

## **Getting in Early and Doing it by the Book Can Reap Rewards**

by John Sturrock

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MUCH has been written about how to be a more effective lawyer in the modern age. If one was to sum up what most lawyers are seeking to achieve it might be this: how you can get good results for clients and make money?

This is the sub-title of a new book by Professor John Lande of the University of Missouri and it is more than a clever marketing ploy. The book (main title: *Lawyering with Planned Early Negotiation*) is an important work, capturing in a commonsense yet profound way what many lawyers are already trying to do and what many more will need to do to survive. Its value lies in taking a systematic approach to the subject of better negotiation, offering sensible guidance and a plethora of practical forms and checklists.

The book's central proposition is that whatever their area of practice, most lawyers engage in negotiation. It also assumes it is usually preferable for clients to resolve legal matters sooner rather than later, especially if this reduces cost and produces an acceptable result. Achieving this for a client, according to Lande, should lead to more referrals, job satisfaction and income. He offers practical advice about how to assess each case, analyse risk and decide which to resolve early – and which not.

He does not shirk from what he calls the “prison of fear” - that early negotiation will harm the clients' interests, give the appearance of weakness or result in loss of income. He emphasises the importance of gathering critical information. He faces up to the culture of maximising billable hours and recognises that negotiation is often hard, even when lawyers and clients are trying to be reasonable. The very process of being in dispute can compound the conflict for many reasons.

With a proliferation of dispute resolution processes, Lande says clients have more choices and lawyers need to understand these, and be competent in advising and representing clients in them.

Broadening this to a general approach to the practice of law, Lande poses a series of pertinent questions for any lawyer: What is the lawyer's job? What should be the relationship between lawyer and client? How should the fact that only a small fraction of cases go to trial affect how lawyers handle legal disputes? What interests do clients have in addition to protecting their financial positions? How can they assess and protect clients' interests and most effectively represent clients in negotiation and mediation? How can lawyers help clients choose and shape appropriate dispute resolution processes? Regardless of the kinds of cases they want to handle, what kind of lawyer do they want to be?

The book describes how to establish good working relationships with clients, understand their interests and manage their expectations. Obvious but not necessarily easy, especially if it involves difficult decisions. It focuses on maintaining a good personal relationship with the

lawyer (and possibly client) on the other side, especially in contentious situations – even to the extent of establishing a protocol for consultation before taking actions which might be perceived as adverse. It also offers advice on dealing with lawyers with whom you have recurring problems – not unusual in legal communities.

Positional bargaining and interest-based negotiation are contrasted. Preparation and planning are emphasised, with the emphasis on strategy and objectives, while the role of third parties to assist resolution, such as evaluators, adjudicators and mediators, is explored.

Offering “planned early negotiation” as part of a portfolio of services may seem sensible. Certainly, collaborative law features in some family disputes. But how many lawyers do so in a systematic way and how many clients would be attracted to firms that made a virtue of early resolution of disputes and cooperative problem-solving from the outset, all to reduce time and money for clients, minimise risk and enhance goodwill? The answer may help define the shape of legal services – and raise fascinating ethical issues - for years to come.

Professor John Lande is keynote speaker on Wednesday at the Embedding ADR in the Civil Justice System conference. He will also conduct a seminar, hosted by Core Solutions, on his book published by the American Bar Association.