



SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
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COMMUNICATING EFFECTIVELY WITH CLIENTS & ADVERSARIES

Presenters:

Lisa Renee Pomerantz, Esq.
Dona Rutowicz, LCSW

Program Coordinator: Lisa Renee Pomerantz, Esq.

August 3, 2016
SCBA Center - Hauppauge, NY

Communicating Effectively with Clients and Adversaries Timed Outline

Lisa Renee Pomerantz, Attorney at Law and Dona Rutowicz, LCSW

1. Overview of applicable Rules of Professional Conduct and Standards of Civility (20 mins)
2. Situational and psychological barriers to effective communications (10 mins)
3. Preparing for difficult conversations (10 mins)
4. Framing your message effectively (5 mins)
5. Establishing rapport (5 mins)
6. Active listening (5 mins)
7. Written communications (10 mins)
8. Conclusion and Q&A (10 mins)

About Dona Rutowicz, LCSW

Dona is a NYS Licensed Clinical Social worker, a Certified New York State Business Advisor and a seasoned leadership trainer and Executive Business coach. Dona has spent the past two decades studying and teaching leadership, career development, success, happiness and how to break through the barriers that keep us stuck.

Dona started out her career as an accountant and moved on to other positions in business such as sales, marketing, client service, training and coaching. Dona has developed two proprietary programs "*Divorcing Gracefully*" which equips women going through a divorce with the tools and resources they need to become less emotionally charged and more empowered, as well as "*The Leadership Matrix*" where Dona helps middle managers develop supervisory, organizational, communication and other skills necessary for success as a leader.

Dona's business sense coupled with her psychotherapy training, provides a very unique and powerful combination of helping others obtain success that sticks. Dona is widely known for conducting interactive trainings that people actually like to come to.

Dona is also an avid member of the community and volunteers her time for many social causes. She sits on the program committee for Mom-Mentum (a 501 (c)(3) non-profit providing leadership, education and advocacy for professional women), sits on the Advisory Board for The Moxie Network, LLC (a women's business community) and is a mentor to young women through The Moxie Mentoring Foundation (a 501 (c)(3) non-profit created to support and foster the leadership development of young women).

LISA RENEE POMERANTZ BIO

Lisa Renee Pomerantz has more than thirty years of legal and dispute resolution experience. After graduating from Harvard University and Boston University Law School, Lisa clerked for a federal judge. Following a stint as a litigation attorney, she worked for fifteen years as a senior-level in-house counsel for a major corporation.

Since 2003, Lisa has practiced law in Suffolk County. She works primarily with entrepreneurs on commercial and corporate matters involving customers, vendors and collaborators, and to resolve business and employment disputes amicably and cost-effectively. She serves on the AAA's Roster of Neutrals as a commercial mediator and arbitrator and has served in a variety of leadership roles with the Association for Conflict Resolution, the New York State Dispute Resolution Association and the Suffolk County Bar Association.

Lisa is a popular keynote speaker at legal and business meetings and conferences, and publishes an email newsletter entitled "Making the Connection." She writes the ADR column for the Suffolk Lawyer and has contributed several articles to ACResolution Magazine. She also has provided on-line and live training for business and legal audiences.

Lisa has received numerous awards for her professional activities. She was named Member of the Year by Moxxie Network for 2015. Lisa also received an award in 2015 from the Association for Conflict Resolution for exemplary leadership. In 2010, the Long Island Business News named Lisa as a recipient of its Top Fifty Around 50 Award and in 2011 as a recipient of its Leadership in Law Award. In 2007, Lisa received the Suffolk County Bar Association Directors' Award in recognition of her service as ADR Committee Co-Chair and also received Awards of Recognition in 2004 for her contributions to continuing legal education and as IP Committee Co-Chair.

STANDARDS OF CIVILITY

Preamble

The New York State Standards of Civility for the legal profession set forth principles of behavior to which the bar, the bench and court employees should aspire. They are not intended as rules to be enforced by sanction or disciplinary action, nor are they intended to supplement or modify the Rules Governing Judicial Conduct, the Code of Professional Responsibility and its Disciplinary Rules, or any other applicable rule or requirement governing conduct. Instead they are a set of guidelines intended to encourage lawyers, judges and court personnel to observe principles of civility and decorum, and to confirm the legal profession's rightful status as an honorable and respected profession where courtesy and civility are observed as a matter of course. The Standards are divided into four parts: lawyers' duties to other lawyers, litigants and witnesses; lawyers' duties to the court and court personnel; court's duties to lawyers, parties and witnesses; and court personnel's duties to lawyers and litigants.

As lawyers, judges and court employees, we are all essential participants in the judicial process. That process cannot work effectively to serve the public unless we first treat each other with courtesy, respect and civility.

LAWYERS' DUTIES TO OTHER LAWYERS, LITIGANTS AND WITNESSES

I. Lawyers should be courteous and civil in all professional dealings with other persons.

A. Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others.

B. Lawyers can disagree without being disagreeable. Effective representation does not require antagonistic or acrimonious behavior. Whether orally or in writing, lawyers should avoid vulgar language, disparaging personal remarks or acrimony toward other counsel, parties or witnesses.

C. Lawyers should require that persons under their supervision conduct themselves with courtesy and civility.

II. When consistent with their clients' interests, lawyers should cooperate with opposing counsel in an effort to avoid litigation and to resolve litigation that has already commenced.

A. Lawyers should avoid unnecessary motion practice or other judicial intervention by negotiating and agreeing with other counsel whenever it is practicable to do so.

B. Lawyers should allow themselves sufficient time to resolve any dispute or disagreement by communicating with one another and imposing reasonable and meaningful deadlines in light of the nature and status of the case.

III. A lawyer should respect the schedule and commitments of opposing counsel, consistent with protection of the client's interests.

A. In the absence of a court order, a lawyer should agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of the client will not be adversely affected.

B. Upon request coupled with the simple representation by counsel that more time is required, the first request for an extension to respond to pleadings ordinarily should be granted as a matter of courtesy.

C. A lawyer should not attach unfair or extraneous conditions to extensions of time. A lawyer is entitled to impose conditions appropriate to preserve rights that an extension might otherwise jeopardize, and may request, but should not unreasonably insist on, reciprocal scheduling concessions.

D. A lawyer should endeavor to consult with other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts. A lawyer should likewise cooperate with opposing counsel when scheduling changes are requested, provided the interests of his or her client will not be jeopardized.

E. A lawyer should notify other counsel and, if appropriate, the court or other persons at the earliest possible time when hearings, depositions, meetings or conferences are to be canceled or postponed.

IV. A lawyer should promptly return telephone calls and answer correspondence reasonably requiring a response.

V. The timing and manner of service of papers should not be designed to cause disadvantage to the party receiving the papers.

A. Papers should not be served in a manner designed to take advantage of an opponent's known absence from the office.

B. Papers should not be served at a time or in a manner designed to inconvenience an adversary.

C. Unless specifically authorized by law or rule, a lawyer should not submit papers to the court without serving copies of all such papers upon opposing counsel in such a manner that opposing counsel will receive them before or contemporaneously with the submission to the court.

VI. A lawyer should not use any aspect of the litigation process, including discovery and motion practice, as a means of harassment or for the purpose of unnecessarily prolonging litigation or increasing litigation expenses.

A. A lawyer should avoid discovery that is not necessary to obtain facts or perpetuate testimony or that is designed to place an undue burden or expense on a party.

B. A lawyer should respond to discovery requests reasonably and not strain to interpret the request so as to avoid disclosure of relevant and non-privileged information.

VII. In depositions and other proceedings, and in negotiations, lawyers should conduct themselves with dignity and refrain from engaging in acts of rudeness and disrespect.

A. Lawyers should not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

B. Lawyers should advise their clients and witnesses of the proper conduct expected of them in court, at depositions and at conferences, and, to the best of their ability, prevent clients and witnesses from causing disorder or disruption.

C. A lawyer should not obstruct questioning during a deposition or object to deposition questions unless necessary.

D. Lawyers should ask only those questions they reasonably believe are necessary for the prosecution or defense of an action. Lawyers should refrain from asking repetitive or argumentative questions and from making self-serving statements.

VIII. A lawyer should adhere to all express promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.

IX. Lawyers should not mislead other persons involved in the litigation process.

A. A lawyer should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.

B. A lawyer should not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

C. In preparing written versions of agreements and court orders, a lawyer should attempt to correctly reflect the agreement of the parties or the direction of the court.

X. Lawyers should be mindful of the need to protect the standing of the legal profession in the eyes of the public. Accordingly, lawyers should bring the New York State Standards of Civility to the attention of other lawyers when appropriate.

LAWYERS' DUTIES TO THE COURT AND COURT PERSONNEL

I. A lawyer is both an officer of the court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom, and maintain a respectful attitude toward the court.

A. Lawyers should speak and write civilly and respectfully in all communications with the court and court personnel.

B. Lawyers should use their best efforts to dissuade clients and witnesses from causing disorder or disruption in the courtroom.

C. Lawyers should not engage in conduct intended primarily to harass or humiliate witnesses.

D. Lawyers should be punctual and prepared for all court appearances; if delayed, the lawyer should notify the court and counsel whenever possible.

II. Court personnel are an integral part of the justice system and should be treated with courtesy and respect at all times.

JUDGES' DUTIES TO LAWYERS, PARTIES AND WITNESSES

I. A Judge should be patient, courteous and civil to lawyers, parties and witnesses.

A. A Judge should maintain control over the proceedings and insure that they are conducted in a civil manner.

B. Judges should not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses

C. Judges should, to the extent consistent with the efficient conduct of litigation and other demands on the court, be considerate of the schedules of lawyers, parties and witnesses when scheduling hearings, meetings or conferences.

D. Judges should be punctual in convening all trials, hearings, meetings and conferences; if delayed, they should notify counsel when possible.

E. Judges should make all reasonable efforts to decide promptly all matters presented to them for decision.

F. Judges should use their best efforts to insure that court personnel under their direction act civilly toward lawyers, parties and witnesses.

DUTIES OF COURT PERSONNEL TO THE COURT, LAWYERS

AND LITIGANTS

I. Court personnel should be courteous, patient and respectful while providing prompt, efficient and helpful service to all persons having business with the courts.

A. Court employees should respond promptly and helpfully to requests for assistance or information.

B. Court employees should respect the judge's directions concerning the procedures and atmosphere that the judge wishes to maintain in his or her courtroom.

STATEMENT OF CLIENT'S RIGHTS

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and personnel in your lawyer's office.
2. You are entitled to an attorney capable of handling your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge).
3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.
4. You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory.
5. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.
6. You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.
7. You are entitled to have your legitimate objectives respected by your attorney, including whether or not to settle your matter (court approval of a settlement is required in some matters).
8. You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.
9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the Code of Professional Responsibility.
10. You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin or disability.

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Lisa Renee Pomerantz,
Attorney at Law

and

Dona Rutowicz, LCSW,
Divorce & Business
Coach

Communicating
Effectively with Clients
and Adversaries



Goals for Today

- Review rules and guidelines for attorney communications
- Understand the challenges and barriers to effective communication
- Learn the keys to overcoming those challenges and barriers
- Build more collaborative relationships with clients and constructive relationships with adversaries



+The Rules Envision a Collaborative Relationship with Clients

- Maintaining client confidences (Rule 1.6)
- Keeping the client informed (Rule 1.4(a)(1))
- Providing adequate explanations (Rule 1.4(d))
- Serving as an advisor (Rule 2.1)
- Deferring to client objectives (Rule 1.2)
- Consulting with client regarding means used (Rule 1.4(a)(2))
- Elaborated on in Statement of Client's Rights



The Rules Envision a Constructive Relationship with Opposing Counsel

- Cannot mislead opposing counsel or the tribunal (Rules 3.3, 3.4, 4.1)
- Courtesy and civility required (Standards I, VII)
- Must avoid unnecessary contentiousness or litigiousness (Rules 3.1, 3.2) (Standards II, VI)





Why Are These Rules Necessary?

- Why don't these behaviors come naturally?
- How can we overcome these challenges and barriers?





Attorney Communications Take Place in Difficult Situations

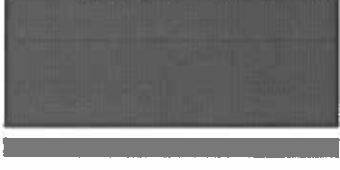
1. Multi-faceted and potentially adversarial context
 - ✓ Between parties
 - ✓ Between lawyers
 - ✓ Between attorney and client(s)
 - ✓ Between clients
2. High stakes for all participants





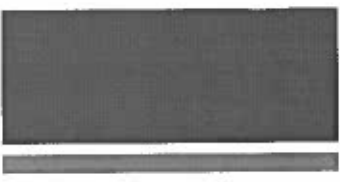
Common Psychological Barriers To Effective Communications

1. Reactive devaluation
2. Confirmation bias
3. Tendency to react rather than respond
4. Urge to speak rather than to listen



+ Preparing for Difficult Conversations

- Mindset
- Emotional Regulation
- Act the part
- Lead with solutions and collaboration vs. anger and conflict





Ask Yourself the Right Questions



- What is the purpose of the communication?
- What needs to be conveyed?
- What is the best way to convey that information so it can be heard and understood and is consistent with the purpose?
- What information or other feedback are you seeking?
- What is the best way to ask for that?



Use Techniques to Overcome Obstacles to Communication

- Separate the people from the problem
- Avoid venting or shooting the messenger
- Use questions effectively
- Focus on interests, positions and concerns
- Be assertive, not aggressive
- Model effective behavior for clients and adversaries
- Use a full range of communications tools





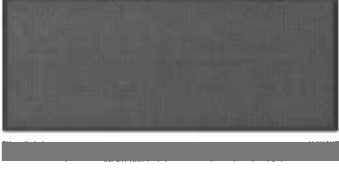
Establish Rapport

- Find common ground
- Develop a bond
- Show empathy
- Use positive body language and tone of voice
- Be courteous and hospitable





Use the Keys to Active Listening



- Listen with an open mind & heart
- Smile
- Eye-contact
- Posture
- Mirroring
- Looping
- Avoid distractions



Take Advantage of the Power of Written Communications

- Ensures thorough analysis
- Promotes use of care in expression
- Permits conveyance of complex ideas, alternative proposals, etc.
- Avoids confusion and misunderstandings
- Gives recipient time to review, process & respond
- Conveys sense of importance of communication and situation





Reap the Benefits of More Effective Communication Skills

- Achieve better understanding of client needs, concerns and priorities
- Allow for more effective client participation in and taking responsibility for decision-making
- Better understanding of adversary's position and interests
- Improved advocacy in negotiations and before tribunals
- Greater opportunity to explore potential resolutions
- Avoid unnecessary and counterproductive litigiousness, gamesmanship, motion practice, posturing



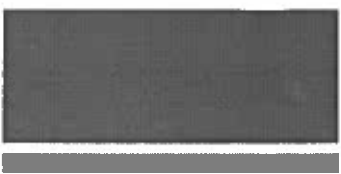
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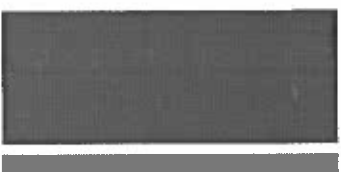
Lisa Renee Pomerantz, 9/12/2016

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**What was the most useful thing
you learned today?**

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Thank You!