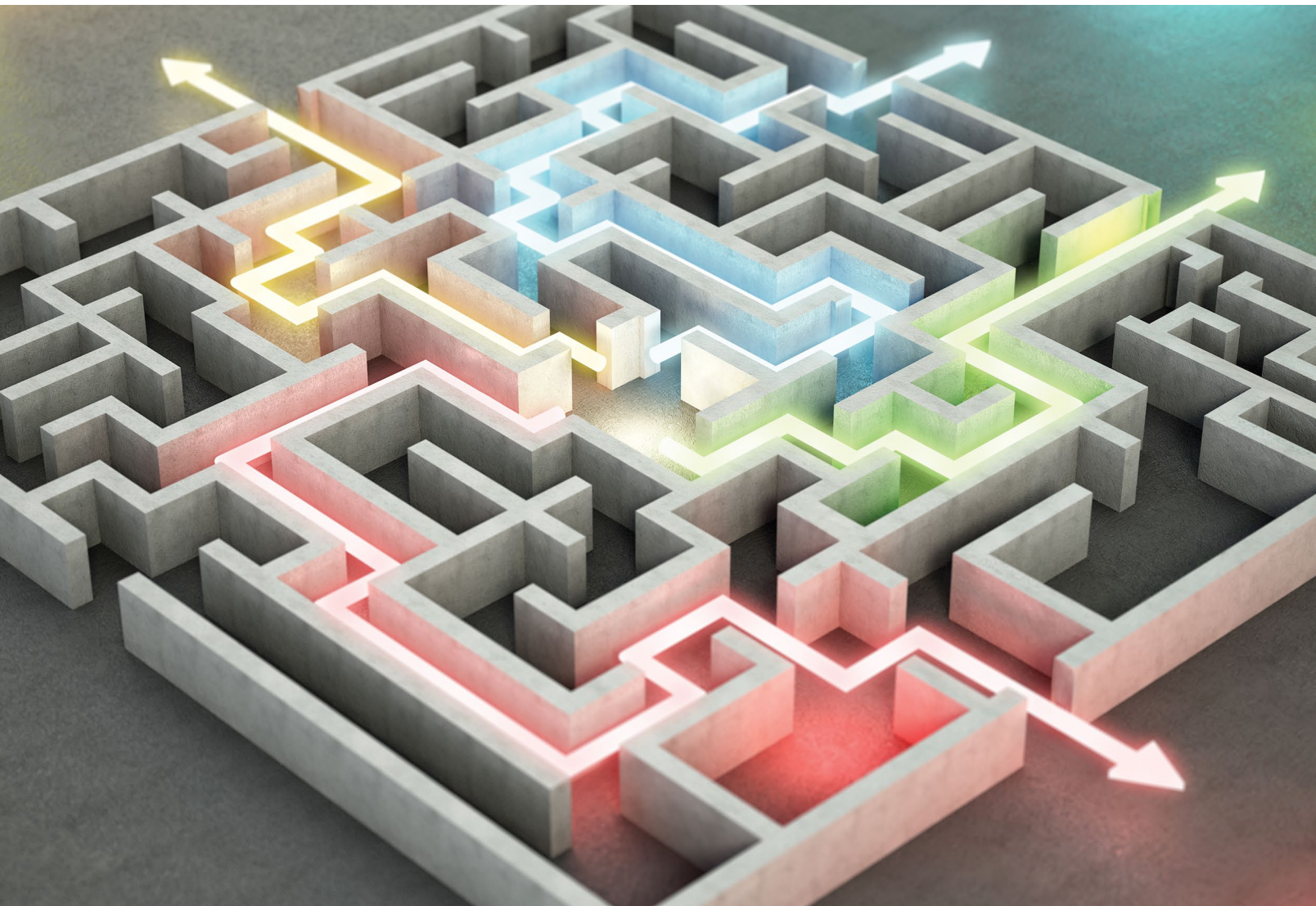


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Dealing with Difficult Situations

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Navigating the Difficult Personalities You Will Encounter in Your Legal Career

By Alice F. Douglas, Esquire, and Nicole R. Moshang, Esquire

It's the not so pleasant part of practicing law: dealing with difficult people and situations. Our goal in this article is to offer practical advice to attorneys on how best to navigate these difficult encounters, with examples of what has worked or not worked for others. To expand the scope of experiences and practical solutions beyond our own individual experiences, we created a survey to gather responses from a variety of practicing attorneys, asking them to provide responses to a handful of questions designed to target these objectives. Summaries of the responses are set forth below.

Respondents represent an equal number of women and men, who reported that they had anywhere from less than a year through 60 years of experience in various areas of the legal profession, including private and public practice. After obtaining that preliminary information, we provided our definition for the word "difficult" and asked whether the respondents had ever encountered opposing counsel, coworkers, clients, or judges who exhibited that behavior. The majority of respondents—ranging between 75 to 90%—indicated they had encounters with difficult opposing counsel, coworkers, and clients. Only about half of the respondents indicated they had faced difficult judges.

We then asked a series of qualitative questions, including how those encounters unfolded and whether any advice or mentorship they received

helped to inform how they dealt with those situations. We also asked the respondents to share any tips or tricks they could offer for dealing with difficult people and situations that they learned from firsthand experience.

The respondents focused heavily on irrational, rude, and intentionally provocative behavior exhibited by opposing counsel. Several respondents (mostly female, but not exclusively) shared experiences from early in their careers in which more senior male opposing counsel had been incredibly demeaning, patronizing, or intimidating to them during a deposition—so much so for one respondent that this encounter dissuaded her from pursuing a career in litigation.

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Another respondent recalled being identified as the court reporter when appearing with her client for a deposition to a room full of male attorneys. While she was taken aback by the assumption, she felt the best course was to share the experience with her male colleagues in hopes of breaking down outdated assumptions.

The respondents emphasized the importance of always remaining professional and courteous and avoiding tit-for-tat responses. Many felt that opposing counsels' poor behavior is more of a reflection of their own shortcomings and typically subsides when met with a calm and rational response—and even if it persists, it tends to backfire and impede their client's objectives.

With respect to difficult coworkers, respondents primarily indicated they had negative experiences while working with more senior attorneys. Respondents felt that they did not always receive the respect they deserved and that they sometimes received feedback that was not particularly constructive.

Respondents indicated that they often felt less comfortable addressing their issues with difficult coworkers than with difficult opposing counsel—due to the greater frequency of interaction and various workplace politics at play—causing respondents to avoid these conversations. Respondents sometimes took this avoidance to the extreme, by deciding to change jobs or to simply wait for a difficult coworker to retire. Other respondents emphasized the importance of learning to take criticism less personally, and scheduling time to meet with more senior or managing attorneys after taking time to process their feedback.

On the issue of difficult clients, respondents focused on clients' refusal to listen or accept their recommendations and contacting them at unreasonable times or by inappropriate methods. Respondents' suggestions for handling difficult clients included establishing realistic expectations and setting firm boundaries early on and revisiting or remaining firm on those initial standards as often as needed.

While several respondents emphasized the importance of building a relationship with clients to develop trust and respect, they were also concerned with the ethical challenges that can arise by getting too close with the client—particularly for less-experienced attorneys who may struggle with telling the client “no.” Respondents encouraged

younger attorneys in this position to seek the advice or “backing” of more experienced attorneys.

Lastly, respondents relayed their experiences with difficult judges who did not respect their schedules, had unreasonable demands, or were biased against the attorney, client, or legal theories in the case. Respondents suggested conferring with other attorneys before appearing before a new judge to learn and adapt to that judge's idiosyncrasies. Given the deference that attorneys are wise to afford the bench, respondents encouraged remaining calm, and even silent, in the face of criticism from a judge. They also emphasized the importance of preserving issues for appeal no matter how much consternation it may cause.

Respondents generally emphasized remaining calm and focused on the client's ultimate goals, no matter how poorly the opposing counsel, coworker, client, or judge is acting. Attempting to see the world through the other individual's perspective and finding opportunities for mutual benefit is often more productive than trying to get even with a bad actor. Building relationships with these individuals can also help reveal areas of common ground and establish rapport for future dealings.

Additionally, it is important to know the matter and the relevant law inside and out, particularly as a newer attorney with less experience. This preparation shields less-experienced attorneys from intimidation techniques and allows the matter to move forward efficiently, particularly when each side has a clear understanding of which issues can be compromised and which cannot.

If all else fails, respondents encouraged practitioners to make a record of poor behavior, either contemporaneously on the record or later in writing.

Finally, respondents emphasized the importance of finding a mentor who can offer guidance from their own prior experience and engaging in personal development through self-reflection, networking, and coursework on negotiation techniques and personality styles. ♦

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