



TEXAS LAWYER

Listen Up, Mr. or Ms. Know-It-All

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Texas Lawyer

June 24, 2013

Years ago, not long after I switched to a different law firm, one of my partners asked me draft a petition for review to the Texas Supreme Court. By that time, I been board certified in civil appellate law for about four years. I knew how to write a petition for review — and a good one, too, or so I thought. A day or two later, however, this partner told me he'd like to get an older, more experienced appellate specialist from a different firm to work with me.

My ego was bruised.

"I don't need any help on this," I said to myself. But as a newbie at the firm, I kept my mouth shut and pretended to be excited at the prospect of working with this highly respected appellate specialist.

Now, looking back, it was probably the best thing that ever happened in my career. Why? Because I made myself listen and learn from this lawyer, instead of letting my ego get in the way. As a result, this interloper became my friend and mentor for many years.

This memory came to mind recently when I became the interloper and faced a different reaction from the lawyer with whom I was asked to work. Like my former partner, this lawyer's boss knew that putting an experienced appellate lawyer on the team would result in better representation for the client.

But instead of forcing himself to listen and learn, the lawyer I was asked to assist fought every suggestion. He insisted on briefing the case in the way he thought best — never mind that he had little experience in the appellate courts. It was his way or the highway.

Don't get me wrong. I understand that reaction. We lawyers tend to have healthy egos and believe we're always right. We're extremely competitive, too. So, it's hard to accept guidance from other lawyers. But, to be blunt, it's a stupid mistake to resist this kind of teamwork.

Even after 23 years of practice, I still have mentors. They're older, more experienced appellate specialists from whom I continue to learn invaluable lessons about writing briefs and presenting oral argument, lawyers I can call to talk strategy and test out ideas.

So, when it was my turn to be the interloper, why did the lawyer fight so hard? It certainly couldn't have been my approach at interloping.

In all seriousness, though, I made a special effort to employ the same techniques my friend used all those years ago to help me open up and listen to his advice and suggestions. So, for the sake of argument, let's assume the problem wasn't on my end. That takes us to why lawyers resist input and suggestions from other lawyers.

BECOME TEACHABLE

Part of the answer may be the Dunning-Kruger syndrome, mentioned by Bryan Garner in his March 1 posting in "Bryan Garner on Words," his *ABA Journal* blog. One symptom of this syndrome is an inability to recognize one's own shortcomings, something Garner believes is rampant in the legal profession.

So, when my partner forced me to work with a more experienced appellate lawyer, I thought, "This guy doesn't know anything I don't."

What a stupid attitude that was. He had at least 25 more years of experience and a long record of success. Fortunately, I didn't spend much time wallowing in this self-defeating attitude. I just kept telling myself, "Look, you idiot, the guy has a quarter century more experience than you do. Of course he knows more."

George Washington had a pithy way of portraying the wrongheadedness of this resistance to other viewpoints: "And shall I arrogantly pronounce that whosoever differs from me, must discern the subject through a distorting medium, or be influenced by some nefarious design?" The lawyer who resisted my input seemed to be suffering from just this delusion.

According to Garner, the Dunning-Kruger theory, developed by David Dunning and Justin Kruger of Cornell University, postulates that people tend to overestimate their own level of skill and fail to recognize genuine skill in others. Or as the Bible puts it in Proverbs 12:15, "The way of a fool seems right to him, but a wise man listens to advice."

The Dunning-Kruger study also shows, Garner argues, that people will recognize and acknowledge their previous lack of skill if they are exposed to training for that skill. That is precisely what happened in my case. I really didn't know how to draft a top-notch petition for review. And when I opened my mind and listened to my mentor, I recognized my lack of skill. Only then did I learn how to draft a good petition for review.

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