

What I Wish I'd Learned in Law School

Running the Ethical Office in the 21st Century

LAWPAY[®]

AN AFFINIPAY SOLUTION



2 Claude E. Ducloux

- 40 year seasoned attorney
- Board Certified in Civil Trial Law and Civil Appellate Law – Texas Board of Legal Specialization
- Former President, Austin Bar Assoc.
- Received Gene Cavin Award for Lifetime Achievement in Teaching Continuing Education



Preview

1



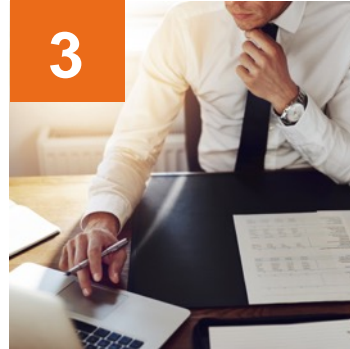
The Potential
Client

2



Documenting
Representation

3



Running
Your Office

4



Using a Trust
Account

4 Five common problems

1. Communication
2. Neglect
3. Handling the Attorney-Client Relationship
4. Poor Billing Habits
5. Misuse of Retainer Accounts

PART 1

The Potential Client

Intake: Your initial chance to bond and assess the client history

- Listen respectfully, intensely—full attention
- Do not allow any interruptions
- Check EARLY for conflicts
- Ask good questions
- Ask client to repeat key facts—keep good notes



7 Discuss what your client wants

Find out:

What they really hope to achieve and is that realistic?

Inform:

What goals can they expect to accomplish?

- Timeline
- Cost
- Alternatives

Two initial interview questions **you should** ask the client

1. What do you think I can do for you?

Good answer:

"You're the attorney, you tell me."

2. What is the other party telling their attorney about you?

Caveat: Remember, a person suing "for the principle" will never be happy with your work.

9 Objectives in contested matters

Discuss their most important objective—is it to win or delay the inevitable?

Warning: If a client says they are suing “for the principle,” that rarely results in a good outcome.

(Consider raising your rate)



The “speeches”

- Discuss conflicts up front

If there is more than one party involved in your legal matter, make sure all know whom (which entity) you will represent.

- Are there other entities involved? Other Counsel?

- Describe your duties of communication in different scenarios.

Ex. “If I represent your entity, you should expect no confidentiality between me and the rest of you.”

Your goal: Reasonable expectations

- A good interview results in reasonable expectations for you and your client
- The good interviewing techniques should result in client's reasonable expectations.
- What about you?
 - Time to ask yourself: Is this a prudent piece of business for you to handle?
 - Do you have the skills?
 - Do you have the desire?
 - Do you have the technology?

Bottom Line: don't sign on to handle matters you are clearly unable to manage.

PART 2

Documenting the Representation

Never underestimate fees

THE CLIENT
WILL REMEMBER
THE LOWEST FEE
YOU QUOTE

Discuss client payment plan

- Does this client have the money?
- Is there a payment plan?
 - **IF SO**, what is it?
 - **IF NOT**, don't start the case.



What should be in a good fee agreement?

For the client, make sure you discuss:

- Scope of work
- Basis of fee
- Who will be working on it (You? Legal Assistant? Associate?)
- How will updates be communicated (Primarily email? Phone?)
- Many states do, or will require, a privacy policy
- Office hours
- Amount of prepaid fees, and disclosure it will not earn interest

Additional contract provisions

- Client's rights—what the client has a right to expect from you
- Rejection of settlement offers (procedure for second opinions)
- Venue for any disputes (your home county)
- Termination rights/withdrawal by attorney
- Employment of other counsel for related matters
- How client can contact the bar if a complaint arises

Rights and duties in conflicts

If there is a potential conflict, You, the lawyer have the duty to:

- a. Disclose
- b. Secure permission if it can be waived
- c. Withdraw if it cannot be, or will not be waived by one or more parties.

In 2016, seven percent of all malpractice suits were based upon conflicts of interest resulting in bad outcomes.

Complete disclosure by lawyer means:

1. The EXISTENCE of the conflict
2. The NATURE of the conflict
3. The IMPLICATIONS of the conflict
4. Possible ADVERSE CONSEQUENCES of common representation
5. ADVANTAGES of common representation

Managing your difficult clients

Just because your client is unreasonably emotional does not give you the right to be the same way.

Observe your duties to the courts and opposing/cooperating counsel and ensure your client understands your duty to do so.

Doing business with the client

Guidelines:

- Must be fair to client
- Must have full disclosure
- Must give client the right to seek independent advice
- **MUST GET THE CONSENT IN WRITING!**

PART 3

Running Your Office

Financial control

- How often do you review statements and checks?
- Who is allowed access to your checking accounts?



23 Payment systems

- How do you bill? How often?
- How difficult do you make it to be paid?
- How many options do you give clients to pay you?

24 Law office budgeting

- The ABA estimates that most lawyers actually bill just under 4 hours per day
- This means most lawyers (especially solo-small firms) should know how to configure their law office budgets on that basis

The three elements you must know are:

1. The reasonable billing rate in your community for the legal services you provide
2. Your personal income budget you are responsible for producing every month for your living costs
3. How much your office operations (overhead) cost you

Ok, so how do I set my hourly rate?

1. What is reasonable and necessary for you?

2. What is a client willing to pay?

You cannot charge less than you need to support yourself (and often your family) given all resources available to you

BUT

You can't charge more than a fair/reasonable rate in your community for your area of practice

Step one: What is charged in my community?

1. Ask attorneys in your practice area
2. Ask the judges in your area



Step two: How do I figure out my personal budget?

1. Annual goal

2. Daily goal

Remember, your formula should support this reality...

4-Hour Per Day Rule

A lawyer should be able to survive on billing and collecting four hours per day

How do I calculate the 4-hour per day method?

Formula

Add all personal	\$8,000
expenses, plus	
law office expenses:	+ \$4,500
	<hr/>
Total:	\$12,500

20 billing days x 4 = 80 hrs a month
\$12,500 ÷ 80 hrs

\$156 HOURLY RATE

How do I implement the 4-hour per day method?

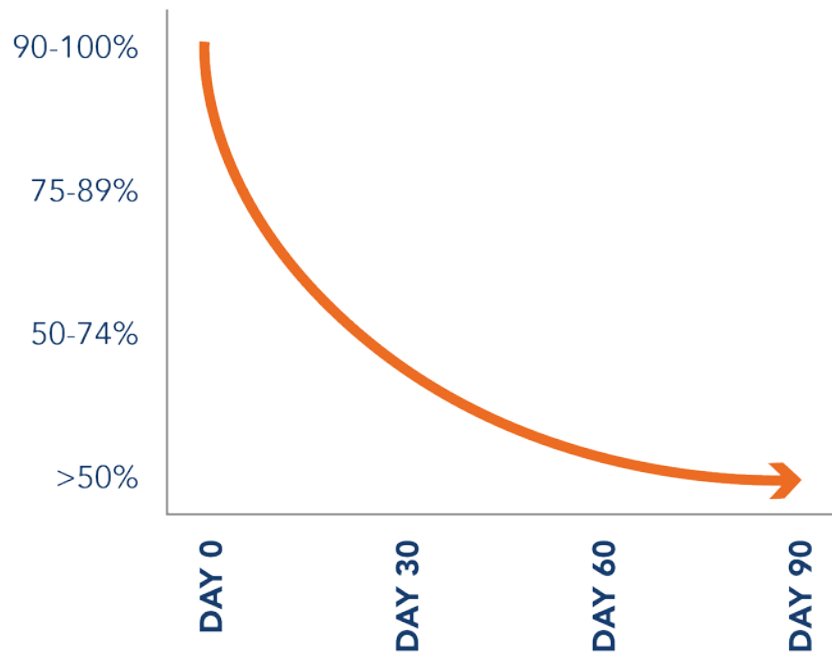
Your office will succeed with the 4-hour per day method if:

- Your hourly rate is within the accepted rate; and
- You monitor/check each day to make sure you are confident you can bill and COLLECT for four hours
- In our previous example, the need for \$12,500 per month translated to a daily average income need of $4 \text{ hours} \times \$156 = \624 per day
- I call that daily rate my “income microcosm”
- $\$12,500 \times 12 = \$150,000$ per year is my “income macrocosm”

Billing and collecting: The “life blood” of your practice

NONE of your budgeting or planning means a thing unless you have EXCELLENT billing habits!

- Record time diligently
- Send bills out on time
- Give clients payment options
- Incentivize them to pay
- Follow up on unpaid items



Strive for 90 percent+ collection rate

Always record your time daily.
You'll forget the very next day what you did.

Tip 1: Check outgoing mail

Tip 2: Don't use shorthand

Tip 3: Never reveal confidences

Throw in entries of activity at no charge.

Bad billing habits:

1. Making the stapler a profit center (charging for binding, office supplies)
2. Charging a surcharge for use of credit cards
3. Charging excessively for “legal research” or using bland descriptions like “file review” or “file update”
4. Charging too much for copies/faxes

Billing habits that work: the path to success

1. Timely billing: It is a “mortal sin” not to get bills out on a set day each month.
2. Remember the client satisfaction curve!
The client satisfaction curve declines steeply after 30 days.
3. Always give clients the option of emailing them their bills. Most younger clients rarely use checks—they prefer debit/credit cards.
4. Use a payment link in your email, on invoices, and attach one to your website.

34 Make payments easy

To: epace@domain.com
From: payments@jeffersonhartlaw.com
Subject: Jefferson & Hart Invoice for Em

Dear Emily,
Please click the button below to p

PAY INVOICE

Thank you for your business.

JEFFERSON & HART
ATTORNEYS AT LAW
Brian E. Hart, Managing Partner
1234 Main Street, Atlanta, GA 30301
555-321-1234 | jeffersonhartlaw.com

https://secure.lawpay.com/pages/jeffersonhart

JEFFERSON & HART
ATTORNEYS AT LAW
Jefferson & Hart
1234 Main Street
Atlanta, GA 30301
(555) 321-1234

**Thank you
for your
prompt payment**

Invoice Payment
INVOICE 123-A

Amount **\$2,000.00**
Total \$2,000.00

Card Information

Card Number **** * 9998 **CW** 001

Exp. NOV 2021

VISA DISCOVER
mastercard. AMERICAN EXPRESS

35 Payment systems

The image shows two overlapping browser windows. The background window displays the Jefferson & Hart Attorneys at Law website with a city skyline image and a 'Pay Invoice' button. The foreground window shows the secure payment portal for the same firm, titled 'Invoice Payment' for 'INVOICE 123-A'. The payment amount is \$2,000.00. The card information section includes a card number field (masked with asterisks and ending in 9998), an expiration date field (NOV 2021), and a CVV field (001). A green 'SUBMIT PAYMENT' button is highlighted with a mouse cursor.

https://www.jeffersonhart.com

JEFFERSON & HART
ATTORNEYS AT LAW

Attorneys Ab

Pay Invoice

Integrated Planning Solutions for
and Their Businesses

https://secure.lawpay.com/pages/jeffersonhart

JEFFERSON & HART
ATTORNEYS AT LAW

Jefferson & Hart
1234 Main Street
Atlanta, GA 30301
(555) 321-1234

Invoice Payment

INVOICE 123-A

Amount **\$2,000.00**
Total \$2,000.00

Card Information

Card Number *****9998

Exp. NOV 2021

CW 001

SUBMIT PAYMENT

What if I don't get paid? Suing clients—a bad idea

Never sue a client unless it is an “existential threat” to the firm!

Why not?

1. Good clients will work with you.
2. Bad clients lie (and you have the burden of proof as fiduciary).
3. Counterclaims against you are mandatory.
4. It is a time vampire. Go make new money!

Instead: Use ADR (i.e., fee dispute committees) whenever possible.

PART 4

Using a Trust Account

Using your lawyer trust account

What belongs in an trust (IOLTA) account?

- Client funds that have not been earned by you
- Client funds being held in escrow for an event or contract or costs

What doesn't belong in there?

- Your money! When you earn it, take it out and transfer it to your operating account
- Non-refundable retainers, absent agreement to contrary (non-refundables are similar to flat fee)

Distributions from a lawyer trust account

What checks/transfers should come out of attorney trust account?

- Payment directly to attorney of earned fees (have a billing to back that up!)
- Payment of costs on behalf of client from client's retainer
- Refunds to client in appropriate circumstances (i.e., fee for matter completed is less than retainer)

Improper distributions from trust

What checks/transfers should NOT come out of the IOLTA account?

- Lawyer's personal bills, overhead, costs, credit card fees, etc.
- Lawyer's payroll, dues, fines, sanctions, etc. (even if it's from a "non-refundable retainer")

Claude's best tips for a successful practice

- Look professional: inspire confidence.
- Do your share of the work. Don't make excuses.
- Get involved in your profession. People will think of you.
- Communicate often with everyone.
- Use the world's greatest research tool: the telephone.

Communicate often: it's a magic shield

- Communicate proactively with clients, opposing counsel, and the courts
- Do not let client change your narrative: “You promised X”
- Always reply with the facts
- Send “newsy” updates
- Remind your client often of their goals and expectations if that needs reinforcement
- If either the goals or methods of obtaining them need modification, write that down and sign it—practice defensively

Six concepts attorneys believe clients want

Competence

Accountability

Accessibility

Communication

Collaboration

Respect & Courtesy

What clients really want

The six concepts:

- Competence
- Communication
- Accessibility
- Collaboration
- Respect and courtesy
- Accountability

“Survey says—”

1. Collaboration
2. Accessibility
3. Communicator
4. Accountability
5. Respect and courtesy
6. Competence

Summary

1



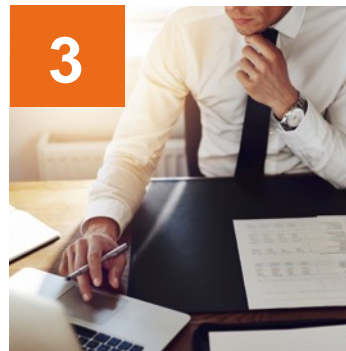
The Potential
Client

2



Documenting
Representation

3



Running
Your Office

4



Using a Trust
Account

Final thoughts

- Make sure you interview in a way that results in reasonable expectations
- Have a written agreement
- Communicate often
- Have excellent billing habits
- Promptly send out bills
- **Make it easy to get paid!**
- Don't sue if you get burned—it's all part of doing business
- Use ADR when available

Improve and defend your profession

- Support the fair administration of justice
- Make sure people understand the judiciary is the third branch of government
- Speak out as a true professional when you see undue criticism

LAWPAY[®]

AN AFFINIPAY SOLUTION

Claude Ducloux

866-376-0950

claudio@lawpay.com

Thank You!