

Family Law Education Reform Project

LAWYER TO LAWYER RELATIONSHIPS IN FAMILY LAW PRACTICE

OVERVIEW

This is part of a series of teaching materials prepared by the American Academy of Matrimonial Lawyers Best Practices Committee.

EXPLANATION AND COMMENTS

This unit focuses on the relationship between attorneys in a family law case. It is authored by Jim McLaren, a vice-president of the AAML. It includes a lesson plan and a helpful piece on “What I Want Young Lawyers to Know Before They Find Out the Hard Way”. It is accompanied by a video in which the author, an experienced practitioner discusses the role of civility in the practice of family law.

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The **American Academy of Matrimonial Lawyers**, founded in 1962, is an association of 1600 highly regarded domestic relations attorneys hailing from all 50 states, dedicated “to providing leadership that promotes the highest degree of professionalism and excellence in the practice of family law.” The on-line materials were developed by the Academy’s Best Practices Committee comprised of 5 senior Academy members from geographically diverse parts of the United States.

Model For Attorney to Attorney Relationships Lesson Guide

Objectives:

At the end of this training module, the participants will be able to:

- Recognize the different approaches to lawyer-to-lawyer relationships.
- Describe their own “default” approach.
- Reflect on why they prefer a particular approach and what circumstances they might use a different approach.
- Describe the image and reputation the participant wants to project and be known by in the legal community.
- Recognize different approaches to correct or capitalize on offensive conduct by opposing counsel.

Assessment:

The trainer will know the participants have met this objective because the participants will have:

- Articulated key differences that they observed in the presentations.
- Written a reflection on their “default” approach.
- Discussed circumstances in which a different approach would be desirable.

Materials:

Video vignette:

- Attorney vignettes describing ways to relate to other attorneys.
- References to the Codes of Civility
- “What I Wish I Knew”

Discussion questions:

- Questions designed to help participant select and describe own “default approach”.
- Questions designed to help participants identify key differences in approaches.

- Questions designed to help participants conceive circumstances in which varying approaches may be appropriate.

Written reflection question:

- One sheet of paper (and pencils) with a question at the top designed to elicit reflection on the participant's "default" position.
- One sheet of paper (and pencils) participant describes how he or she wants to be described by fellow attorneys.
- One sheet of paper (and pencils) participant describes how he or she wants to be described by judges.

Methods:

Vignette (15-20 minutes)

- Discussion – what is your reaction to this approach (10-15 minutes)
- Reflection – what is your "default model"? (5-10 minutes)
- Additional discussion – what variations/what circumstances might cause you to alter your opinion?(10-15 minutes)
- Summary/wrap up (5 minutes)

**LAWYER TO LAWYER ISSUES OUTLINE
AAML BEST PRACTICES COMMITTEE**

By
James T. McLaren

I. WHAT I WANT A LAWYER TO KNOW BEFORE THEY LEARN THE HARD WAY:

1. Clients see the world differently than we do. So do opposing attorneys. You or they may not be hearing what is being said. You or they might not understand what is said.
2. Avoid being judgmental. Try to find a solution together.
3. Not everything is quantified into money.
4. Everyone loses in a divorce case. Instead, try to find a solution that makes for a better life for all involved.
5. Opposing attorneys will be here long after this one client.
6. Your reputation amongst the bar is your most valuable asset. Do not allow it to become tarnished.
7. Be senatorial. Do not address the intent of the speaker. Address the issue.
8. Always be honest, your word is your bond.
9. Never be disrespectful to anyone, particularly to opposing counsel. If there is to be any disrespect or harsh words, that is left solely to the partner's discretion.
10. When deciding what to do, flash forward and look retrospectively. Would you be proud of what you are doing?
11. When all else fails, confront difficult attorneys in terms of how they are viewed by other attorneys and the court. Make them look in the mirror.
12. Understand how attorneys transform issues, which can be good and bad. There are almost parallel worlds of understanding.

13. Lay the client groundwork for your interaction with opposing counsel. Help the client understand your relationship with the other attorney. Explain that it is not necessary for you to be nasty or mean in order to do an effective job and prove yourself to the client. Having a good relationship with the opposing attorney is viewed positively by the court and helps the two attorneys resolve problems that would have otherwise been litigated.
14. Find a work way to work with the other attorney, even if the other attorney is difficult. That is your job.
15. When speaking about the other attorney, find a way to make the other attorney look good in some manner.
16. Be the attorney who other attorneys want to call and look forward to speaking to. Do not be the attorney who other attorneys dread calling.
17. Be diligent when dealing with other counsel. Note the facts of your case and be in control without telling the other lawyer you are in control.
18. When all else fails and dealing with a difficult attorney, consider bringing in a neutral.
19. Learn how to deal with attorneys who are not competent or simply cannot bring the matter to closure. Recognize that early. Get scheduling orders. Do not give away everything early as you will accomplish nothing with that type of lawyer.
20. Just because the other lawyer sends mean-spirited letters, that does not mean you should respond in kind. Respond with simple factual responses.
21. Follow the rules. Stand up when addressing the court. Do not make speaking objections. Simply say "objection hearsay". Always address the court. You are not arguing with opposing counsel.
22. Be careful about what the front office is saying. If the receptionist says you are on the phone, the caller will expect a return call in two minutes. If the receptionist says he is on the phone, and is on the way out to a two day trial, the caller will understand that the return call might not come until sometime later. Have someone else return the call. Attorneys can be particularly offended by these miscommunications.
23. Treat other attorneys as you want to be treated. Would you want a letter written about you like that which was written about the Dallas attorney?

24. Do not reduce yourself to the level of a skunk. In fights involving female attorneys, never put yourself in a position of being described as being in a catfight. Address the court always.
25. Sit down and talk with the judge and the other attorneys.
26. New attorneys think if they are not being adversarial, they are not being effective. That is not true.
27. Be aware of gender differences. Female attorneys are harder on female attorneys.
28. Understand that the person on the other side of the case is different from you. They have the right to be different and you need to get along with person.
29. Always be courteous to other attorneys, before the case, during the case, and after the case.
30. Keep your word. If you cannot remember what you said, write it down.
31. A worthy adversary will work just as hard as you will work. Remain polite nonetheless.
32. Never make disparaging statements about the other attorney.
33. If the other attorney is treating you badly, listen to what you are saying and look at what you are doing. Perhaps you are inviting the criticism.
34. Always put deals in writing.
35. Always address the issues, not the negatives.
36. Ask for a status conference with the court.
37. When you leave a message for an attorney, tell the receptionist why you are calling and that way you are more likely to get a timely return call.
38. Always be available to help other attorneys.
39. Send your associates to watch good and bad lawyers. There are lessons to be learned from both.
40. Explain the process of dealing with difficult attorneys.

41. Participate in Bar Association activities. Socialize. Get to know the other attorneys. That will give you a basis upon which to deal with the other attorney beyond that of just being an adversary.
42. Put the kindergarten rules aside.
43. Know your opposing counsel and the court. Do all that you can do to find out about them.
44. Know all that you can know about your case. Know the details. Always turn arguments to the facts. Listen to what the other side says about their case. That gives you clues on where they are going. Be willing to re-configure your own roadmap and case.
45. Just listen. They will tell you their entire case.
46. Gently turn down cases if there is a bad attorney on the other side. If you cannot get along with the other attorney, you cannot effectively represent the client.
47. Be sensitive to the fact that the attorney or the judge may be re-living his/her her own divorce.

II. **LAWYER'S OATH:** When you are considering mailing a harsh letter, or having an unpleasant discussion with opposing counsel, read the following Lawyer's Oath first.

I do solemnly swear (or affirm) that:

I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect and defend the Constitution of this State and of the United States;

I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them;

To my clients, I pledge faithfulness, competence, diligence, good judgment and prompt communication;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will not pursue or maintain any suit or proceeding which appears to me to be unjust nor maintain any defenses except those I believe to be

honestly debatable under the law of the land, but this obligation shall not prevent me from defending a person charged with a crime;

I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge or jury by a false statement of fact or law;

I will respect and preserve inviolate the confidences of my clients, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

I will maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice;

[So help me God.]

- III. **BOUNDS OF ADVOCACY:** If you still feel compelled to send a “nasty-gram”, read the AAML Bounds of Advocacy.