



PROGRAM MATERIALS

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Dealing with Difficult People: Mindfulness Strategies for Lawyers

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5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
Phone 561-241-1919

Dealing with Difficult People: Mindfulness and Compassion Strategies for Lawyers

Claire E. Parsons
Attorney, mindfulness and
compassion teacher,
blogger, and author

Meet Claire

- Of Counsel Bricker Graydon Wyatt LLP in the Cincinnati area
- Practice areas: Civil litigation, school law, and employment law
- Active community leader
- Frequent speaker and author
- Meditation, yoga, & compassion teacher and founder of Brilliant Legal Mind blog
- Author of 2 books – and a 3rd on the way!



Overview

- The problem of difficult behavior in law practice
- Ten tips to help you take care of yourself in response to challenging behavior from opposing counsel
- Resources
- Q & A

Common Difficult Behaviors Lawyers Experience

- Have you experienced any of these in your law practice?

Rudeness

Criticism/shame/judgment

Intentional obstruction

Creating extra work

Unnecessary disputes and conflict

Personal attacks

Microaggressions

Trickery or deceit

Impact on Attorney Mental Health

In 2024, 48% of all lawyers reported feeling burned out.

Between 29% and 56% of lawyers reported disrupted sleep, anxiety, low energy or concentration and moods, physical health issues and depression.

- Source: Bloomberg Law 2024 Attorney Well-Being Report

Difficult behaviors that many lawyers often encounter share similarities to workplace bullying tactics which are correlated to worsened mental health over time.

The Problems Difficult Behaviors Create for Lawyers



- Stress, frustration, exhaustion and overwhelm for lawyers, support staff, and clients
- Waste of time and money for clients
- Impede effective management of risk or resolution of disputes
- Can cause lawyers anxiety about doing the right thing
- Can sometimes cause or contribute to more problematic behavior

Tip # 1 – Know When Enough Is Enough



Model Rule 8.3(a)

(a) A lawyer who **knows** that another lawyer has committed a violation of the Rules of Professional Conduct that **raises a substantial question as to that lawyer's honesty, trustworthiness or fitness** as a lawyer in other respects, shall inform the appropriate professional authority.



Sanctions

Rule 11

Rule 37

Other rules specific to your practice area

Don't Make These Decisions Alone

- Separate strategic necessity from emotion
 - See Model Rule 3.1: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”
 - Ethics counsel or hotlines or a trusted colleague may support you in determining if reporting another attorney is necessary.
- Involve clients in sanctions decisions
 - Be mindful of the requirement under Model Rule 1.2(a) “abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.”

Tip # 2 – Know Your Role

- Difficult behavior from opposing counsel is hard because it often blocks or is intended to disrupt our efforts to help our clients.
- In situations like these, even the simplest thing becomes a battle.
- This can create anger, frustration, and over time lead to feelings of overwhelm or a sense of futility.



You Can't Control What Your Opponent Does

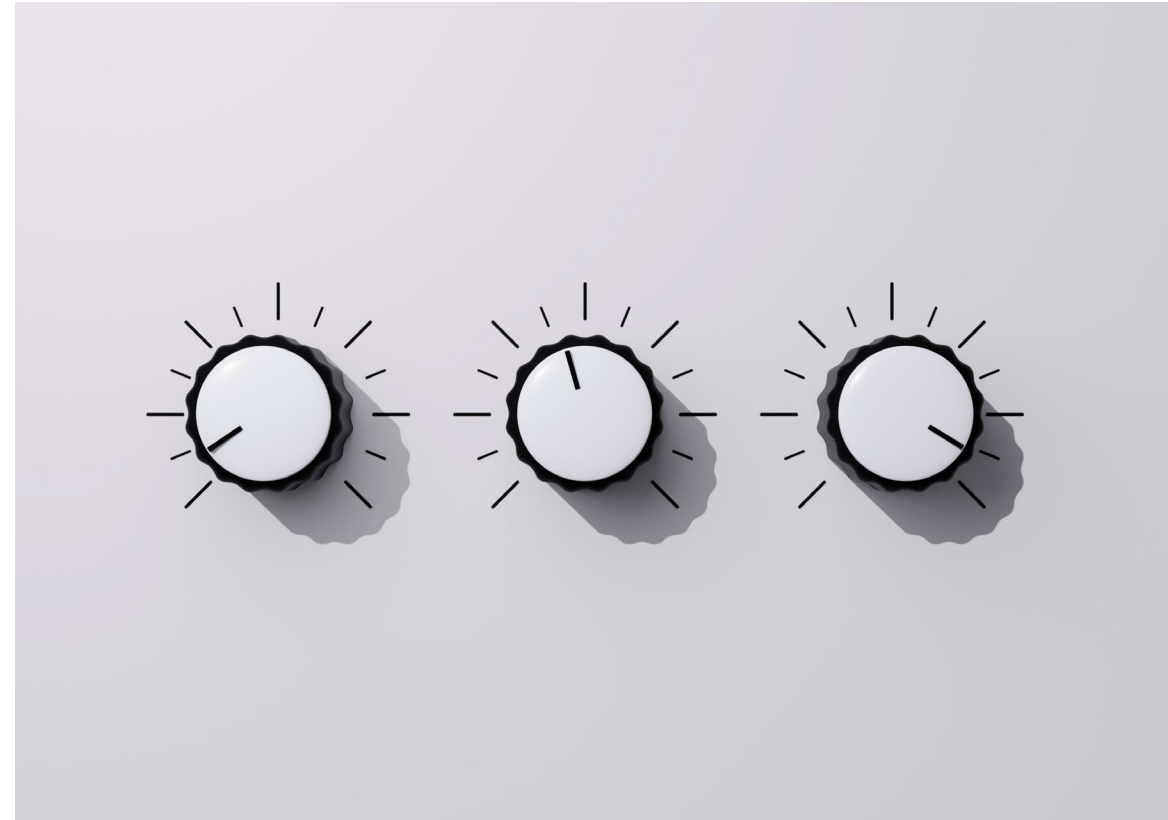
Lawyers manage risk. We usually can't eliminate it entirely.

- It is not your job to win. Your ethical duties are instead to “act with reasonable diligence and promptness in representing a client.” Model Rule 1.3.
- [1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client.

Focusing on What You Can Control

Restores Agency and Balances Your Outlook

- How you counsel and communicate with your client
- Documenting behavior
- Crafting a strategy and sticking to it
- Making requests and explaining consequences
- How you behave
- How you choose to live your values
 - What matters most?
 - What will you remember most?
 - What will make you most proud?



Tip # 3 – Document Bad Behavior

- This is good practice and good for you.
- Under Model Rule 3.4, lawyers have the obligation not to take actions which are frivolous, dilatory, or in violation of court orders.
- Judges and other adjudicators do not often want to hear about disputes between lawyers. They expect legal counsel to work together.
- In many situations, you may have a stated or unstated expectation to meet and confer to resolve a dispute.
 - Examples: Federal Rules 26 and 37



Ways to Document Bad Behavior

Email communications

- Memorializing phone conversations in a follow up email
- Using a memo to file to document discussions or interactions
- Sending letters to document notice of obligations or expectations

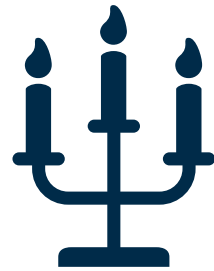
Recording meetings, phone calls, or depositions

- Note: Recording of other people should happen with knowledge and consent.
- In two-party consent states, recording without permission may be criminal.
- Even if legal, surreptitious recording has been considered an ethical violation of Rule 8.4(c) which requires attorneys to avoid deceitful conduct.

Tip # 4 – Be Vigilant Against Shame & Blame

- Model Rule 3.1 “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”
- Shame trigger: a comment made to induce shame in someone else, usually done for the purpose of manipulation.
- Blame: a tactic to displace responsibility or assert control where it is lacking
- Examples:
 - “I will settle for an attorney fee award for the same amount paid for your losing defense.”
 - “If you had answered our discovery in a timely manner, I would have been able to request depositions sooner.”
 - “I couldn’t comply with my pre-trial disclosure obligations because opposing counsel failed to comply with their Rule 26 obligations.”
 - “We would have settled this matter already if your communication had been clear and consistent.”

Why People Try to Shame Others



Shame is powerful and pervasive.



Studies show that shame can lead people to:

Doubt themselves

Go on the defensive

Feel bad about themselves or their performance

Feel defeated or withdrawn

Lead to overwork or perfectionism

How to See Through Shame & Blame



PEOPLE WHO USE SHAME AND BLAME ARE OFTEN COMING FROM A POSITION OF WEAKNESS.



THEY DO NOT HAVE A LEGITIMATE RIGHT TO DEMAND SOMETHING, SO THEY ATTEMPT TO USE YOUR EMOTIONS AGAINST YOU.



TAKE A PAUSE, LET THE EMOTIONS RUN THEIR COURSE, REGROUP AND EVALUATE YOUR RESPONSE WITH A COOL HEAD.

When You May Need to Respond to Shame or Blame

- If the shaming comment constitutes harassment in violation of ethical duties, a response may be warranted.
 - See 8.4(g) and comment 3: “Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others.”
- If the lack of an answer could affect client interests, a response may be needed.
- You may also respond to explicitly note a redirection, make it clear that the behavior did not work, or to document the discussion or behavior.

Tip # 5 – Don't Be an Emotional Sponge



Some people bully others with their emotions.



This can include yelling, outbursts, physical intimidation, or even personal attacks.



Empathy can mean we are affected by these emotions even if we do not share or approve of the way they are being manifested.

Beware of HALTING

Taking care of basic human needs is a protective measure for emotional overwhelm when dealing with difficult people and situations.

Hungry



Angry



Lonely



Tired



Take Regular Pauses to Check in With Yourself

- Stop
- Notice how you feel
 - Body sweep technique
- Notice what is happening in your environment
- Identify what you need next to better support yourself

Eyes / brow

Jaw

Neck/shoulders

Chest / belly

Hips

Hands

Coping in the Moment

- One way to cope with overwhelming emotions is to shift attention.
- Emotions often arise in the body (usually the belly, chest, neck, face, and hands), so shifting to a less reactive place such as the feet can help.
- Another strategy is called “titration” where you alternate attention between the reactive place (i.e. your belly) and the something calming and supportive.



Tip # 6 – Be Effectively Assertive

When dealing with difficult people, it helps to pay extra attention to your own language.

- Model Rule 1.3, Comment 3: “The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.”

Nonviolent communication strategies can help avoid this:

- Make an observation.
- Express and address relevant needs.
- Make a clear and specific request.

Nonviolent Communication in Practice – Example 1

Observation:

- “I see that you have asked to add an agenda item to the meeting, and you are suggesting that my client’s refusal to do so violates your client’s rights.”

Needs and Interests:

- “I have explained to you the practical impediments to conducting the meeting in the manner you have proposed but have suggested that we meet at a different time to allow for full discussion of the items you mentioned.”

Request:

- “I ask that you please focus on the relevant agenda items for our first meeting and provide alternative dates for an additional meeting.”

Nonviolent Communication in Practice - Example 2

Observation:

- “You are interrupting me. This is the third time you have interrupted me during this meeting.”

Needs and Interests:

- “It is not possible for us to communicate well if we interrupt each other.”

Request:

- “Please allow me to finish before raising your points and I will try to do the same for you.”

Nonviolent Communication in Practice - Example 3



Observation:

“You have commented on my age to indicate a lack of experience in this matter more than one time.”



Needs and Interests:

“It is distracting and upsetting to me that you are focusing on my personal characteristics instead of issues in the case.”



Request:

“I ask you to stop commenting on my age or I will end the call and finish this discussion with your co-counsel.”

Tip # 7 – Remember Everyone Is Human

- Under Model Rule 1.3, we have an obligation to treat “all persons involved with the legal process with courtesy and respect.”
- In litigation matters, Model Rule 3.4 requires us all to avoid “abusive or obstreperous conduct.”
- How do we do this when an opposing counsel or party makes professionalism very hard?

You Are the First Beneficiary of Compassion



When we show kindness to someone else, we are the first beneficiaries.



Kindness and compassion feel better than antagonism and dislike.



Kindness and compassion also help us behave in a calmer and more composed way even in stressful situations.

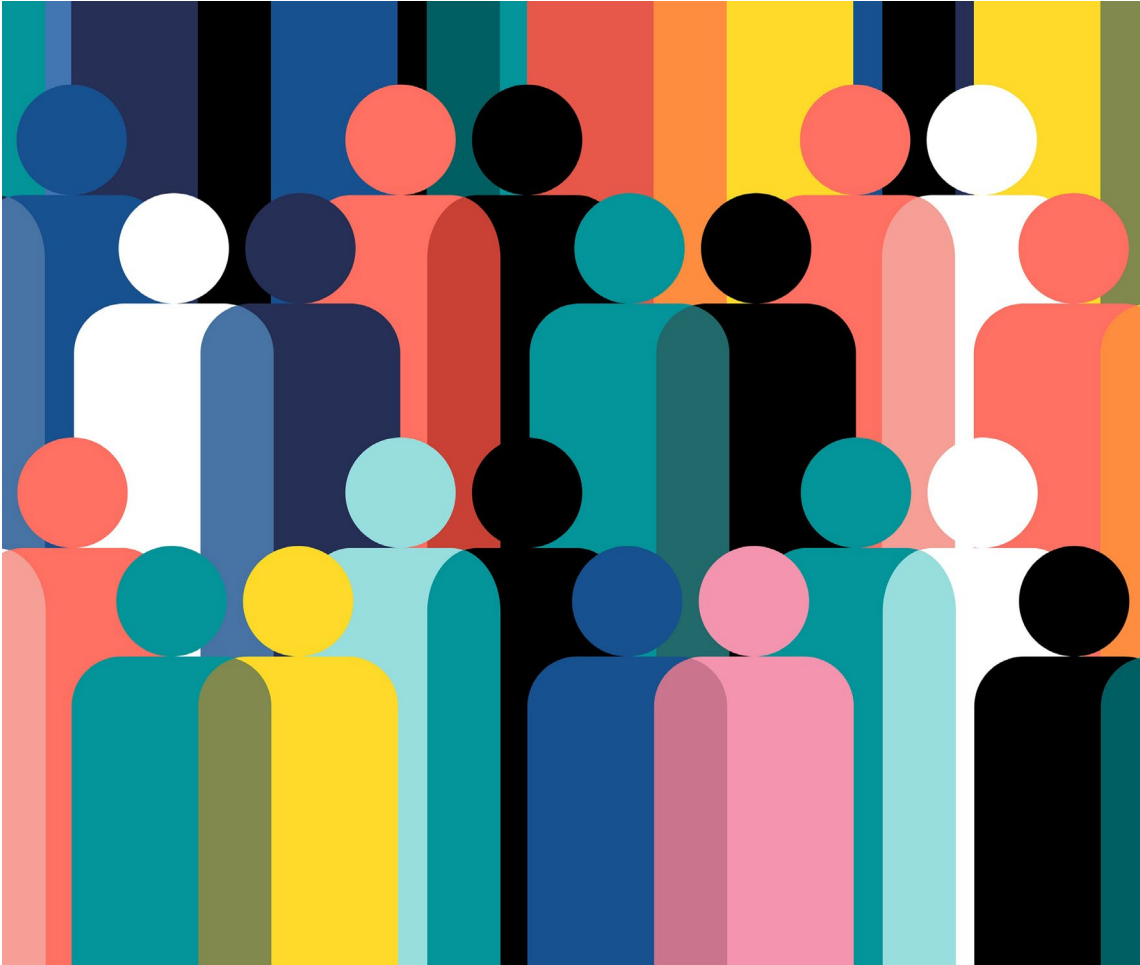


You don't practice compassion for difficult people for them.



You practice it for you first.

Compassion for “Difficult” People



“Just like me”

- How is this difficult person just like you?
- What do you have in common?

Loving-kindness for difficult people

- Sending kindness to someone else is not the same thing as condoning their conduct.
- This is a gradual practice that may take time to learn.

Tip # 8 – Have a Place of Refuge



Comment 2 to Model Rule 1.3 – “A lawyer's work load must be controlled so that each matter can be handled competently.”



Difficult opposing counsel and cases can consume your mind, life, and waking hours if you let them.



Having a space of refuge, away from the case, is essential for managing challenging matters long-term.

What Refuge Looks Like



Someone you can trust with your feelings.

- Social support is the #1 thing you can do to manage stress.
- Colleagues can provide peace of mind and perspective.

Activities you enjoy

- Physical activity
- Getting outside
- Creative pursuits

A way to rest and recharge.

- Beware of technology
- Be aware of mind wandering

Tip # 9 – Remember that This Is Hard

- How often do you consider all the things you manage in your life and work?
- Your job is hard enough.
- When you add problematic conduct to it, life becomes even harder.
- You are a human being, and you may not handle every situation perfectly.

Self-Compassion When You Lose Your Cool



Mindfulness

Take honest stock of your feelings.



Common Humanity

Remember that your job is hard and was made even harder by the situation.

Remember that all people can lose their cool in challenging times.



Self-Kindness

What will help you recover?

What will help you get back on track?

What will help you let go and move forward?

Self-Compassion Is a Strength

Self-compassion is positively correlated with better relationships, mental and physical health, grit (not giving up), and attainment of goals.

It is negatively correlated with unhealthy stress, rumination, anger, and relationship problems.

You can review a multitude of studies which demonstrate these benefits on self-compassion.org.

Tip # 10 – Don't Let the Bad Behavior Win

- If problematic conduct works, you can guarantee that it will continue.
- One way to deal with a difficult opposing counsel or party's behaviors is to not let it throw you off course.
- Sometimes ignoring and proceeding with your plan is the best move.
- Sometimes the energy generated by a difficult person's behavior may motivate you to focus more, fight a little harder, or even win.



Celebrating the Victory

- *For more on this, read Rick Hanson Hardwiring Happiness.*

Notice and define

- Notice and define the victory.
 - This can be a legal victory, a practical one for the client, or a personal one for you.

Savor

- Savor the positive experience for at least 20-30 seconds.
 - Identify the sensations and name what you are feeling.

Allow

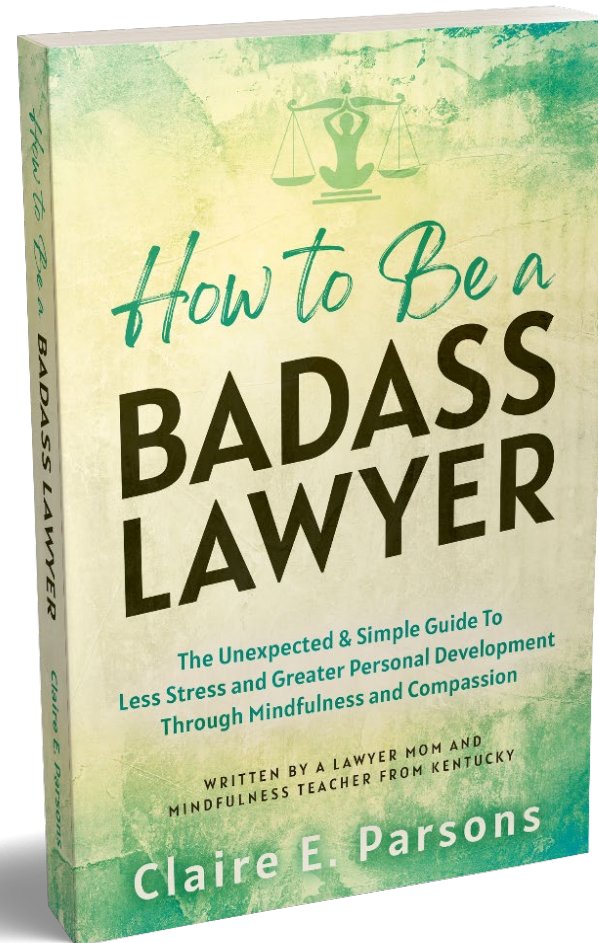
- Allow the positive feelings to expand in your body and permeate it.

Imagine

- Optional: imagine this healing (even if in part) the difficulty you faced in managing the matter.
 - Make a connection between the difficulty and the victory.

Want more on mindfulness or meditation?

- Book on Amazon or other online booksellers
- brilliantlegalmind.com
 - Follow on LinkedIn



Questions?

Please reach out.

- Mindfulness in Law Society virtual sittings and other events
- Email: cparsons@bricker.com
- LinkedIn: @Claire E. Parsons
 - Connect or follow
 - Send me a message

Thank You



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Wyatt**