the pain we have inflicted on others. In family law disputes, we face a difficult task in acknowledging our client’s pain while also providing the perspective that their spouse may also feel pain or have a different viewpoint. Our client’s friends and family (shadow advisors) sometimes play the role of cheerleaders for our client’s status as the victim, instead of helping our client see the broader picture. Our conflict styles and our decision-making styles vary. Often clients assign moral failing to these differences. As problem solvers, simply acknowledging with our clients that people have different conflict resolution styles and different decision-making styles can help normalize their feelings and provide perspective.
9. **Remain flexible:** As your client gains knowledge or information, their needs and interests might change. The emotional stages of divorce are comparable to the emotional stages of grief. As your client moves through conflict emotionally, their goals may change. Anger and the desire for revenge may be replaced by acceptance and the desire for peace. Continuing to listen, not only to the words but also to the tone and emotion behind the words, is critical to responding to changes and resolving the problem.
10. **Keep your eye on the prize:** “Winning” in today’s world rarely means a full scale victory in court. In fact very few civil cases are tried, particularly before juries. So end where you start — by recognizing

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ing that “winning” may not be how you define it, but instead how the client defines it — solving the problem. By establishing a collaborative relationship with the client, with the other side, and with any neutral involved in the case, you have the best opportunity to solve the problem in a winning way.

Do you want to be known as a bull dog? Or as a problem solver? Some cases require aggressive representation. But more often, practicing law or serving your community at your church, PTA, or city council requires effective problem-solving skills that focus on the needs and interests of all sides.

Want to learn more? Join the Joint Alternative Dispute Resolution Committee of the Virginia State Bar and

the Virginia Bar Association on September 25, 2017, in Richmond when we host “A Place at the Table: A Symposium on Attracting 21st Century Clients and Efficiently Solving Their Problems.” More information is available on the joint committee’s web page at http://www.vba.org/?page=joint_adr.



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