



My walk in the shoes of a prospective client (254)

By Kenneth Jones on August 8, 2021

Prospective Client Scorecard

Criteria	Grade	Comments
1. Communication: Methods and Timing		
2. Functional Advice/Ownership of Advice		
3. Empathy / Candor		
4. Ethical Considerations		
Overall Experience:		

Making lemonade out of lemons.

It's sometimes hard for those of us working in professional services or the legal profession to fully and completely walk in the shoes of our clients. Sometimes it takes a bit of real-world experience to get us there.

My spouse, **Mila Jones** (we call her Miles), was recently involved in a controversy that had the potential to result in class-action litigation involving several sophisticated parties. As a loving and supportive spouse whose household was personally affected by the alleged wrong—and someone who earns his living in the litigation business—I had the experience of walking in the shoes of a prospective client. And no surprise, it was eye-opening.

The purpose of this post is to share this experience and translate them into tangible action items. Above is a little scorecard I created to provide a little structure to the process. But first, here is the essential background on the controversy.

The controversy

As readers may recall, Mila is a critical care nurse who worked as a supervisor of an intensive care unit when the COVID pandemic descended on New York City area. See **Post 142** (discussing what was happening in her life and our household in late March of 2020).

Highly specialized nurses are expensive, particularly those with many years of experience. Thus, in 2019, as part of a collective bargaining process, the New York Hospital Alliance negotiated a deal with the New York State Nurses Association (Mila's union) to create a program called Bridge to Medicare. The purpose of the program was to provide an enticement to nurses age 60 to 65 with 20 years of experience to retire early by enabling them to continue with their union healthcare benefits. To finance this benefit, the New York City Hospital Alliance committed \$4 million for four years.

Unfortunately, less than a year after the NYC Hospital Alliance and NYSNA entered into this deal, the pandemic hit, which caused many skilled and experienced nurses to evaluate their work. The union expected between 100 and 150 nurses to

use the program to retire early. Mila submitted her paperwork and retired in August 2000. But because of COVID, the total numbers in Bridge to Medicare swelled to nearly 350, causing a shortfall in the funding and curtailment of benefits that no one was expecting.

Based upon how the Bridge to Medicare program had been presented to them (simply put, as a “bridge to Medicare”), many of the nurses believed that were misled. Had they known this type of shortfall was possible, many would not have retired. For additional background on this controversy, see Maya Kaufman, “**Bridge to Nowhere: A plan to ease nurses into retirement backfires as the program becomes inundated,**” Crain’s New York Business, July 26, 2021.

Suffice to say, it was time for the nurses to seek out some legal advice. Enter Miles and her legal technologist spouse, Ken Jones.



Miles Jones receiving commendation at her retirement party

Walking in the shoes of the prospective client

When working on most issues, we professionals and advocates are generally well within our element, opining and advising on topics where we have vast expertise and experience, bolstered by a network of colleagues and experts to assist us.

The other side of the table is totally different. You often stand as an individual or single entity. Feelings of isolation or intimidation have the potential of becoming indelibly etched in the mind of anyone facing daunting legal issues.

I’m hopeful Miles and my experience “on the other side”, acting as an advocate for an issue while temporarily playing the role of a prospective plaintiff in a legal matter, may be instructive to others in the legal profession. A great deal of what we observed along the way was, at least to me, exceptionally surprising and genuinely instructive.

Our experience is organized along the four criteria set forth in the above scorecard. Note that experience extends well beyond law firms to potential defendants (obviously advised by lawyers) and government agencies (who, surprisingly, earned high marks).

1. Communication: Methods And Timing

Like many elements of customer service, the most apparent area was communications between various parties and Miles/myself throughout “the process.”

Our Experience:

Our dealings with plaintiff firms were mixed, with us experiencing both positives and negatives. In all instances, our initial contact included an intake process of some type. For most part, and I don’t mean this in a bad way, it was a fairly generic, mechanical or perfunctory process. Not terribly unlike say opening a ticket in a platform like ServiceNow or an issue in GitHub in the technology field. Can’t say this was bad, but there was a certain amount of sterile treatment as administrative employees and legal fellows interacted with us to gather initial elements of the potential matter.

For plaintiff firms with an interest in our matter, next came the initial consultation. This was, by far, the best part of the lawyer-prospective client interaction. For Miles and I, with two different firms, we participated in detailed conversations with law firm partners who showed both interest and empathy in the potential matter as they indicated they’d been looking into the legal implications of the situation. Both of these conversations left Miles and I with the proverbial “warm and fuzzy” feeling as it related to the situation.

If the initial consultation was the zenith of our law firm experience, the follow-up process was clearly the nadir. We didn’t hear back from firms within the discussed timeframes, follow-ups were often ignored, and with both firms our final correspondence was a fairly brief, succinct email conveying that the firm could not pursue the matter for us, adding that this did not mean it was a strong case and suggesting to us we should feel free to contact other firms.

Grade: C+

Very much like American long-distance runner Galen Rupp in the 2020 Tokyo Olympic Marathon yesterday, the plaintiffs started representatively, were truly excellent in the core of the encounter, but unfortunately faded at the end.

Suggestions / Lessons Learned:

As a legal technologist, I see substantial opportunities to improve the “intake process” with technologies like digital operations platforms and artificial intelligence. These technologies facilitate a more personalized, focused line of questioning based on the responses one provides during a process like intake, greatly improving the effectiveness of the questions posed and information gathering. Platforms like **Neota Logic**, **Autologyx**, or functionality embedded within document management platforms like **Net Documents** and **iMANAGE** all offer different types of opportunities to improve this function.

Furthermore, in my opinion, advanced practice management software like **Clio**, **HighQ** or one of the many others which facilitate common business workflows like ticklers / reminders might help improve legal service to clients in this area.

Finally, as an actual living and breathing human, I have one final piece of advice as it relates to communication processes. Sure, email is ‘efficient’, but if you advise someone you can’t take their case or some other piece of less than ideal news, try to do it with a bit of a personal touch. One wouldn’t break up with a girlfriend with a text message (at least I hope one would not), and a lawyer should not end a relationship with an email. At least that’s my opinion after running through the wash cycle a few times.

It is possible to do follow-up and decline work in a way that makes the prospective clients feel respected.

2. Functional Advice/Ownership of Advice

This aspect of our experience is relevant to anyone who makes a mistake, including lawyers, or the clients that lawyers advise.

Our Experience:

It’s obvious that when one approaches someone with expertise with a request for specific subject matter assistance, they are expecting strong functional knowledge. Someone calls me about technology, hopefully I have some idea what I’m speaking about. They call an attorney, the expectation is that strong legal advice will be forthcoming.

But sometimes mistakes happen. Our systems sometimes crash and I imagine lawyers take the occasional misstep as well.

In our case, both Miles' union (NYSNA) and employer (Mount Sinai Hospital) unfortunately botched the execution of Miles' retirement plan (at least that's my opinion). But their respective response was stark in its' difference. Once engaged, which took a bit of time, NYSNA responded to us, engaged in dialogue (e.g. a real-life Zoom meeting) and essentially admitted this was not their finest hour. They also invited Mila to participate in a retirement advisory capacity and scheduled future calls with us to continue ongoing discussions. By contrast, Mount Sinai sent only a stock email from a Vice President of Labor Relations pretty much written by the Public Relations Department citing the "company line" and referring us back to the union. Which was particularly unfortunate given the fact the NYC Hospital Alliance (which Mount Sinai is a part of) was the main financial beneficiary of this debacle, ultimately enjoying unexpected savings of millions of dollars.

Grade: Overall (C). B+ For One Party, D For The Other

Mistakes happen. But everything is made worse when we don't own it.

Suggestions / Lessons Learned:

When you make a mistake, as soon as reasonably possible, acknowledge the error and do what you can to try to address it. I might suggest that a touch of humility and ownership might be a desirable "right-skilling" goal, as described in Rob Saccone's [Post 248](#). Try to avoid lip-service-type responses and don't hide behind corporate mumbo-jumbo to skirt issues and hide your mistakes.

Everyone understands that when errors occur, sometimes you can do something, sometimes you can't. Bad judgement calls in sports can't always be fixed by video review, one can't always retroactively fix a computer issue for a client, and I suspect the same is often true in the law. But we certainly can bend over backwards in a good faith effort to try and rectify a mistake.

Taking the path of Miles' union (personal conversations, accountability and go-forward actions) and avoiding the actions of Mount Sinai Hospital (sterile email, lack of personal response) is a path which will almost always be greatly appreciated by those you serve within the legal profession.

3) Empathy / Candor

In pursuit of relief, we turned over many rocks, hoping to find someone who would listen with genuine interest.

Our Experience:

I think we could all agree that, when in difficult situations a touch of empathy goes a long way. Cf. **Post 251** (advocating basic sales training in law school that emphasizes the value of empathy).

In my world as a legal technologist, for example, one needs to be exceptionally careful of overpromising and underdelivering. Those who do that can quickly lose their credibility. And I'd have to imagine the same type of "setting expectations" should be tightly woven into any messaging an attorney provides to their clients. Having those you advocate for expecting a pot of gold at the end of the rainbow when something far more ordinary is the likely outcome for a legal matter, is going to result in some unhappy clients.

In our case, it was the unlikeliest of protagonists who provided us with the best experience. It was the Federal Government, specifically the **Employee Benefits Security Administration** (EBSA).

At the suggestion of an employee with the New York State legal department, we filed a case with the EBSA. I have to be honest, my personal expectations were exceptionally low. EBSA, however, cleared the bar on their opening height by a wide margin, literally calling us after a scant three days to discuss our case on a lengthy teleconference. While in the end, EBSA could not assist us, the caller had clearly taken considerable time to research the facts of our issue and explained why EBSA could not help us. She also thanked my wife for her service (as a nurse) and conveyed her personal frustration about the situation and wished us luck. The manner in which she handled our inquiry was heartwarming indeed.

Grade: A

A human working for the government made this legal technologist grateful at the same time she delivered bad news. Haha, definitely not what I was expecting, which is all good.

Suggestions / Lessons Learned:

What does this mean to us in the legal profession? Perhaps a simple message that every client's inquiries are very important to them. I know, for me, anytime I receive a support request regarding our matter management product line, be it from a key executive/attorney or from a clerical user, I now even more try to be mindful of how I was treated by the EBSA. The temptation to dismiss and sweep certain things under the rug is always there, of course. But I not to do so and "pass it forward", so to speak, responding to requests as promptly as possible. It turns out the good manners are exceptionally memorable to those in need.

Can I always help our users? No, not always, just as I know an attorney can not always give a client the answer or outcome they desire. We are not magicians. But we all can treat our clients with respect and dignity, remembering they are often the person sitting alone with a concern important to them for which they've turned to for help.

4. Ethical Considerations

I am a legal technology rather than a lawyer. So I have a laymen's perspective on ethics. Specifically, I am interested in fairness and fair dealing.

Our Experience:

One of the great things about working with lawyers is that they are guided by (and governed by) rules of professional conduct. Given the importance of our healthcare to Miles and our family, we are thankful for standard of care and conduct designed to protect consumers. Whatever observations I have, these ethical standards give the legal profession a huge head start compared to many other disciplines.

In the business world, we see fewer guidelines or conduct-related expectations imposed on the parties in a dispute (in our case, Miles' employer and union).

After reflection, I believe both parties, especially the executives within Mount Sinai, would have greatly benefited from a valuable function often present within the legal community, namely an independent arbitrator or mediator. Clearly, if an experienced, unbiased legal practitioner had provided advice to Miles' employer's General Counsel or Labor Relations Vice President that it probably is a good use of their time to spend fifteen minutes to discuss a botched situation with a

former valued employee, the entire situation could have de-escalated. (And likewise, this article would not have been written.) Cf. **Post 252** (long-time lawyer-mediator Sam Ardery noting that one of the touchstones of succeeding in conflict to accept responsibility for your portion of the problem).

Based on my experience supporting clients in large litigations, attorneys acting in a capacity to help resolve or mediate issues often deliver incredible value via the presence of an impartial perspective shared with both parties. In our case, many reasonable people likely believe that a business enjoying an unexpected \$10 million in saving via greater numbers of retirements than was planned for might be on more solid moral ground if they funneled a small percentage of that back to aggrieved parties (e.g. retired nurses who lost their health care due to an ill-conceived medical plan), even if there were hard feelings due to the nature of labor negotiations.

The integration of a negotiator with the proper legal skillset might have added tremendous value and helped guide Miles' employer to do what many perceive to be the right thing. Truly great example, by virtue of what was missing, of how attorneys can add tremendous value helping to resolve challenging disputes.

Grade: C

A good lawyer, with a mediator mindset, could have gotten us to an A.

Suggestions / Lessons Learned:

Often, we think of a lawyer as someone who can help us “win” a case. While that is certainly true, it is also accurate that the value of a mediator who is impartial and helps parties reach a consensus is another important role within the legal profession. Consider integrating the viewpoint of a legal professional with no skin in the game to render an independent opinion on a situation. That will make all parties feel less aggrieved.

Also, for most of life's situations which hopefully will not result in unpleasant disputes, try to learn from this example. Fully consider situations and strive to make fair judgments and be equitable whenever possible. Just because you can charge someone more or provide a lower service level contractually, this does not mean you need to do that. Acting in an ethical, moral manner will benefit you in the long term.

5. Conclusion

When walking through legal affairs or the course of business, think back to those initial examples. Many in life approach those in the law with problems very important to them with nowhere else to turn. There often is a feeling of isolation, despair, or hopelessness in the situations our clients are facing.

Remembering some of the lessons here — communication skills, functional expertise yet acknowledging mistakes, maintaining an empathetic perspective, and always following a strong moral compass — will make us far more effective legal professionals.

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