



Romanowski Law Offices

The Progressive Lawyer: How to Improve the Quality of Interviews, Meetings and Settlement Conferences by Learning to Use Advocacy and Inquiry More Effectively

by Curtis J. Romanowski, Esq.

As attorneys, we are trained to be advocates in the process known as “adversarial.” Many of us self-selected into the legal profession partly because our underlying personality and temperament traits are geared toward advocacy. Similarly, lawyers – the good ones – are typically quite inquisitive. Their questioning techniques, however, often take on the tone of cross-examination.

We can all stand to improve the way we practice the non-adversarial, settlement-oriented part of our profession by paying attention to the way we employ the principles of advocacy and inquiry.

Advocacy is stating one’s views. Examples of advocacy include: sharing how you’re feeling; describing what you’re thinking; stating a judgment; pushing for a particular course of action, decision or outcome; and making demands.

Inquiry is asking a genuine question. By asking real questions, information is truly sought. Rhetorical or leading questions are a kind of advocacy in disguise. We’ve all observed journalists and other questioners with not-so-hidden agendas pose inquiries such as, “Isn’t it true that your administration’s domestic fiscal policy has done a disservice to the elderly?” Another loaded style of pseudo question-asking might go something like, “Some people (not me, of course) might say that you handled yourself rather poorly in the first two debates. How would you respond to such criticism?”

In any discussion or conference we are engaged in, we can be high or low on advocacy. The same can be said for inquiry. Regardless of whether our advocacy and inquiry levels are high or low at a given instance, we can come across positively or negatively, depending upon our style, intent and often habit.

For instance, if we are operating from a high advocacy, low inquiry perspective, we come across quite positively if we are truly explaining our point of view. Cramming our viewpoint down the other party’s throat, conversely, is a destructive tendency. It should be mentioned that high advocacy/low inquiry results in one way communication, even if both people are engaged in it. It can be useful for giving information, but doesn’t enhance understanding of diverse perspectives or build commitment to a specific course of action. Advocacy that imposes the proponent’s views on others usually creates either compliance or resistance.

On the other hand, if we are geared up in the inquiry department, but toning down the advocacy, we can conduct meaningful, non-threatening information gathering interviews, or we can find ourselves falling into interrogation mode; a natural tendency for many lawyers. High inquiry/low advocacy results in one way communication in a different sense in that the inquirer refrains from stating his or her views or beliefs. While it can be quite useful for finding out information, it can create difficulties when the inquirer has a hidden agenda, or is really using the questioning process as a device to get the other person to “discover” what the inquirer already thinks is right, or both.

There are certainly times when keeping both advocacy and inquiry levels to minimum is the way to proceed. This is what we’re doing well when we are observing or listening attentively. The flip side in this realm is withdrawal. We’ve all observed this in four-way settlement conferences when a sore topic is being discussed, with one spouse preaching from the soapbox while the other checks out mentally and glazes over. Low inquiry/low advocacy also flows in one direction: Participants watch, but contribute relatively little. This approach is ideally employed when being a tacit observer is useful, but it can create difficulties when participants withhold their views on key issues.

Finally, in the context of energetic sessions when we are high in both advocacy and inquiry departments, mutual learning or appreciation of each other's viewpoints is the objective. High advocacy/high inquiry fosters two way communication and learning. I state my views and I inquire into yours; I invite you to state your views and inquire into mine. We must be careful, particularly in the context of settlement talks, not to over-work the process. When excessive communications generate too much information density, participants become worn-out, irritable and confused or overwhelmed. Positive energy is a great thing, but it's also important to keep dialogues down to a manageable pace. Participants need time for things to sink-in. Managing the pace of high advocacy, high inquiry discussion is also indispensable when taking into account the differences between introverted and extraverted (not a spelling error, but rather the Jungian term) personality types. While extraverts often relish high pace, high energy dialogue, introverts often find them quite distracting, if not frankly annoying.

Balancing advocacy with inquiry is necessary. Taken alone, however, the balancing process is not enough to promote a positive meeting of the minds. In order for this to occur, the quality of advocacy and inquiry is also vital. For example, "That's a really moronic comment. How long did it take you to come up with that one?" is both a statement and a question, but it doesn't encourage negotiated problem solving. Ideally, our use of advocacy should involve providing information to others and explaining exactly how we moved from observing or collecting this information to our view of the situation. Competent use of inquiry entails honestly seeking others' views, probing how they arrived at them, and encouraging them to challenge our perspective. Balancing high quality advocacy with high quality inquiry makes significant breakthroughs possible.

A DOZEN PRACTICE TIPS

If we assume that we are obviously right and that our job is to get others to realize what we already know, we will be unable to promote either agreement on a specific issue or ultimate settlement. Accordingly, we are well advised to:

- 1) Assume from the onset that we may be missing things that others see, and seeing things that others miss. If we begin with this assumption, the result is that we will listen more intelligently and inquire more genuinely without downplaying our own views.
- 2) Assume that others are acting in ways that make sense to them and that they are motivated to act with integrity. (This advice applies, regardless of whether you believe another to be Demon Seed or the reincarnation of Mother Theresa of Calcutta.)
- 3) Attempt to understand what leads to behavior that we find problematic. Are others caught-up in dilemmas? Are we contributing to any problems?
- 4) Help others to understand or appreciate our viewpoints and how we think about them by giving examples of the underlying data we select. Go on to state the meaning that we find in the examples, and explaining the steps in our thinking to others.
- 5) Describe our understanding of the other's reasoning.
- 6) If we notice negative consequences to what others may be doing, identify the consequences without attributing any intent on their part to create those consequences. Distinguish between intent and impact; between motive and outcome.
- 7) When choosing to disclose our emotions, we must endeavor to do so without implying that the other person is primarily responsible for creating our emotional reactions. Remember also Eleanor Roosevelt's observation that no one can make us feel inferior without our permission.
- 8) Find out how others see the situation by asking them to give examples of the information they selected from which they necessarily drew the inferences which lead to their conclusions> Ask them to explain the steps in their thinking.
- 9) Ask for help in finding out what we may be missing by encouraging others to identify possible gaps or errors in our thinking.

10) When we have difficulty with how others are acting, ask them to explain what has prompted them to act as they have done, in a tone that suggests they may have a reasonable answer.

11) Inquire into others' feelings and emotions, but don't ask, "What's your problem?" or "Why do you get so worked up?" Say, instead, "You appear to be sad about something, am I right? Do you feel comfortable talking about it?"

12) Ask for help in exploring whether we are unknowingly contributing to the problem. Quite often, well-intended action on our part is problematic for others.

These tips have been extraordinarily helpful to many, both in their work and private lives. I hope that you will find them helpful.

- CJR

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