
Psychology and Family Law

The Importance of Empathy in the Legal Profession

Part II of a Series

By Mark Baer, Esq.



In Part I of this series, I started describing a program I gave at the first official meeting of the Bruin Professionals Lawyers Affinity Group on the importance of empathy in a lawyer's work. Among other things, I explained the main variables which determine how much a case will cost in legal fees and costs, and why potential clients are increasingly more reluctant to retain lawyers to assist them in resolving their legal problems.

In my program, after going through those variables, I stated that attorneys are gladiators who are brought in to effectuate a "win" for their clients. In support of my statement, I mentioned that recently, a family law attorney addressed her colleagues as "fellow warriors" on the Listserv for the Family Law Section of the Los Angeles County Bar Association. Furthermore, in April, at the Beverly Hills Bar Association's program titled, *Tips from the Legends*, one of the "legends" present referred to himself as a gladiator. In any case, all of the "legends" on the panel agreed that the level of contention has increased with each successive generation of attorneys.

I commented that regardless of what people want to call it, when "gladiators" or "warriors" are on either side of an adversarial process, I'm afraid we're talking about combat or war. That reality, in conjunction with the increased level of contention shown by each successive generation of attorneys, works to make matters in which attorneys get involved that much more combative. I asked if anyone disagreed with that assessment, and not a single attorney present did.

At that point, one of the audience who has been practicing law for 43 years shared his opinion that lawyers used to concern themselves with solving problems, and that now it's all about "winning" the case at all costs—rather than simply working to solve the problems at hand.

He then described how much more civil attorneys were with each other when he was first admitted to the Bar. He mentioned that, unlike today, attorneys extended common courtesies to each other in terms of scheduling and granting extensions to each other, among a great many other things. Attorneys used to give opposing counsel the benefit of the doubt that they were being truthful with the information they

conveyed—although possibly slanted in their client's favor. Now, he opined, attorneys just take the position that the opposing counsel is somehow deceiving them.

This man went on to note that our colleagues now argue about pretty much anything and everything, and that a great many of those arguments involve personal attacks against each other and their respective clients, and have little or nothing to do with the case itself. He suggested that attorneys seem to have forgotten the Golden Rule, which is, "do unto others as you would have them do unto you." In sum, he commented that attorneys have either forgotten or completely ignore the important social skills they were taught in kindergarten.

This idea was echoed in a recent article by lawyer David Ruiz, in which he suggests that avoiding disciplinary actions for misconduct is simple, and can be summarized—according to Susan Chang of the California State Bar—in the simple rules: "Don't lie, don't steal and don't cheat... *It's what you learn in kindergarten.*"

I asked my group of lawyers if they felt that the public was unjustified in its belief that lawyers unnecessarily create conflict. In the discussion, some mentioned that clients *expect* their lawyers to behave argumentatively. They surmised that the media's portrayal of lawyers has greatly added to this expectation by causing the public to erroneously believe that the best attorneys are those who are the most contentious.

I then shared that according to Bill Eddy, LCSW, Esq., who is co-founder of the High Conflict Institute, "We are seeing high conflict behavior increasing in every setting: in legal disputes, in divorce, between neighbors, among family members, against organizations and government agencies." He contends that people are "learning fewer relationship conflict resolution skills as a direct result of the media, which "shows adversarial conflict resolution for entertainment and gaining market share."

In any event, the consensus among those present was that it was our responsibility to advise clients that it is *counter-productive* to create unnecessary conflict. As responsible professionals, it is virtually unethical of us not to do so.

As this series unfolds, the significance of the information presented here and in Part I will become obvious. Both lawyers and non-lawyers alike need to grasp the importance of empathy within the legal profession.

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