

# Lawyers and their Clients, and Vice Versa

By: David G. Ebert

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Twenty-five years ago, on my first day at his firm, Milton Gould—an extraordinary lawyer by any measure—described the lawyer’s ideal client: “an angry billionaire.” (He actually said “millionaire,” but angry millionaires are a dollar a dozen these days.)

When I’m not out tracking down and inciting them, I think about how the angry billionaire-set might describe their ideal lawyer. To this end, I’ve conducted a completely unscientific survey of long-standing satisfied clients (we tend not to have long-standing dissatisfied clients), including in-house lawyers, individual and institutional clients, new clients who come to us unhappy with their ex-lawyers, etc. And it seems that there are basic attributes clients can and should reasonably expect from their lawyer:

- Your lawyer should be responsive—especially to you. Your phone calls and emails should be returned reasonably promptly, which seems basic, but apparently isn’t. Part of being represented is having access to the person you’ve entrusted with your matter.

- Your lawyer should be ready, able and willing to communicate in plain English. And to write documents and contracts that you can understand without reference to a Lawyer-to-Human Dictionary. If you don’t understand what your lawyer is saying or writing, it’s likely no one else does either. Also, if you don’t know what your lawyer is talking about, you can’t tell if he or she is doing right by you, and you can’t provide meaningful feedback or input. And you may end up being unsure after you hang up whether you won or lost. While it may often seem otherwise, there is no Lawyers’ Code of Professional Obfuscation by which we are bound.

- Your lawyer should be willing to give you a budget—which you should then double, at least. In our defense, it’s very difficult to predict fees; there is just too much out of our control. But it is reasonable for you to ask us to try.

- Your lawyer should be experienced and self-confident enough to say: “I don’t know, but I’ll find out,” “I can’t/won’t do that,” “it’s not worth the time and money you will spend” and “I was wrong” (although, hopefully, not all at exactly the same time).

- Your lawyer should staff and conduct your matter as though he or she were paying the bill for it. Sometimes doing nothing with as few lawyers as possible is the best course.

- Your lawyer *must*—this one’s non-negotiable—have excellent instincts and judgment. Having a technically-sound advocate is obviously important. But lawyering at

its most critical level is often largely a matter of making hard judgment calls. Getting to your desired outcome will depend in every case to some extent on making the right decisions about what to do or not do, and how and when to do or not do it. If you have less than deep confidence and trust in your lawyer's instincts and judgment, you will be better served engaging your lawyer to represent the other side instead.

- Your lawyer should give you an opportunity to review everything of substance that goes out on your behalf to the court, an adversary, the lawyer on the other side of a deal or anywhere else *before* it goes out. You may not want to review it, but you should have the opportunity.

- Your lawyer should not be afraid to take reasonable risks or to make mistakes. Working to avoid potential risks and mistakes is a great way to avoid potential risks and mistakes. But it may not necessarily be a great way to best protect and represent your interests. I'm not suggesting that we embrace recklessness as a professional virtue. On the other hand, if your lawyer is afraid of taking reasonable risks or making mistakes along the way your matter may turn out *fine*, but it's not likely to turn out *great*. [Note to each of my current and future clients: you have my personal guaranty that I will continue to strive to make at least one moderately-critical mistake each and every day—but only on matters other than yours.]

- Your lawyer should periodically let you know what's happening, even when nothing is happening, and particularly when nothing has been happening for a long time.

- Your lawyer should be able to give you a reasonable explanation of why a particular task *needs* to be done (and that should happen before you're being billed for it). There are plenty of circumstances, particularly in litigation, where, although a given action is perfectly justifiable from a legal-technical standpoint, the same outcome can be accomplished without it.

- Your lawyer should be open to helping you in non-billable ways. Helping clients network with other clients, recommending good professionals—including other lawyers—to address a client's particular needs and facilitating business relationships for clients can be very productive for all involved (except the lawyer, in those cases where the two clients he or she cheerfully introduced end up in battle, rendering the lawyer unable to represent either!).

- Your lawyer should not be drowned out on calls with you by a meter ticking in the background. And speaking of fees, your lawyer should be open to discussing fee arrangements based on something other than hours (e.g., flat fee, hybrid contingent/hourly fee, success-based bonuses, etc). Your lawyer shouldn't *agree* to any of those arrangements as this would betray a serious weakness in his or her strategic thinking and negotiating skills, as well as an odd absence of a survival instinct. But a willingness to at least *discuss* it with you will hopefully ensure arrangements that work for both of you. It may also make in-roads to a much-needed overhaul of the entire

profession's hourly-based billing model, a transformation I heartily endorse—starting as of the very next business day after I retire.