GRIEVANCE AVOIDANCE – COMMUNICATION, CARE AND COLLABORATION

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EDUCATION
University of Texas, Austin, B.A., 1972
St. Mary's University, San Antonio, J.D., December 1976

BAR ADMISSIONS
Texas1977; California 1978, Colorado 2003
Various US District Courts and Circuit Courts of Appeal

EMPLOYMENT
Assistant General Counsel, State Bar of Texas: 1978-1980
Robinson, Felts, Starnes, Angenend & Mashburn; Civil Trial Attorney, 1980-1987
Wood, Lucksinger & Epstein; Civil Trial Attorney, 1987-1989
1989-2016 Hill, Ducloux, Carnes & de la Garza
2016 - Attorney at Law, private practice, and Director of Education, Ethics and Compliance, Affinipay-LawPay

PROFESSIONAL ACTIVITIES
President, Travis County Bar Association (now, Austin Bar Association); 1997-1998; every officer position 92-97;
Chair, Texas Board of Legal Specialization, 1997-1998
Board Certified: Civil Trial Law, 1984; Civil Appellate Law, l987
Chair, Texas Bar Foundation 2005-2006; Secretary-Treasurer (04-05); Trustee 2004-2008
Chair, Texas Center for Legal Ethics and Professionalism: 2004-06, Trustee 2003-07
Chair, College of the State Bar of Texas; 1992-94; Vice-Chair 1990-92; Director, 1988-98,
Chair, State Bar of Texas Annual Meeting (Texas Bar Convention), 2001
Chair, United States Fifth Circuit Judicial Conference, Austin 2004
President, St. Mary's Law School Alumni Association, 2006-07, Trustee, 2001-2008.

Associate, American Board of Trial Advocates, 1999- pres.
Director, State Bar of Texas; District 9, 1998-2001; Executive Committee 1999-2001
(Outstanding 3rd Year Director Award - 2001)
Director, Austin Lawyers Care (now: Volunteer Legal Services of Central Texas), 86-89
Director, Austin Young Lawyers Association, 1984-1986
Editor, Travis County Practice Handbook, 1984, 1986
Trustee; St Mary=s University, San Antonio, Texas 2007-08
Member and Founder ABar & Grill Singers,@ Lawyer Group performing musical parody across the country, and raising (through Jan 2008) $400,000 for *pro bono* causes.
Member, Supreme Court Advisory Committee on Court-Annexed Mediation, 1996-1998
Distinguished Mediator, Texas Mediator Credentialing Association, 2010

PROFESSIONAL HONORS
Lola Wright Foundation Award for Promotion of Legal Ethics, 2013 (Statewide Award)
Gene Cavin Award for Excellence in CLE, State Bar of Texas, 2011 (Statewide Award)
Annual Professionalism Award, College of the State Bar of Texas, 2002 (Statewide Award)
W. Frank Newton Award (Statewide Annual Pro Bono Award given by State Bar of Texas), 2000
Outstanding Young Lawyer Award, 1987 (Awarded by Austin Young Lawyers Association)
Presidential Citation; State Bar of Texas, 2001 and 2006
Pro Bono Award, Volunteer Legal Services of Central Texas, 1991, 1993, 1997, 1999
Professionalism Award, Austin Bar Association, 2007
Outstanding Mentor of the Year Award, Austin Young Lawyers Association, 2007
SBOT- "Stars of the Bar" Award for Best Article Series *"Entre Nous"*, 2003

MILITARY SERVICE U.S. Army; 1st Cavalry Division, 1972-1974 (Awarded
Army Commendation Medal, 1974)

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GRIEVANCE AVOIDANCE - COMMUNICATION, CARE AND COLLABORATION

By Claude Ducloux

In my speeches to young lawyers around the country I tell them there is no more important skill to the successful practice of law than to effectively communicate with all of the participants in your legal system. This includes your clients, any court or governmental unit which is involved in your practice, as well as opposing counsel. Your ability to communicate effectively demonstrates integrity, knowledge, empathy, and continuing thoughtful evaluation of changing circumstances.

I also personally believe that good communication habits also make you a better lawyer because effective communication practices require you to constantly evaluate, distill, and clarify positions, changing dynamics, risk, and opportunities for resolution.

Additionally, I preach that lawyers often overlook a crucial element of communication: your billing invoice! Effective and smart billing communication allows the lawyer to control the "narrative" of the case for the client. Those bills are every bit as important as a report letter to the client of what happened at your last hearing. But, I'm getting a bit ahead of myself. Let's discuss this in the general chronological order of practice.

PART I. REMEMBER WHAT BUSINESS YOU ARE IN

The Client – Always keep in mind that most lawyers rarely encounter a new client in a celebratory mood. Clients who are coming to see lawyers (just like doctors) are usually trying to address a stressful failure in their life, perhaps a betrayal, an unexpected social condition, a failure resulting from their own inappropriate decisions, or another unforeseen event, like an injury or other loss caused by themselves or an opposing party. Bottom line: new clients are rarely happy.

A. You are a Problem Solver

Although we all have various skills and expertise, remember that your initial role is to diagnose and problem-solve. This takes intense concentration, respect, and an appreciation of the stresses which usually have brought the client to your meeting. Your initial presentation and communications skills can help you form the "bond" of trust and professionalism which survives long after the representation is over. So, how to you do that?

B. Initial Presentation:

First and foremost, present yourself as a professional. For me, someone that has been practicing nearly 40 years, I will *look* like a lawyer, if nothing else to match my client's expectation. I want to look like the image that a new client would expect someone of *my age* and generation to look like (which generally means, I wear a tie). While your own personal style, your age, and your cultural orientation may dictate a different look, the result should be that the client sees a person who looks professional. If you present unprofessionally, you add an unnecessary barrier which you must overcome. We will discuss that in more detail later in this presentation.

C. Be sensitive, attentive, and thorough:

As I will explain in **Part II**, a good client interview has many elements. But in any initial interview, you "begin the healing process." Devote 100% of your attention to interviewing and sizing up this client. Emotionally, this means empathizing with their plight, being patient as they unload information (which often may be more than you actually need), and simply allowing the client to "vent." As you will see, because the goal of this initial interview is "reasonable expectations" on everyone's part, you may be required to "push back" on unrealistic expectations, bad facts, etc. You cannot do that (ie., thoughtfully criticize or push back) with credibility unless you have thoroughly extracted *all* the information from the client which will be the basis of your overall analysis. Further, by being patient, you may discover facts which change your opinion of the case.

D. The Goal: Reasonable Expectations:

Remember, your client is always looking for you to lead the client to a solution. Lawyers are taught early in law school that a good contract requires a "meeting of the minds." This applies to the attorney-client relationship. The object of a good interview is to result in reasonable expectations: the scope of work the lawyer will do, the relief or resolution being sought, *the alternatives to be explored*, and the basis of the fee.

E. Clearly Establish the Payment Plan:

Moreover, the client's willingness to pay you (as well as your willingness to continue working) depends on each side honoring this agreement. Boiled down to its most basic formula the interchanged messages should be:

From Lawyer's perspective:

> "I will do this for you and you will compensate me by doing X."

From the client's perspective:

> "I understand *what* you are going to do for me, *what* my alternatives are, how long it might take, and *how* I will compensate you."

F. Collaboration:

The best attorney-client relationships are collaborations towards a goal. If you achieve reasonable expectations, it allows you to collaborate with the client to achieve realistic and lawful goals and outcomes. Keep the word "collaboration" in the front of your mind.

G. Following Through:

Once you have communicated and formed a bond of confidence and an impression in the client's mind that you are competent to do the work, *you need to follow through.* Get started. Do the hard work. Stay late if other things get in your way. It goes without saying that communication is more than just the spoken or written word. It is the way you carry yourself, respond, and continue to encourage confidence in your performance. You destroy that early bond of confidence by immediately delaying work you promised to do. By contrast, early communication and updates following your initial interview "seals" the bond of confidence you are trying to encourage. It says, "You can count on me."

H. Communication During the Case:

A lawyer should always report each event in the case to clients to keep them informed of each process and allow the client the opportunity to ask questions. This serves not only to keep the client calm, but protects the lawyer from a claim of neglect. Obviously, in our adversarial system, not every case will go perfectly. I have had a habit for 25 years of simply sending newsy updates to the client even when nothing is happening. Sending out ten 2-sentence emails to ten clients advising them briefly of case status is a true winning habit, and sends the client the message, "I'm thinking about your case." Those little messages are an effective inoculation against grievances.

I. Never Withhold Bad News:

There can be setbacks in terms of rulings, failures of evidence, and simply unexpected bad things happening. Each time, however, your communication can serve to either reassure the client that you have the matter in hand, or be a harbinger of likely adverse outcomes that militate toward modifying your goal. It is much better for the client to be warned well in advance of that likelihood long before it happens. And be aware, some clients recoil at hearing bad news and immediately want to blame the lawyer. When that inevitably happens, never respond with evidence of exasperation, frustration or anger. Your communications are critical to the character you present. The bottom line is never write a letter you'd hate to see on a poster board.

J. Never Let the Client Change the Narrative:

Never allow the client to communicate something you know is untrue: (You promised this whole case would [only take 6 weeks!] [only cost $1500!]) Always respond as soon as possible with the facts. Your failure to respond is always considered an admission against interest. Remember, you have the fiduciary duty to the client, and because of that, the surpassing duty to keep the record straight. I have handled scores of grievance complaints, and it is devastating to the accused lawyer to show a series of correspondence from the client for which there was no reply. Don't risk it. Practice defensively when setting the record straight. In this same vein, if an adverse event is based upon a misrepresentation by the client or someone acting on the client's behalf upon which the you, the lawyer, relied in appraising the case, the reasons for such outcome should be communicated (albeit diplomatically, as necessary) so that the client can understand the connection between the misrepresentation and the ultimate outcome. There are many examples of this. The easiest is a client telling his family lawyer: "My spouse and I have already agreed to everything. How much will this cost?" This is almost universally false, as the client may not even know the scope of agreements required. Another example could be if a client assures you that a particular document will be available to prove timeliness of a condition precedent - and then the document turns out *not* to be available or doesn't support the client's statement, the lawyer should reference that disparity in the communication to the client.

K. Good Lawyers ARE Good Communicators:

Here's the undeniable truth, which I mentioned at the outset—good communication habits *make you a better lawyer.* By this, I mean that if you require yourself to have robust client communications, you'll pay more attention to your cases, accomplish more, and accomplish it faster. If you avoid communication, it unfailingly leads to neglect, mutual frustration, and a breakdown of your bond of confidence.

L. Requesting Second Opinions:

Some lawyers are threatened by a client's request in a case for a second opinion. Do NOT be threatened. I always welcome that opportunity. It is my theory that if a lawyer with equal or better specialized skills than I have has a different perspective, I want to hear about it because we are "collaborating" to achieve the best outcome for a client and not simply preserving our dignity or pride. In my career, I have never had a bad outcome as a result of the client's request for a second opinion. My only advice is to have the client ensure that

the reviewing attorney has the requisite experience and skill.

M. Mistakes in Communication:

Caveat—Making predictions "off the cuff." A very dangerous situation presents whenever a client asks you to guess as to the outcome of a future event. Why? Because the client rarely will remember the "construct" of your opinion, just the *best possible* outcome predicted, and will hold you to that fictitious prediction. Your "guesstimates" frequently rely on unproven facts (facts often suggested by the client). The best advice I can give is to scrupulously avoid guessing about the future. The best I will do is to say "My job is to do the best I can for you, and based upon the facts I know today [*e.g.*, I am comfortable that we are on the right track]."

N. Civility in all Communications:

Despite the nastiness you see on lawyer TV shows, every lawyer has a duty to attempt to keep all communications civil. Civility is a process. It avoids unnecessary confrontation and it relies on the Rule of Law. At this point, your eyes are glazing over thinking, "blah bla…Rule of Law." But let's talk about that.

What is the "Rule of Law?" Simply put, it is society's social compact to resolve issues within frameworks and rules. To observe neutral methods to achieve best outcomes based upon fairness, process, and opportunity to present facts. We choose to live in this society rather than to allow money, brute force, or guns and swords to dictate outcomes. That is exactly why we need to preserve it. Our first step in that preservation is civility.

O. Civility depends upon communication:

That is, keeping in touch and responding. Civility observes respect of all the participants: your clients, opposing counsel, and the judicial system. The most effective way to serve your client generally is maintaining a productive and problem-solving relationship with the opposing counsel. In this regard, the words you use matter. Thus:

a. *"How do we solve this?"* works better than *"I demand you do this."*
b. *"When may I expect the documents?"* works better than *"Once again you blew by the discovery response deadline."*

Always remember, you should <u>never expect better treatment</u> yourself than you are offering the other side.

P. Civility is Social Insurance:

Finally, remember how dependent *you are* on the good will of the other participants of the legal system: clerks, administrators, and other state, county, or city employees who will review or handle your work. Be kind, gracious and humble, appreciating that those people often have stressful jobs for unappreciative citizens.

In my 2001 article about "The Ten Rules of Life and the Practice of Law: or Growing Balder and Wiser," - http://claudeducloux.com/entre-nous - I list this lesson within Rule 7: "Friendship is social insurance, and you never know when you need to make a claim." Remember that. If you're a jerk, expect to be treated as a jerk.

Q. Nonverbal Communication:

As old fashioned as this sounds, please remember that a client will make an appraisal as to competence and confidence by what they hear and how they see you being treated. Bad press affecting you and your practice undermines confidence. If those negative images evoke reminders to a client of how he/she is being treated, it is likely that client will change counsel.

R. Communication on Billings:

As I will explain in **Part III**, you can influence the narrative of the entire representation of your client with intelligent billing habits and techniques. Accurate, explanatory billing survives faulty and failed memories and suspicions. Accuracy in billing increases exponentially when you record time immediately or as close to the event billed as possible, and increases the likelihood of payment.

If you set proper expectations, prompt billing reminds the client of his/her end of the bargain. Not sending billing promptly sends a completely different message: "I'm too rich and important to get my bills out. And it's not a priority for my practice." Good luck expecting prompt payments.

Now, let's start at the beginning.

PART II: THE ART OF THE INTERVIEW: HOW TO INTERVIEW CLIENTS IN A WAY THAT RESULTS IN REASONABLE EXPECTATIONS

While interviewing skills are critical to a lawyer's success, few of us are ever trained how to do it. While colleagues in the medical profession spend a great deal of time learning how to "take a history" and probe the client for clues as to the source of their ailment or discomfort, few programs appear to respect the importance of that process for lawyers. The value of properly interviewing proposed clients is immeasurable. A good interview can result in candor, trust, credibility, and choosing the most appropriate remedy for the issue presented.

The true purpose of a legal interview should result in the following: realistic expectations as to the limits of the legal rights involved, timelines and costs, as well as alternatives that may be available to the client.

The Incoming Client

A. The Incoming Client:

As we discussed above, always keep in mind that as a lawyer you are first and foremost a *problem solver*, and that you rarely see people at their best during a client interview. Think of your own hopefulness when you have a debilitating medical problem and go to the doctor hoping that he or she will fix it for you. Expect the same hopeful expectation in the person consulting you: to fix a problem.

All of your technical skills are simply tools for you to solve problems. So, always look at every legal matter as a problem that requires resolution.

B. Resolve Potential Conflicts of Interest Early:

Older lawyers generally have learned the importance of resolving potential conflicts of interest *early* into the interview. If you wait 45 minutes into the interview, after the client has poured out his entire financial, moral, family history and goals, and only then discover a conflict, you likely have already formed an attorney-client relationship, regardless of your being paid, or your intention to handle the matter.

***Practice Tip*:** Remember, whether or not an attorney-client relationship has been formed is *in the mind of the client* and not in yours. If, by your action or inaction, you have encouraged the prospective client to disclose all of his most serious, confidential information to you and only then do you determine that a potential opposing party is a client of your or the firm's, you may be completely conflicted from handling any portion of that case, even for your existing client.

As such, experienced lawyers attempt to discover in the first 5 minutes of an interview the names of parties or entities that may be involved, and quickly determine whether a conflict exists. This is a hard lesson, especially for young lawyers who may not have had but a few dozen clients. Early on, a young lawyer may have few conflicts. But conflicts frequently become a strong possibility after 35 years of practice, even in a large city. Anecdotally, I can tell my readers that in my very broad general practice of nearly 40 years I discover conflicts of interest regularly, and if you have a reputation for skill and special ability in an area of law, your opposing counsel will waste no time trying to remove you from a case. So, just like checking the gas in the tank before you take off on a long trip, always check your conflicts before you get too far into an interview.

C. Form an early Bond of Trust:

Remember the old adage: you never get a second chance to make a first impression. This applies to your initial interview. Look like a lawyer. You want an aura of professionalism, confidence, and dedication. I apologize to those who will call my thinking old-fashioned, but if you show up in a T-shirt and flip flops to a first meeting, you are diminishing the client's assessment of your professionalism, and setting yourself as perhaps a cheap alternative to a "real" lawyer.

D. Complete Attention to Facts:

Next, when the meeting starts, stop checking emails, hold all your calls. Feel free to make notes (I take very precise notes of the facts) and dedicate yourself 100% to attending to that client. Take a clue from our psychotherapy colleagues, who believe that "healing begins when people believe they are being listened to." Listen closely, carefully, and make sure the client appreciates your concentrated efforts to understand their issue.

Another important interview technique I practice is to *repeat key facts*, dates, relationships, and parties BACK to the client for accuracy. The "meta-communication" of such repetition is to tell the client: "I am listening carefully, and every fact is important to my advice as assessment. So be careful."

If you show interest, concentration, and ask intelligent questions, you very often are forming not only an attorney-client relationship, but a friend for life.

E. To End with Reasonable Goals, Ask the "Magic Questions":

After you have listened carefully, your interview must ultimately end with both parties having reasonable goals and expectations. With regard to goals, you must determine: what do they hope to achieve? This can tell you a lot about the personality of the client you will be dealing with. Also, what are their motivations? Are they doing this for the right reasons or to inflict pain on someone else? After you have listened carefully, I urge that there are two magic questions you must ask:

First, diplomatically inquire:

> "What do you think I can do for you?"

Second, if the matter has an opposing party:

> "If we were listening to the person who is on the other side of this transaction or claim talk about you, what would he/she be saying about you?"

The best answer to the first question is some version of: "You're the lawyer, you tell me." In any event, the answers to these questions will be very illuminating. If, for example, they have presented a small personal injury or consumer case which you assess has maybe $20,000 in potential damages, and they express an expectation of $1 Million, you have a problem that you must resolve before you can take the case, or you must absolutely

pass. You cannot take that case unless you both agree that the goal you are trying to receive is reasonable and supported by the law and that the client has sufficient means to get you to the goal line. If you know that this client doesn't have the means to take this matter all the way through what could be a long process, hearing or trial, then your retention by the client should be subject to that agreement and understanding, which may include some contingency fee for you.

The answer to the second question will almost always reveal extremely important (and often unfavorable) information about your clients that they somehow neglected to tell you in your interview. But by safely asking what that opponent will say, they feel comfortable warning you of all the awful things you'll hear about them (which are generally accurate) which you need to put into your equation of reasonable expectations.

F. "I Want to Sue for the Principal of It!":

My most serious "red flag" warning is the siren call of those potential clients who inform you that they "want to sue for the principal of it." Translation: "I have been wronged, and dagnabbit, I'll show that [wrongdoer] what's for!" Be aware of this unalterable, immutable, and bitter truth: YOU will never make that client happy, as they enter the relationship with completely unrealistic expectations, and they expect you to meet those expectations 100% (and that's at *a minimum*). If you decide to take this on, raise your rate, as you'll earn it. Later, you can send me your regrets.

G. Encourage Questions:

Also, I think it is very important to encourage the client to ask you questions. Be prepared that one of their earliest questions will be "Do you do this [type of legal work]?" If you have not, do not exaggerate your skills or experience, or there is an 80% - 90% that such exaggeration will come back to haunt you.

H. "What Are My Options?":

Whether the client actually asks you this question or not, advice on potential routes of resolution should always be offered. Why? So that the client clearly knows that he directed you to take this route of resolution, and doesn't blame you if that route proves expensive, time-consuming and difficult. For example, you might assess in a consumer case that a partial refund is a reasonably quick possibility, but a full refund will likely take a lawsuit and all the time and expense that entails. "If you get 80% of your money back now, would that be sufficient? More than that will likely mean litigation and a much longer and more expensive timeline." Make good notes of those conversations.

I. Practicing Defensively:

As the overall title of this article implies, the single most important word in the practice of law is communication. Communicate with everyone: your client, your opposing counsel, and the court and its staff when necessary. Never leave any stone unturned if there is a possibility of a miscommunication.

You should know by now that I cannot overstate the importance of communication to grievance avoidance and client relations. By communicating carefully and thoughtfully with your client, you control the narrative. If you allow your client to respond with a changed narrative and you do not correct that, you are setting yourself up for problems in the future. If, for example, you informed the client that the cost of the legal services, depending upon the response from the opposing party, will be between $1,500 to $10,000, and the client writes back confirming that you have told the client that you will do the whole case for $1,500, you are allowing the client to change the narrative. Always respond quickly, effectively, and courteously with the correct information that you have discussed. As I discussed earlier, your failure to correct that, again, is a huge problem, and may be presumed to be evidence against you.

J. Clear Expectations should include a Complete Payment Plan:

This is extremely simple: never get started representing a client without a clear understanding of what you are charging, and how and when the client is expected to pay. Have modern contracts which could be put on a power point slide and be understood. Include those matters which the law now protects and requires.

K. Clear Expectations Result in Good relationships:

If your client interview results in reasonable understandings of what your client wants you to do, your own belief that such results are achievable, and you have carefully explained time frames and the likely range of costs, you will not only have a client who trusts you, but a friend and a future source of referrals upon which you can expect more work.

PART III: GETTING PAID: THE LIFEBLOOD OF YOUR LAW PRACTICE

Nothing helps a law practice more than hearty and dependable cash flow. It is indeed, the holy grail of financial success. But, old fashioned lawyers (especially in my generation) seem to make every mistake you can in promoting the easy payment of bills.

One of the most difficult concepts for lawyers (especially older lawyers) to understand is the changing relationship between their perceived professionalism and modern payment systems that make it easy for clients to pay their fees. Thirty years ago, no self-

respecting lawyer or law firm would accept credit cards ("What are we? Bartenders?"). But, the ease and ubiquitous nature of debit/credit cards and our increasingly cash-less society have made cards the preferred method of instant payment, especially among younger clients.

The truth is: all law firms can benefit from providing their clients will safe and secure credit card payment systems. Personally, when I started allowing credit card payments, it was amazing boost in my cash flow. My success led me to create the CLE program for LawPay.

The large firms with corporate or institutional clients who only get paid quarterly may not feel a need for credit card payments. But for the rest of us, relying on mailed-out bills and return-mail checks is like telling your clients you're relying on carbon-paper copies and typewriters. Frankly, if you can't take credit cards, you are missing the boat by not providing your clients an easy opportunity to pay your bill quickly and (relatively) painlessly.

But (and let me make this emphatic), using a good payment system like LawPay is only 1/3 of the prescription for getting paid promptly. Of equal importance are:

a) a good client contract which creates reasonable expectations, and
b) promptly billing your client to show your income is important to you!

A. The Client Contract:

All of these elements should be discussed with the Client and Included in the fee agreement:

Scope of work
Basis of fee (Flat fee? Hourly? Contingent?)
When payment shall be expected (within x days of billing)
Who will be working on it (You? Legal Asst? Assoc.?)
Communication methods (Primarily email? Phone?)
Office Hours
Texas now requires the firm to have a "Privacy Policy"
Amount of prepaid fee retainer and a disclosure that it will not earn interest.

Additional Optional and Helpful Provisions Include:

Client's Rights
Rejection of Settlement Offers and Rights to Terminate/Withdraw
Venue for Disputes (your home county)
Employment of Outside Counsel (if required)
File Destruction Policies
Paperless Office Policies ("Digital File Maintenance")
How to Contact the State Bar or Attorney Disciplinary Authority
Continuing Charge Authority to Credit Card
Third Party Credit Card Authorizations

B. Getting Bills Out the Door:

Every lawyer and firm should have an absolute, inalterable rule to send bills promptly, and good billing habits that facilitate those billings. Remember that clients HATE getting bills three months after the event, and the client's willingness to pay a lawyer's bills without objection diminishes precipitously after 30 days. Indeed, the typical write-offs of big firms who rarely get bills out for 60-90 days are enormous.

C. Billing Discipline:

It is a matter of good habits to accurately record time daily.

Accurate, timely explanatory billing trumps faulty and failed memories and suspicions. Accuracy in billing increases exponentially when you record time immediately or as close to the event billed as possible, and increases the likelihood of payment. It actually takes less than five minutes per day with a modern system to accurately record time.

Practice tip: If you can't remember what you worked on, always check your outgoing email for valuable reminders and clues what your busy day entailed.

D. Here's a short list of good billing communication habits:

a. Remember your audience: use words your client will understand if you expect to be paid. Use Client's name rather than "client."
b. Again, keep in mind that your bills may be subject to third party review in the event you are seeking reimbursement in court, or the client complains. That means you are unlikely to be able to redact, and therefore reveal no client confidences, but add enough information so a court or committee can evaluate what you did.
c. Add free events: "Called Bob to remind him of pre-trial on Oct 10. --0.2 hours, NO CHARGE."
d. Be prepared to defend every event you are billing.

Now, here's a short list of bad billing communication habits:

a. Using meaningless techno-legal babble: "File review - .3 hours"

b. Using confusing shorthand: "cc wC re:mot." *Huh?*
c. Overbilling: "Draft Original Petition for Divorce - 1.5 hours" *Really?* Even if it takes you 1.5 hours for a task, charge a market (reasonable and necessary) rate.
d. Revealing confidences: "Client told me he doesn't have documents, so try to settle for 35K."
e. Making your stapler a profit center: do not bill for office supplies! You're a lawyer! Clients expect you'll have paper, paper clips and staples, and you didn't have to run out to the office supply store just because they hired you! It is the smallest charges on your bill that often cause the most anger (like seeing a $20 aspirin on a hospital bill).

E. Prepare Clients Ahead of Time for Unexpected Bills:

Intrinsic in this process is to have created a reasonable expectation with your client of what you are doing and how much it is likely to cost. Anytime you go outside that legal budget you need to proactively explain (prior to shocking the client with an unexpectedly high bill) to your client with some communication why the cost is outside the parameters of what you discussed.

F. You Need to Get Paid!:

The biggest mistake that lawyers make in the whole billing cycle is not getting the bills out on time. If your income depends on billing for your time, writing it down is just as important as eating lunch or having an extra coffee break. No excuses: do it. In my office, we have absolute inviolate rule that our monthly legal fee bills go out on the first business day of the month following service (ie., March bills go out April 1, etc.).

G. The 5 Steps to Good Billing:

1. Write down your time as soon as you can
2. Review the bills promptly at the end of the month for modifications, adjustments, and corrections
3. Have the bills go out of the first business day
4. Incentivize clients to pay by credit card with a hyper-link to your payment page
5. I personally encourage clients to keep their points/miles/rewards

H. Send Reminders During the Process:

Each month, as I review the bills, I also see who may not have paid a bill last month, and I stop and send that client a cheery reminder (Eg. "Hi Bob, I just noticed you didn't pay for the [services]. I hope you got the bill, but here's a reminder and a hyperlink to go ahead and pay now with your credit card"). That reminder is amazingly effective in producing immediate payments, and often a quick apology email from client: "Oops. sorry. Thanks for the reminder."

I. Waiving surcharges/convenience fees:

This is clearly my own opinion, but I stand by it. Undoubtedly, there are those of you who believe that if you have to pay 2% of the collected fee to a credit card processor, that you should somehow charge a convenience fee or surcharge. Frankly, in my opinion, that's misguided. You'll be creating ill-will and additional barriers for your fees to be paid. If you have a good credit card processing company, your fees will be minimal and it is well worth it. I would very gladly pay the 1.95% (which is the typical fee for standard Visa, MasterCard, and Discover card) to encourage that client to pay me immediately. Further, surcharging the client requires you to specify how much of the charge is for the surcharge or convenience fee, and you must check what limits your state allows. Again, paying the $19.50 for every $1,000 paid allows me to sleep soundly knowing my cash flow supports my operations.

The Danger of Suing Your Clients

Let me discuss something all lawyers will face, and you can't prevent - but you can minimize. First, folks do run out of money. Be cognizant and thoughtfully consider when that happens. Why? Because at least 50% of the time, you had something to do with it! You underestimated costs, you improvidently took on the case by not assessing your client's abilities to pay, or the case took an unexpected turn... which you should have anticipated and discussed with the client.
When clients run out of money, experience has shown the relationship will take one of two directions:

A) Good clients will do their best to work something out with you and you will never need to sue them.
B) Bad clients will do, say, and claim *anything*, including your malpractice, to get out of paying you. And, if you do sue and win...they are *almost always* judgment proof!

Remember that under *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999), in the case of breach of fiduciary duty, now the judge has the discretion not only to deny your fee recovery, but have you disgorge previous fees paid. So, never sue unless it is an "existential threat" to the firm, meaning your firm will fold without this fee. And never sue a bad client. Suing is a time vampire, and you will likely make more money with new business.

What you want instead is to think of every client as a potential friend for life and treat them from the beginning as such. I do. But that alone won't get you paid. You need these additional skills and disciplines,

which are absolutely time-proven, solid foundations of a productive, cash-flowing law practice.

FINAL THOUGHTS

Claude's Three Rules:

For nearly 20 years, I end many speeches with my three rules for success:

a. Treat every client like you will live next door to them for the rest of your life. That thought changes how you will interact. No one wants a bad, angry neighbor.
b. Always tell the truth. There will be far less paperwork if you do.
c. Never sue a client. Go make new money.

To distill what we've discussed above, always remember it is your responsibility to appear professional, knowledgeable, and collaborative.

Only sign-on to represent a client when you have a meeting of the minds as to reasonable expectations. Communicate actively and informatively in a way that connects you as a team member for your client's reasonable goals.

Treat every person, firm, agency, and interest with respect and courtesy, observing your duty of civility. When stress arises, be "the adult in the room" who can control the emotion and act civilly and responsibly.

If you follow these rules, you will likely have clients who will be friends for life, as well as lawyer-colleagues who will refer you more business because they have had a good experience working with you.

In other words, you will be a success.