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DEVELOPMENT COUNSEL

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Coming under fire?

From time to time, all lawyers face the prospect of coming under fire — mostly from clients, but also from regulators, the media, the public and government.

Lawyer's often feel they're singled out for special — that is, especially awful — treatment. However, lawyers are in good company when it comes to coping criticism.

Perhaps scrutiny or criticism of your service (or failure) is deserved. Perhaps it's even long overdue. But maybe it's unfair, unbalanced or even hypocritical.

Whatever the circumstances, and no matter how tempting, when you're put in the spotlight, it usually doesn't help to:

- swing straight into defence mode;
- lash out with criticisms of others; or
- simply go to ground with 'no comment'.

Just like so many situations in life, when you come under fire you may have little or no control over the circumstances or the actions of others.

What you can control, though, are your own reactions and behaviour.

Instead of letting instinct take over, try this approach when you're next confronted with this kind of criticism.

Show you care

Express your concern. Show you understand — or at least want to. Sincere care and concern are never wrong.

Get into action

Explain the steps you've taken or the action you plan to remedy or mitigate the problem. Talk about what you're doing to make sure there is no repeat of a problem.

Put it in perspective

Offer insights to place the problem in perspective. Give information which will help get things back into balance.

Some examples of how to put this approach to work.

You've been successfully working with a client for some time but, just recently, you've missed a couple of due dates.

Show you care

'I understand you're under pressure, Bill, and that you work to tight timelines. I recognise that when we miss a due date it makes things even more difficult for you, and that you, in turn, can't report to your Board on time.'

Get into action

'Bill, here's what I've done to make certain that we don't slip up again and that we meet all deadlines in future. I'm doing *x* and *y*. I've also arranged for my assistant to do *z* from last week onwards. I'm watching week by week to make sure this procedure is followed by everyone.

No exceptions.'

Put it in perspective

'Bill, you know how much I value our business relationship. Over the last couple of years, with 30 or 40 deadlines, we've made all but two. Now, we've let you down twice in quick succession. I think we've developed a great working rapport and I'll be doing everything I can to rebuild that and make sure there are no more slip-ups in future. I hope you'll give me the chance to restore your confidence.'

A second example:

You've put heart and soul into a tough commercial recovery action, running up \$20,000 in fees. You succeed in recovering \$60,000 for your client, ABC. You feel you've snatched victory from the jaws of defeat. But all your client focuses on is the \$50,000 shortfall from what was owing to them. Now, ABC has shared their woes with a tabloid journalist who's angle is 'All lawyers are vultures'.

Show you care

'I truly understand how hard it is for ABC, doing a good job and delivering on its commitments, to be faced with customers not paying promptly, let alone not paying what's due. I understand the unfairness and financial pressures on ABC, like so many other businesses.'

Get into action

'I was truly concerned that we had so

much legal work on this one to counter the delaying tactics and endless obfuscation of the debtor. I've written a paper recommending changes to certain legal procedures to avoid this in future — I'm sending copies of these recommendations to various professional bodies to encourage change in the right direction.'

Put it into perspective

'At this firm, we simply don't get involved in the kind of behaviour we observed from the debtor. It isn't right. In the end, the debtor's obfuscations and delays hugely increased the work we had to do. It reduced our client's eventual recovery. I do understand ABC's anger. At several points, I alerted ABC to how professional fees were running up and gave my frank and clear assessment that prospects of recovery were only okay, and that collecting the full \$110,000 was nigh impossible.'

'ABC wanted to continue, and we pulled out all stops to get the best result we could.'

'While we charged ABC \$20,000, this represented a very substantial goodwill reduction on the fees we racked up pursuing their interests.'

'I just hope that, in future, ABC — and other good businesses like it — never have this kind of experience. We got the best result possible for ABC. But sadly, in these circumstances, even a "win" feels more like a "loss".'

Work through this care, action, perspective (CAP) approach and see how you can use it to do better when you next come under fire. (Sooner or later, it happens to us all.) ●



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