



## RESOLUTION IS EVERYTHING

BY LAURA GRANIER, YOUNG LAWYERS CHAIR

*“Whatever your core area of practice is, resolution should be part of your thought process in everyday practice.”*

When I was graduating from law school, word on the street was that the future was in Alternative Dispute Resolution and litigation as a practice was coming to an end – too expensive and too time consuming for most clients. Well, many years later, litigation is alive and well (thankfully for us lawyers) but, more times than not, litigation ends in settlement rather than a trial on the merits. Indeed, some statistics report that only 3 percent of all civil cases actually go to trial. Justice Warren Burger characterized traditional litigation as a “mistake that must be corrected.” Of course, for some disputes, trial will be the only means, but, in the words of Burger, “for many claims, trials by adversarial contest must in time go the way of an ancient trial by battle and blood. Our system is too costly, too painful, too destructive, too inefficient for a truly civilized people.”

I think the very practical take-home message is that whatever your core area of practice is, resolution should be part of your thought process in everyday practice. Our purpose is to serve our clients’ interests the best we can. In doing so, we must identify the client’s objective and give them our most critical and thorough evaluation of their case and the “cold hard truth” – good and bad – along with an estimate of time and cost for them to reach the result. Even with the best facts there is always some factor of unpredictability in the outcome when you put the decision in the hands of others. It is important

that the client understands how the process will work, as well as the risks, the costs and the potential outcomes.

Keep your eye on the objective and focus your research and work on finding solutions. As a new lawyer, fresh out of law school, I was eager to spot issues and find cases and, as appropriate, creatively apply the law to questions of first impression. I never will forget the invaluable lesson in hearing that my memorandum that was well-researched and included a thorough analysis raised more questions than it did answers. The lesson, of course, was to focus on answers and advice for the client rather than just raising and analyzing their legal issues. Law school teaches us to think like lawyers but may not always focus us on serving as counselors to our clients, which requires working through problems and finding solutions.

It is a big responsibility we take on when we offer to serve as lawyers. Clients come to us for answers and advice. They rely on us for their important business and personal decisions and our expertise in something they often have no experience in. Generally, there is more than one possible solution to any given problem – usually it is not a zero-sum game. It is our responsibility to help our clients consider the likely outcome, the various possibilities, and the costs and benefits of going to trial and possible settlement options.



I believe this all ties back to not only our ethical obligations but to our professional responsibility to our clients, to the legal system and to the community. I believe in our system but also think that our system can only be as good as we make it. So, next time you draft an e-mail to opposing counsel, think about the end game and remember that being a zealous advocate for your client includes thoroughly evaluating all options to reach their intended result. Also remember that being an effective and “top-notch” lawyer does not require hostility toward opposing counsel and, in fact, such conduct can often be counter-productive. Your client very likely does not wish to pay you to write scathing letters or engage in unnecessary discovery disputes. Establishing a professional working relationship with opposing counsel will likely help avoid unnecessary and costly discovery disputes and may prove much more conducive to settlement discussions. Finally, while trial may be fun for us lawyers, it usually comes

at high financial and oftentimes substantial personal and emotional costs to our clients. So, at least consider alternative dispute resolution and remember to always keep your eye on the client’s goal posts. **NL**

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