Chicago Daily Law Bulletin®

Volume 162, No. 247 Serving Chicago's legal community for 161 years

Soft skills still irreplaceable even as law goes high-tech

Possessing soft skills has always been an advantage in the practice of law. Lawyers who are socially proficient tend to connect easily with clients and garner respect from their peers. They are skilled at dealing with difficult people and may even have a better chance at predicting what will appeal to a particular judge or jury.

As emerging technologies such as artificial intelligence continue to automate many tasks previously done by lawyers — ranging from document review to analyzing contract clauses — and as texting, e-mail and social media are taking their toll on interpersonal communication skills, soft skills are becoming even more essential.

According to a survey of 24,000 lawyers on the most desirable characteristics needed in recent graduates by the Institute for Advancement of the American Legal System, "Foundations for Practice: The Whole Lawyer and Character Quotient" (bit.ly/2h7AXc5), soft skills are already increasingly sought after.

The study found that qualities such as listening respectfully, having a strong work ethic and treating others with courtesy were ranked urgent to a greater degree than many legal skills.

In addition, advances in neuroscience, behavioral economics and cognitive psychology demonstrate that lawyers can be much more effective if they have some notion of how the human brain makes decisions and behave accordingly.

In thinking about cases I have mediated in the context of soft skills, I came up with a few examples of soft skills that translate into "Mediation Don'ts".

Emotional Intelligence (Don't forget the decision maker is the person across the table)

In one employment discrimination mediation, the employer's lawyer quite aggressively kept trying to attack the plaintiff's discrimination allegations when it was clear that the main outcome she was looking for was an acknowledgement that her murdered son's donated organs had helped several different people.

She described how painful it was to have her co-workers express disbelief on this issue when it was the only positive thing she could cling to relating to his death.

A lawyer with more emotional intelligence would have taken the time to listen to the employee, let her know that the employer's representative believed the organ donations had occurred and acknowledged how difficult all of this must have been for her.

Coaching the employer's representative to do this would have been even more emotionally intelligent advocacy. The organ donations had little relation to the legal claim, and given the confidential setting of mediation, such acknowledgements would not have hurt the defense case.

Social intuition and relationship building skills (Don't be in permanent warrior mode)

A lawyer I admire made some really lame jokes at the beginning of a mediation, which helped to forge connections among everyone in the room. In this particular mediation he appeared willing to endure some groans just to create an atmosphere where people could connect. He then switched to his serious mode and, as he is a very talented lawyer, got his points across.

The beauty of his approach is that after having laughed with him, his negotiation partners tend to behave more professionally. His approach has not hurt his ability to generate business and everyone involved is spared the annoyance of someone trying to impress clients through over the top aggressiveness.

Optimizing the ability of another person to consider contrary or new information (Don't just argue at people if you want them to hear you)

This one is for everyone in our entire nation, not just lawyers in mediations. In my experience, people who are already angry with each other (and who may be represented by lawyers who have come to detest one another), have a hard time hearing the opposing side's arguments.

These days, with logical arguments and actual facts seeming to matter less and less in the national culture, the ability to communicate so that your negotiating partner will actually pay attention and take in what you are trying to get across is more important than ever.

One example of a technique to optimize the ability of your negotiation counterpart to hear you is active listening, which involves listening respectfully and then attempting to summarize back to the speaker what one is hearing. You can also surprise your negotiating partner by acknowledging some part of their case or some weakness in your own case at the first opportunity — or say something positive about the client or lawyer.

Nonverbal communication competence (Don't ignore body language, facial expressions and physical settings)

Once, in order to make things more convenient for parties who needed to resolve a co-worker dispute on a near-emergency basis, I agreed to go to their location.

In many situations this is a reasonable way to proceed and can be quite helpful to the parties either because of the need for a neutral location, age, disability or some other factor.

Someone, however, decided to put us in a building that apparently had the heat turned down. As it was sunny and there were large windows, we soldiered on and went on mediating with our coats on. We resolved the matter, but I had a niggling feeling as I left that the co-workers might still have hard feelings.

Knowing what I know now about the research on "embodied cognition," such as the experiments by Lawrence Williams of the University of Colorado and John A. Bargh of Yale University showing that someone in a negotiation holding a cold drink will rate someone they are negotiating with as "colder" than they would while holding a warm drink, I would not let this happen again.

Interest-based negotiation skills (Don't bargain over positions)

In a recent matter I observed a lawyer become flummoxed because the company had never previously agreed to waive a certain provision in a widely used contract. Confidentially waiving the provision in the circumstances of the case was not likely to hurt the client's interests in any way, and the settlement was otherwise extremely beneficial, but the lawyer struggled to overcome the fact that it had not happened before — whether or not it was in the company's interest did not seem to enter into the equation.

It has been more than 35 years since the landmark negotiation book "Getting to Yes: Negotiating Agreement Without Giving In" by Roger Fisher and William Ury of the Harvard Project on Negotiation was published, and books, articles and business and law school courses on negotiation have proliferated since.

The ability to do more than positional bargaining should by now be considered a basic soft skill for lawyers.

BEYOND DISPUTE

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