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How to Raise Disagreements with Senior Attorneys

RICHARD HEPPNER

- A**s a new attorney, you may receive assignments from your supervising attorney like:
- find a case that stands for this legal argument,
 - draft the section of the brief arguing that the court has no jurisdiction, or
 - write a client memo explaining why this asset purchase is a good idea.

Sometimes you will discover that the initial assignment isn't necessarily the best approach. What should you do?

It Is Your Job to Bring It Up

You were hired as a lawyer to give your clients and legal partners sound advice, not just to follow directions and complete ministerial tasks. It can be daunting to raise disagreements, but it is better than the alternative outcomes—perpetuating a mistake that makes you and your partners look bad, creating more work in the future, or causing the client harm.

Not All Disagreements Are Created Equal

If it's a strategic question, the client or assigning attorney may know of considerations unknown to you. If it's a legal question, figure out the correct legal answer and be prepared to explain it. If it's a factual question, and you are in charge of the relevant documents, you might be in the best position to identify the error—but also consider who might know more than you. If it's an ethical issue, you may be required to bring it up, push back against any resistance, and even withdraw from representation if you can't convince your supervising attorney to change course.

So, How Do You Bring It Up?

FIRST MAKE SURE YOU'RE RIGHT

Take the time to dig into the law and the record and really figure it out. Often you will find that what looked like a contradiction was actually a difference of opinion or interpretation—something you can point out when you turn in your assignment.

SECOND BRING IT UP QUICKLY

If you have found an error, it can be tempting to put off the awkward conversation. But you shouldn't wait until your assignment is due to point out the problem. If there was a real mistake, it is better to find and fix it quickly. And if you are the one who is mistaken, it is better for you to get back on track in time to complete the job.



THIRD BE PREPARED TO EXPLAIN THE ERROR

How you present your explanation—a memo, an email, a phone call, stopping by for a conversation—will depend on your firm culture and your relationship with your supervisor. But however you broach the topic, you should prepare ahead of time with a clear explanation of the issue.



FOURTH PROVIDE A SOLUTION

It is not that helpful to say, "Hey, I think this is wrong." It's much more helpful to say, "Hey, I think this is wrong. Here's what we should do about it." Consider your client's needs and ultimate goals, and present a new approach that still helps achieve them. You may very well find that, far from being upset, your supervising attorney will be happy to have more options.



FIFTH PLAN HOW YOU WILL FRAME THE CONVERSATION

You can raise the issue as a question, seeking advice about a contradiction you have identified (while still being prepared with a full explanation and solution). You can also raise it as a concern, pointing out what opposing counsel might argue. You may want to raise it as a suggestion, starting with your proposed solution and then to explain why it is the best path forward.



Most of all, remember that every young attorney faces this situation. Supervising attorneys are not infallible. But they likely want to appear to be. And you can help make that happen—and earn some goodwill for yourself—by identifying, solving, and raising mistakes before they go any further.

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