

Teaching Notes for
15.666/9

NOTES ON OPTIONS FOR COMPLAINT-HANDLERS

A. Plan and Prepare:

- Estimate your time constraints — is this an emergency? Do you have time to give the complainant a little time to compose his or her thoughts?
- Determine whose interests are at stake and what those interests are;
- Determine "Who owns this question?" Who is responsible for this subject or problem? Who in management would think they have a right over this subject? What about the original source of the complaint — does that person feel he or she "owns" the complaint or ought to be able to do so?;
- Seek advice, making certain that you have permission to do so;* (check for precedents, etc.);
- Gather any facts that are cost-effective and ethical to gather at any given time — depending on the situation this might be done by you or for you or for someone else;
- Brainstorm — with someone else if possible — all the constructive and unconstructive options open to each actor. This will lead you to doing an analysis of the sources of power for each of the actors, and the potential sources of power for each.** Be sure that you have thought through the covert — that is, acting out — options open to each actor;
- Brainstorm again if you can — feelings, interests, positions, options; policies and principles that should obtain;
- Make notes — figure out a plan for action, and a plan for follow-up, (this is ESSENTIAL in harassment, safety and ethics cases);

B. General Principles

- Help your complainant to pick an option, or if appropriate, you pick an option — one that you really think will work. One wants to avoid half-hearted measures and escalation, so plan to expend 101% of the effort that will be required actually to resolve this question;
- Other things being equal, choose a method that resolves the problem at the lowest possible level. "Delegate" as much complaint-handling as you effectively can — empowering others is probably efficient for you;

C. Choose an Option, or if Possible, Help Your Complainant Choose an Option

1. Helping People Help Themselves:

a) How to do it:

- Consider all the other options first, and again before any action is taken. Be sure that if this option is chosen, that the complainant knows other options exist and has freely chosen this one. This is ESSENTIAL for harassment, safety and ethics complaints, so you may wish to make a written note of having offered options;
- Explore facts and feelings with the complainant — take enough time!

- Explore with the complainant, what O (the Other) would or will think, say, do and feel; (you may wish to role-play — "I'll be you — you be O;")
- Consider re-reading "Drafting — and Perhaps Sending — A Private Letter to a Person Who Has Harassed or Offended You";
- Encourage your complainant to draft a letter to O, writing several drafts if necessary, with facts, feelings, and recommendations in separate sections;
- Help your complainant choose an option for handling the complaint. If the option is to be that the complainant will handle the problem directly, help him or her to choose whether to handle the problem in person or on paper, or both — by delivering the letter in person. The writer should keep a copy of a letter, if any, but usually should not send open or covert photo-copies to anyone;
- Prepare for all logical outcomes on the part of the alleged offender, so the complainant will not be surprised by the outcome, whatever it is;
- Follow-up with the complainant; this is ESSENTIAL with harassment, safety and ethics complaints.

b) Reasons to consider this option:

- The complainant wants this option;
- This may prevent mistakes based on insufficient data and/or different perceptions of the facts; it makes it much more likely that the complainant will learn what should be learned about the facts and O's perceptions of the facts;
- This option may help when it is impossible or too expensive for the complainant or the employer to get all the facts;
- This option may help to teach offended people a method for dealing with problems and offenses. This is because teaching a method for dealing with problems — rather than just solving the specific problem — appears to make it less likely that the complainant will be offended in the future — possibly because it may help such a person to learn how to deal directly with interpersonal problems;
- Delegating complaint-handling makes a more efficient enterprise, (as with any other effective delegation of responsibility);
- Handling the problem directly appears to some people more moral and more fair;
- This option helps to support peoples' control over their own complaints. For many people, handling a problem directly, if it is effective, may be a preferred process, whatever the substance of the complaint;
- This option helps to preserve the privacy of all;
- This option helps to protect the other rights of O;
- In most cases handling a problem directly is less likely to provoke attempts at reprisal, since reprisal is often provoked by intervention by a third party — dealing directly does not "rock the boat" and is often preferred by O;

- This option is likely to take less time and cost less;
- This option is sometimes better in terms of timing and other psychological variables, due to the complainant's superior knowledge of the situation;
- This option permits a wide variety of "next steps," if this step does not work, and if more action is desired;
- This option may provide more leverage for management, if management action is needed later on, because of the evidence provided by a complainant's letter, or by the complainant's direct attempt to get the situation resolved;
- Direct action by a complainant is frequently the most effective option, in terms of stopping offensive behavior, where there is little evidence for the offense beyond the complainant's own statements.

c) Caveats:

- This option has only limited goals — there is not likely to be much system change, or consciousness-raising of others from the use of this option, unless the option becomes widely known and used in the company;
- Follow-up is essential;
- "Justice" may or may not be served;
- If a complainant sends a letter, that letter then belongs to the recipient and can be used by that person. This can be damaging if the letter is inaccurate or embarrassing;
- There are no central records in the case of repeat offenders; one is opting for errors of omission — too little being done — rather than errors of commission — too much being done.

2. Shuttle Diplomacy and Mediation:

a) How to do it:

- Consider all other options, with your complainant and by yourself. Be sure that you have permission to talk with everyone with whom you will need to talk.* Remember that in most situations mediation should be purely voluntary for all parties;
- Seek advice, from counsel, Equal Opportunity, Employee Relations, mentors, superiors, etc. Consider re-reading Christopher Moore's Mediation Process;
- Consider how and when to enter the dispute. Can you enhance your credibility? Is there trust and rapport; is there anyway you can build trust? Think about timing and place, etc. Is there an understanding of third-party intervention of this type? What are each party's expectations of you?
- Investigate a little if you can do so at no cost. Are there records? Will the parties have data they can prepare for you? (The parties are to come at least in part to their own settlement, in this mode, but you will be better off with as much data as you can get);
- Prepare and plan for all logical outcomes — beginning with the standard analysis of feelings, interests, positions, options, policies and principles;

- Choose a mode for how you will enter the dispute, remembering that — within hierarchies — shuttle diplomacy works better for most people than does mediation. (See also point "c", below.) If mediation appears to be a good choice, then consider using shuttle diplomacy first, to prepare people for the mediation.

- Follow the basic steps: prevent emotional withdrawal if possible; protect and support conciliatory feelings if possible; seek out all the interests again and again, and deal with the "positions" that come up. Brainstorm if possible — expand the pie if you can — wait for the parties' own solution if it will come. Then help narrow the issues; help in assessing and choosing an option; come to a conclusion; state the conclusion; write the settlement if appropriate.

- Follow up if appropriate.

b) When to consider this option:

- The parties want this option — and you have been asked to conciliate or mediate;
- You feel comfortable with this option — you know you are good at it and you know you have no conflict of interest;
- This kind of complaint-handling is consistent with your employer's "culture" — the norms support each side giving a little and the norms support cooperation;
- The timing seems right. For example, they have tried to settle this themselves unsuccessfully, but they are not yet hopelessly polarized;
- You believe that you will be able to problem-solve, to help them come to their own solution, to help them exchange information and perceptions, to build trust;
- The parties are inter-dependent and this is not a win-lose situation;
- The parties each perceive that they have weak Best Alternative to a Negotiated Agreement (BATNA); there is reasonably equal power in the situation;
- You have a high investment in a good outcome for each person involved;
- The right people are actually available to deal with;
- Because these parties — like most people — prefer conciliation and mediation to adjudication, and may be more satisfied with the process of mediation, as well as the outcome.

c) When to consider shuttle diplomacy rather than mediation:

- This is the option that the parties want, or that one person wants, or that you prefer;
- Trust is a major problem;
- "Face" is a major problem;
- Privacy is a major problem;
- This is the best way to get the data that are needed;

- A single text option is going to work best with these people;
- This option is more convenient;
- This is the only way to substitute for someone who cannot be there for face-to-face mediation;
- This is the only way to deal with a situation where you cannot discuss all the relevant data with one person or the other because of privacy concerns.

d) Caveats:

- Do not use mediation where what you really intend is to lay down the law or otherwise adjudicate, or arbitrate. People will quickly come to distrust you if they were brought together to find (or to help to find) their own solution and you provide and insist on your solution;
- Do not use mediation as a tool for formal investigation or where you believe that you might learn facts that will force you to adjudicate;
- "Justice" may or may not be served;
- Mediation may or may not provide good "precedents".

3. Investigation and Adjudication or Arbitration

a) How to do it:

- Consider all other options. Be sure that you have permission to use the information that you have or will have, except in the unusual circumstance that there must be a truly clandestine investigation;*
- Under ordinary circumstances you should not take adverse administrative action against an employee without a fair process beforehand. Emergencies may occasionally pose a problem in this respect, but consider carefully whether a fair process can occur, before you fail to initiate such a process;
- Seek advice, from counsel, Equal Opportunity, Employee Relations, mentor, superior, etc.;
- Consider who should be the investigator(s). For example, you may wish to insulate a decision-maker from any bias or perception of bias, or from backlash. You may wish to provide special, perhaps technical, expertise in fact-finding, and therefore may wish a finder of fact separate from the decision-maker;
- Consider what should be the charge to the fact-finder, and what should be the limits or scope of the investigation;
- Consider whether the investigation should be formal or informal, and whether the investigator should or should not be asked for formal recommendations. Do not ask a very junior person to make formal recommendations;
- Consider the timing of the investigation, which should typically be "fair, prompt and thorough" — although note that an expeditious investigation will not necessarily be possible;
- Consider carefully all the non-invasive sources of data, for example records, reports, etc., before going to disruptive sources of data;

- Consider very carefully who should know about the investigation, beginning of course with whether you will inform the subject of the investigation. Consider who will be informed about the process of an investigation if it takes a long time, and on what schedule.
- Prepare and plan for all the logical outcomes, beginning with the standard analysis of feelings, interests, positions, options, policies and principles that may be relevant. It is particularly important to do a careful analysis of the sources of power of each of the people involved, and a careful analysis of unconstructive as well as constructive options open to each of these people;
- Arrange for appropriate review of the results of any formal investigation — for example by legal counsel — before administrative action is taken;
- Consider carefully before you start, what may be the important follow-up steps after investigation and adjudication have occurred.

b) When to consider this option:

- When you are required by law or policy to investigate, and/or adjudicate;
- When you personally are willing and able to undertake a fair process; (for example you have no serious conflict of interest);
- When one or both parties wish an investigation and decision-making, and you approve, for example for the reasons above;
- When both or all parties refuse to negotiate or mediate; where the parties cannot learn how to negotiate fast enough to deal with the problem that must be resolved;
- When a win-lose decision is the right decision — for example it is a distributive problem — there is an emergency— it is clear that one or both parties are lying about something serious;
- In lose/lose situations where the goal is to minimize the maximum feasible loss;
- When you can easily see a win/win adjudication;
- There is a hopeless power imbalance, or a desperate problem of saving face;
- When the future relations of the parties are not a concern or might actually be enhanced by adjudication, or satisfaction of the real interests of the parties is not dependent on their future cooperation;
- When the stakes for the parties are low, but they are high for your employer;

c) Caveats:

- Investigations are often very expensive in time and feelings, and money and investigations often make people fear and dislike the investigator;
- Expect that the results of the process and outcome of the investigation may be made public, possibly in a disconcerting way;
- Be prepared for people "voting with their feet" or expressing other dissatisfaction with the outcome of investigation and adjudication. This is especially true in delicate situations where you

will not be able to give out much information to the public, and where you therefore cannot defend yourself and the process. In such situations you may need to continue to deal with peoples' feelings, and to try to provide at least some information to disputants and bystanders, for some time. This may be especially true with people who are — or who see themselves as — "whistleblowers".

- Too frequent adjudication of disputes may result in inefficient management and loss of motivation — or willingness to speak up — by those involved.

4. Generic Options and Systems Change

a) How to do it:

- Consider all other options to be sure this one is appropriate. Be sure that you have permission or a right to use any information you will need to use, or devise a method whereby the appropriate manager can be alerted to collect the information that is needed, without your having to break anyone's confidence;
- Ask yourself, whose interests are at stake? (Make a list). Ask yourself, who "owns" this problem — who would feel a right to dispose of or prevent this type of problem? (Make a list). Consider these lists carefully before you decide where and how to intervene;
- Consider the time constraints. Is this an emergency? Is this a problem that needs careful study?
- Do a quick and practical cost-effectiveness analysis in your head about whether and when and how a systems approach might help;
- Consider whether to design a way to find out later if the systems change is working.

b) When to consider this option:

- When a systems change is required by policy or law;
- When you personally are willing and able to pursue a generic approach;
- When many people are likely to have the same problem, the costs of not fixing it are high, or for any other reasons the cost-benefit analysis is favorable;
- When the workplace culture is, or should be, tilted toward preventive measures as well as complaint resolution;
- When for confidentiality reasons you cannot address the alleged problem of an individual (e.g. sexual harassment) but a "generic" address to the problem (e.g. a training program on harassment) is likely to resolve the problem of a known individual who will not otherwise come forward;
- When the complainant or the offender is unknown (e.g. the complainant is anonymous or an anonymous person is making obscene calls);
- When you have picked up a problem new to the company, that will need to be thought through, or where the ramifications of a problem are as yet unknown and should be considered at top management levels;

- When the only satisfactory approach will require cooperation between the company and outside persons or entities.

c) Caveats:

- A systems approach may not satisfy the feelings of individual complainants, especially if a problem is taken out of individual hands, or the solution takes a long time, or a "vanilla" solution must be adopted to placate strong competing interests;
- "Justice" may or may not be served in the individual case that is dealt with on a "generic" basis;
- If a systems approach is used to deal with an individual case, follow-up with the individual who complained is essential, to be sure that the individual problem does not recur;
- Some managers will complain that a systems approach was not needed, for a problem that they never knew existed or thought to be trivial or very rare;
- One must approach the system in the right manner, at the right time and at the right level. If you think this is not possible at the moment, this may not be a good option.

* Confidentiality: You are well-advised always to get permission, if possible, to use the information given by a complainant. Typically one can get permission to consult with others, to use the data on an anonymous basis, or to use the information after a certain period of time (that is acceptable to you) has passed. If all else fails, a complainant will often give you permission to tell a person very high in management, for example, a CEO. It is usually better to spend the time to work very hard to get permission to use information than to expose someone as an informant. When in doubt, (and when an investigation is not clandestine), work hard to get explicit permission before quoting a complainant, and in general always protect people's privacy in any responsible way that is open to you.

** Sources of Power in Negotiation include: Legitimate Authority; Rewards; Sanctions; Force; Commitment to a Position; Charismatic/ Moral Authority Power; Information or Access to Information; Expertise or Skill; an Elegant Solution; Good (or Bad) Relationship — for building (or losing) power; a BATNA (or fall-back position).