

## REPORT

### **Introduction**

For at least 200 hundred years, lawyers have worked tirelessly to promote the legal rights of their clients. By zealously pursuing their clients' interests and carefully guarding the attorney-client privilege, lawyers have built the trust and loyalty that are the cornerstone of the attorney-client relationship.

However, the nature of that relationship has evolved as times have changed. Clients are no longer committed to a relationship with a single trusted counselor and advisor. Instead, they sometimes view lawyers as selling a largely fungible commodity, for which the cost may be an important distinguishing factor.

As the legal marketplace has become more competitive, and as information about a firm's financial performance has become widely available, lawyers are now forced to focus on the profitability of their business in a way they never have had to before. Profits are a measure of success and, regardless of any individual's personal financial aspirations or even indifference, a lawyer and law firm's reputation for success are critical in recruiting and retaining both lawyers and clients.

The increased emphasis on revenues and profitability exerts pressure on the attorney-client relationship. It also takes its toll on lawyers in many ways: the most direct and obvious result is that lawyers work harder than ever before; that work can be less fulfilling when hours and profits become the focus; and increased billings inevitably take away from not only personal, but also professional activities – including community service, pro bono work, teaching and mentoring – that historically have been a hallmark of the profession and the source of great personal satisfaction.

The proposed resolution is premised on the belief: (a) that it is important for lawyers to engage in pro bono work and community service, and (b) that such work and service are consistent with law firms' profitability goals. Success of a law firm depends on two critical constituencies – clients who need legal services and are able to pay their bills, and lawyers who are able to provide those services at the highest possible level. Pro bono work and community service provide lawyers (particularly newer lawyers) with invaluable experiences, enabling them to broaden the skills necessary to serve their paying clients. A firm that encourages its lawyers to live full and satisfying professional lives will be valued by both newer and seasoned lawyers, allowing those firms to recruit and retain the most skilled lawyers at all levels. Moreover, a lawyer or law firm's stature in the community can be a powerful attraction to clients. That stature can be built not just through results in paying cases, but also through commitment to activities that benefit the broader community.

The proposed resolution recognizes the realities of the legal marketplace but also encourages firms to consider approaches that are broader than a rigid emphasis on billing more and more hours. The resolution encourages firms to adopt practices that encourage lawyers to engage in non-billable professional and community activities with the goals of (i) increasing

lawyers' personal satisfaction and thereby attracting and retaining the best lawyers, (ii) broadening lawyers' professional experiences, skills and judgment, and (iii) enhancing the reputations of the lawyers and firms those who engage in them. These activities, the sponsors of this resolution submit, improve lawyers' ability to serve their clients, build better law firms, and enhance attorney-client relations.

## **The Historically Broad Role of Lawyers**

Lawyers have been in the forefront of efforts to ensure that legal rights extend to all individuals, regardless of race, ethnic background, gender or other identifying characteristic. From John Adams' representation of the British soldiers charged with the Boston Massacre, to Thurgood Marshall's decades-long struggle to integrate public schools, to lawyers' work in the Civil Rights Movement of the 1960's, lawyers have strived to make the American Dream available to everyone in our country.

American history is filled with lawyers who were able to combine private practice with public service. Alexander Hamilton, Daniel Webster, Abraham Lincoln and William Jennings Bryan are only a few of the lawyers who contributed so much to the public good. More recently, many lawyers have had considerable success at private law firms, but also achieved great stature through public service.

While many of these lawyers are nationally known for their public service, others may be recognized only as local heroes for providing legal services to the poor, assisting nonprofit organizations, serving on local school boards, or engaging in similar community service. Without much fanfare, lawyers historically have devoted thousands of hours every year to pro bono and community service work. By helping their communities and the people who live in them, these lawyers have achieved a personal satisfaction to which many aspired when they became lawyers.

On the business side, these good works offer rich opportunities for the lawyers who engage in them. Many have met other leaders—indeed, potential clients—in the course of their community activities. Others have been able to cement relations with existing clients who support the same causes they support. The lawyers have had the opportunity to showcase their knowledge, judgment, and effectiveness in a much more persuasive way than in any client “pitch.” And they have enhanced their general stature and reputation in the community, while simultaneously honing the skills that serve lawyers equally well in their daily practices.

## **Raise the Bar – Issues Affecting Lawyer Satisfaction**

The Section of Litigation began its *Raise the Bar* initiative two years ago to address what we perceived to be serious issues affecting lawyers' satisfaction within the profession. Starting with two focus groups in Atlanta in August 2004, we hypothesized that there is a generational gap in the profession such that newer and more seasoned lawyers would have very different views about those issues.

What we found in these focus groups, and in four subsequent conferences around the country, was very different. In fact, we learned that the issues confronting newer and

seasoned lawyers are generally the same. The pressure of being “on call” 24/7 with blackberries and cellular phones; diminished collegiality; inadequate mentoring; fewer opportunities for pro bono work and public service; less client loyalty and trust; greater competitiveness within and among law firms; and, most of all, the pressure to bill hours—all of these were repeatedly cited as reasons why lawyers are becoming increasingly dissatisfied with their careers and why many have left the profession altogether.

Many if not all of these problems coincide with the transition of legal practice over the past 20-30 years from a “profession” to a “business.” The increasing emphasis on “profits per partner”, billable hours and the like has made law firms more competitive—internally and externally—and has created a real risk that many lawyers will perceive that the only path to success is through hard work, measured in billable hours. The potential consequences to the legal profession are serious and profound, as lawyers (particularly newer lawyers) might decide to reduce their pro bono and community service activities, to say nothing of lessening their efforts to train and help other lawyers whom they perceive as competitors.

The proposed resolution encourages law firms to consider (1) alternatives to mandatory minimum billing requirements that would reduce undue emphasis on billable hours, and (2) compensation systems that would recognize and reward attorneys based on factors in addition to billable hours, including factors like pro bono work, community service, mentoring and others. These alternatives would communicate to lawyers that non-billable professional activities are also important and valued by their firms.

## **Client Tensions and Law Firm Profitability**

Law firms’ rigid emphasis on billable hours and profitability has not been lost on clients. Thirty years ago it was rare for a dispute between a lawyer and her client to end up in litigation. Now clients often sue lawyers for malpractice, breach of fiduciary duty and even fraud; and lawyers sue clients to collect unpaid bills.

But not only litigation demonstrates the negative changes in the attorney-client relationship. Increases in billing rates and for other charges have brought home to clients the business aspects of the legal practice. The results have been increased tension in the attorney-client relationship, as both the lawyer and her client have had to divert attention from the problem at hand to the financial aspects of their relationship.

Thirty years ago attorney-client relationships, at least the best ones, functioned almost as partnerships. The lawyer and her client worked together to solve the client’s problems. Trust and candor were essential to the success of that partnership. Now, by contrast, many attorney-client relationships are replete with skepticism and distrust.

These problems have been exacerbated, not helped, by the explosion of electronic means of communication. Even five or ten years ago, lawyers would meet regularly with their clients to hash out strategies and solutions to the clients’ problems. Now, with email and cellular telephones, lawyers can work for a client for years without ever meeting face-to-face.

## **Conclusion**

The proposed resolution attempts to address some of these serious problems affecting the legal profession, its lawyers and their critical relationship with clients. The proposed resolution encourages law firms to consider steps that would recognize and reward lawyers for undertaking pro bono work, community service, and other non-billable activities that promote these societal values -- while at the same time developing important legal skills, client relationships and the stature of lawyers and law firms. These steps, the sponsors of this resolution submit, will help maintain the vitality of law firms and ensure that lawyers continue to play vital roles in their communities as we move ahead in the 21<sup>st</sup> Century.

Respectfully submitted,

Brad D. Brian, Chair  
Section of Litigation  
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