

Litigation

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VOLUME 258—NO. 116

MONDAY, DECEMBER 18, 2017

Five Roles of the Litigator: Problem Solver, Advocate, Strategist, Negotiator and Therapist

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A litigator must often wear various hats to offer the best representation to his or her client. Each of these roles requires the cultivation of a set of skills necessary to the job—some more widely expected of a litigator and others less thought of but equally important. Whether helping clients assess contracts or disputes from the outset before any litigation is even on the horizon or listening to a client vent about a frustrating situation that may or may not lead to a winning claim, a litigator that hopes to develop a strong attorney-client relationship should focus on all five roles.

Role 1: The Problem Solver

Avoid disputes before they occur. This seems counterintuitive to a litigator's bread and butter, but in the long run, a client is likely to keep coming back to a lawyer who shows he is interested in helping



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solve the problems, not just making money through costly litigation. One method is to give advice to your clients *before* the problems arise. Encourage them to show you the contracts before they are signed. You have seen litigation over contracts time and time again. Who knows the pitfalls better than a litigator? But

whatever the stage, whether before a contract is signed or long after when trouble is already brewing, the key to problem solving is getting all the relevant information. When speaking with a client, allow them to tell you the story they want to tell, but also be sure to ask the important questions and gather all the relevant

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facts and information so that you are armed to tackle the problem. To be an effective problem solver, a lawyer needs more than just cold facts though—she needs to really understand her client's business. Problem solving is not just about the law, it requires a practical perspective too.

Role 2: The Advocate

This is the role litigators are expected to take on. Fight, fight, fight. And you must be good at it. Cultivate your speaking and writing skills. Spend the extra time on motion papers and appellate briefs. Focus on your craft. Write clearly and concisely and summarize your points up front. Be prepared for oral arguments and meetings. Know your papers. Know your legal positions. And know your case. But being a strong advocate does not mean being a bully. Treat your adversaries, and frankly everybody you encounter, with respect. There is a difference between being tough and standing your ground and being rude and pushy. We have all dealt with obnoxious adversaries that rely on underhanded tactics and turn every little thing into a fight. Don't engage. Pick your battles instead. Not every request for an adjournment or extension of time warrants fighting over. Save the fight—and your energy—for the issues that matter.

Role 3: The Strategist

Look at the big picture and look at the details. There is a strategy to litigation. Think strategically and try to be one step ahead of your adversary. Or, at least, anticipate the possibilities and keep your client

well-informed. But also understand your client's goals. This goes back to understanding their business. Litigation can impact a client's continuing ability to do business. It can also have public relations consequences. All of this must be part of your strategy. Offering your client a global perspective when it comes to a potential or actual litigation gives real value to the client and will inevitably strengthen the attorney/client relationship.

Role 4: The Negotiator

Litigators don't just fight, we resolve disputes—whether through meet and confers regarding discovery disputes or settlement negotiations and mediations. Learn how to

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play nice with your adversaries. And when it is appropriate to do so. To successfully negotiate, you need to be knowledgeable. Not just knowledgeable about your client and your position but about the adversary as well. Don't just bombard the other side with an explanation of why you are right and they are wrong. Take the time to listen. Hear the underlying cues and gather all the information you can about the facts, your adversary, and their position. Even try to get an understanding of what their client may need or want from a business perspective. Knowledge is power. So make sure you are adequately armed. But also be sure to

share information. The more your adversary understands where you and your client are coming from, the more likely a resolution can be reached.

Role 5: The Therapist

This is the role a litigator may be least expected to take on or the role a litigator least *wants* to take on. But it may be the most important role for client relationship purposes. Whether you are dealing with an individual or a company, there are going to be feelings involved—often very unhappy feelings—whether a litigation is just brewing or going strong. Litigation is taxing for the individuals involved and can take a toll on a company's business as well. Listen to your client. Not just about the facts but even the feelings. Be patient. This is a stressful situation for the client and sometimes a foreign one. Explain the process and possible outcomes. Be sure to tell your client the worst-case scenario but in a gentle fashion. We, as litigators, are used to the ups and downs of litigation and the surprises along the way, but the client is not necessarily as familiar. Litigation is stressful for all involved. But a good litigator will help alleviate some of that stress for the client and carry the bulk of the burden. Be mindful of your client's emotional needs and even if it means another 30-minute call in which he or she reiterating his or her side of the story to you, just listen.