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## What a Client Expects of His Lawyer

By MAURICE H. WINGER of the Kansas City Bar

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It is timely and appropriate that lawyers should consider subjects of particular interest to their own well-being. A review of leading legal publications and proceedings by Bar Associations discloses that remarkably few subjects are discussed bearing upon the progress or prosperity of the individual lawyer. We consider and discuss at great length legal principles and precedents, improving legislation and procedure, prepare and deliver or listen to great scholarly addresses, write or read profound discussions, all matters of great interest to our profession as a whole. But all too often we neglect consideration of those practical questions which have to do with or are of individual benefit to the lawyer in his personal relationship to his client and are of practical consideration in promoting and developing his own best interests. In business trade associations are organized and conducted for the benefit of the individual members of the industry or trade involved. It would seem to be wise for lawyers' associations to spend at least a part of their time and energy for the individual benefit of the members of the association, that is in consideration of subjects that are of practical importance to the lawyer in the conduct of his professional life. My subject is practical and does not require or permit of the scholarly approach. What does a client expect of his lawyer? I shall approach the subject from the standpoint of the business man's lawyer. The business man is interested in practical considerations. We are living in a changing world. This must be recognized by the lawyer who would serve his client best. As was said by Mr. Louis F. Jordan in an article in a recent issue of the American Bar Association Journal:

"If it can be said that war has changed our educational system, it can be pointed out with the same accuracy that something has changed not only present-day law practice, but also the kind of arena the young lawyer will find as he emerges from law school with his diploma and his degree."

The practice of law is less spectacular and more exacting than in the old days. To quote again from Mr. Jordan:

"The complexity of present day existence is such that time is a vital factor in the administration of justice; lawyers (and clients as well) are more anxious about succeeding in the quickest way rather than play to the galleries and thrive on publicity. They are becoming less the actors they used to be, and more the cold and calculating scientists of the law; more the surgeon with a steady scalpel, relying on scientific exactitude, rather than dramatics and the play on emotions."

### Advice

The first thing a client expects of his lawyer is *sound advice*. Regardless of whether a lawyer is consulted about a lawsuit, the organization of a corporation, a complicated scheme of financing or reorganization, the drawing of a contract, the preparation of a will or a trust, or anything else, the client expects his lawyer to give him correct advice on what he can and cannot do, and the lawyer must have courage enough to advise him correctly and fearlessly. A client has the right to expect his lawyer to find a way to accomplish his purpose if it can be done. This frequently requires legal ingenuity, but care must be exercised in trying to give a client the kind of advice he wants. A client should expect a frank and honest opinion based on a full understanding of all the facts which may frequently be hard to get from the client. No advice should be given until all the facts have been fully disclosed, and then only after a careful investigation of the law as applied to the particular facts involved. A good client should not expect more, and the lawyer in justice to himself can do no less. A client may frequently request quick advice on an important matter in a conversation over the telephone. Giving such advice under such circumstances is always dangerous and can easily result in the loss of a good client. It is a good rule never to give legal advice over the telephone. There is no record of what has been said and the door is left wide open for misunderstandings. When a lawyer is compelled to answer a legal question in a telephone conversation with a client the only safe way to proceed is to confirm the advice by letter, reciting the facts as disclosed to him and stating clearly and concisely the advice given. It is always disturbing and unpleasant to be compelled to give a client advice which he does not want to hear. It is the best practice to give such advice in writing and fortify yourself with a memorandum of facts and authorities, which, if not communicated to the client, should be kept in your own file on the subject. A client always expects a positive opinion. Unfortunately the law is not such an exact science that an unqualified opinion can always be given. In these days of divided opinions by courts of last resort, new constitutions and new codes which have not been construed, many of us have found it necessary to change opinions which have been long held to conform to the latest decision which may have been rendered by a divided court. The best a lawyer can do under such circumstances is to advise his client what the latest ruling of a majority of the court is on a given subject, and in many instances tell him that it will take a trial and probably an appeal to determine the particular question presented.

### Advice on Business Questions

It should not be necessary to say that a client expects his lawyer to be honest and to have good judgment. To what extent a client has the right to expect his lawyer to have and use good business judgment in advising on legal questions is a matter for serious consideration. Many times legal and

practical questions are so intermingled and dependent that the lawyer finds himself compelled to consider them together. This is particularly true of a businessman's lawyer. In such cases the lawyer who has sound business judgment as well as legal ability is most fortunate, as also is his client. A businessman's lawyer can expect to be confronted with such situations many times. It therefore behooves him to study business as well as law if he would render the best service to his client. It is always safe, however, to remind a client that ultimate decisions on purely business questions are the decisions of the client and not the lawyer.

I was impressed by some of the remarks of Mr. Justice Burton at the American Bar Association meeting. He said:

"Many a business lawyer feels that the day is lost when he or his client spends it in court. He tries to keep so well within the law that his clients never will have to sue and never will be sued, so that it is only with disappointment that he finds himself now and then in litigation."

Continuing, Mr. Justice Burton told the meeting:

"I like to think of the business lawyer's practice as constructive practice. Business law supplies a creative service that is as essential to modern industry as is engineering and finance. The business lawyer shares in the creation of the prosperity and enterprise of the nation just as do the businessman, engineer, and the financier."

As was said by a distinguished Boston lawyer, Mr. Sherman L. Whipple:

"It will be admitted, too, or rather, I should say, we assert with pride, that the lawyers today are more businesslike in the conduct of professional work than in former times. They understand business and business problems better than ever before. In the development of their practice it has been necessary for them to study and master problems of manufacturing, of commerce, of transportation, of engineering, of mining, and of a multitude of callings when they have been called upon to advise about, or to litigate, cases involving such questions, and in this way as well as other ways they have acquired skill and judgment in business matters. In the larger offices there exists today a higher efficiency, a better organization, and more systematic methods than existed so recently as half a century ago. We might concede the accuracy of the entire statement, but for the implication it carries that, by the adoption of business methods and businesslike organization, and by familiarity with business principles and problems we have somehow sacrificed something that was, or is, of value to our standing as professional men. But let us assume that we lawyers, or some of us, have become men of business. What of it? Is it still a disgrace or something contemptible to be a man of business? Is it asserted, or to be implied, that we as a profession are somehow above business and businessmen and our dignity of position is lost by association with men of affairs? . . .

"I believe, on the contrary, that the ideals of our profession are today as fine and pure, the sense of honor as keen, the moral discrimination as sharp,

and the character as worthy, as they have ever been. . . . I believe it to be a fact that the lessening of popular prejudice against us, and the higher esteem and regard in which the profession is held today are largely due to the change in attitude and function which has been noted. Much of the aloofness of the profession has disappeared. There is less, I believe, of the supercilious arrogance of superior education and mental discipline. The close contact with business and the application of our abilities to business problems have been a benefit alike to the profession and to businessmen. . . .

"I see naught in the change that has come to be regretted or deplored; but, on the other hand, I see distinct cause for pride in the achievements of our brethren in a new field of endeavor and for joy in the enlarged opportunity for useful and honorable service which the future opens to us."

### **A Fearless Fighter**

In the handling of litigated matters a client has the right to expect his lawyer to leave no stone unturned to win his case. He has a right to expect him to be a fair but fearless fighter for his rights. There are two sides to every question, particularly those questions that give rise to litigation. There is no royal road to the successful handling of a lawsuit. Unremitting toil and study and exhaustive investigation of both law and facts are the price of success. Brilliance alone is not enough. A client has the right to expect his lawyer to use all the brilliance of which he is possessed, but he also has the right to rely on his lawyer's painstaking care in the preparation and trial of his case and to know that he will not go into court relying on his acumen and neglect the hard work which it takes to win a lawsuit. He has a right to expect his lawyer to see that the judge does not make a mistake in applying the law to his case. There is never a time when a lawyer can feel or act with cocksureness.

### **Availability**

A client has the right to expect his lawyer to be available when he needs him and to be prompt in keeping his appointments. Some lawyers refuse to be interrupted and insist on completing the business in hand regardless of how many people are waiting. Nothing is more exasperating to a client than to wait on and on while an indifferent receptionist refuses to announce his arrival, particularly if he is uncertain whether the lawyer is really busy or only visiting and would admit him if the lawyer knew who was waiting. It is not fair to keep a busy man waiting unnecessarily. He is entitled to know that he will be seen as soon as possible. It is the best practice to have the arrival of each client announced as he comes into the office.

### **Keeping Abreast of the Times**

A client expects his lawyer to keep abreast of the times and to keep him advised of changes in the law which may affect his business. This makes it

good business for both lawyer and client to work out some arrangement for a regular retainer, payable monthly, quarterly, or at other regular fixed periods when necessary adjustments can be made based on the time consumed, a record of which should be kept, and the general nature of the service which has been rendered. Business and social conditions are constantly changing. The lawyer who would serve his clients must keep in touch with the times and progress as conditions around him advance. He cannot stand still and let the world go by. Laws are changing, administrative agencies are being created to take over much of the work formerly handled by the courts to meet new social conditions and the practice of law, of necessity, is changing accordingly. To some lawyers specialization seemed to present distinct advantages, but this tendency is passing as the law is too broad and too interrelated to permit satisfactory specialization. I concur in the conclusions of Mr. William L. Ransom expressed in an article which appeared in the American Bar Association Journal, from which I quote:

"From my own observation, the tendency, manifest and regretted a few years ago, to force young lawyers to 'specialize' and to shelve them in some niche or alcove of a large office, is not nearly so general today. It is found that first-class results require that all work be done by men of a broader experience and ability than this specialization produced. Many offices now refuse to permit their men to work exclusively in a single field of the law—even in such fields as taxation and estate work, which once seemed certain to be turned over to men who did nothing else. The modern law office places at the service of clients a more dependable product—the result of the work and discussions of several men, not one man only. There is an insistence on a standard of quality and a certainty of conclusive decisions which ordinarily can best be secured through a co-ordinated and co-operative handling. The expeditious handling of modern law business cannot be left to depend on the presence or absence, the health or sickness, the other engagements or the idiosyncrasies of any individual. There must be continuity of policy and treatment, as well as promptness of dispatch. Those factors have already forced a better organization of lawyers' offices in the larger cities, and are forcing the same thing, on a smaller scale, upon their brethren in the smaller cities and villages. For one, I do not believe the American lawyer has lost independence, dignity or prestige by the change."

### Service

In a word a client expects his lawyer to be of service to him in the handling and conduct of his business. An eminent author has said:

"All things are of little avail, however, without the spirit of service, a desire to accomplish something worth while for others. A selfish desire dwarfs and stultifies endeavor. Altruism broadens the outlook and leads

to real accomplishment. High ideals and a broad vision are essential factors in all constructive effort.

"Selfishness or the lust for wealth or power dooms to mediocrity. The self-centered may gain wealth or power but it is the wealth of a miser or the power of a pirate. Altruism is the very foundation stone of success. On this foundation 'service' will rear a structure of permanent value."

A lawyer who practices his profession with the purpose and object of rendering the best service to his client can always maintain his self respect and command the confidence of his client, which after all is said is his best stock in trade. A lawyer is constantly called upon to decide nice questions of propriety and legal ethics. He must beware of pitfalls and blind ways that may lead into compromising positions. No lawyer can afford to take any chances. A client may sometimes ask a lawyer to do things that he would not think of doing himself. Such a client knows that any lawyer who will pull a shady deal for him would not hesitate to pull the same kind of a deal against him. If confidence is thus undermined the value of the lawyer's legal advice is destroyed. A client will respect the lawyer who maintains his self respect. It is the lawyer of high standing and integrity who has the ability and courage to back it up to whom the client turns in time of real need.

### **Charging a Reasonable Fee**

Finally a good client expects his lawyer to charge a reasonable fee for services rendered. To most lawyers the task of rendering bills and collecting money from clients is one of the most distasteful sides of the practice. Too many of us put off the sending out of statements until the dwindling bank account makes the sending of a bill a necessity. Indeed, I have read of one lawyer who said he had not sent a statement to a client for a period of ten years. Other lawyers adopt the practice of sending a bill for all the traffic will bear. The services which a lawyer sells cannot usually be measured by any ordinary rule or measured or weighed in a regulation scale. In the business world it is common practice to render monthly statements on which prompt payment is expected. Certainly as soon as a case or transaction is closed and disposed of a bill should be rendered to the client, and if the matter extends over a long period of time bills should be sent from time to time to apply on account until the matter is concluded. No client will think any less of a lawyer for having rendered his bill promptly.

While no exact measuring stick can be applied in all cases in determining the value of a lawyer's services there are certain elements that may well be considered in determining the amount of a bill for services. Some of the things to be considered are:

1. The time consumed.
2. The amount or value of the property involved.

3. The nature of the matter as to the difficult character of legal questions involved.

4. The ability of the client to pay.

5. After all other questions have been fairly considered be absolutely impersonal in fixing the amount of the bill.

Explanations are unsatisfactory and apologies are unnecessary. A lawyer is entitled to fair pay for the only thing he has to sell, which is service. However a client has the right to know what his lawyer has done, much of which may have been done without his knowledge. It is of interest to him to know something of the amount of time consumed. The lawyer should also know how much time he has spent on a given matter by himself and his associates so that he can in a measure determine the amount of his investment in the subject of his bill. This makes necessary the keeping of a record of time consumed in the handling of each matter in his office. Some clients will be irked by itemized statements. Others are more easily convinced of the value of a lawyer's services by a detailed statement, showing time consumed and the exact nature of each item. Some transactions and trust accounts require a full accounting that can be handled only by such itemized statements. In any event a client is entitled to know what his lawyer has done when a bill is sent to him. Such a bill should either itemize the service rendered or contain a statement in narrative form, covering his handling of the entire matter and fixing a lump sum to be paid for the services rendered.

As a fitting close to these desultory remarks I refer to and quote the paragraph from the Canon of Ethics of the American Bar Association covering "The Lawyer's Duty in its Last Analysis":

"No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man, as a patriotic and loyal citizen."