RECOVERING FROM MISTAKES WITH CREDIBILITY AND CONFIDENCE

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   Dan DeFoe
Recovering from Mistakes with Credibility and Confidence

April 11, 2014 | 1:00 pm Eastern

Faculty Bios

Avery M. Blank is a Legal & Policy Analyst for the Center for Health & Homeland Security at the University of Maryland. In that role, she devises crisis plans and advises clients. Recently, she served as a trainer on goal-setting and personal development at the Ms. JD 2014 Conference on Women in the Law. Avery received her law degree from the University of Maryland School of Law where she was the recipient of the 2011 National Association of Women Lawyers Outstanding Law Student Award. She graduated magna cum laude from Colgate University.

Dan DeFoe, a former in-house trial attorney for a large insurance company, currently practices law near Kansas City, MO. He is also an organizational consultant and provides lawyers with change and development advice through Adlitem Solutions and his blog, Psycholawlogy. Dan received his undergraduate degree from the University of Illinois at Springfield, his JD from the University of Missouri School of Law – Columbia, and his MS in Organizational Development Psychology from Avila University.
Moderator Bio

Kathy Morris founded Under Advisement, Ltd. in 1988 to help lawyers excel in their careers. She was a criminal defense lawyer before starting her work in lawyer professional development and training. She also was the original creator of the ABA Career Center.

Kathy earned her JD from Northeastern University School of Law in Boston.

She is the series moderator for the monthly ABA CareerAdvice LIVE! programs.

Program Agenda

• Faculty Discussion
• Tips on the Topic
• Audience Questions
• Agree/Disagree
• More Audience Questions
• Takeaways
• ABA Resources
"The greatest mistake you can make in life is to be continually afraid you will make one."

Elbert Hubbard, U.S. author

"Mistakes are lessons of wisdom."

Hugh White, U.S. politician

"If you make a mistake and do not correct it, this is called a mistake."

Confucius

Top Issues

• Common lawyer mistakes and lessons to learn from them.
• Dealing with mistakes early and well.
• Handling the mistakes of others well too.
• Seeing red flags before, and recovering after, mistakes.
**Tips on the Topic**

- Pause.

- Apologize once (and only once!), then be solution-oriented.

- If you're the supervisor, when a mistake is made, be supportive.

- Don't keep someone's mistake top of mind or belabor it; allow him or her to get past it.

**Questions?**

From Program Participants
Agree/Disagree

Clients don't pay for mistakes; lawyers do.

Agree/Disagree

Find the mistake; fix the mistake; prevent the mistake.
More Questions?

Takeaway

Be resourceful in talking to peers and mentors and in thinking about your support network...before making a mistake.
Takeaways

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Making the same mistake twice is one time too many; engage in self-reflection to understand why you did it again.

More Takeaways

Be resourceful in talking to peers and mentors and in thinking about your support network...before making a mistake.

Making the same mistake twice is one time too many; engage in self-reflection to understand why you did it again.

Recall some of your own mistakes and share them, instructively, with others.
Final Takeaways

Be resourceful in talking to peers and mentors and in thinking about your support network...before being faced with making a mistake.

Making the same mistake twice is 1 time too many; engage in self-reflection to understand why you did it again.

Recall some of your own mistakes and share them, instructively, with others.

Learn the confidential resources in your workplace and your community—to use when multiple mistakes are grounded in other (deeper) issues.

Recovering from Mistakes

Visit the ABA Career Center Website to:

- **Search and apply** for more than 450 high-quality legal jobs nationwide.
- **Upload your resume** for review by hundreds of potential employers.
- **Receive email alerts** when new jobs are posted that meet your search criteria.
- Or **post a job** if you have an open position to fill.
Visit www.ambar.org/advice to register for our next CareerAdvice LIVE! program:

Tripwires for Lawyers and Law Students: Practice Traps for the Unwary

May 9, 2014
1:00 PM – 1:45 PM ET
We all make mistakes. There is no way around it; we are human beings. Common mistakes that lawyers make include errors related to time-keeping, deadlines, proofreading, court rules, being loose-lipped about client matters, claiming expenses, and not asking questions.¹

However, we can recover from the mistakes we make. To recover properly from mistakes, we must demonstrate confidence and credibility. So how exactly can we recover? Here is my advice:

The first question to ask yourself is whether your action (or inaction) was, in fact, a mistake. Sometimes the situation is due to a misunderstanding or lack of communication between both parties, or even a difference in opinion or morals. There may be times when attorneys that are more senior will try to exert power over younger attorneys to make them think they did something wrong. Be careful not to fall into the trap of wanting to be liked and submit to false allegations.

If you made a true mistake, think about what to say, as well as where and how to say it:

1. **WHERE**: Consider having a conversation with the offended party in a neutral location (e.g., conference room) rather than their office or workplace. A neutral setting helps both parties to be on equal footing and averts an automatic shift of power to the other person.

2. **HOW**: As evident from the first point, do it in-person. Dealing with the issue in-person shows courage. Show the other person you are in control by standing tall, speaking clearly, and making direct eye contact. If you are unable to do it in-person, have a video or telephone call. Try to avoid e-mail as words only can be misinterpreted.

3. **WHAT**: What you say speaks most to your credibility. First, admit to the mistake and apologize (once). Do not try to claim it was the fault of someone else.

   Second, be solution-oriented. After you have apologized, show the other person that you have figured out what to do to resolve the problem. Show that you have learned from the experience and will approach things differently next time. Give them two or three options on how to proceed to help them to feel more in control of the situation.

   Third and finally, ask for feedback. Show that you value them and are invested in their success and the success of the organization.

Recovering from a mistake is not easy and can be (initially) very uncomfortable. If you do it right, you will feel empowered at the end. You will know how to move forward in the current situation and not make the same mistake the next time.

Think of making a mistake as an opportunity to learn and prove your worth. Remember, it is not what you do but how you recover that matters most to the integrity of your career.

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Legal Practice Management Tip—Accountability: One Approach to Attorneys Handling Mistakes and Becoming a “Trusted Advisor”

BY DAN DEFOE ON MARCH 31, 2014 · LEAVE A COMMENT · IN ATTORNEY PROFESSIONALISM, LAWYERS, PERFORMANCE, PROFESSIONAL DEVELOPMENT

“. . . the key to professional success is not just technical mastery of one’s discipline (which is, of course, essential), but also the ability to work with clients in such a way as to earn their trust and gain their confidence.” from Introduction, The Trusted Advisor

“Now, what is Accountability? It is: . . . * The quickest way to learn from your mistakes and improve your effectiveness . . . .” from Coaching for Attorneys: Improving Productivity and Achieving Balance

Lawyers begin their legal careers as vendors. Yes, while we may provide our “special” service with a mastery of certain subject matter areas with technical excellence, we have not reached trusted advisor status. That takes time. Growing pains occur. Mistake, defined in Black’s Law Dictionary as an “unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence”, contributes to that experience.

This post’s discussion does not involve breaches or violations of professional ethics, rules of professional responsibility, or disciplinary codes. Instead, we touch on the common day-to-day hiccoughs which, if not addressed and corrected, may lead to deeper, more serious trouble. We all make mistakes. This post suggests some tips about dealing with them and growing in that process.

The authors of The Trusted Advisor describe that person as reaching the pinnacle of the client-advisor relationship in that “. . . virtually all issues, personal and professional, are open to discussion
and exploration.” The trusted advisor has content expertise and integrates that with organizational and interpersonal skills. The trusted advisor goes beyond the vendor's service offering of content, exceeds simply meeting the needs of the client, and enjoys much more than having a “relationship”. The trusted advisor reaches the summit and has a “full trust-based relationship . . . marked by a broad range of business issues and a deep personal relationship.”

Mistakes occur often during our careers. When it comes to serving your clients, mistakes always matter. This issue involves two perspectives – client and attorney. The authors of the Trusted Advisor note the importance of the client’s perspective on the very first page of the opening chapter of their book. We all want to become trusted advisors. That status can bring many benefits to your professional career. The authors present a list. It states in part: “The more your clients trust you, the more they will: . . . . 11. Forgive you when you make a mistake.”

How attorneys handle their mistakes matters just as much, and perhaps more over the course of an attorney’s career growth and development. This purpose of this post is to provide a tool for your attorney tool-belt. I borrow this tool – an approach from an expert attorney coach, and address the general topic – mistakes that lawyers make. This post offers an approach on how to acknowledge them and fix them, and makes a connection between that process and how you as an attorney can grow as a person and professional. When you acknowledge and fix your mistakes, learn from them, and avoid setting a pattern, you will grow as a person and attorney, and will not choose to let mistakes become an obstacle in your path to becoming a “trusted advisor”. This post lays out an approach from a recent book, Coaching for Attorneys: Improving Productivity and Achieving Balance, authored by attorney-coach Cami McLaren and co-author attorney Stephanie Finelli reviewed in a prior post see here.

**Accountability – Attorneys Can Learn from Mistakes and Improve Effectiveness**

Accountability provides attorneys a workable foundation for creating sustainable change. McLaren and Finelli define it as “the ability to account for the choices you have made and the results that you have.” This is a neutral term. Reorienting ourselves from a culture of blame and victimhood, this approach enables us to develop the ability to take ownership for choices, appreciate the concept of feedback so that we can learn from results, recognize patterns, and then act on our learning to move forward purposefully.
No more blaming something outside of ourselves. The weather, boss, judge, traffic, wife, or kids do not make our choices. The approach outlined in Coaching for Attorneys suggests that accountability provides us a key to empowerment, can operate as the quickest way to learn from our mistakes and improve effectiveness, and enable us to take ownership for our actions/omissions and results. By accountability, as spelled out in their book, McLaren and Finelli, provide a pretty compelling model on how to deal with them, and to move forward from mistakes purposefully. This leads to sustainable change and improved effectiveness.

“N.O.L.L.A.” – the Accountability Process for Attorneys to Learn from Mistakes Begins With Neutrality

The main premise of “Accountability”: we can learn from and profit from the mistakes of past choices. How? The first step is to recognize that we always have choices. Whether it relates to delivering a brief or memo on time or securing a meeting room or getting a court reporter, when we think about these tasks in terms of our choices, our options or possibilities expand, according to the authors. The more that we talk to ourselves about it, the greater our awareness of all our possible choices becomes. Before considering this simple and elegant process, an important preliminary – neutrality – gets some attention.

Neutrality helps us escape the culture of blame and fault which riddles our profession. We either blame others, i.e. fault finder, or blame ourselves, i.e. victimhood, for results [mistakes] that we do not accept or which disappoint. McLaren and Finelli provide their coaching tips from a background of Neurolinguistic Programming [NLP]. Under NLP, “There is no failure; only feedback.” The accountability process builds upon this foundation of neutrality. A ledger provides the visual for neutrality. A ledger holds numbers and facts. No right or wrong here. Instead, it presents what is “true” – the information which describes reality. Context provides the basis for your evaluation of
your terrain. Accountable attorneys generate their “ledger” by stepping back and taking an objective look. They collect clues, and ask how they can learn from this information. They do not blame others or themselves. Instead, they take on the role of detective – ferret out what happened, what worked, and what did not. Next, NOLLA.

The authors of Coaching for Attorneys provide a simple, elegant process model of the accountability process. The process, which I have identified by the NOLLA label, involves the attorney looking at himself or herself to see where choices worked and did not work, and to see where the attorney can make the same or different choices to get the desired results. This process, NOLLA, operates on the main premise that “we are always choosing”, and goes forward in steps:

1. **[N] Notice the Result** – What is, what happened, what worked, what you wanted. . . .
   Anything can result. You start by noticing the result itself.

2. **[O] Own the Result** – The result occurred after you made choices. According to the authors, “you must identify your choices and not the circumstances or what someone else did”. Ask “What are all the choices I made that landed me here?”

3. **[L] Look for Patterns** – Pattern identification starts with a question – “Is this behavior a habit or pattern for me?” Avoid judgments like “good” or “bad” or “smart” or “stupid”. The authors suggest that we use queries which tap into the “. . . is this working. . . “ or “. . . does this not work . . . “ concepts instead. These are neutral.

4. **[L] Learn from My Choices** – What does the information in this situation from Step 3 teach me about myself? Consider three important things about my behavior: beliefs, attitudes, and assumptions. According to the authors, these percolate in our subconscious minds. We, they continue, often make choices based upon our subconscious minds. Beliefs often generate behaviors. Our attitudes show how we regard ourselves, other people, and certain circumstances. These, too, figure in our choices. Finally, sometimes assumptions about ourselves, people, or circumstances leads us in choices.

5. **[A] Act on Learning** – Learning under the attorney accountability model envisions you making a different choice next time. Or, if your choices worked, you will want to replicate your results. This last step involves two parts: Decision and Action. You must take action to make a change. Beliefs, attitudes, and assumptions do not change automatically. Accountability, the process described here, helps make those things which lie below the waterline become a greater part of our conscious awareness. Change can occur then.
The NOLLA process of accountability enables attorneys to account for choices and results. This provides true power. A paradigm shift occurs. The words that you use play a huge role here.

**Accountability, the Power of Language, and Payoffs**

Do not say “. . . I am tryin. . . .” anymore. According to the authors, that exemplifies “victim language”. That word – try – does provide you important information. The authors state, “It tells you when you are feeling powerless.” With the power of NOLLA behind you, you can say “No. I am not done.” instead of “. . . I am trying. . . .” in response to the question about the memo or brief being done. Speak from a place of ownership about your work. The authors give several examples in their chapter “Accountability – Your Keys to the Kingdom”:

- Say, “What is possible” instead of “There is nothing I can do”
- Say “What’s working” instead of “I can’t”
- Say “What action can I take” instead of “I have no control over it”
- Say “What is my part in this” instead of “If [another person] would only do things differently, this would have . . . .”

McLaren and Finelli observe that the language that you use in your attorney work affects your feelings, energy level, and your belief in yourself. By using the NOLLA process, you can interrupt your feelings of powerlessness and victimhood, and empower yourself to learn from your mistakes.

An attorney who becomes “accountable” has used courage, commitment, and dedication. He or she has shifted their view of the world and self. The accountable attorney gives up things and gains others in the process. Examples of the nice payoffs include:

- Give up the illusion that you do not make mistakes. You gain the power to learn from your mistakes.
- Give up avoiding the work of change. You gain the ability and become solution-focused, rather than problem-focused.
- Give up the “looking good” image. You gain the trust of others as they come to know that you will figure out what went wrong and then fix it.
- Give up telling the victim story to get attention and comfort from others. You gain greater self-esteem and feel better about yourself.
Mistakes – A Major Item in the Inventory of Trust-Building or Trust-Breaking Behaviors

The authors of Coaching for Attorneys place the chapter “Trust in our Profession” at the end of the fine attorney-coaching book. They assert that trust in the context of legal services has many more aspects than one might imagine. Beyond that, they describe the real issue for attorneys as “accountable trust”. This has two facets: (1) we are responsible for our results, and (2) we have more choices and control over our results than we believe that we have. Building on their entire book up to that point, the authors suggest that the important “trust” for attorneys springs from choice. We engage in the behaviors that build or break trust with others. McLaren and Finelli include mistakes in their list of the major behaviors which either build or break trust with others.

The fifth item in the authors’ list states “Acknowledge and Fix Your Mistakes”. “Admitting mistakes builds trust.” Apologize immediately. Make no excuses. Forgive others when they make mistakes. Open communication about mistakes paves the way to create open, honest, and trusting relationships. Next step involves the “fix”.

You have realized your mistake. Acknowledgement has occurred. Next, rectify the situation. Sometimes, little or no action needs to occur. Other times, making things right requires more action. Do what you can to do what is needed to make the situation right. No recipes here. Instead, as the authors simply state “Once you realize your mistake, do what you can to rectify the situation.” If that does not work, get help. Do not “try”. Do.

Summary

This post describes the Accountability process from a new coaching book for attorney effectiveness, Coaching for Attorneys: Improving Productivity and Achieving Balance, by attorney-coach Cami McLaren and co-author attorney Stephanie Finelli. Accountability, described in this post as a step by step process identified as “N.O.L.L.A”, provides a simple and elegant value-
neutral process for attorneys to acknowledge, fix, and learn from their mistakes.

Accountability, when practiced as described here, can relieve us from the burden of the culture of blame and victimhood. Accountability empowers attorneys’ choice-making behaviors, and provides a way for them to learn from their mistakes, gain trust, and get us all one step closer, perhaps, to becoming a more effective attorney and counselor – a “trusted advisor”.

The accountable attorney gives up staying comfortable. The accountable attorney, one who has been empowered to learn from mistakes, gains personal integrity and higher self-trust. This makes the possibilities for sustainable change in professional and personal life wide open. When you truly believe in yourself, after you say that you will do something, you will . . . .

**Image Source:** Trusted Advisor – [here](#) / Ledger – [here](#) / Who are your trusted advisors [see here](#)

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