

The Intelligent Practitioner: Using Modern Communication Techniques for Success

**Contracts, Billing Strategies,
Communications and Collections**

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AN AFFINIPAY SOLUTION



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- 45+ year seasoned attorney
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- Former President, Austin Bar Assoc.
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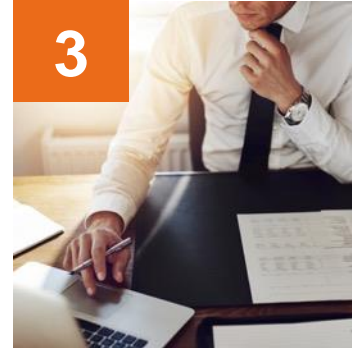
Preview- Vibrant, Effective Communication



1
The Potential
Client



2
Documenting
Representation



3
Running
Your Office



4
Using a Trust
Account

5 common problems of the American lawyer

1. Communication- not responding to Client Inquiries
2. Neglect
3. Handling the ongoing Attorney-Client Relationship
4. Poor Billing Habits
5. Misuse of IOLTA (or “IOTA” in some states) Trust Accounts

PART 1

The Potential Client

What Business Are You In?

- You are Problem Solvers
- You are Professionals
- Often you see people at a low-point in their lives
- Be Sensitive, Attentive & Thorough
- Your goal: “Reasonable Expectations”



7 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



8 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

9 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.

10 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 your firm to handle?

- Do your firm all have the skills?
- Do your firm have the desire?
- Do you firm have the technology?

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

PART 2

Documenting the Representation

14 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

17 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
- Social Media Addendum – prohibiting client from discussing matter on S.M.

18 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 in U.S. were based upon Conflict 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

20 Managing your difficult clients

Just because your firm 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

Disciplinary Rule 1.8(c) Prohibited Transactions

Remember- You can't draft an instrument giving you or a related family member substantial gift, including testamentary gift, unless you're related to client.

For all other deals with Client:

Guidelines, Rule 1.8(a) :

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

Keeping the Client Relationship Healthy

- Communication During Representation – 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.
- Send Newsy Updates: This serves not only to keep the client calm, but protects the lawyer from a claim of neglect. Those little messages are an effective inoculation against grievances.
- Never Withhold Bad News: It is much better for the client to be warned well in advance of that likelihood long before it happens.
- 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.

PART 3

Running The Law Office

Financial control

The “dirty little secret of our profession: embezzlement happens OFTEN:

- How often do you review statements and checks?
- Who is allowed access to your checking accounts?
- Why do others need access?
- Do you do background checks?



- 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?

MOREOVER, WHAT ARE YOU COMMUNICATING IN YOUR BILLS!

Remember, the words you use in your bills create the narrative of the case of representation. You have the advantage to tell that story! Use it.

- 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.

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 expenses, plus law office expenses:	\$10,000
	+ \$8,500
	<hr/>
Total:	\$18,500

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

\$231.25 HOURLY RATE

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

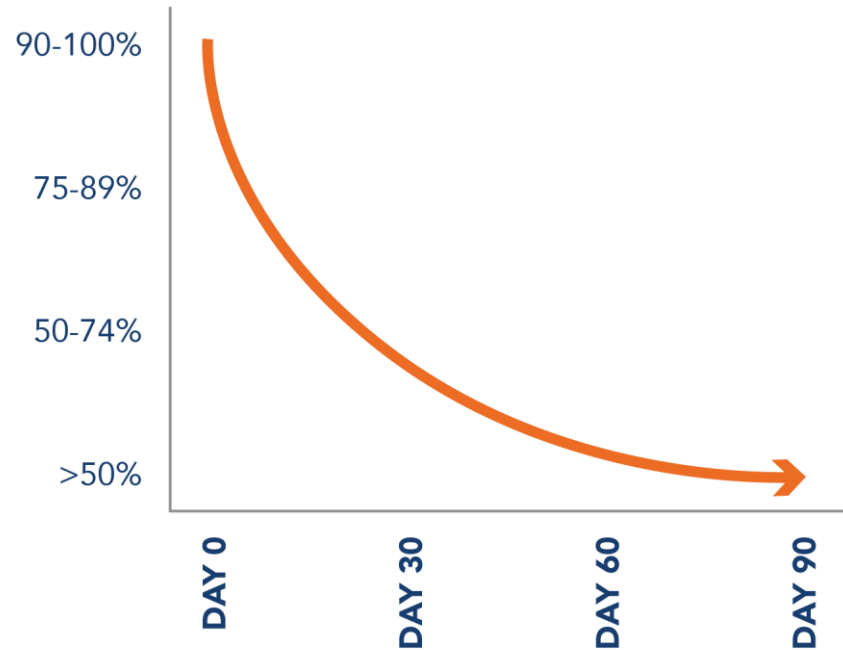
Your office will succeed with the 4-hour per day method if:

- 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 \$18,500 per month translated to a daily average income need of 4 hours x \$231.25 = \$925 per day.
- I call that daily rate my “income microcosm”
- $18,500 \times 12 = \$222,000$ per year is my “income macrocosm.”

Billing and collecting: The “life blood” of your 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



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 – remember: “narrative”

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

AND NOW, EVERYONE READ (and weep):

***Rohrmoos Venture v. UTSW DVA Healthcare, L.L.P.*, 578 S.W.3d 469-506 (Tex. 2019)**- “Generalities about an attorney’s experience, the total amount of fees, and the reasonableness of the fees are not sufficient to support a fee-shifting award under the lodestar method, abrogating *[numerous earlier decisions]*.”

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.

36 Make payments easy

The image shows a composite of two screenshots. On the left is an email interface with a header containing icons for trash, mail, and replies. The email body includes a 'To:' field with 'epace@domain.com', a 'From:' field with 'payments@jeffersonhartlaw.co', and a 'Subject:' field with 'Jefferson & Hart Invoice for Em'. The main text of the email reads 'Dear Emily, Please click the button below to p' followed by a green button labeled 'PAY INVOICE' with a mouse cursor clicking it. Below the button, it says 'Thank you for your business.' and includes the logo for 'JEFFERSON & HART ATTORNEYS AT LAW' along with the name 'Brian E. Hart, Managing Partner' and address '1234 Main Street, Atlanta, GA 30301' and phone number '555-321-1234 | jeffersonhartlaw.com'. On the right is a browser window showing a secure payment page. The address bar contains 'https://secure.lawpay.com/pages/jeffersonhart'. The page features the 'JEFFERSON & HART ATTORNEYS AT LAW' logo and contact information: 'Jefferson & Hart, 1234 Main Street, Atlanta, GA 30301, (555) 321-1234'. A 'Thank you for your prompt payment' message is displayed above logos for VISA, DISCOVER, AMERICAN EXPRESS, and mastercard. The main heading is 'Invoice Payment' for 'INVOICE 123-A'. The 'Amount' is '\$2,000.00' with a 'Total \$2,000.00' below it. The 'Card Information' section shows a 'Card Number' field with '**** * 9998' and a 'CW' field with '001'. The 'Exp.' field shows 'NOV' and '2021'.

37 Payment systems

The image shows two overlapping browser windows. The background window displays the Jefferson & Hart website with the URL <https://www.jeffersonhart.com>. The foreground window displays a secure payment portal at <https://secure.lawpay.com/pages/jeffersonhart>. The payment page features the Jefferson & Hart logo and contact information: 1234 Main Street, Atlanta, GA 30301, (555) 321-1234. The main heading is 'Invoice Payment' for 'INVOICE 123-A'. The amount is \$2,000.00, with a total of \$2,000.00. Below this, there is a 'Card Information' section with input fields for Card Number (**** * 9998), CVV (001), and Exp. (NOV 2021). A green 'SUBMIT PAYMENT' button is highlighted with a mouse cursor. A circular callout on the left of the payment page contains the text 'Pay Invoice'.

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

Trust account records: fee agreements



YOU MUST KEEP RECORDS!

- Every state has regulations requiring that a lawyer **shall maintain** written records of money **and other property** coming in the lawyer's possession.
- Your fee agreement should address how you will be able to withdraw pre-paid fee retainers from the trust account, for example:
 - “Attorney acknowledges the receipt of a pre-paid fee retainer from client in the amount of \$2,500.00. This pre-paid fee shall be deposited into the attorney's IOTA (IOLTA) trust account, to be drawn out monthly and credited against attorney's fees to be earned by attorney...”
- and **also** advise the client:
- “...no funds deposited in attorney's client trust account will earn interest for client.”

41 Using your firm's lawyer Trust account

What belongs in a 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)

What checks/transfers should come out of Attorney Trust account?

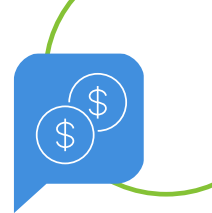
- Payment directly to attorney of earned fees (have a billing to back that up!)
- Payment of costs on behalf of client from client's retainer
- Refunds to client in appropriate circumstances (i.e., fee for matter completed is less than retainer)

Improper distributions from Trust

What checks/transfers should NOT come out of the IOLA 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")

Commingling funds



A lawyer tells her client that the legal fees will be \$1,000 and the court filing fee will be \$200. The client gives the attorney a check for \$1,200. Some attorneys will put the entire check into their business accounts because most of the money is going to the lawyer anyway, and may be spent quickly.

BEST PRACTICE: Bar association rules require (and the safer practice) that **the whole check** must go into the trust account even if the attorney is entitled to the full attorney's fee immediately. The filing fee portion of that check has to be held in trust.

Bookkeeper oversight: your duty

Most states' rules (i.e., Texas Rule 5.03) designate to the supervising lawyer responsibilities to manage regarding non-lawyer assistants:

Texas Disc. Rule 5.03. Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

Similar Rules:

Calif Disciplinary Rule 5.3:

. . . (c) a lawyer shall be responsible for conduct of such a person that would be a violation of these rules or the State Bar Act if engaged in by a lawyer . . . whether or not an employee of the same law firm . . . and fails to take reasonable remedial action.

Similar Rules: Mo. Rule 4-5.3; etc.

Third-party disputes



What if a third-party makes a claim to client funds held in your trust account, and your client instructs you to release the funds to the client and ignore the claim?

The answer depends on the nature of the claim.

Analyze the basis of the third-party claim. Is it a result of contract or order, or other legitimate claim (especially a court order or letter of protection)?

ANSWER: proven, matured claims only



The lawyer may pay only when the claimant has a proven interest in the client funds in the IOLTA Account. Mere 3rd Party claims do NOT override the Client's right to appropriate share of funds in your trust account.

Proven Matured claims would include:

- a. A statutory lien
- b. A judgment adjudicating ownership of funds
- c. A court order addressing the funds in question
- d. A written assignment conveying an interest
- e. A right of subrogation
- f. A signed letter of protection

10 biggest mistakes

- 1 | Not establishing **reasonable expectations** with the client from the very beginning
- 2 | Not resisting the client's invitation to "guess" or predict outcomes or costs without sufficient facts
- 3 | Not keeping the client informed regularly, truthfully, and aggressively to avoid mistakes and negative inferences

10 biggest mistakes

- 4** | Failing to respond to client contact which changes the narrative, i.e., expression of client's mistaken interpretation of your communication, facts, or options
- 5** | Stupid billing—not using correct, intelligent descriptions in billing, thus raising suspicions of overbilling
- 6** | Writing a letter or email that you would hate to have seen by a grievance committee

10 biggest mistakes

- 7 | Telling a lie, or treating anyone involved in the matter with contempt or disrespect
- 8 | Making a threat, even passively
- 9 | Leading an opposing party to believe that you are neutral or “on their side”
- 10 | Sending a communication to anyone that will “burn a bridge”

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

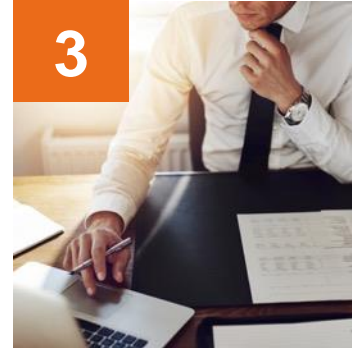
Summary



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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

Our Legal Profession will be:

- Courteous – if you are
- Strong – if you are active in it
- A source of service – if you serve
- A source of resolution – if you share your talents



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Thank You!