



*Hal  
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# Discussing Career Issues from Your PBA General Counsel

## Listening to Your Lawyer: Don't Kill the Messenger

About once every two years (normally after I have received a stern lecture from one of my clients about "not being enthusiastic enough" about his or her case), I feel compelled to write about the "attorney-client relationship" and the "expectations" clients have about their chances to successfully appeal their disciplinary cases. This article is about listening to your attorney—especially when the attorney is reviewing and preparing your case.

**First, understand that I need to know "all" the facts about your case.** So, please do not be offended if I ask you pointed questions about your case that make you feel uncomfortable or expose errors, mistakes or improper conduct on your part. Rest assured: I am not trying to embarrass you! I am just trying to understand the facts and discover what the "real" facts are. Also, understand that it is better for me to ask about the facts before we go to hearing rather than learn about them from the other side at hearing.

Why is this "cross-examination" by your own attorney necessary? First, so a fair evaluation of your chances on appeal can be made. Next, so the strength and weaknesses of your case can be identified. Finally, so you and your attorney don't get blind-sided by the other side at hearing. You should want your attorney to be prepared and that means knowing about the "good" facts and the "bad" facts. It is for your own good.

**Next, understand I may ask you for a better explanation as to why you did what you did.** So please do not be offended if I ask you to explain your answer, give me a fuller explanation or even question what your thinking was at that point in time. Once again, it is not my intent to embarrass or question your integrity. I am just trying to understand what you did and why you did it. I am not passing judgment on you.

Why question your explanation? For two reasons: (1) because I may not fully understand the circumstances or practices surrounding your actions, I need to learn, and (2) more importantly, if your explanation does not make sense to your attorney after several attempts to try to understand it, it will not in all likelihood make sense to a hearing officer or an arbitrator who is hearing it for the first time. Simply put, if you don't have a reasonable explanation for your conduct that makes sense, your case will be extremely difficult to win. So we need to work on the explanation, not avoid it.

**Third, understand that it is my obligation to give you a realistic evaluation of your case.** So please do not be offended if I tell you your case will be difficult to win, is "fifty-fifty," is "good but not great." Seldom do I run into a case that is a "dead winner," is "guaranteed" or "we'll kick their butts." If you ask me to evaluate your case, I assume you want a fair and objective evaluation of your case. If you want moral support, you need to tell me that up front or ask your drinking buddy what your chances are to win it.

Why tell you what you might not want to hear? First, I have an ethical obligation to give you my best evaluation of your chances. Next and most importantly, at some point in the process you may be asked to make a decision about resolving your case and maybe even your career in law enforcement. You need to make that decision based upon a realistic evaluation of your case, not a "sugar-coated" evaluation. You deserve that, as does your family, so you should expect and want a realistic evaluation from your attorney.

**Fourth, understand that it is my obligation to bring all settlement offers made by the other side to you for your decision.** So please do not be offended if I advise you that a settlement offer has been made even if you consider it ridiculous. I don't get to tell the other side "no"—that is your decision, not the attorney's to make.

Why can't the attorney make the decision to accept or reject a proposed settlement? Because you have to live with the settlement. It is your decision to make with the advice of counsel and your family. That is why you want a fair evaluation of your case. That is why you want your attorney to know the "good" and "bad" facts. And, that is why you want to know whether your explanation makes sense or doesn't make sense. Ultimately, so you can decide to settle or resolve your case with confidence that you and your attorney are basing the decision upon the best information available.

**Finally, understand that despite the uncomfortable questions I ask, the requests for a better or fuller explanation I have demanded from you, the brutally blunt evaluation of the case I have given you and the settlement offer I may have advised you to strongly consider, I am still your attorney. I and every PBA attorney I know will do our best to win your disciplinary case and represent you to the best of our abilities. That is a promise. ●**

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