



What I Wish I'd Learned in Law School
Running the Ethical Office in the 21st Century

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- 40+ year seasoned attorney
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- Former President, Austin Bar Assoc.
- Received Gene Cavin Award for Lifetime Achievement in Teaching Continuing Education



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Preview



- 
The Potential Client
- 
Documenting Representation
- 
Running Your Office
- 
Using a Trust Account

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4 5 common problems

LAWPAY
AN ATTORNEY PRACTICE

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

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LAWPAY
AN ATTORNEY PRACTICE


PART 1

The Potential Client

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6 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



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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

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8 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.

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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)



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¹⁰ The “speeches”

LAWPAY
AN ATTORNEY PRACTICE

- 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.”

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¹¹ Your goal: Reasonable expectations

LAWPAY
AN ATTORNEY PRACTICE

- 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.

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LAWPAY
AN ATTORNEY PRACTICE

PART 2

Documenting
the Representation

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¹³ Never underestimate fees



THE CLIENT
WILL REMEMBER
THE LOWEST FEE
YOU QUOTE

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¹⁴ 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.



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¹⁵ 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

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¹⁶ 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

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¹⁷ 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, 7% of all malpractice suits were based upon Conflict of Interest resulting in bad outcomes.


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¹⁸ 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


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¹⁹ 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.


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²⁰ 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!

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PART 3

Running
Your Office

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22 Financial control

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



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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?



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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; and
3. How much your office operations (overhead) cost you.



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²⁵ 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


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²⁶ Step one: What is charged in my community?

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



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²⁷ 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

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²⁸ How do I calculate the 4-hour per day method? **LAWPAY**
AN ATTORNEY PRACTICE

Formula

Add all personal expenses, plus law office expenses:	\$8,000 + \$4,500	20 billing days x 4 = 80 hrs a month \$12,500 ÷ 80 hrs
Total:	\$12,500	\$156 HOURLY RATE

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²⁸ How do I implement the 4-hour per day method? **LAWPAY**
AN ATTORNEY PRACTICE

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 hours x 156 = \$624 per day.
- I call that daily rate my "income microcosm"
- 12,500 x 12 = \$150,000 per year is my "income macrocosm."

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²⁹ Billing and collecting: The "life blood" of your practice **LAWPAY**
AN ATTORNEY PRACTICE

NONE of your budgeting or planning mean 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

Day	Percentage of Bills Collected
DAY 0	90-100%
DAY 30	50-74%
DAY 60	~60%
DAY 90	>50%


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³¹ **Strive for 90%+ 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

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³² **Psychology of billing** 

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

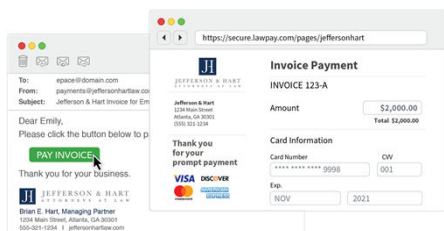
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³³ **Billing habits that work: the path to success** 

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.

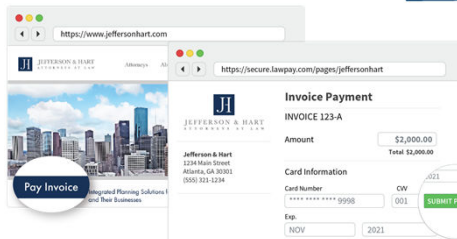
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34 Make payments easy



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35 Payment systems



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36 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.

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LAWPAY
AN ATTORNEY PRACTICE

PART 4

Using a Trust Account

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³⁸ Using your lawyer Trust account **LAWPAY**
AN ATTORNEY PRACTICE

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)

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³⁹ Distributions from a lawyer Trust account **LAWPAY**
AN ATTORNEY PRACTICE

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)

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40 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")

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41 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.


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42 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


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PART 5

Please Divert Me


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⁴⁴ **Disciplinary Issues at U.S.P.T.O.**

- Practitioner discipline issues are handled by The Office of Enrollment and Discipline (OED) at the USPTO.
- The results of current OED discipline procedures are often public record, and may trigger self-reporting.
- In response to recent studies showing attorneys are at high risk for alcoholism and drug abuse, the OED launched a Diversion Program in 2018, to help practitioners avoid formal discipline for minor misconduct. Instead of punishment, the new Diversion Program plans to correct minor practice issues by implementing remedial measures.

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⁴⁵ **Who Qualifies for the Diversion Program**

Requirements for Participation- No discipline in previous 3 years, and....

The practitioner's conduct must not:

1. involve the misappropriation of funds;
2. result in or likely result in substantial prejudice to a client or other person;
3. constitute a "serious crime" as that term is defined in 37 C.F.R. § 11.1 (basically, any felony or a lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects).
4. be part of a pattern of similar misconduct for which the practitioner has been disciplined in the past

Participation does not have to be reported to State Bar – or TBLS.
Why? Because it is not a disciplinary proceeding

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46 Where Can I find OED Decisions?

Discipline decisions may be found online at the USPTO website. The Electronic Freedom of Information Act Amendments of 1996 (E-FOIA, for short). E-FOIA makes it possible for individuals to have electronic access to the USPTO FOIA Reading Room.

See:
<https://www.uspto.gov/learningandresources/ippolicy/electronicfreedominformation-act-e-foia>

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47 Recent Case from OED

IN THE MATTER OF MATTHEW H. SWYERS, OED, D2016-20, FINAL ORDER JAN. 26, 2017

Swyers was attorney of record on 16,848 trademark registrations of which 9427 are live trademark registrations. On or about August 29, 2014 Swyers received an initial Request for Information ("RFI") from the OED.

So, the OED starts reviewing Swyer's Files... and

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48 Swyers fails to sign or supervise

In December 2014 the OED began contacting Swyers clients to ask questions about What arose from the closer examination of the applications were concerns by the OED that included,

- Mr. Swyers was not personally signing the applications, per 37 C.F.R. Section 1.4(d)(1)
- was not properly supervising his staff, (per 37 C.F.R. Sec. 11.505(a))
- multiple fraudulent or digitally manipulated specimens of use were submitted with applications,
- fraudulent declarations were signed and filed, and
- Swyers did not deposit client funds into a trust account when those funds were received before being earned.

See In the Matter of Matthew H. Swyers, OED, D2016-20, Final Order Jan. 26, 2017 (hereafter Swyers Final Order)
https://e-foia.uspto.gov/Foia/RetrievePdf?system=OED&fNm=0900_DIS_2017-01-26 visited on Dec. 21, 2018. Swyer is Excluded on Consent from practicing before the USPTO

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49 Six concepts attorneys believe clients want



Competence Accountability

Accessibility Communication

Collaboration Respect & Courtesy

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50 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

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51 Summary



1 The Potential Client


2 Documenting Representation

3 Running Your Office

4 Using a Trust Account

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⁵² 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

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⁵³ 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

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AN AFFINIPAY SOLUTION



Thank You!

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