Texas Bar CLE
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presents

The Art of Counseling

Telephone Seminar

Friday, August 23, 2002
1:00 p.m. - 3:00 p.m. Eastern
12:00 Noon - 2:00 p.m. Central
11:00 a.m. - 1:00 p.m. Mountain
10:00 a.m. - 12:00 Noon Pacific

Presented by:

Michael Maslanka
Cynthia Mueller
Theresa Gegen
I practice employment law. There are, of course, several other types of specialists, as well as numerous generalists. But whatever our practice area, we all share one constant: the need to effectively communicate with our clients.

The ability to do so — what I like to call a lawyer’s “bedside manner” — is not something taught in law school, and is often hard to pick up in the day-to-day bustle of practice. As with many things, it is easier to describe the problem than to provide a solution.

So, I have put together the following rules to help lawyers, not so much with their “IQ” as with their “EQ,” their emotional quotient — which is nothing more than an ability to understand a client’s problems, empathize with them, provide options, give bad news, and still retain their trust and respect. The math is simple: lawyers with a developed sense of “EQ” are less likely to have disgruntled clients, less prone to grievances, and feel more satisfied with the practice of law.

Rule 1: Lawyers are Advisors, Not Consultants

A lawyer is an advisor, not a consultant. Some wag once defined a consultant as “someone who knows 10,000 pick-up lines but has never had a date.” That’s true. Technical expertise is simply not enough to be a good advisor — a lawyer must, unlike a consultant, bridge the world of theory and apply it in developing concrete solutions for a client. This is a “home base” rule: when in doubt, rely upon it in all client communications.

Rule 2: The difference between the right word and the almost right word is the difference between a lightning bolt and a lightning bug

This quote from Mark Twain says it all. A slight shift in emphasis in communicating a difficult issue to a client can make all the difference between the client accepting or rejecting the counsel being given. Clients are willing to accept bad news if it is presented in a way that is palatable, understandable, and confirms the lawyer is a friend and not an enemy. This arises in a variety of problem situations, which are diagramed in Table One. Remember: How you say something is just as important as what you say.

Rule 3: When Asked A Question, Answer It

A number of years ago, a client called and asked me whether we would win a case and, if we lost, the range of damages. I pontificated with the utmost erudition on the vagaries of jury trials, the elements of damages, and the like. In other words, I didn’t have a clue. After about 15 minutes of silence on the other end of the phone, the client simply said: “You haven’t answered my question.” He then said: “Maybe you don’t know the answer, but of the five billion people on earth, you come closest to knowing.” Then came a gentle reminder that he was paying me for my expertise and did not think that an answer to the question was unreasonable. While my feathers were ruffled, I still learned the lesson.

I think these conversations are not uncommon. I was just lucky to have a candid client. I ran into another employment attorney a few years ago at a conference. We shared the same client, but in different parts of the country. He said that our mutual boss, the assistant general counsel, asked what he thought it would take to settle a case, and what he considered the downside exposure to
be. He told me that he thought this was something of an unreasonable request, and told our boss that he really didn’t know. Wrong answer.

Frankly, what lawyers would not put up with in their car mechanics, we expect clients to put up with in us. When we take our car to the shop in the morning, we don’t expect to go back at night to have the mechanic tell us “on the one hand, it could be the carburetor, but on the other, it could be the transmission, and yet on the other…” much less telling us it can’t be fixed.

Although we need not engage in engineer-like precision, we can still ballpark it. We can do this in a number of ways: telling a client that if we try the case 10 times, we will win or lose it “X” number of times, or that we believe a potential jury verdict will be in a certain range a certain percentage of the time, or that we believe the plaintiff will settle within an approximate range. We owe our clients the value of our expertise and our experience.

Rule 4: For Goodness’ Sake, Shut Up!

<table>
<thead>
<tr>
<th>TABLE ONE</th>
</tr>
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<tbody>
<tr>
<td><strong>CHALLENGE</strong></td>
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<tr>
<td>Describing difficulties with the case</td>
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<td>Telling the client an expected bad result</td>
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<td>CEO is a terrible witness</td>
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<td>Client says “I wasn’t thinking of his [sex] [race] [age] when I fired him and the plaintiff is focusing on this as trivial.”</td>
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<td>Reluctant to settle</td>
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<tr>
<td>Client jumps to conclusions</td>
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<td>The messenger gets blamed</td>
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</table>

Rule 5: Know Your Client

Psychologists tell us that there are a number of different personality types. A leading test in this area is the Birkman, which divides personality types into four groups. There are other tests. The point of all this research is not to find out what your personality type is, but what the client’s is. Once you know that, you can tailor your responses. For example: I was meeting for the first time with the president of a corporation with about 150 employees. An employee he had terminated retained a lawyer who sent a demand letter. It went on for
several pages and essentially said that the ex-employee was a whistle-blower, which he asserted was the reason for the firing, and that the president had better pay up. Throughout our discussion, the president was very agitated at the letter.

He then pulled out his response, flung it across the desk, and asked: “What do you think of this?” I glanced at his letter, looked up at him, and said: “I’m glad it’s more than two words.” We connected. The same line or the same approach with a different personality type would not have worked. What are the different types of personalities? Table Two provides a summary.

All of this is simply figuring out someone’s needs and then devising a plan to meet them.

Want to learn more? Several companies let you take the Birkman test or similar tests at a modest price, together with some training. Also, check out The Color Code by Taylor Hartman, which has practical, easy to implement advice on how to identify and deal with different personality types, or Selling the Invisible by Harry Beckwith, which provides thoughtful counsel, in a reader-friendly format, on meeting and exceeding client needs.

Rule 6: Optimism Goes a Long Way

In his astute book, The Art of Advice, former SMU School of Law Dean Jeswald W. Salacuse makes a telling point: an advisor whose advice is consistently negative is not as good as one who can explain the positive opportunities in a situation. A client will very quickly pick up on this: the person who can see all of the negatives may be more educated, but the person who can see all the possibilities is more experienced. Here’s what he says:

A pessimistic advisor is not generally the best advisor. Indeed, consistently negative advice is often an indication of inexperience. While formal education may have taught advisors what won’t work, it’s experience that teaches them what will …

Being optimistic is not being a Pollyanna; it is not adopting an ostrich-like attitude of self-delusion; and it is not a willful refusal to see the obvious. The essence of optimism is developing and presenting options which will solve the client’s problem.

Any lawyer can essentially “CYA” by telling a client to avoid exposure and therefore not to do something. Clients do not need to pay for this — if the answer is black and white, then the client doesn’t need us. Rather, it is up to the lawyer to develop options among the shades of gray. How do we go about doing this? Here’s a simple formula: every time you say “this won’t work,” follow it up with a “(comma) but this will,” or, better yet, keep this demarcation seamless, with your counsel on options twisted together like a pretzel with your admonitions.

A couple of caveats. First, this rule is not to be confused with telling the client what he or she wants to hear. You can be both optimistic and honest. I recently spoke to a client about a tricky and undeveloped area of removal law. When he asked about our chances of success, I told him that “we have good arguments but the operative word is argument.” Message delivered.

Second, keep in mind that when we represent individual defendants in litigation — which is becoming ever more frequent — it is especially important to have just the right mix of optimism and frankness. A piece of litigation can hang like a cloud over the individual defendant’s life, permeating everything, not unlike the smell of a smoke-filled room clinging to our clothes. It’s not a pleasant experience. Consequently, we need to have our antennae up, and assist clients in placing the lawsuit in proper perspective. Here is an example.

I was representing a prominent physician. He was being sued for sexual harassment. The allegations were egregious, and I believe entirely untrue. The fact that he was in the right provided little comfort to him and his spouse. The first time that I met with them, his wife asked me how bad things looked. Before adhering to Rule No. 3 — I did, in fact, answer the question — I emphatically told her the following: “This lawsuit will be resolved one way or another. And after this lawsuit is over, you will still have everything that is important to you: your family, your home, and your life. It would be a terrible mistake to let the plaintiff, however the lawsuit turns out, ‘win’ by making you focus myopically on this suit. We will work through this together. Whatever you do, don’t let the tail wag the dog.”

Rule 7: Every Problem Is an Opportunity

The Chinese character for danger is also the character for opportunity. We as lawyers need to embrace this notion in dealing with clients, especially when the client makes an error in judgment. Let me give you an example.

Recently, a client said that it was contacted by a government agency. The agency was investigating why a particular employee was denied his health insurance benefits after termination. It turns out that the client had an absolute rule — no exceptions allowed — whereby benefits were denied whenever an

<table>
<thead>
<tr>
<th>TYPE</th>
<th>TOLERANCE LEVEL IF YOU MISJUDGE THE CLIENT’S TYPE</th>
<th>BEST APPROACH</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Hard Charger</td>
<td>Zero/minimal</td>
<td>Start at the end, a.k.a. in the military as “BLUF”: bottom line up front, like the company president.</td>
</tr>
<tr>
<td>The Politician</td>
<td>Minimal</td>
<td>Focus on protecting their image; let them know how you will fix problems for them; the case is about both the case and them and not necessarily in that order.</td>
</tr>
<tr>
<td>The Accountant</td>
<td>Modest</td>
<td>Here’s their motto: “I never met a fact I didn’t like” — process is everything and should be your focal point.</td>
</tr>
<tr>
<td>The Minister</td>
<td>Moderate/high</td>
<td>Listen a lot - has to perceive you as a caring, empathetic person. Work on developing a relationship.</td>
</tr>
</tbody>
</table>

TABLE TWO
employee was terminated for a certain reason. I didn’t think much of the rule, not only because there was no practical benefit to the client, but also because I thought it might be susceptible to legal attack. The call from the agency only confirmed my fears, although the client ultimately dodged the bullet.

It would have been natural, and easy, to have criticized the client. This doesn’t always involve an overtly critical comment — often, a slight change in the tone of voice, or body language, or a facial expression can just as effectively communicate your displeasure at the situation.

Instead of being critical of the client, and lecturing on the law, I made the following points:

■ The complaining ex-employee may have done us a favor
■ The regulations dealing with this situation are like hieroglyphics and are hard to understand
■ This allows us an opportunity to revisit our policy, and consider revisions to it.

In short, the client saw — not a problem — but a positive development, and did not go on the “defensive.” None of us would want a physician who only treats the symptoms but doesn’t cure the disease. Likewise, a lawsuit or a governmental inquiry or the like is often a symptom of a deeper problem. We need to keep this in mind, and treat the disease, not just the symptoms. To return to Dean Salacuse:

One of the talents of effective advisors is to make the clients see the positive opportunities in a situation, to see the glass is half full rather than half empty, to view a problem as a chance for improvement rather than a certainty for disaster.

And, speaking of defensiveness, we need to help clients lower their defensiveness, which chokes off the flow of facts, and increase their openness, which opens the spigots of useful information. Try this: use the phrase “the more something goes without saying, the more it needs to be said” whenever a client — or you — say or hear something that seems obvious. Using this phrase gives the client permission to say what he or she thinks, without the risk of looking foolish or sounding dumb. This helps develop a common language with the client, not unlike spouses who understand one another without a word being spoken.

Rule 8: Respect Your Client’s Opinion

From time to time, clients want you to do something that you believe is not the absolutely best tactic. Lawyers need to be especially careful, however, about coming to the conclusion that every difference in judgment warrants the lawyer saying “no, that is just wrong and will backfire.” The ultimate “no” should be sparingly used, not unlike the use of salty language. When something is seldom used, the effect is greatly amplified when it is.

A lawyer acquaintance of mine told me the following story. A lawyer was filing a summary judgment motion in a federal court case. The client wanted to add an obscure argument to the motion dealing with the collateral estoppel effect of an administrative decision. In fact, the client thought it should be the first argument. After negotiating with the client, the lawyer dropped the argument to a footnote. Well, you can guess what happened. The court granted the motion, relying entirely upon the footnote.

Upon receiving the memorandum opinion, the lawyer called the client and told him in a jocular way: “I’ve got good news and bad news. The good news is that the motion was granted, the bad news is the court relied on your footnote.” The client shot back: “Well, in that case, I’ve got bad news and worse news. The bad news is you’re not going to handle the appeal, and the worse news is your law firm is fired from all other cases.”

I don’t think this is an extreme example. The lesson is not that “the client is always right.” Rather, it is that clients are often the very best source of strategy, tactics, and information about how to solve a certain problem. We ignore their wisdom at our own risk.

Rule 9: The Client Makes Business Decisions, Not You

From time to time, clients want to put us in the position of making the decision for them. This comes from a variety of sources: a company executive may want to put the blame on someone else if the matter goes wrong, or it may be a matter of the client’s business inexperience. Whatever its source, it is vitally important that the lawyer, at the outset, help the client understand the difference between a “legal” decision and a “business” one. This is a three-step process.

First, as a threshold matter, the lawyer needs to determine the approach the client prefers to take. Here are a couple of tactics you can use to do so:

■ Focus the client’s attention on what the client has done to resolve the matter. For instance, ask simple questions about what the client perceives to be its options: “What have you already done to try to solve the problem?” or “What options have you thought about or are you thinking about trying?”

■ Focus the client on what the client perceives is its objective in the matter. Is the objective to try the lawsuit because a settlement would simply encourage others to sue or is the objective to manage the risk to the company by settling? Remember: when you and the client seem to be losing focus, ask yourselves: what are we trying to achieve?

Second, present all of the options to the client — that is, the options that will assist in solving the problem. This entails more than going into full-fledged litigation mode. To borrow a concept from the medical profession, sometimes invasive procedures are called for and sometimes not. This development of options can involve, for instance, “creating evidence” before suit is filed. (Note I did not say manufacturing.) This phrase is simply shorthand for making sure that the client’s pre-suit actions generate the facts that will give the jury a reason to find affirmatively for you, not merely an excuse to find against your opponent. It can also involve simply picking up the phone and asking the other side what they want before declaring all-out war.

Third, in keeping with Rule No. 3, it is okay to tell the client what you would do, as long as the dividing line is clear. The question can be answered directly,
but with a caveat. My preference is
telling the client “I’ll take my lawyer’s
hat off for a minute, and put on my
manager’s hat ...” or “If I was sitting in
the CEO’s chair and it was my compa-
ty to run, then I would ...” After this,
however, the lawyer should refocus the
client on all of the options that present
themselves, not simply the one the
lawyer would choose should he or she
be in the driver’s seat.

Rule 10: Manage Expectations
Like Rule No. 1, Rule No. 10 is a
“home base” rule: Learn how to manage
a client’s expectations. This is not to be
confused with manipulating the client. Rather, what I am talking about is mak-
ing sure the client understands the legal
process, comprehends what it entails,
and embraces a realistic view of the
matter. And, the verb “manage” is delib-
erately used — this rule involves an
ongoing process, not a one shot effort.
Most successful CEO’s do exactly this.
When a CEO does so, the price of stock
in her company rises; when you do, the
client is positioned to be neither unduly
surprised on the upside or on the down-
side, and your credibility rises. You can-
not effectively communicate with a
client holding unrealistic expectations.
He won’t hear what you are saying.

Conclusion
The practice of law takes its toll. It’s
frustrating and often seems counterpro-
ductive. We settle cases not because the
person really is a victim of discrimination,
but because he or she has a compelling
story to tell and we’re concerned about
juror identification with on-the-job
trauma. We do not expand the economic
pie, we only help in carving up how it’s
divided. When we are awarded a summa-
ry judgment, or win a case at trial, we feel
equally frustrated: all the expenditure of
time and effort and the client is no better
off — the status quo prevails. (Sometimes
it’s worse. As Voltaire said: “There were
only two times in my life I was finan-
cially ruined. Once is when I lost a law-
suit, and the other is when I won one.”)

Developing your “EQ” can, however,
make the practice of law more enjoy-
able. Here’s an example. I had repre-

sented a client for a few years, with one
particular person as my contact. She was
a high-ranking executive and we’d spent
a considerable amount of time together.
One day she introduced me to some new
subordinates as her “consigliere.”

Naturally, I flashed onto images of
The Godfather, John Gotti’s lawyer, and
Tony Soprano. Was I really that unctuous?
Did she consider me that unprincipled?
I quickly realized, however, that this was a
compliment, not a slam. Driving home that
night, I slowly realized something else:
her comment was a wonderful reminder of
why we do what it is that we do.

Michael P. Maslanka writes the Texas
Employment Law Letter, a monthly pub-
lication dealing with current issues in
employment law. His last article for the
Texas Bar Journal, “The Complete Lawyer:
A Balanced Approach to Life and the Law,”
was published in June 1995. He is also the
author of three books, the most recent
being Guide to Employee Discipline and
Termination (Warren, Gorham & Lamont,
1998). He is a partner at Clark, West,
Keller, Butler & Ellis, L.L.P. in Dallas.
The Art of Counseling

by

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Columnist, Texas Lawyer, WorkMatters

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August 23, 2002
MICHAEL MASLANKA
BIOGRAPHY

Experience

- Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization, 1987.
- 20 years experience in litigation and trial of employment law discrimination cases including several multi-party cases under the Age Discrimination in Employment Act, claims under the Fair Labor Standards Act, and retaliation claims.
- Recognized by Texas Lawyer in its February 2001 issue as one of the “to go” management employment lawyers in Texas, and by D Magazine in its May 2001 issue as one of Dallas’ top management employment lawyers, both based on voting by other attorneys.
- Adjunct counsel to Fortune 10 company, providing multi-state consulting advice on employment matters.

Experience that works for you

- Successful appeal before Amarillo court of appeals compelling employment claim to arbitration.
- Obtained summary judgment in age discrimination case pending in Marshall, Texas.
- Successful appeal of summary judgment in an ERISA Section 510 claim, and a successful ERISA removal.

Counseling Experience and its Benefits to Clients

Our firm culture shares this value: an emphasis on the importance of thinking about our counseling and litigation experiences, to reflect upon what they mean, and to derive lessons from them. We do it every day.

The books and articles listed below emphasize our experience in the most important role of employment lawyers, namely, helping companies where it counts most – retaining employees, managing a valued but flawed employee, practical solutions to difficult issues, and creating good facts that help win a lawsuit before one is filed.

- The Texas Employment Law Letter – this is a monthly publication, written solely by our lawyers since 1990, with 3,000 paying subscribers across Texas and the United States. We feature practical, bottom-line advice, not the recitation of dry legal principles. Almost all articles have “Bottom Line,” or practical applications sections. These lessons are taken directly from our experiences.
- Guide to Employee Discipline and Termination and Human Resources Forms With Commentary With Supplements – two books written by Michael Maslanka. The first book deals with effective ways to manage, discipline, and terminate employees; the second with what employment policies work and why, what employment policies don’t and why, and how to effectively use policies to accomplish an employer’s goals.
- A regular column in the Executive Lawyer, a joint publication of Texas Lawyer and The Texas General Counsel Forum, called “To the Point,” written by Michael Maslanka.
  - “How to Protect your Most Important Assets,” October 30, 2000
  - “Managing the 80/20 Employee,” December 18, 2000
  - “Managing the Corporate Crisis,” March 2001
• “Effective Client Communication,” is an article written by Michael Maslanka, published in the Texas Bar Journal, and reprinted in both the Oregon State Bar Journal and the Bench & Bar of Minnesota, dealing with the challenges of effectively communicating with both internal and external clients. Michael used this article to offer, with Theresa Gegen, a telephone workshop in conjunction with the State Bar, on how lawyers, including corporate counsel, can more effectively communicate with their clients.


• High Tech Litigation Seminar for the State Bar of Texas, March 2000: Theresa Gegen served on the Planning Committee Member and spoke on Dealing with Departing Employees and Employee Retention in a High Tech Environment.

• Six-part statewide conference call seminars, starting February 2001, sponsored by the State Bar of Texas and the Texas Bar Journal, featuring only Andrews & Kurth lawyers Michael Maslanka and Theresa Gegen in conjunction with a monthly article in the Texas Bar Journal, on developing areas of employment law.
Introduction

I practice employment law. There are, of course, several other specialties, as well as numerous generalists. But whatever our practice area, we all share one constant: the need to effectively communicate with our clients.

The ability to do so – what I like to call a lawyer's "bedside manner" – is not something taught in law school, and is often hard to pick up in the day-to-day bustle of practice. As with many things, it is easier to describe the problem than to provide a solution.

So, I have put together the following rules to help lawyers, not so much with their "IQ" as with their "EQ", their emotional quotient – which is nothing more than an ability to understand a clients' problems, empathize with them, provide options, give bad news, and still retain their trust and respect. The math is simple: lawyers with a developed sense of "EQ" are less likely to have disgruntled clients, less prone to grievances, and feel more satisfied with the practice of law.

The essence of good lawyering is good communication; we communicate the risks and rewards to clients of a course of action, our clients version of events to the fact finder, the law to the court, and the final decision – good or bad – back to our clients. We don’t just act as conduits. How we communicate – persuasively or not, confidently or not, and positively or not – determines how effective we are as lawyers. In short, better communicators get better results.

Rule 1: Lawyers Are Advisors, Not Consultants

A lawyer is an advisor, not a consultant. Some wag once defined a consultant as "someone who knows 10,000 pick-up lines but has never had a date." That's true. Technical expertise is simply not enough to be a good advisor – a lawyer must, unlike a consultant, bridge the world of theory and apply it in developing concrete solutions for a client. This is a "home base" rule: when in doubt, rely upon it in all client communications. As Shakespeare notes in Measure for Measure, “Good counselors lack no clients.”

Rule 2: The difference between the right word and the almost right word is the difference between a lightning bolt and a lightning bug.

This quote from Mark Twain says it all. A slight shift in emphasis in communicating a difficult issue to a client can make all the difference between the client accepting or rejecting the counsel being given. Clients are willing to accept bad news if it is presented in a way that is palpable, understandable, and confirms the lawyer is a friend and not an enemy. This arises in a variety of problem situations which are diagramed below:

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<tr>
<th>Problem</th>
<th>Solution</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Describing difficulties with the case</td>
<td>Impart a shared sense of concern (à la President Clinton)</td>
<td>(1) Let the client know you are on the same side. For instance, use a word like &quot;challenge,&quot; not &quot;problem.&quot; (2) Here's another illustration: &quot;The litigation risk with this type of case - and quite frankly, our great frustration with these cases - is that a jury can second-guess the employer's motivation, and if the jury determines that the [protected class] was a factor in the decision for termination, then the jury may award damages that exceed any logical or rational basis.&quot;</td>
</tr>
<tr>
<td>Telling the client an expected bad result</td>
<td>(1) and (2) Use of positive/negative sentences make difficult statements more palatable to hear</td>
<td>(1) &quot;While we relish the opportunity to try a hotly contested case (positive), we are also acutely aware of the dangers inherent in a jury trial (negative); (2) &quot;While we acknowledge the many arguments in our favor, we still face some indisputable and troubling facts&quot;; (3) &quot;When the facts are viewed through this legal filter...&quot; (4) &quot;We acknowledge that the jury will undoubtedly be composed of the peers of the plaintiff.&quot; (5) &quot;As difficult as it is for me to say and you to contemplate...&quot;</td>
</tr>
<tr>
<td>CEO is a terrible witness</td>
<td>Make flaws into virtues</td>
<td>&quot;Many of the qualities which make Sue such a dynamic CEO may, however, make her come across to the jury as opinionated and rigid, when in fact she is decisive and self-assured.&quot;</td>
</tr>
<tr>
<td>Client who says &quot;I wasn't thinking of his [sex] [race] [age] when I fired him and the plaintiff is focusing in on trivia.&quot;</td>
<td>An analogy is worth a thousand words</td>
<td>Use O.J. Simpson trial: &quot;A typical plaintiff's tactic is, in fact, to focus a jury's attention on what we would consider irrelevant issues. This approach is not unlike the O.J. case, where his lawyers convinced the jury to ignore the blood the police found on the driveway and, instead, to focus on the minutiae of how it was collected and maintained.&quot;</td>
</tr>
<tr>
<td>Reluctant to settle</td>
<td>Apply slight pressure</td>
<td>&quot;We have a window of opportunity to resolve the case ...&quot;; &quot;We will not know how serious the plaintiff is on his offer, unless we test the waters...&quot;; &quot;of course, if the plaintiff continues to insist on an unrealistically high settlement demand, then the decision on whether to settle is essentially made for us...&quot;</td>
</tr>
<tr>
<td>Client jumps to conclusions</td>
<td>Objectify the problem</td>
<td>Try phrases like: &quot;there is a good reason for the hearsay rule ...&quot; or &quot;let's be careful about playing doctor&quot; (a useful phrase in personal injury or disability discrimination cases) or &quot;the lawyer in me...&quot;</td>
</tr>
<tr>
<td>The messenger gets blamed</td>
<td>Objectify the bad news; distance yourself from the news</td>
<td>Try this: &quot;While we hotly contest it, we know that the plaintiff will argue...&quot;; &quot;We can reasonably anticipate that the Plaintiff...&quot;; Also using a grease board or video deposition clips to deliver the news will focus the client's attention on the message, rather than the messenger...&quot;</td>
</tr>
</tbody>
</table>
Remember: How you say something is just as important as what you say. Because it is, remember the following:

**Avoid**
- You based conversations
- Shifting responsibility for communicating
- Meta Talk -
  - Rather
  - Somewhat
  - It would seem
  - The truth is that
  - As a matter of fact
  - Are of the opinion that
  - For the purpose of

**Embrace**
- Clarifying
- Acknowledging
- Normalizing
- Empathizing
- Summarizing
- Responding

**Rule 3: Ambiguity and Anger Are Your Friends**
Don’t be afraid of anger and ambiguity in dealing with your clients. They are your friends; not you’re enemies. Everything a client tells us – and just as importantly, doesn’t tell – and the order in which he or she tells it, reveals something. The client may tell you that her factory makes 10,000 widgets a day. There is an emotion attached to that fact, whether pride, or shame, or something else. Find it.

**Ambiguity**
Ambiguity is an opportunity to find out what’s really happening. Let’s say you are meeting with a client, you offer a solution, and the client say, “I’m not sure that’s going to work.” A defensive “Why not?” is a sure way to end a fruitful dialogue. Instead, take ambiguity as an invitation to probe – ask where the client sees some concerns and ask that he or she tells you more.

A corollary to this rule brings out another facet of human nature, namely, talking in conclusions. We don’t even realize we do it, because conclusions are a convenient shorthand. But as a lawyer, don’t assume that you understand another’s shorthand or that they understand yours. Rather, lawyers must decipher imprecise words or concepts. Here are some methods to use:

- When a client says that “X is the case,” try a simple “What do you mean by X?”
- Why do you say “X is the case”?
- Why do you believe “X is the case”? Is it because of “A” or because of “B”?
- Or ask for an example of what they’re talking about.

**Anger**
Anger is a more difficult matter to handle, but it can be done. First, you need to remember that the case is not only about the case. It is also about something much more, especially in employment law. The psychologist Dr. Abraham Maslow described a person’s hierarchy of needs. Clients have them too. They need to be acknowledged, emotionally heard (that is empathized with) and respected. Visualize the hierarchy
as a triangle with these needs of the apex. Starting and ending with the technical solutions, which forms the triangle base, without considering the apex needs can be disastrous.

For instance, let’s look at a meeting we had with a CEO of a new client. At the outset he said “All lawyers are leeches, interested only in padding their pockets, and you guys are not much better than the suing employee trying to shake me down.” Our reaction? Rather than getting defensive or arguing with him, we acknowledged his feelings. He was heard, and empathized with, and the meeting, once we got down to the technical issues, went well.

Here are two other thoughts to keep in mind:

• When upset clients needs to be calmed, a good rule of thumb, is “monkey see, monkey do.” Calmly reflecting back to the client what he is saying “what I hear you sayings is [x y z]. Are we right or is there something we are missing?” is an effective approach. Again, it acknowledges the client’s concerns and opens the dialogue.

• Just because a client isn’t hollering, doesn’t mean he or she is not emotional. There was one client we spent a long time developing three options on an employment termination issue. We favored the least risky, and the client seemed to agree. While going over the details, however, he leaned back, crossed his arms, and looked quizzical. Swallowing our pride and taking a chance, we asked, “even though you tell us you are satisfied with this solution, we are getting the feeling that you are not quite sold on it. Are we off base?” This gave the client permission to open up, he told us he wasn’t happy with the solution, why, and we changed course. He was respected.

Presume Positive Intent

No one likes to be criticized, and when that criticism is coupled with anger, it’s an unpleasant experience. The most important rule to remember is this: Presume Positive Intent. Here are some ways to do it: If someone angrily tells you after a meeting that they couldn’t believe you said “x y z” in the meeting, your response is: “I could see how you may have misunderstood what I said. Let me try it again or differently.” That takes the wind right out of their sails. So, as hard as it is to do, think the following to yourself:

• Even if we disagree, he is doing what he thinks is right.

• Even is she is wrong, she is motivated by the same things I am, which is to win the case.

• Her intentions are as valid as mine, even though we disagree.

However, there will be times when things go wrong in a case, and there will be a time when it is your fault. There will be times when it is not.

Here are two approaches.

Approach 1: Agree  Appreciate
• Apologize  Acknowledge
• Act  Assist

Rule 4: Make Every Conversation a Learning Conversation

Each of the conversations on the left violates our fundamental home base rule–namely the conversation focuses on the lawyer, not the client. It makes it about you, not them. This is your ultimate
take home point. As we’ll see, these models (taken from *Difficult Conversations* by Douglas Stone) will come back and help in other Rules.

<table>
<thead>
<tr>
<th>The “What Happened?” Conversation</th>
<th>A Battle of Messages</th>
<th>A Learning Conversation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Challenge:</strong> The situation is more complex than either person can see.</td>
<td><strong>Assumption:</strong> I know all I need to know to understand what happened.</td>
<td><strong>Assumption:</strong> Each of us is bringing different information and perceptions to the table; there are likely to be important things that each of us doesn’t know.</td>
</tr>
<tr>
<td><strong>Goal:</strong> Persuade them I’m right.</td>
<td><strong>Goal:</strong> Explore each other’s stories; how we understand the situation and why.</td>
<td></td>
</tr>
<tr>
<td><strong>Assumption:</strong> I know what they intended.</td>
<td><strong>Assumption:</strong> I know what I intended, and the impact their actions had on me. I don’t and can’t know what’s in their head.</td>
<td></td>
</tr>
<tr>
<td><strong>Goal:</strong> Let them know what they did was wrong.</td>
<td><strong>Goal:</strong> Share the impact on me, and find out what they were thinking. Also find out what impact I’m having on them.</td>
<td></td>
</tr>
<tr>
<td><strong>Assumption:</strong> It’s all their fault. (Or it’s all my fault.)</td>
<td><strong>Assumption:</strong> We have probably both contributed to this mess.</td>
<td></td>
</tr>
<tr>
<td><strong>Goal:</strong> Get them to admit blame and take responsibility for making amends.</td>
<td><strong>Goal:</strong> Understand the contribution system: how our actions interact to produce this result.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The Feelings Conversation</th>
<th>A Battle of Messages</th>
<th>A Learning Conversation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Challenge:</strong> The situation is emotionally charged.</td>
<td><strong>Assumption:</strong> Feelings are irrelevant and wouldn’t be helpful to share. (Or, my feelings are their fault and they need to hear about them.)</td>
<td><strong>Assumption:</strong> Feelings are the heart of the situation. Feelings are usually complex. I may have to dig a bit to understand my feelings.</td>
</tr>
<tr>
<td><strong>Goal:</strong> Avoid talking about feelings. (Or, let’em have it!)</td>
<td><strong>Goal:</strong> Address feelings (mine and theirs) without judgments or attributions. Acknowledge feelings before problem-solving.</td>
<td></td>
</tr>
</tbody>
</table>
### The Identity Assumption

**Conversation**

**Challenge:** The situation threatens our identity.

**Assumption:** I’m competent or incompetent, good or bad, lovable or unlovable. There is no in-between.

**Goal:** Protect my all-or-nothing self-image.

**Assumption:** There may be a lot at stake psychologically for both of us. Each of us is complex, neither of us is perfect.

**Goal:** Understand the identity issues on the line for each of us. Build a more complex self-image to maintain my balance better.

---

### Rule 5: When Asked a Question, Answer It

A number of years ago, a client called and asked me whether we would win a case and, if we lost, the range of damages. I pontificated with the utmost erudition on the vagaries of jury trials, the elements of damages, and the like. In other words, I didn't have a clue. After about fifteen minutes of silence on the other end of the phone, the client simply said: "You haven't answered my question." He then said: "Maybe you don't know the answer, but of the five billion people on earth, you come closest to knowing." Then came a gentle reminder that he was paying me for my expertise and did not think that an answer to the question was unreasonable. While my feathers were ruffled, I still learned the lesson.

I think these conversations are not uncommon. I was just lucky to have a candid client. I ran into another employment attorney a few years ago at a conference. We shared the same client, but in different parts of the country. He said that our mutual boss, the assistant general counsel, asked what he thought it would take to settle a case, and what he considered the down-side exposure to be. He told me that he thought this was something of an unreasonable request, and told her that he really didn't know. Wrong answer.

Frankly, what lawyers would not put up with in their car mechanics, we expect clients to put up with in us. When we take our car to the shop in the morning, we don't expect to go back at night to have the mechanic tell us "on the one hand, it could be the carburetor, but on the other, it could be the transmission, and yet on the other . . . " much less telling us it can't be fixed.

Although we need not engage in engineer-like precision, we can still ballpark it. We can do this in a number of ways: telling a client that if we try the case ten times, we will win or lose it "X" number of times, or that we believe a potential jury verdict will be in a certain range a certain percentage of the time, or that we believe the plaintiff will settle within an approximate range. We owe our clients the value of our expertise and our experience.

### Rule 6: Have a POV—It’s Your Job

You must have a POV. What’s a POV? A Point of View. As former Texas Agricultural Commissioner Jim Hightower said, “The only things in the middle of the road are yellow strips and dead armadillos.” A POV is not the same as imposing a solution on the client. Rather, it is communicating opinions without blurring the roles of counselor and client.

Some lawyers fear expressing a POV. They think the client will be upset, or the senior lawyer will see them as upstarts, or that their opinion is of no consequence. We often tell new lawyers it is part of their job to speak up, and we use this analogy: Planes often crash because the co-pilot, rather than speaking up about the blinking red light on the console, thinks, “the pilot has done this for 30 years, he must know what’s going on, so I’ll just sit tight.”

By being afraid of looking foolish, saying something less than perfect, or admitting ignorance, a lawyer violates another home base rule – you’ve made it about you, not them.
And having a POV is not the same as embracing in an unthinking manner a client’s position. William Butler Yeats, in his poem *An Irish Airman Foresees His Death*, wrote the following: “Those that I fight I do not hate, those that I guard I do not love.” Every lawyer needs to remember those words. If you hate the other side, you’ve made it about you. If you love your side, you’ve made it about you. In both instances, you can’t be an effective counselor.

**Rule 7: For Goodness’ Sake, Shut Up!**

Not the client, you. Lawyers often interrupt their clients, talking over them, and ending what could be a fruitful dialogue. We do this for one of two reasons:

- Some of us tend to be arrogant and pompous and want to impress the client with how much we know. Clients, however, often perceive this rush to talk as a reflection of inexperience and a lawyer being too anxious to prove his or her value. They also perceive it as not wanting to take the time to understand their problem. Remember: if you talk too soon, then you won't get all the pertinent facts and your solution may not fix the problem.

- We interrupt out of a more benign motive, and simply try to reflect back to the client that we agree with what the client is telling us. That's fine, but you need to let the client finish conveying a thought before popping up like a jack-in-the-box to recite some war story as to why the client is right. Remember: it's about them, not you.

Here's a rule of thumb. We like to tell clients when they conduct an investigation into inappropriate behavior in the workplace that – rather than arguing with the complaining party that something didn't happen, or that a supervisor is too good a person to commit sexual harassment – they take a "mental time-out," refrain from talking, and listen to the person. The same idea applies here. So, the next time you are with a client, and you want to start to talk, throw the flag and declare a "mental time-out." It works.

Dr. Rick Fuentes, a jury consultant at DecisionQuest in Atlanta, says that a jury hears only five minutes of an opening statement before the jurors start filling in the story from their own backgrounds and experiences. He compares it to taking his two young sons to an action movie, and after only 10 minutes they tell him what will happen next.

Resist this impulse. If you don’t, you end up imposing your story on the client’s, eschew inconvenient facts, and wind up with generic solutions to nongeneric problems. Couple this with a rush to judgment, which is often triggered by a desire to impress the client, and you whip up a recipe for faulty communication.

So take the time to listen as you understand these very real human tendencies. When in doubt, return to home base – it’s about the client, *not you*.

**Rule 8: Know Your Client**

Psychologists tell us that there are a number of different personality types. A leading test in this area is the Birkman, which divides personality types into four groups. There are other tests. The point of all this research is not to find out what *your* personality type is, as the client's. Once you know that, you can then tailor your responses. Let me give you an example. I was meeting for the first time with the president of a corporation of about 150 employees. An employee he had terminated retained a lawyer who sent a demand letter. It went on for several pages and essentially said that the ex-employee was a whistle-blower, which he asserted was the reason for the firing, and that the president had better pay up. Throughout our discussion, the president was very agitated at the letter.

He then pulled out his response, flung it across the desk, and asked: "What do you think of this?" I glanced at his letter, looked up at him, and said: "I'm glad it's more than two words." We connected. The
same line or the same approach with a different personality type would not have worked. What are the different types of personalities? Here is a summary:

<table>
<thead>
<tr>
<th>Type</th>
<th>Tolerance Level if You Misjudge the Client's Type</th>
<th>Best Approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Hard Charger</td>
<td>Zero/minimal</td>
<td>Start at the end, <em>a.k.a.</em> in the military as &quot;BLUF&quot;: bottom line up front, like the company president.</td>
</tr>
<tr>
<td>The Politician</td>
<td>Minimal</td>
<td>Focus on protecting their image; let them know, if there is a problem, how you will fix it for them; the case is about both the case <em>and</em> them and not necessarily in that order.</td>
</tr>
<tr>
<td>The Accountant</td>
<td>Modest</td>
<td>Here's their motto: &quot;I never met a fact I didn't like&quot; - process is everything and should be your focal point</td>
</tr>
<tr>
<td>The Minister</td>
<td>Moderate/high</td>
<td>Listen a lot - has to perceive you as a caring, empathetic person. Work on developing a relationship.</td>
</tr>
</tbody>
</table>

**Rule 9: Know Yourself**

How do you know your communication style? Take this test. No reading on what’s next.

Rate *each* of the four phrases after the following five statements on the following scale: 

<table>
<thead>
<tr>
<th>Rate</th>
<th>Example:</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>the word or phrase that <em>best</em> describes you.</td>
</tr>
<tr>
<td>[4]</td>
<td>A. Results Oriented</td>
</tr>
</tbody>
</table>
4=the phrase *next most* like you,  
[6] B.  Relationship Oriented

3=the phrase *next most* like you, and  
[1] C.  Practical Oriented

1=the phrase *least* descriptive of you.  

I am likely to impress others as:

[___] A.  Results Oriented.

[___] B.  Relationship Oriented.

[___] C.  Practical Oriented

[___] D.  Action Oriented.

The work I enjoy *most is*:

[___] A.  Results-oriented so that time and effort spent is justified.

[___] B.  Stimulating and thought-provoking with people I enjoy.

[___] C.  Well planned, organized, and with a clear purpose.

[___] D.  Challenging and likely to contribute something new.

My time is important, so I want to make sure that:

[___] A.  What I do shows results today.

[___] B.  My decisions and actions are meaningful and have long-term value.

[___] C.  I plan carefully and follow the plan efficiently.

[___] D.  I select activities that are the most interesting and important to me.

I feel *most* satisfied when I:
A. Get more done than originally planned.
B. Am in a position to help a friend.
C. Solve a problem by collecting information and thinking it through.
D. Can come up with a new idea to meet a challenge.

I enjoy it when others see me as:

A. A person who can be counted on to get things done.
B. Someone who is trustworthy, sensitive, and creative.
C. Someone who is organized and efficient.
D. A person who loves a challenge.

ADD THE TOTALS FOR EACH A=[___] B=[___] C=[___] D=[___]
Circle Your Highest Score       Red      Blue     Yellow     Green

Rule 10: Know Your Client; Know Yourself; Apply What You Know

What we’ve just gone through is called the Birkman. For more information, go to www.birkman.com. When we first meet a client, or are just getting to know them, seconds count. We don’t change who we are, but we do focus on who they are and communicate accordingly.

<table>
<thead>
<tr>
<th>Office Hints</th>
<th>Red</th>
<th>Green</th>
<th>Yellow</th>
<th>Blue</th>
</tr>
</thead>
<tbody>
<tr>
<td>formal arrangement</td>
<td>individual style</td>
<td>motivational items</td>
<td>functional</td>
<td>casual, open items</td>
</tr>
<tr>
<td>honors/achievements</td>
<td>style</td>
<td>items</td>
<td>job-related items</td>
<td>family, personal items</td>
</tr>
<tr>
<td>work stacked by type</td>
<td></td>
<td></td>
<td>neat, very organized</td>
<td>lots of paper</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Body Language</th>
<th>Red</th>
<th>Green</th>
<th>Yellow</th>
<th>Blue</th>
</tr>
</thead>
<tbody>
<tr>
<td>direct eye contact</td>
<td></td>
<td></td>
<td></td>
<td>variable eye contact</td>
</tr>
<tr>
<td>businesslike</td>
<td></td>
<td></td>
<td></td>
<td>warm, casual</td>
</tr>
<tr>
<td>firm handshake</td>
<td></td>
<td></td>
<td></td>
<td>open gestures</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Speaking Style</th>
<th>Red</th>
<th>Green</th>
<th>Yellow</th>
<th>Blue</th>
</tr>
</thead>
<tbody>
<tr>
<td>direct, decisive</td>
<td></td>
<td></td>
<td></td>
<td>thoughtful, casual</td>
</tr>
<tr>
<td>short, conversations</td>
<td></td>
<td></td>
<td></td>
<td>people stories</td>
</tr>
<tr>
<td>interrupts, to the point</td>
<td></td>
<td></td>
<td></td>
<td>questions</td>
</tr>
</tbody>
</table>

The Art of Counseling

Page 12
Expectations

Results  Creativity  Thoroughness  Relationships
Bottom-line  Enthusiasm, Innovation  Detail, Systematic  Trust, Loyalty
Frankness, Efficiency  Novelty, Adventure  Accuracy, Logic  Friendly, Personal

Focus

Objectives  Ideas  Process  Feelings

Strength

Pragmatic  Imaginative  Objective  Empathetic
Confident  Creative  Analytical  Loyal, Trustworthy
Assertive  Enthusiastic  Thorough  Persuasive

Weakness

Aggressive  Unorganized  Rigid  Overly sensitive
Domineering  Unrealistic  Indecisive  Internalizes
Impatient  Impractical  Impersonal  Avoids conflict

Best Approach

Short conversation  Allow time to talk  Provide written info.  Face to face is essential
Start with results  Show enthusiasm  Allow time to review  Get to know them
Provide choices  Listen/discuss new ideas  Review history/experience  Emphasize relationship
Be direct, concise  Use testimonials  Expect detailed questions  Discuss needs

Decision-Making

Will decide on the spot if information supports decision.  Will decide on the spot if level of enthusiasm is high.
Will rarely decide quickly. Needs chance to review information and consider the decision
Will rarely decide quickly. Needs chance to get to know you.

Push for a decision. May be vague as to specifics of the decision. Important to briefly review the details to avoid confusion.
Try to pin down decision timing. Follow-up to answer questions.
Will focus on opportunity to work long-term. Follow-up with low pressure.

All of this is simply figuring out someone's needs and then devising a plan to meet them.

Want to learn more? Several companies let you take the Birkman test or others at a modest price, together with some training. Also, check out The Color Code by Taylor Hartman, which has practical, easy to implement advice on how to identify and deal with different personality types, or Selling the Invisible by Harry Beckwith, which provides thoughtful counsel, in a reader friendly format, on meeting and exceeding client needs. Also, the Trusted Advisor by David Maister is a must read.

Rule 11: Optimism Goes a Long Way

In his astute book, The Art of Advice, former Dean of the SMU School of Law, Jeswald W. Salacuse, makes a telling point: an advisor whose advice is consistently negative is not as good as one who can explain the positive opportunities in a situation. A client will very quickly pick up on this: the person who can see all of the negatives may be more educated, but the person who can see all the possibilities is more experienced. Here's what he says:

A pessimistic advisor is not generally the best advisor. Indeed, consistently negative advice is often an indication of inexperience. While formal
education may have taught advisors what won't work, it's experience that teaches them what will.

Being optimistic is not being a Pollyanna; it is not adopting an ostrich-like attitude of self-delusion; and it is not a willful refusal to see the obvious. The essence of optimism is developing and presenting options which will solve the client's problem.

Any lawyer can essentially "CYA" by telling a client to avoid exposure and therefore not to do something. Clients do not need to pay for this – if the answer is black and white, then the client doesn't need us. Rather, it is up to the lawyer to develop options among the shades of gray. How do we go about doing this? Here's a simple formula: every time you say "this won't work," follow it up with a "(comma) but this will," or, better yet, keep this demarcation seamless, with your counsel on options twisted together like a pretzel with your admonitions. And speaking of a client’s context, remember that the best communications are those who provide a positive context, helping to see a half-full glass. Try some of these:

- Talk about “meeting challenges,” not “dealing with problems.”
- Instead of saying “yes, but” to an idea, use a connector to build on what the client says – “yes, and.”
- Remind the client that often a challenge, as with the accountability example, is “inexpensive” tuition compared to what could have occurred, and point out the lesson learned and how it can be put to use in the future.

A couple of caveats. First, this rule is not to be confused with telling the client what she or he wants to hear. You can be both optimistic and honest. I recently spoke to a client about a tricky and undeveloped area of removal law. When he asked about our chances of success, I told him that "we have good arguments but the operative word is argument." Message delivered.

Second, keep in mind that when we represent individual defendants in litigation - which is becoming ever more frequent – it is especially important to have just the right mix of optimism and frankness. A piece of litigation can hang like a cloud over the individual defendant's life, permeating everything, not unlike the smell of a smoke-filled room clinging to our clothes. It's not a pleasant experience. Consequently, we need to have our antenna up, and to assist a client in placing the lawsuit in proper perspective.

**Rule 12: Remember The Client’s Context**

Clients don’t operate in a vacuum. Whether representing individuals, or corporate America, everyone deals with dynamics beyond the law. Here is a short example: The client wanted to fire an employee because it believed he had inappropriately handled the reporting of a safety violation. Not taking what the client said at face value, it was clear that more people were really accountable than that one employee. And part of the challenge was a very human one: the decision maker was a vice president over the entire area, and, like everyone else, there were employees he liked (the ones he didn’t want to punish), and those he was neutral about or didn’t like (including the one who was to be punished). Ideal conditions for a wrongful termination lawsuit. So what did we do? A couple of things:

- It would have been easy, and disastrous, to be forthright about what we thought. Instead, to drain the meeting of unproductive emotion, we went to a grease board, diagramed the chain of command and the facts, and focused on something neutral – the facts on the board – as opposed to feelings.

- Forgive the rhyme, but we framed without blame.

Once we went through the facts, we said, “We don’t know exactly how to say this, so we hope you’ll help us, but we’ve noticed there may be some other people who should be held accountable.” While initially upset, the client came to a better-reasoned and more defensible decision. Dostoevsky wrote that “A lawyer is conscience for hire.” While it wasn’t meant as a compliment, it does get to the heart of the matter.
Rule 13: Every Problem is an Opportunity

The Chinese character for danger is also the character for opportunity. We as lawyers need to embrace this notion in dealing with clients, especially when the client makes an error in judgment. Let me give you an example.

Recently, a client said that it was contacted by a government agency. The agency was investigating why a particular employee was denied his health insurance benefits after termination. It turns out that the client had an absolute rule – no exceptions allowed – whereby benefits were denied whenever an employee was terminated for a certain reason. I didn't think much of the rule, not only because there was no practical benefit to the client, but also because I thought it might be susceptible to legal attack. The call from the agency only confirmed my fears, although the client ultimately dodged the bullet.

It would have been natural, and easy, to have criticized the client. This doesn't always involve an overtly critical comment - often, a slight change in the tone of voice, or body language, or a facial expression can just as effectively communicate your displeasure at the situation.

Instead of being critical of the client, and lecturing on the law, I made the following points:
✓ The complaining ex-employee may have done us a favor.
✓ The regulations dealing with this situation are like hieroglyphics and are hard to understand.
✓ This allows us an opportunity to revisit our policy, and consider revisions to it.

In short, the client saw – not a problem – but a positive development, and did not go on the "defensive." None of us would want a physician who only treats the symptoms but doesn't cure the disease. Likewise, a lawsuit or a governmental inquiry or the like is often a symptom of a deeper problem. We need to keep this in mind, and treat the disease, not just the symptoms. To return to Dean Salacuse:

One of the talents of effective advisors is to make the clients see the positive opportunities in a situation, to see the glass is half full rather than half empty, to view a problem as a chance for improvement rather than a certainty for disaster.

And, speaking of defensiveness, we need to help clients' lower their defensiveness, which chokes off the flow of facts, and increase their openness, which opens the spigots of useful information. Try this: use the phrase "the more something goes without saying, the more it needs to be said" whenever a client – or you - say or hear something that seems obvious. Using this phrase gives the client permission to say what she thinks, without the risk of looking foolish or sounding dumb. This helps develop a common language with the client, not unlike spouses who understand one another, without a word being spoken.

Rule 14: Respect Your Client's Opinion

From time to time, clients want you to do something that you believe is not the absolutely best tactic. Lawyers need to be especially careful, however, about coming to the conclusion that every difference in judgment warrants the lawyer saying "no, that is just wrong and will backfire." The ultimate "no" should be sparingly used, not unlike the use of salty language. When something is seldom used, the effect is greatly amplified when it is.

A lawyer acquaintance of mine told me the following story. A lawyer was filing a summary judgment motion in a federal court case. The client wanted to add an obscure argument to the motion dealing with the collateral estoppel effect of an administrative decision. In fact, the client thought it should be the first argument. After negotiating with the client, the lawyer dropped the argument to a footnote. Well, you can guess what happened. The court granted the motion, relying entirely upon the footnote.
Upon receiving the memorandum opinion, the lawyer called the client and told him in a jocular way: "I've got good news and bad news. The good news is that the motion was granted, the bad news is the court relied on your footnote." The client shot back: "Well, in that case, I've got bad news and worse news. The bad news is you're not going to handle the appeal, and the worse news is your law firm is fired from all other cases."

I don't think this is an extreme example. The lesson is not that "the client is always right." Rather, it is that clients are often the very best source of strategy, tactics, and information about how to solve a certain problem. We ignore their wisdom at our own risk.

**Rule 15: Don’t Forget: We have an Ethical Responsibility in Termination Decisions**

We advise clients on whether to fire an employee. It is the employment law version of capital punishment. If all we are saying is “write them up three times” and fire them, we’re failing in our duty. Here are 9 points to remember:

1. Ask yourself: Is this an 80/20 or 20/80 employee?
2. Use 100% effort to turn around the 80/20
3. Start off with the double-bind
4. Focus on behaviors, not personalities
5. Identify the problem.
6. Use honesty and empathy.
7. Consider the 12 types of 80/20 employees.
9. Go ahead, take the next step.

**Rule 16: Don’t Forget: There are Cultural and Sexual Differences in Communication**

Here are four resources:

- *In the Company of Women* by Patricia Heim
- *The Race Trap* by Robert L. Johnson
- [www.workrelationships.com](http://www.workrelationships.com)
- *The Male Mind at Work: A Woman’s Guide to Working with Men* by Deborah Swiss

**Rule 17: The Client Makes Business Decisions, Not You**

From time to time, clients want to put us in the position of making the decision for them. This comes from a variety of sources: a company executive may want to put the blame on someone else if the matter you’re handling goes wrong, or it may be a matter of business inexperience on the part of the client. Whatever its source, it is vitally important that the lawyer, at the outset, help the client understand the difference between a "legal" decision and a "business" one. This is a three-step process.

**First**, as a threshold matter, the lawyer needs to determine the approach the client prefers to take. Here are a couple of tactics you can use to do so:

- Focus the client's attention on what the client has done to resolve the matter. For instance, ask simple questions about what the client perceives to be its options: "What have you already done to try to solve the problem?" or "What options have you thought about or are you thinking about trying?"

- Focus the client on what the client perceives is its objective in the matter. Is the objective to try the lawsuit because a settlement would simply encourage others to sue or is the objective to manage the risk to the...
company by settling? Remember: when you and the client seem to be losing focus, ask yourselves: what are we trying to achieve?

Second, present all of the options to the client - that is, the options that will assist in solving the problem. This entails more than going into full fledged litigation mode. To borrow a concept from the medical profession, sometimes invasive procedures are called for and sometimes not. This development of options can involve, for instance, "creating evidence" before suit is filed. (Note I didn't say manufacturing.) This phrase is simply shorthand for making sure that the client's pre-suit actions generate the facts that will give the jury a reason to find affirmatively for you, not merely an excuse to find against your opponent. It can also involve simply picking up the phone and asking the other side what they want before declaring all-out war.

Third, in keeping with rule number two, it is o.k. to tell the client what you would do, as long as the dividing line is clear. The question can be answered directly, but with a caveat. My preference is telling the client "I'll take my lawyer's hat off for a minute, and put on my manager's hat . . ." or "If I was sitting in the CEO's chair and it was my company to run, then I would . . ." After this, however, the lawyer should refocus the client on all of the options that present themselves, not simply the one the lawyer would choose should he or she be in the driver's seat.

Rule 18: Don't Forget the Art of Decision Making

Because we are advisers, we must understand how our clients make decisions. A key to doing so is understanding the common decision making traps. Here are a few:

- The Anchoring Trap
- The Status-Quo Trap
- The Sunken Cost Trap
- The Confirming Fairness Trap
- The Provider Trap
- The Reliability Trap

Rule No. 19: Manage Expectations

Like Rule No. 1, this is a "home base" rule: Learn how to manage a client's expectations. This is not to be confused with manipulating the client. Rather, what I am talking about is making sure the client understands the legal process, comprehends what it entails, and embraces a realistic view of the matter. And, the verb "manage" is deliberately used - this rule involves an ongoing process, not a one shot effort. Most successful CEO's do exactly this. When a CEO does so, the price of stock in her company rises; when you do, the client is positioned to be neither unduly surprised on the upside or on the downside, and your credibility rises. You cannot effectively communicate with a client holding unrealistic expectations. He won't hear what you are saying.

Rule: Be Authentic

Finally, good communication is based on authenticity. You can’t take another person’s style and make it your own. Before the decisive battle of Midway, Admiral “Bull” Halsey was knocked out of commission by illness. Ray Spruance, his replacement, went to the hospital, asking him for advice. Halsey’s blunt counsel: “When you’re out there, don’t play it the way you think I’d play it”; play it the way you think it should be played.” Now that’s communication, and, by the way, still good advice more than half a century later.

Conclusion

The practice of law takes its toll. It's frustrating and often seems counterproductive. We settle cases not because the person really is a victim of discrimination, but because he or she has a compelling
story to tell and we're concerned about juror identification with on-the-job trauma. We do not expand the economic pie, we only help in carving up how it's divided. When we get a summary judgment, or win a case at trial, we feel equally frustrated: all the expenditure of time and effort and the client is no better off - the status quo prevails. (Sometimes it's worse. As Voltaire said: "There were only two times in my life I was financially ruined. Once is when I lost a lawsuit, and the other is when I won one.")

Developing your "EQ" can, however, make the practice of law more enjoyable. Here's an example. I had represented a client for a few years, with one particular person as my contact. She was a high-ranking executive, and we'd spent a considerable amount of time together. One day she introduced me to some new subordinates as her "consigliere."

Naturally, I flashed onto images of The Godfather, John Gotti's lawyer and Tony Soprano. Was as I really that unctuous? Did she consider me that unprincipled? I quickly realized, however, that this was a compliment, not a slam. Driving home that night, I slowly realized something else: her comment was a wonderful reminder of why we do what it is that we do.
Appendix

*Effective Communication Skills for Scientific and Technical Professionals* by Harry E. Chambers - This is a great book. As the title suggests, it is especially useful in dealing with those whose skills are more analytical, and less verbal.

*Listening: The Forgotten Skill* by Madelyn Burley-Allen - This is a straight forward and user friendly book on the art of listening. There are self tests throughout the book which are valuable, including a listening assessment exercise.

*Dealing With People You Can’t Stand: How to Bring Out The Best in People at Their Worst* by Dr. Rick Brinkman and Dr. Rick Kirschner - An easy to read book, describing the ten specific behaviors that represent people at their worst, and how to deal with them.

*Resolving Conflicts at Work* by Kenneth Cloke and Joan Goldsmith - A must read book on how to deal with the emotional issues that often arise in communication in the workplace.

*Difficult Conversations* by Douglas Stone - A very fine work dealing not only with workplace communication but communication in general. It deals with one of the hardest issues in communication, namely, how to tell somebody something unpleasant.

*In the Company of Women* by Patricia Heim - This book deals with how women communicate in the workplace, and especially with the challenges faced by female managers. Controversial, but well worth the read.

*Maximum Success: Changing the 12 Behavior Patterns that Keep You From Getting Ahead* by James Waldrop and Timothy Butler - This book, written by two professors at Harvard Business School, identifies the 12 types of 90/10 employees: that is, employees who are great 90% of the time but awful the rest of the time. It gives advice on how to manage these employees, and not let them manage you.

*Now, Discover Your Strengths* by Marcus Buckingham - This book by the Gallup Polling Organization has a simple premise: employees need to spend more time developing their strengths than fixing their weaknesses. Each book has a pin number that allows access to the Gallup organization website, where you can take a test (it runs about an hour), which will then tell you your top five strengths out of the 40 or so identified by Buckingham. This book then gives ideas on how to communicate effectively with employees who have certain strengths.

*How the Way We Talk Can Change The Way We Work: Seven Languages for Transformation* by Robert Kegan and Lisa Lahey - A very good book on why employees do or don’t change, and how you can meet the challenge of dealing with employees in a changing work force.
Get to the Point by Elizabeth Danzinger - A good book on effective communication.


The Race Trap: Smart Strategies for Effective Racial Communication in Business and in Life by Robert L. Johnson.

The Trusted Advisor by David Maister - A great book which all lawyers need to read.
SOME TIPS FOR WRITTEN COMMUNICATIONS WITH CLIENTS

By: Theresa M. Gegen, Andrews & Kurth, L.L.P.

I. Introduction: This paper focuses on tips for more effective written communications. Lawyers have a reputation for being poor writers – and unfortunately this reputation is well deserved. By applying the tips below, you can improve your written communications and help improve the reputation of all lawyers.

II. Ten tips for written communications

   Tip 1 - Reduce Passive Voice.

   This tip is recited in every manual and course about effective writing. Some bean counter actually figured out that good writers use passive voice about 25% of the time and lawyers (who are notoriously bad writers) use passive voice about 75% of the time. Law professors are even worse, often using passive voice 90% of the time.

   How can you identify passive voice?

   - Look for a “be” verb with a verb ending in “-ed”
   - Look for a sentence that de-emphasizes the actor, and emphasizes the object.

   Some examples:

   The bill was passed by the Legislature. (Passive).
   The Legislature passed the bill. (Active).
   The deadline was missed by the Plaintiff. (Passive).
   The Plaintiff missed the deadline. (Active).

   By reducing passive voice, you eliminate unnecessary words and add clarity.

   Tip 2 - Shorten.

   Everything can and should be shortened: words, sentences, paragraphs and sections. The result: a product that gets to the point and is easy to read.

   Some general guidelines that I use are:

   Never have a paragraph that covers a whole page. It’s like trying to read a block of ice. You can break it up with bullet points or a chart (see tip 7 below) or turn it into two or three paragraphs. It will be much easier to read.

   Keep sentences short. If a sentence is longer than a couple of lines, it may be too long. Use one line descriptive headings as signposts. For example:
Plaintiff goes to work at the company and complains about a co-employee stealing from the company.

Chose simple words:

<table>
<thead>
<tr>
<th>Instead of</th>
<th>Try:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additionally</td>
<td>And</td>
</tr>
<tr>
<td>In addition to</td>
<td></td>
</tr>
<tr>
<td>Further</td>
<td></td>
</tr>
<tr>
<td>Furthermore</td>
<td></td>
</tr>
<tr>
<td>Currently</td>
<td>Now</td>
</tr>
<tr>
<td>At the current time</td>
<td></td>
</tr>
<tr>
<td>At this time</td>
<td></td>
</tr>
<tr>
<td>However</td>
<td>But</td>
</tr>
<tr>
<td>Due to the fact</td>
<td>Because</td>
</tr>
<tr>
<td>On the basis of</td>
<td></td>
</tr>
<tr>
<td>For the purpose of</td>
<td>To</td>
</tr>
<tr>
<td>In order to</td>
<td></td>
</tr>
</tbody>
</table>

Use specific words: mealy mouthed double speak can result in wordiness. Here’s a quick example:

Please extinguish all smoking materials. (Vague).

Please put out all cigarettes. (Concise and easier to understand).

Eliminate unnecessary adverbs and adjectives.

<table>
<thead>
<tr>
<th>Instead of</th>
<th>Try:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Totally without foundation</td>
<td>without foundation</td>
</tr>
<tr>
<td></td>
<td>unsupported</td>
</tr>
<tr>
<td>We obviously need</td>
<td>We need</td>
</tr>
<tr>
<td>We clearly need</td>
<td></td>
</tr>
</tbody>
</table>

Remember your audience -- they are busy people who already have to much to read.

Tip 3 - Complicated issues need simple writing.

These days we are finding that communications require discussion of technical issues. And it’s not just because of the growth of high tech companies in Texas (although that is certainly a factor). The other reason is that technology has permeated all aspects of our lives. So a simple case about an employee incorrectly recording his work time can involve complicated issues related to hand scanning devices and computerized time systems.
When you must address technical material head on, you need to determine how best to present the information. Generally, the more technical the issue, the simpler your writing needs to be. If you are writing about something technical, make sure you understand it yourself. This doesn’t mean that you have to get a computer science degree and understand the inner workings of the machine. But you do have to understand all the terms of art and source material that you are using. Then focus on plain language. Consider using an analogy to something we all know about.

**Tip 4 - Don’t write like a lawyer.**

The symptoms: using long sentences, clauses within clauses, and legalese. The solution: write the way you speak. Would you say: “The reasons are fourfold”? No. You would say “There are four reasons.”

Some words scream “legalese.” These include “heretofore,” “hereunder,” “said document,” “wherefore.” You should eliminate them from your documents.

Try reading your work out loud. Does it sound unnatural? If so, it’s probably full of legalese. Then verbally explain your arguments to a non-lawyer friend (don’t worry, you can use an imaginary friend here). Your actual produce should be similar to your verbal, non-legal explanation.

Even if your client is another attorney (for example in-house counsel), you should avoid legalese and legal terms of art in evaluation letters and case memorandum. The reason? While the in-house counsel may understand what you’re saying, you never know who is going to read your work. The client’s vice president may read your written communications. Also, using plain language that anyone can understand will help the in-house counsel – she doesn’t want to spend her time translating your legalese into plain language for the operations people.

**Tip 5 – Keep Notes Neat and Professional and To the Point**

As attorneys, we look at your business documents a bit differently than you do. The first goal, of course, is to get your message across. But you have to remember that the information may be used for other purposes. For example, if you are investigating a claim of harassment by one employee, the notes you take may very well be the cornerstone of any defense your company has if a lawsuit occurs. If the notes are not neat and professional or are incomplete real trouble can result.

For example, in one case I had the investigator, during a witness interview, had written the words sexual harassment, with no explanation by them. About six months after the investigation, when the lawsuit was filed, I interviewed the investigator. The investigator could not remember what the significance of the words “sexual harassment” was in her notes, she couldn’t remember if she asked about it, if the witnesses brought it up, and whether the witness denied or confirmed that sexual harassment occurred.

Try to make your documents complete, so that they can stand on their own without you. Also, never make any jokes, sarcastic comments, or flippant comments in your documents.

**Tip 6 - Use a Summary Up Front.**

A short summary of an evaluation letter will help focus the writer and the reader. As the
writer, if you cannot summarize the point of the communication concisely, you probably need to work on the structure of it. For the reader, it will give them some context about what is coming. If your client is really busy, like some of mine are, the summary may be the only thing she reads. Using a summary also helps you communicate with people who have different communication styles. For example, if your client is the type who wants an immediate bottom line, without lots of discussion, he can go directly to the summary. However, if your client is the type who wants to know all the details and the process, he can focus on the discussion below the summary.

**Tip 7 - Try Charts, Time lines, and Bullet Points.**

Some lawyers feel that everything must be written out like an essay. However, charts and bullets point lists can be very effective. They can be used to break up a block of complicated information and make your brief more visually appealing. Here’s some ways to use charts:

To show a contrast and To condense and organize complicated information:

1. **Smith Cannot Dispute that Company Promoted Jones Because He was Better Qualified**

A comparison between Jones and Smith shows who was better qualified for the supervisory position.

<table>
<thead>
<tr>
<th>Category</th>
<th>Jones</th>
<th>Smith</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leadership</td>
<td>Fulfilled Grade 9 “go to” role; trained general ledger employees.</td>
<td>Acknowledged not a “leader in general ledger”; admitted let supervisor down.</td>
</tr>
<tr>
<td>G/L Experience</td>
<td>Continuous general ledger employee from 1991 through promotion to Grade 10; was incumbent general ledger employee when Smith transferred in 1993; had previous general ledger experience before working at this company.</td>
<td>Less experience in general ledger than Jones; wanted to leave general ledger in 1996; admits Jones had experience in 17 general ledger areas she did not.</td>
</tr>
<tr>
<td>Accuracy and Timeliness in Accounting Duties</td>
<td>Received highest possible performance appraisal ratings in all areas, including accuracy and timeliness, from supervisor, in June and December 1996 and June and December 1995.</td>
<td>Admits unacceptable mistakes in “revenue and volume” in 1996-1997; concedes that supervisor legitimately held her accountable; agrees that her mistakes should be considered by him.</td>
</tr>
<tr>
<td>Closings</td>
<td>Of major assistance while Grade 9 in completing monthly closings, for which Grade 10 to be primarily accountable.</td>
<td>States that she could not handle stress in closings.</td>
</tr>
<tr>
<td>Category</td>
<td>Jones</td>
<td>Smith</td>
</tr>
<tr>
<td>----------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Davidson said “I’m giving you a direct order to go set up one stand.”

Rather than go and set up the stand, Plaintiff chose to argue by responding “Well, now, I’m getting a direct order to go set up one stand. Well, Davidson, tell me the real reason why you’re given me a direct order.”

To Focus the communication on key issues: The example is from a case which involved a bonus payment. The plaintiff announced his resignation orally, and therefore was not paid a bonus. The Plaintiff then sued, saying that because his resignation was oral and his employment contract said it must be in writing, the Company owned him the bonus. One ground for summary judgment was estoppel.

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>UNDISPUTED FACTS SUPPORTING</th>
</tr>
</thead>
<tbody>
<tr>
<td>False Representation or concealment of material facts</td>
<td>Smith represented to supervisor that he would leave company when three conditions were met; Smith sent e-mail to supervisor with proposed transition plan and “end date.”</td>
</tr>
<tr>
<td>Made with knowledge of the true facts</td>
<td>Smith knew that he intended to resign when he told supervisor he was leaving company; Smith knew that he had a secret meaning for the term “end date.”</td>
</tr>
<tr>
<td>To someone who was not aware of the true facts</td>
<td>Supervisor took Smith at his word when Smith said he intended to leave employment and proposed a transition plan.</td>
</tr>
<tr>
<td>Detrimental Reliance</td>
<td>Supervisor relied on Smith’s representation in accepting Smith’s resignation. Company relied on Smith’s representation to its detriment by allowing him to continue working while taking time off to work on his own company and remain an employee.</td>
</tr>
</tbody>
</table>

Bullet point and check lists: Some attorneys feel that bullet point lists or check lists have no place in a letter. They think that these devices are too informal. I disagree. The whole point is to communicate information. If a bullet point list or check list will help you reach this goal, then you should use them. For example:

**Our Key Witnesses**

1. Frank

   Frank no longer works for the company. He claims he quit because of mistreatment by a manager. When interviewed, he claimed the following:

   He is involved in the drug business, together with his mother.

   Because of his proceeds from the drug business, he and his mother own a variety of properties, including apartment complexes in McAllen.

   He works with the Drug Enforcement Agency (DEA) as an undercover agent.
The manager claims that he ultimately came to believe that Frank was a “loose cannon” because of various things he heard second hand about him, for example, that he was a trained assassin. The manager’s opinion: “He is a loose moose if there ever was one.”

1. Defamation

According to Plaintiff, the following individuals were told that she was a thief:

Thelma (she confirmed this in her interview)

Thomas (he stated that on one occasion, the supervisor told her that he had suspicions that Plaintiff was stealing from the store, and stated that he heard from others in the store (he does not recall who), that she was fired over some amplifier incident but he did not know anything about it.)

A bullet point list like this focuses the reader on these important facts. It is also a useful tool to summarize the key points of a communication.

Check lists can be used for similar purposes: they are especially useful when you want to show that your client complied with a process or a list of requirements. They can also show your client where it went wrong.

Time Lines: A lot of attorney’s time line out the facts before they go to trial. Unfortunately, many do not do so before they send evaluation letters to their clients. A time line can be useful to explain procedural issues and facts like whether the employee filed a charge or suit on time. And if can be useful for substantive issues: How many times and how often did the employee complain of harassment before the company did anything? How long was the time between the employee’s request for an accommodation and the employer’s response? This can also be useful if you have multiple plaintiffs.

Other Graphic Devices: The possibilities are endless. If a diagram or picture aids communication, you should use it. Also, using a question to focus on key issues can be very effective. For example:

4. Why Was Plaintiff Terminated?

According to Plaintiff, she called the company 800 ethics number after she was terminated. She doesn’t remember the name of the person she spoke to, but she told him that her supervisor and co-employee were stealing. The manager recalls a conversation with Plaintiff after she was terminated in which she claimed that she was terminated unjustly. While both she and the manager have a general recollection about discussion her termination, the facts leading up to it are disputed.

Version No. 1: [the manager’s recollection]

Version No. 2: [the co-worker’s recollection]
Tip 8 - Leave it alone.

This tip presumes that you give yourself enough time to really polish your work. I have to admit that I rarely do. But if you can get your letter written a day or two before you send it, and you can set it aside for a time, then come back to it with fresh eyes, you will have a better product. Try doing your first draft, then take a break and work on something else, then come back. You’ll notice problems that you wouldn’t otherwise.

Tip 9 - Use a proof reader.

A proof reader is essential for grammar checks. But, just as important is the content check. I tend to fall in love with my writing. Some of you probably do also. So, you have to be thick skinned for this one. None will give you an honest opinion if you cannot take the criticism in stride.

The best proof reader in our office is the receptionist, Deona. Lawyers are OK as proof readers. But a non-lawyer is much better. Why? Other lawyers suffer from the same problems you do. They come to the table with the same biases. And a lawyer can be a bit arrogant about his own writing style. The last thing you want from the editing experience is someone else’s style forced on you. A non-lawyer has a different focus: “Do I understand this document and does it convince me?” A non-lawyer has the advantage of a different perspective. She can often point out skipped steps or leaps in logic that other lawyers don’t see.

If you are still not convinced that a non-lawyer proof reader is useful remember this: your audience (your client) probably is not a lawyer. Even if your client includes the in-house counsel, it also includes non-lawyers (the operations people).

Tip 10 - Take my challenge - Do it in steps.

You are probably telling yourself “I don’t have time to reeducate myself on how to write. I’m too busy.” It does take time and practice. But you don’t have to do it all at once. Start small. Work on reducing passive voice on one letter. On the next, focus on short sentences and short sections. Then on the next one you can try a chart or bullet point list. If you keep it up, all of your writing will improve.

For more information, see:

Kenneth Roman and Joel Raphaelson, *Writing that Works* (Second Ed., Harper Collins, 1995): This is a short and inexpensive book ($5) that focuses on business writing. It can be read in about an hour. Even though it doesn’t focus on legal writing, the tips it gives can improve any writing. And if you are writing to business people, not lawyers, it is invaluable.
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Similarity of actual program content to advertised content  
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Activity met your personal objectives  
5  4  3  2  1
Information presented was of genuine value to your practice  
5  4  3  2  1
Accessibility to registration and telephone technology  
5  4  3  2  1
Audibility of telephone seminar  
5  4  3  2  1
Effectiveness of telephone seminar concept  
5  4  3  2  1

FACULTY

Michael Maslanka  
CONTENT:  5  4  3  2  1
DELIVERY:  5  4  3  2  1

Cynthia Mueller  
CONTENT:  5  4  3  2  1
DELIVERY:  5  4  3  2  1

Theresa Gegen  
CONTENT:  5  4  3  2  1
DELIVERY:  5  4  3  2  1

1. Type of practice  
☐ Private  ☐ Corporate  ☐ Govt.  ☐ Judiciary  ☐ Other

2. Size of firm?  
☐ Solo  ☐ 2-4  ☐ 5-10  ☐ 11-24  ☐ 25+

3. Number of years of experience?  
☐ - 1 year  ☐ 1-3 yrs  ☐ 4-10 yrs  ☐ 11-19 yrs  ☐ 20+ yrs

4. How many people listened at your site? _________________________

5. Would you participate in another telephone seminar?  ☐ YES  ☐ NO

6. Assuming availability, what percent of your continuing education would you obtain from listening to a telephone seminar versus attending a “face-to-face” seminar?  ☐ 0%  ☐ 25%  ☐ 50%  ☐ 75%  ☐ 100%

7. What was your overall impression of the program and the live telephone seminar format? Additional Comments?

_________________________________________________________________________________________________
_________________________________________________________________________________________________

Name of Participant (optional): ____________________________________________