

**LOUISIANA STATE BAR ASSOCIATION
QUEBEC SEMINAR**

CONFLICT CONSULTING AND COACHING

Presented by:

**Michael W. McKay
Stone Pigman Walther Wittmann L.L.C.
One American Place, Suite 1150
301 Main Street
Baton Rouge, Louisiana 70825**

MICHAEL W. MCKAY is a partner in Stone Pigman Walther Wittmann L.L.C.'s Baton Rouge, LA office. He has been a trial lawyer since 1974. He has tried numerous judge and jury trials in both state and federal courts. He has represented plaintiffs and defendants in a wide variety of matters ranging from intellectual property to community property; wills and trusts to antitrust; RICO to ERISA; class actions to derivative actions; product liability to professional liability; and more. In addition to his trial work, Mike has been mediating casualty and commercial disputes for over 20 years and has been associated with the mediation/arbitration firms of ADR, Inc., and then MAPS, Inc. prior to joining The Patterson Resolution Group. He received his B.A. and J.D. degrees from Louisiana State University. He received a graduate Certificate in Dispute Resolution from the Straus Institute of Dispute Resolution at Pepperdine Law School in May, 2016 and is currently enrolled in the LLM program there. He is the only lawyer to have served on the governing boards of the Louisiana Trial Lawyers Association, the Louisiana Association of Defense Counsel and the Louisiana State Bar Association. He served as president of the Baton Rouge Bar Association in 1992-1993 and of the Louisiana State Bar Association in 2004-2005.

I. INTRODUCTION

Conflict Consulting and Coaching is a relatively new field in the broader area of mediation. It involves the use of trained intermediaries to facilitate the resolution of personal and organizational conflict, as well as to train people and organizations how to resolve and deal with conflict wisely.

It is ironic that the legal profession is no better at this (and maybe worse) than other professions and organizations. After all, litigators are taught to resolve conflict through trial, arbitration or mediation. Transactional lawyers are taught to provide for means of resolution when conflict does occur in people's activities and contracts. Yet, lawyers and law firms repeat the same negative and potentially destructive behaviors in their relationships and operations as other businesses.

Conflict Coaching and Consulting recognizes the principle that peace is not the absence of conflict; but rather, the ability to handle conflict by peaceful means. At its simplest, Conflict Coaching and Consulting is designed to teach people how to have a civil conversation about a difficult topic.

II. CONFLICT

The focus here is to help people and organizations to change their fundamental beliefs about conflict. Normally, these beliefs are that the conflict is preventable, always negative and should be avoided. This is wrong.

It is critical to make peace with conflict for the following reasons:

- A. Conflict is inevitable;
- B. Conflict is just energy;
- C. Conflict is not inherently positive or negative;

D. How people and organizations navigate conflicts is what can make it destructive or negative;

E. Conflict can be harnessed for good and be a creative force;

F. People are not hardwired to "do" conflict well due to the "fight or flight" response in the human brain; and

G. Since conflict is inevitable, people will struggle if left to themselves.

Conflict is simply a tool that most people and organizations avoid rather than use for good.

A dysfunctional conflict culture is one where conflict typically tends to escalate when it arises without then being resolved positively. Certainly, individual issues such as personality clashes, ego, money and sex are always possible causes of conflict. However, there are a number of systemic causes of conflict as well that typically exist in organizations such as law firms:

A. Underdeveloped leadership;

B. Poorly defined roles;

C. Unclear or unrealistic expectations;

D. Blame environment;

E. Feedback issues;

F. Lack of accountability;

G. Silos; and

H. Perceived unfairness.

Any of these or combinations thereof typically exist in systemic organizations.

The goal of Conflict Consulting and Coaching is to help people and organizations become "conflict competent" or "conflict resilient". Signs of success would be that conflict is no

longer avoided, conflict is no longer escalated and parties struggle "with" each other rather than "against" each other to solve the problem. So, how does it work?

III. CONFLICT CONSULTING AND COACHING IN ACTION

Typically, the engagement begins because of some particular conflict or blow up in the workplace. The consultant is called and meets with the decision maker(s). After the initial interview, the consultant proposes a process. Initially, the consultant prepares a proposal for the decision maker to sign. The proposal lays out the process, which includes confidential interviews of relevant witnesses and/or employees, the preparation of written conflict assessment with suggested action items and the execution of the action plan itself. Pricing for the various processes are included as well.

A more concrete example of such an engagement is attached and entitled "Ron and Tom, LLC". It describes the fact pattern, summarizes the interviews and presents a simplified assessment and action plan to further illustrate the process.

Another example of a dysfunctional conflict culture is one where conflict is avoided at all costs and problems are kicked down the road – otherwise known as the "let sleeping dogs lie" management philosophy. While there is no drastic blowup, there is also no dynamic creativity in the management of the firm and a general sense of malaise and dissatisfaction. When the dispute or conflict does erupt, and it will, the results will likely be more destructive. Here, people may want to change, but are not sure what type of change they desire. The assessment and action plan in this instance would probably be more heavily weighted to leadership training, systemic changes and team-building.

Conflict Coaching and Consulting can be as individualized as one person's training or as broad as an entire organizational assessment and training.

IV. CONCLUSION

For people and organizations to grow and prosper, they need to become conflict competent. Conflict is inevitable. It can be avoided for only so long. In fact, conflict should be embraced and used for creative change. Both people and organizations do not know how to do this. Conflict Consulting and Coaching is here to help.

RON & TOM, LLC

I. INTRODUCTION

You have been called by Ron, the senior partner in a small law firm with ten employees. Ron is quite desperate. He is complaining of an issue between two of his employees: Pat, his administrative assistant, and Nicole, his senior associate. Things have never been good between the two of them. However, it has reached an all-time low. Last week, they had an actual screaming match in the reception area. The argument was so loud that the client Ron was speaking with on the phone could hear the argument. The rest of the staff's morale is low after constantly having to witness their arguments and living with the tension afterwards.

Recently, Ron merged his firm with Tom, an older lawyer with an existing practice. Tom brought his associate, Heidi, and his secretary, Sue. They moved into Ron's office building, but into unused space that was at the other side of the building from the space that Ron was utilizing.

After doing an initial interview with Ron, you suspected that the issues between Nicole and Pat may just be a symptom of some bigger cultural issues in the office. You discussed this with Ron and suggested the idea of a conflict culture assessment. You explain to him that you would want to interview all of his employees. These interviews would be confidential. You would only report back trends and give a summary of possible causes of conflict, along with a recommended Action Agency.

Ron agrees. You have him sign a proposal that clearly states the purpose of the interviews. In addition, you prepare a confidentiality agreement for each of the employees that you interview to sign. The agreement guarantees the confidentiality of their statements and that your report will not be used for litigation purposes, but will only be used to help the firm improve the current culture.

II. INTERVIEWS

1. Ron. You are the senior partner. You took over the firm at a very young age. Pat was your predecessor's secretary, and you kept her on as your office manager and secretary. Pat runs the firm administratively and, quite frankly, you don't know everything she does to run the firm because she had been doing it since before you were here. She works hard and is fiercely loyal to you and the firm. You know she is abrasive, but she is a hard worker and you can never see letting her go. You don't really have conversations with her about her attitude with other staff and clients. Everyone seems just a little too sensitive and you really just want them to do their jobs.

Nicole is your first associate. You like her personally, but her work product leaves a lot to be desired. She is a bit of a *prima donna* and does not proof her work well. She has complained to you about giving more work to your other associate, John, which is true. You do, because John does a better job and the clients love him. Sometimes you get complaints about Nicole and how much she bills for things. Nicole works from home some and she doesn't always let you know when she's going to be in the office. You haven't pushed this issue with her or given her feedback on her work.

You don't like dealing with staff issues. You hear Pat complaining about the new people not following the firm's procedure and you are hoping that after they get more settled in, this will self-correct. Unfortunately, it does seem to be getting worse. You are somewhat disappointed with Tom, because he sometimes complains about processes and tells you how they would do it in the firm. He also spends a great deal of time defending his secretary, Sue's, position against Pat and generally complaining about Pat. You are also extremely frustrated that Tom lets his secretary come in late and call in sick often. That's clearly against firm policy and her not following it is causing the rest of the staff to be disgruntled.

2. Tom. You have been practicing for 45 years and approached Ron about a year and a half ago to merge your firms. You respect Ron and wanted to find somewhere to land where you could still do some work, but would no longer have the administrative headaches or worries about making payroll and overhead.

For the most part, the move went smoothly and you enjoy working with Ron and talking to him at the end of the day. However, Ron's assistant, Pat, is extremely abrasive, especially to your secretary, Sue, who was also your administrative assistant at your old office. You have tried to discuss these problems with Ron, but he seems uninterested in discussing how to deal with the problem.

Pat and Nicole, Ron's associate, also always seem to be going at it, which is hard on morale in the office. Last week, they had a very loud argument which was extremely unprofessional, and you really hate to see this type of behavior.

Although Nicole is nice enough as a person, her work product is definitely subpar. You initially tried to utilize her for some work, but have moved on to utilizing John, the other associate, who has a fantastic work product and a super-fast turnaround time.

3. Heidi. Heidi has been practicing the longest of the associates. She feels she should really be a partner, but she has always put her career on the back burner and her children on the front. She believes she has the same knowledge level as Tom and Ron. She resents the idea of having to change the administrative processes from her old firm's policies. The office hasn't been very friendly. She feels like she is stuck in the back corner and they haven't done much to include or welcome her. She was very happy in Tom's old office. She believes her experience is underappreciated in the new firm. She has never been around a co-worker like Pat, who although clearly fiercely loyal to Ron, is extremely nasty to everyone else.

Heidi has even heard her be nasty to clients. She does not feel that Pat plays fair in distributing associate-level cases, but rather gives most of it to John.

You do like Tom's secretary, Sue, but she does get on your nerves when she calls in to take off or comes in late. It doesn't seem like there is a policy for the staff on this and, if there is, it's not in force.

4. Nicole. Nicole has been working at the firm for the past ten years, starting right out of law school. She has a lot of flexibility in her job and, for the most part, enjoys her job. Her pay structure is different from most associates, because she is paid solely on the hours she bills. She appreciates Ron allowing her to have flexibility for her family life outside the firm.

However, Ron does make Nicole very frustrated. She believes that he favors John, giving him more work and more clients. Ron doesn't give her feedback except for once a year at her review. Her reviews are always good. Ron doesn't seem to have any issues with work, but he does favor John and she doesn't understand. She thinks he might be a little bit sexist. He is not good at giving instructions and gets very annoyed when she comes into his office to ask for more direction on a project.

In addition, Nicole cannot stand Pat, Ron's administrative assistant. She is extremely abrasive and doesn't seem to understand that she is lower on the totem pole than the lawyers. She is always giving Nicole a hard time about her work, making snide comments. She doesn't understand why Ron keeps her around, because she is disrespectful and abrasive to him and consistently abrasive to clients. Some clients have ever mentioned it to her. Additionally, Pat serves as the "HR" person, so Nicole has to provide medical information to Pat when she

needs to be out of the office or have health insurance questions. Pat does not keep this information private.

The firm recently merged with Tom, who is well respected in the bar. She was initially excited when he came over because she thought it would mean more work for her. At first, Tom did give her some work, but then he seemed to move over to John and his associate, Heidi. Nicole does believe that he is somewhat sexist like Ron.

Although she and John get along on the surface, she has a great deal of resentment towards him because he gets all the work. She doesn't feel connected with the new associate, Heidi, or Tom's secretary, Sue, and frankly feels like they are two totally separate offices, as they tend to stay back in their space and are resistant to following any of the firm's procedures.

5. John. John is Ron's junior associate and has been with the firm for five years. They get along extremely well and most mornings start the day with a long talk about the sports world the night before. John gets along with everyone in the office. John acknowledges that Pat is abrasive, but he's figured out a way to charm and deal with her. He shows her a great deal of respect because she is older and has a great deal of knowledge, which has saved John from making mistakes a time or two. Pat is abrasive to clients at times and John has heard her discussing how clients are "crazy". Sometimes, John thinks Pat forgets that the clients are the ones who pay everyone's salaries.

John is happy with his work and likes doing work for both Ron and Tom. John knows that Nicole is resentful of the work he is given. He doesn't have much interaction with Heidi and Sue, because they seem to keep to themselves. He is beginning to hear little things the staff is saying that folks are not following the firm's procedures.

6. Pat. Pat is Ron's administrative assistant and the office manager. She has been with the firm for 20 years. Pat is very engaged with job and loyal to Ron. She prides herself on the office running efficiently, and that's why she gets very agitated by Nicole. Nicole is disorganized and her projects are often done at the last minute, causing everyone to scurry around for her. Additionally, she is a bit of a diva and treats the staff as if they are beneath. The staff is always complaining to Pat about Nicole. While Pat has brought up the issue multiple times to Ron, nothing ever seems to change.

Pat really likes John because he does good work and is extremely organized. He is timely and respectful to Pat and the rest of the staff. When Pat receives new client calls, she always transfer them to John and tells the receptionist to do the same thing.

Pat really doesn't like change and the last six months have been hard since Tom merged his practice with Ron. The new people are okay, but they stay on their side of the office where Ron put them. They never come out of their offices and seem only to email when they want to communicate instead of walking down the hall. They fight Pat on all of the office procedures, wanting to things the way they used to do them. Pat has asked Ron to talk to them about this, but he never has. As a result, the files and systems are beginning to get out of order and this is very concerning to Pat because something is going to be missed. Also, Tom's secretary, Sue, is especially bad because she wants to do things the old way and is messing up Pat's procedures.

7. Sue. Sue has been working for Tom for a long time. She really likes her work, but she misses her old job as office administrator. She tried to give Pat some ideas, but every time she does, Pat snaps at her. This happened so often that Sue stays in her office. She doesn't feel very welcome in the firm.

The atmosphere caused by Pat's personality has made Sue a little depressed. As a result, she started sneaking in a little late and has been taking off. No one has said anything to her and she doesn't think anyone really notices or cares if she's there or not. She never did this at Tom's firm, because she really cared about the firm's success. She doesn't even know the new people and it doesn't seem like they want to get to know her.

III. CONFLICT CULTURE ASSESSMENT

While the initial catalyst for this assessment was a personality clash between two employees resulting in a public argument in the firm office, interviews with the firm's employees reveal issues much larger in scope than just the interaction between the two employees. Some issues have existed for some time prior to the recent firm merger. Some issues arise partially as a result of the merger. While many of them are interrelated, it is helpful in addressing them to separate the major issues as set forth below.¹

A. PRE-MERGER

These issues were present in the firm (Ron's firm) prior to its merger with Tom's firm.

1. Unhealthy Conflict Environment

Obviously, a public shouting match in the office between two senior employees raises a red flag as to the health of the conflict environment. Interviews revealed that the tension and underlying issues which led to the blowup had existed unaddressed for some time. An effective method of addressing this conflict was simply not present or utilized.

Additionally, the same interviews revealed a number of other resentments:

¹ These issues arise out of the perceptions of the employees, as revealed in the interviews. Perceptions are not necessarily accurate, and no attempt to vet these perceptions for accuracy was made by the interviewer. However, these perceptions are the truth to the people who hold them.

1. Toleration of disrespectful behavior between employees;
2. Toleration of disrespectful behavior toward clients;
3. Violation of privacy issues; and
4. Favoritism/sexism in work and client allocation.

These issues were either not recognized or addressed by management in any healthy way. Additionally, the employees involved were unwilling or unable to competently deal with these conflict issues themselves. As a result, morale in the office was significantly declining.

2. Leadership Issues

The affection and loyalty of the employees for senior partner, Ron, were very evident from the interviews. The same interviews, however, also revealed a number of issues with his management style. These included:

- a. Conflict avoidance;
- b. Ineffective or lack of feedback; and
- c. Lack of clarity in expectations.

Conflict avoidance is the most important of these issues. It actually leads to or results in both feedback and lack of clarity problems.

Specifically, Ron has been requested on multiple occasions to act on a number of issues without any apparent response on his part. He may be uncomfortable with directly addressing issues or concerned about the outcome (i.e., loss of a valued employee). His apparent lack of response has led to increased resentments and declining morale.

Similarly, ineffective or lack of feedback has resulted in misunderstandings by employees of their roles and effectiveness. Further, it denies them the opportunity to address faults or problems, as well as the motivation resulting from positive feedback.

Lack of clarity in expectations also leads to misunderstandings, as well as confusion and declining morale. Employees need to know exactly what is expected of them.

3. Process Issues

Process problems can also lead to confusion and negatively impact morale. Good process increases clarity, which helps support morale.

Several areas involving process came to light through the interviews:

- a. Allocation of work and/or clients;
- b. Job duties and responsibilities; and
- c. Privacy of employee information.

Inadequate practices in these areas led to multiple resentments and problems.

Allocation of work and/or new clients has apparently been handled on an *ad hoc* basis by the office administrator and the receptionist. They have been deciding who gets the work without any input from the partners or the associates actually receiving the work. As associates are paid by the hours they bill, this process greatly impacts what each associate earns. Without a clearly understood process, this creates a huge source of conflict. Further, without agreed-upon criteria adopted by the firm for allocation, there is no method for determining whether these allocations are in the best interests of the firm.

Job duties and responsibilities can definitely cause conflict when they are not set forth with some specificity in a firm policy. This has occurred here, where it's not clear what specific duties are performed by staff and what duties are performed by attorneys. Clarity here reduces conflict.

Another thread from the interviews involves privacy of employee information. To be blunt, employees have repeated that private health information required to be reported to the human resources department has been publicized within the office. This is not only bad for

morale; it also potentially exposes the firm to legal action. A process needs to be developed to protect and enforce employee privacy.

Again, all of these issues existed in Ron's firm prior to the merger. However, while the merger brought its own issues, a number of these issues impacted the post-merger issues as well.

B. POST-MERGER

Additional conflicts occurred as a result of the merger. The two most prominent issues were:

1. Resistance to change; and
2. The "Silo" phenomenon.

Failure to address them could ultimately lead to a failure of the merged firm.

1. Resistance to Change

Resistance to change is natural. People are comfortable with what they know. We've come to realize, though, that change is an agent for improvement and growth. Those who embrace change are much more likely to be successful.

Resistance was manifested here primarily in utilization of operational and administrative procedures. Each group thought their process was best. Rather than make the effort to choose the best practices of each firm, the two sides retreated to what they knew – either by trying to enforce certain procedures or by holding on to certain procedures. The employees did not do it on the own and neither did the bosses who both did not like dealing with firm administration. This needs to change and developing a new procedural manual or administrative practice is an excellent way to begin the process of change.

2. The "Silo" Phenomenon

There was apparently no thought given to team building when the firm merged. No real effort was made to help the various groups get to know each other better and begin developing the relationships necessary to smoothly operate the new firm. That led to the "Silo" effect, where both groups operated separately for the most part. In fact, the effect was exacerbated by putting the new group physically in another area of the office. This reinforced the separation in a physical manner. The result was increased inefficiency and conflict.

CONFLICT ASSESSMENT CONCLUSION

Given the fact that all employees have indicated that they basically like their bosses, work and the talent and work that exists at the firm, there is great potential for this firm if the existing issues can be resolved. However, we not only want to assist and guide the resolution of these issues; we also desire to equip the firm and its personnel with the ability and confidence to address conflict when it arises in the future, because it will. With that thought in mind, an action plan has been prepared and is set forth below. Action items have also been priced per item as indicated. While we believe that each of these items is necessary to fully address the issues indicated herein and develop conflict competence, we do provide the opportunity for the client to pick items at your discretion.

ACTION ITEMS

1. Ongoing Mediation Between Pat and Nicole

As the conflict between Pat and Nicole has erupted publicly and continues to have a negative impact on firm morale, this presents the most immediate need. The mediation will take place over a several-month period and will consist of both joint and individual sessions with the mediator, along with assignments in between. It will initially address their individual behaviors, as well as their relationship in seeking to identify the underlying causes of the

conflict. It will also develop methods for dealing with underlying causes, as well as the conflict itself.

Total cost is \$8,000 for ten 2-hour sessions at \$400 per hour.

2. Leadership Training and Coaching

Given that issues with leadership were a fundamental, underlying cause for not only the Pat and Nicole blowup, but also most of the other issues revealed, it is vital that Ron get the leadership training necessary to effectuate and guide a conflict competent organization. This will involve the use of assessment tools to help identify traits necessary to reinforce and improve with coaching, as well as bi-weekly coaching sessions for six months with assignments in between sessions.

Total cost is \$10,000, including the cost of assessment.

3. Team Building and Book Study

Given the relatively small size of the firm, the pervasiveness of underlying conflict and the fact that there are distinct groups which have not worked together for very long, we believe a conflict skills and team-building training would best be accomplished by a facilitated book study. This study would involve 24 hour-long, semi-monthly sessions over 12 months reviewing and studying several well-respected works on conflict competence and team building, with facilitated discussions of the content.

Total cost is \$6,000, including books.

4. Administrative Procedures Review

This is an item that can be done internally with no cost or through a facilitated discussion with a third party neutral. It would be designed to provide the administrative procedures necessary to clarify duties and responsibilities.

5. Office Design and Layout

This is an item that can be done internally with no cost or through a facilitated discussion with a third party neutral. The concept is to integrate all personnel together, without a distinct separation of the previous firms. This will allow for additional communication and interaction, which will enhance team building.

Thank you for the opportunity to work with you. If you have any questions or comments, please let me know.

Yours very truly,

Michael W. McKay