

MASSACHUSETTS Lawyers Weekly



TUESDAY, NOVEMBER 17, 2020
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Managing legal teams through good conflict

By: Eliane S. Markoff and Gary M. Markoff November 5, 2020



This article is in recognition of Ombuds Day, declared by the International Ombuds Association and the American Bar Association and celebrated on the second Thursday of each October (Oct. 8 this year). Ombuds Day recognizes a centuries-old yet little known and underutilized profession. This year's theme is "Ombuds: Unusual name. Important service."

Juxtaposing the words "good" and "conflict" seems odd, but allow us to explain.

Conflict is inevitable, particularly in the workplace where people have different ideas, goals, standards, aspirations and, yes, clashing personalities. Whether intentional or not, we annoy. If unintentional, we often lack the self-awareness to know how our words or deeds impact others.

Conflict, therefore, has the potential to be disruptive and even destructive. It can easily de-motivate, negatively impact the work environment, and result in low morale and a toxic environment, all quite unwelcome outcomes.

JeffreyNewmanLaw
www.jeffreynewmanlaw.com
 T: 617-823-3217 • F: 781-639-8688
Jeffrey.Newman@jeffreynewmanlaw.com
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This article focuses on how to manage conflict in a team setting and provides practical steps to increase the chance of benefitting from conflict.

The word "conflict" originates from the Latin "conflictus," which means to come together to contend, strike or battle. Before the potential combatants draw swords, however, they must first come together.

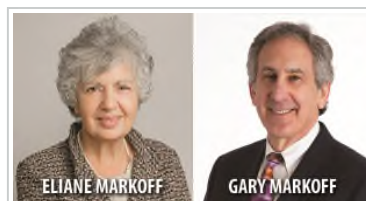


That gives them the opportunity to listen to each other first, if there is the will. If both parties keep an open mind and respect the other's views, the "battle" can be avoided. One may say that is what courts are for, but that is often too expensive, painful and unnecessary.

Conflict can be internal or external. Internal conflict can lead to cognitive dissonance when one's actions do not align with one's values and beliefs. One may support gun control laws but finds herself working for a manufacturer of gun parts sold to manufacturers of guns. Despite her deeply held personal beliefs, she may try to justify her work because she needs the money; it's the only work available to her hometown; or the job is close to her parents' house allowing for more family visits.



Teams can prepare for conflict by brainstorming.



But these rationalizations mask the conflict within that will remain with her until she either leaves her job or changes her values and beliefs. The former is more likely.

An external conflict involves more than one individual and usually takes the form of a disagreement. It could be a disagreement over a specific issue, objective, goal or a plan to best accomplish a task. The individuals may agree on the end result sought but disagree on the strategy and steps needed to achieve that result. This is often referred to as a substantive conflict.

If a conflict is not substantive (i.e., does not point to a specific task or goal), it is most likely an emotional one. An emotional conflict often involves incompatible personalities or behavior. We find someone's perfume objectionable, or we do not appreciate someone chewing gum while speaking, or, without realizing it, we feel jealous of or intimidated by a colleague.

External conflicts can arise when team members collaborate to complete a project requiring contributions from several individuals. Lawyers often find themselves in teams working on a complex piece of litigation or a transaction with many moving parts. Let's consider two scenarios of lawyers working on client matters together in teams.

Scenario 1

A litigation team meets at the start of an engagement. Each member is delegated a task or area of law to research. The team meets on a regular basis to share progress and results.

One member, an outspoken partner, volunteers that the strategy of the case being pursued is all wrong. The partner in charge shuts down the dissent and directs everyone to stay the course.

Work progresses, but the dissenting partner can't let it go. At the next team meeting, he reiterates his concerns, only this time with more vigor and again in front of the other members.

The lead partner with primary responsibility for the client, visibly annoyed, sees her authority challenged. She asks to see her partner after the meeting. They meet. Here's what the "fly on the wall" reports:

The lead partner pulls rank and tells her partner that she didn't appreciate his judgment to challenge her authority in front of the other team members. She lays down the law — her law. It's "her way or the highway." Her partner threatens to take the highway with his clients in tow.

This kind of conflict can escalate beyond repair to the detriment of both firm and client.

The lead partner could avoid escalation by leaving her ego at the door and listening intently to her partner's concerns. She also has a legitimate concern. Her partner could have been more discreet and expressed his views outside the team meeting. He, nevertheless, may have a valid point, but his message is obscured by his manner of delivery.



Scenario 2

A corporate team meets on an M&A transaction. A new team member joins the team and does not like what he sees. To avoid conflict he stays silent, but with each meeting he becomes more and more annoyed by a couple of the team members who continually come late. And when they occasionally look up from their iPhones, they interrupt other members, dismissing their comments, or worse, denigrating their views.

But an unwillingness to address bad behavior only makes the new team member more annoyed, even angry, risking an escalation to more serious conflict that could and should be avoided.

Here are some suggestions to manage the conflicts raised by the scenarios above:

A. Scenario 1. The behavior of partners makes unlikely their ability to reach resolution on their own. More discretion, willingness to be open-minded, and a showing of mutual respect would have gone a long way to resolution. If they are unable to reach consensus, the partners could seek a senior and neutral partner to hear them out and assist them with finding a resolution without prejudicing the client. This format could be institutionalized in the firm to resolve similar conflicts in the future. A seasoned lawyer respected by her partners can assume the ombuds role to help her colleagues resolve conflict that they are unable to resolve on their own. This position can be rotated among the partners every few years.

B. Scenario 2. Bad behavior needs to be addressed early to avoid more conflict down the road. The team member needs to speak with the team leader in private to urge him to insist on better decorum during meetings. To avoid future problems, rules and expectations for the team need to be clearly and unambiguously established upfront.

Teams can prepare for conflict by brainstorming. Coming together as a team to identify possible conflicts builds trust and encourages collaboration, thereby increasing the probability of a successful outcome when a real conflict occurs.

Brainstorming is effective because it can be done without the inevitable intrusion of emotion and ego, which often arise with real conflict. This exercise also allows team members to incorporate and confront their own past experiences, personal fears, or insecurities including past mistakes.

A team member, for example, may describe how being ignored during meetings in the past impacted his motivation and self-confidence.

Or, a team member could complain that she was never given constructive feedback. Although constructive feedback may not always be appreciated because it can be obscured by an unwelcomed tone, the message may resonate later in life.

Here are some practical steps to manage and resolve conflict, particularly in team settings.

The conversation

- Start the conversation "early." Learn to recognize and not ignore the early stage of a conflict.
- Meet in person.
- Place your ego aside and focus on what you need to achieve.
- Listen and acknowledge what you hear, and allow the other person to express his or her concerns without interrupting.
- Explain how the conflict is affecting you and your ability to achieve your goals. Use the word "I" and not "you."

Getting in the right mindset

- Articulate what you would like to see happen.
- Focus on the relationship and your common goals.
- Put yourself in the other person's shoes.

Working toward a resolution

- Make suggestions on ways to work toward a resolution.



- Ask the other party to suggest ways to come to a resolution.
- Focus on how a resolution can benefit both parties.
- Be positive and envision a resolution.
- Keep an open mind and look at other creative possibilities.

Tips to remember

- Beware of assumptions; they may be wrong.
- Be willing to apologize.
- Be willing to forgive.
- Be willing to accept change.
- Be willing to let go.

Conflict is not an option. It exists both personally and professionally. When addressed and handled properly in a timely fashion, it can accrue several benefits for the firm, its lawyers and staff: better appreciation and understanding of one another, mutual respect, promotion of better ideas, greater personal satisfaction, higher productivity, and an increased probability of success.

Eliane S. Markoff is the university ombuds at Bentley University in Waltham. She can be contacted at emarkoff@bentley.edu. Gary M. Markoff is a senior partner and former managing partner at Sherin & Lodgen in Boston. He can be contacted at gmarkoff@sherin.com.

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