

# PART 1

## Managing Clients and Creating Collaborative Relationships

**L**ike it or not, clients are the most important part of any business. Without clients, you are just a lawyer without any means or opportunity to practice your craft. Once you have clients, you're going to find it preferable to meet their needs and expectations so that they remain your clients. This section is designed to identify the needs your clients will have, the importance of collaborating with them while managing their cases, and the value of working within parameters necessary to resolve your clients' problems without sending them to the poorhouse.

## Your Clients Need a Problem Solver, Not a “Trial Lawyer”

I’m a litigator, and I like thinking of myself as such. I participate in written discovery, review and assess thousands of pages of documents, take and defend depositions, and try cases. I’ve learned that every aspect of a case should be conducted in furtherance of preparing the matter for trial. Interrogatory responses, site inspections, party depositions—none of them happen in a vacuum. Everything that happens in a case is (or should be) in anticipation of putting your client in the best position for final resolution.

### *Tunnel Vision for Litigators*

As a trial lawyer, when I catch a scent—the plaintiff has a preexisting injury she didn’t disclose, he went rock climbing after he allegedly tore his rotator cuff in the accident, or she has been in three subsequent accidents and has a different lawyer for each—I can be kind of like a hound dog. Everything else goes dark, and there is only where the scent is leading. I am not alone in this tunnel vision. Frank Ramos of Clarke Silverglate recently commented:

As lawyers, we become so wired to become advocates that we may buy into arguments that a more objective counselor simply wouldn’t make. When analyzing the strength of an argument, ask yourself, “How would I respond if I was on the other side? What if this argument was being made against me?” Sometimes we stretch the facts and law too far to find a winning argument when in fact we’re jeopardizing our credibility by pursuing an argument that we would find laughable if we were on the other side.

Then, in the distance, I hear a fainting, echoing voice. The world around me becomes illuminated again, and the voice is my client, who wants to position the case for settlement, if we can do so reasonably. This is hugely disappointing. I was already envisioning the plaintiff’s expres-

sion as I impeach him in front of the jury and the lawyer's abject horror as her case falls apart in front of her eyes. It was going to be glorious.

Unless it wasn't. Trial is expensive and uncertain. The judge can keep out evidence that you believe is due to come in, even that incredible evidence that was going to cause you to be revered with the likes of Williams Jennings Bryan and Thurgood Marshall. And then there are juries, which are . . . well, juries. Juries are an unknowable creature, an entity unto themselves, unlike any other. These are the things that keep clients from sleeping well at night.

### ***Be the Problem Solver Your Client Needs***

The best way for you to advocate for your clients is to understand their goals and objectives, which may not include trying the case. Clients may need to get a case positioned for reasonable settlement. They may want to salvage a business relationship at the conclusion of the case. Most important, your clients need you to understand there are things to consider other than storing up armaments and making battle plans in preparation for war. Your clients don't need you to be a *trial lawyer*. They need you to be a *problem solver*, which sometimes involves trying cases.

## “Efficient Lawyers Starve to Death”

Some time ago I was involved in a Twitter conversation that arose from an article I wrote about corporate clients tracking performance metrics for their lawyers. One of the major points I was espousing was that the day of the bloated bill with redundant time entries and unnecessary expenses is largely a bygone era. Yet some of that culture remains for an older generation of lawyers. A friend of mine prodded me with this statement, “Efficient lawyers starve to death.” I immediately began ruminating on whether the statement had any merit.

### *Do Efficient Lawyers Starve to Death?*

#### The Billable Hour

Let’s talk about the billable hour for a minute. It is an outdated model that creates an uncomfortable tension between clients and their lawyers. For the relationship to continue to be functional (and this next part is true of every relationship), there has to be a significant measure of trust. The client should be able to trust that the lawyer is only doing work that is reasonable, necessary, and calculated to advance the case. The client must know that the lawyer is only billing for work that actually was performed and in increments of time that reflect the work done. The lawyer must be able to trust that the client is going to pay for the work that is done. If these levels of trust exist, the billable hour can be a manageable tension.

But here’s where things get wonky. Plenty of lawyers submit bills that reflect inordinate amounts of time spent on ordinary tasks, duplicative billing among partners and associates, and seemingly unnecessary expenses. These billing practices slowly grind away at the trust essential to the attorney–client relationship. Likewise, many corporate clients arbitrarily cut lawyers’ bills. Maybe something wasn’t worded just right on the invoice. Maybe work was done by a lawyer that, in the client’s estimation, could have been handled by a paralegal. Maybe the client just has

an arbitrary policy of cutting bills by 10 percent. On the lawyer's side, that's where things start to break down and a seed of animosity develops.

### Alternative Billing Methods

Without getting too far afield from whether efficient lawyers starve to death, I feel compelled to address the topic of value-based billing structures. Alternative fee structures such as flat rates and budgeted fees with collars (wherein hourly fees are subject to a case budget and collar range; if the fees come in under the collar, there is a bonus, and if the fees are above the collar, the client receives a discount) certainly have a place in some types of practices. There are situations in which these structures work well and others in which one side benefits to the other's detriment.

Value-based billing structures are worth considering, but if you don't have a good handle on your business, you are likely to do yourself or your client a disservice with fee proposals. One of the best ways of keep up with your fees is to develop spreadsheets on which you can track costs and expenses. In this way you may be able to prepare alternative billing methods that are beneficial to both you and your clients.

Case Name	Hours Billed	Fees Billed	Litigation Costs	Total
Duck v. Mouse	320.3	\$42,699.00	\$2,346.44	\$45,045.44
Turtles v. Splinter	624.0	\$85,911.00	\$9,402.46	\$95,313.46
Skywalker v. Vader	350.4	\$47,214.00	\$4,960.96	\$52,174.96
Starling v. Lecter	444.1	\$59,953.50	\$4,265.12	\$64,218.62
Jordan v. Johnson	157.4	\$21,669.00	\$754.60	\$22,423.60
Brady v. Manning	76.2	\$10,107.00	\$215.67	\$10,322.67
Gates v. Jobs	547.2	\$75,141.00	\$7,937.83	\$83,078.83
Shakur v. Naz	308.1	\$42,384.00	\$3,340.48	\$45,724.48
Kent v. Wayne	676.6	\$94,063.50	\$6,927.86	\$100,991.36
Lennon v. McCartney	769.0	\$108,294.00	\$5,770.39	\$114,064.39
Cobain v. Love	39.8	\$5,469.00	\$193.89	\$5,662.89

If a client is interested in using a flat fee structure, you could use this table to determine your average billable fees on that type of case. You could then negotiate a fee that would allow you to remain profitable and keep your client from overpaying. Given enough volume, the numbers should work out appropriately, even though in individual cases one of you comes out ahead.

### ***But Really, Do Efficient Lawyers Starve to Death?***

We might have to revisit this in ten years to see if I'm malnourished, but I'm going to provide my clients with efficient representation for the time being. Before I go into my reasoning on this, let's revisit the tension: the more time I spend working on cases clients send me, the more money I make. For most lawyers, time is money, quite literally. But if my client has to pay me too much on a particular file, my client may begin to wonder if a substantially similar service and results may be available elsewhere at less cost.

Here are some other truths. It takes more money to develop and bring in new business than it takes to retain existing business. If your practice is a revolving door of clients who leave because their files are being over-billed, then even though you may be making more money on each file in the short term, you are not maximizing your earnings because you're having to spend too much time and money on client development and putting out the fires of broken relationships.

In addition, your relationships with individuals who are employed by your clients are going to suffer as well. For example, in the insurance industry, which is where most of my clients reside, there is a lot of movement among personnel, both vertically and horizontally. The adjusters with whom I interact on a daily basis move up the corporate ladder or move on to other insurance companies. If we have an effective relationship, there is a greater chance of them taking me with them wherever they go. But if I'm squeezing every last red cent out of a file, they may soon find someone else who will do the same work for less. And make no mistake, there is no shortage of lawyers who are lined up for their business, just waiting for me to give them an opportunity to pounce.

So my answer to the question of whether efficient lawyers starve to death is a resounding NO! Efficient lawyers may not make as much money on each individual case, but they are maximizing the trust relationship with clients and setting themselves up for a more stable and productive practice for the long haul.