

# Difficult Clients Sharpen Our Game

by Jack W. Burtch Jr.



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There are good clients, and there are great clients. Unfortunately, it's often the difficult clients who are the most memorable. All lawyers have heard the old adage, "There is nothing wrong with my law practice except the clients." But to be completely fair, most people who need a lawyer aren't at their best. They call either because something has gone wrong, or they are afraid something's about to go wrong. Even deal-making clients anticipating great profits sometimes resent the necessary intrusion of a lawyer. So any time we meet with clients, either in our office or theirs, a hidden tension hangs in the air. We hope to anticipate problems; they fear we will make the project more complicated. We try to provide a good solution; they want an easy result without having to navigate a maze of legalities.

In the normal course of events, these tensions get resolved. The lawyer and the client proceed as a team, even if the legal issues are perplexing. There are situations however, when the team doesn't gel. What Tolstoy said about happy families also applies to difficult clients. To paraphrase, all satisfied clients are alike, but each difficult client is difficult in his or her own way. However, these clients do fall into some broad categories, and when you learn how to recognize the challenges they present, you are better prepared to handle the complex situations they create.

### *The client who doesn't understand the limits of the legal system*

Some clients just don't understand that justice is neither instantaneous nor always available. Our

system of justice offers only a limited menu of remedies. Money damages, injunction, restitution, specific performance, accounting, and declaration of rights are on the short list of what a court can do. Each of these remedies comes at the end of a specific legal process where both sides are heard and a fact-finder makes a decision.

Recently, a successful business client became irate when I told him that I could not just march into court, show the judge the contract, and demand that his money be delivered that afternoon. "The contract is so clear" he said. "How can the judge not see it my way now, and why do I have to wait months for what is due to me today?" I understood his point, but he didn't get mine. What he wanted was instant justice, vending machine style: in goes his contract, out comes his money. The notion that there were two sides to the issue, each with its own interpretation of that contract, just didn't matter. My client made it very clear that if he had to wait a long time for his money, he could wait by himself, and he didn't need to pay me.

### *The client who is always right*

Forget what actually happened or what the legal consequences might be. To self-righteous clients, any questions you ask are simply noise. Your failure to agree instantly is actually your failure to understand things as they really are.

These clients actually don't want legal representation or advice. They want affirmation, followed by vindication. All they want is for you to tell them they are right. To suggest their situation may be subject to multiple interpretations is seen as an act of disloyalty. Suggest there may be a way to resolve or compromise a matter, and they take it as an invitation to accept defeat. To concede shows weakness. To propose settlement suggests they are wrong.

Sometimes clients come to lawyers asking for a second opinion. More often than not, their first lawyer didn't agree that they were right. The second opinion they want is to hear their views reflected back to them. Clients who are always right seldom end up happy. Anything less than total victory is total failure.

*The client who wants to start a war but only pay for a skirmish*

A number of years ago, I represented an out-of-state manufacturing company. Its director of sales had left for a competitor and taken the company's proprietary information with him. Although the director's non-competition agreement was imperfect under the current law, the type of information he took opened the door to a number of different causes of action. Some of these legal claims had the potential to recover significant damages and attorney's fees. After explaining all the options to my client, I received very clear marching orders: "full speed ahead; take no prisoners; money doesn't matter; it's the principle of the thing." So I filed suit papers and a motion for injunction, conducted extensive discovery, and scheduled emergency depositions.

Shortly after the initial flurry of activity, I noticed that my phone calls were not being returned with the same alacrity as before. My client was focusing on current business problems, so his previous goal of keeping this former employee out of the industry for two years didn't seem quite so important any more. The message became crystal clear after I sent the second bill. The company president told me, "You said this was going to be expensive and time-consuming, but I'm not sure we want to stay on this path. He's not really hurting us in the market, so I'm not sure about throwing more money at this." Here, finally, was the answer to the question I'd asked at the outset: is the cost and disruption of the lawsuit justified by the amount of damage this former employee could inflict? Initially, my client said yes; now he was saying no.

Even for big corporations, deciding to file a lawsuit can be an emotional ordeal. My client made his original decision based on pride, anger, and revenge. Having satisfied the itch to gear up for battle, he suddenly didn't want to bear the cost of seeing it through. Both he and I were put in the awkward position of having to stand down without losing credibility. For lawyers, this scenario is perfectly predictable; it happens with regularity. But advising caution and exploring potential scenarios when the client is riled up for a war doesn't build trust. Ultimately, it makes clients feel you're not committed to their goals. We have to balance our responsibility to present all options with our sensitivity to the foibles of human nature.

*The client who doesn't want to give you all the information*

Some clients just won't fill you in on the whole story. Often those who want to buy or sell something will hire you as their lawyer but won't tell you their goals in the negotiation. Of course, this is a trust issue. The client is thinking, "If I tell my lawyer the real number our company will take, he will put that information out on the table too soon and then we won't get the best price." So, lawyers can end up in a dual negotiation: first, negotiating with our clients for information, and second, negotiating with the other side for the best deal.

Some clients don't want to tell you what's going on at all. After a few meetings, you get the sense that there's really another agenda, one you don't know. Sometimes it's because of internal politics. Your contact is using your advice as part of a personal political strategy within the corporation. You're not being used as a lawyer, but as a pawn in a game of corporate chess. Sometimes there are hidden decision-makers, such as a significant family member or a business advisor who is always consulted but never disclosed. A strategy you thought the client completely accepted on Monday is strangely rejected on Tuesday. You know another influence is in play, but it is never revealed — Oz behind the curtain.

Once I thought I was representing an important executive who was fired from his job. We strategized on how to maximize the benefits of his employment contract, yet minimize the effects of the misjudgments which had led to his termi-

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nation. After our meetings, the client would call me with completely different questions, or he would advocate ideas he'd rejected earlier. I knew I was being played. Finally, when it came time to make a written demand to his former employer, he said, "I have to think about whether you should do that or whether Mr. Barrister should." (Mr. Barrister happens to be an outstanding lawyer and a friend of mine.) It turned out my



client had been consulting with him the whole time he'd been working with me. Mr. Barrister and I both thought we were representing him. After discussing the situation between ourselves, we lawyers decided it would have been much more effective, and a lot less expensive, to have worked collaboratively from the start. As it turned out, I got to see — acted out before my eyes — the very behavior that had gotten this executive into trouble in the first place.

*We've all heard doctors complain about patients using WebMD to diagnose their own medical problems.*

*Lawyers experience a similar situation.*

*The client who denies reality*

No matter how many businesses have failed at this location, these clients believe that theirs will surely succeed. The forces of change just don't apply to them. They are exempt from economic recession, supply and demand, and even new technology.

The 2008 economic downturn brought a number of these clients into the open. With the digital revolution has come a flattening of corporate structures. There are fewer levels of management, but more responsibility and accountability at each level. Yet there are still top executives who are absolutely flabbergasted that their job is the one that just got cut. These unrealistic employees watched their direct reports shrink, but never once thought the ax might hit their branch of the organizational chart. Rather than prepare for change, they simply assumed change couldn't, or wouldn't, affect them or their jobs.

Early in 2009, I met with one financial executive whose former employer had just seen a quarter of a billion dollars evaporate. But the executive refused to accept that such a drastic loss might affect him. I asked, "Don't you think such a loss might trigger cuts across-the-board?" "Yes," he said, "but it shouldn't have affected my job. I'm too important." He simply was not able to correlate a major economic disruption with any risk to his personal job security.

*The client who does legal research on the Internet*

We've all heard doctors complain about patients using WebMD to diagnose their own medical problems. Lawyers experience a similar situation.

In the late 1990s, I was contacted by a high-paid executive who had been let go by his long-time employer for reasons the company said were performance-based. My client thought he was terminated because of his age. I spent most of our first meeting finding out the facts, and then I outlined the type of proof he would need to assert a viable age claim. Proving an age discrimination case is tough. The employee has to produce something close to a "smoking gun," while all the employer has to do is present some legitimate reason that's not transparently bogus. (This is a gross over-simplification of the legal standard. But thinking about it in this way clarifies an age claimant's real task.)

At our second meeting, my client showed up carrying an armload of paper. He must have copied hundreds of pages of federal laws, regulations and random blogs about employment discrimination. I tried to explain that it was my job to simplify this process for him. I'd been trained to take his particular situation, apply the law affecting it to the facts of his case, and determine if there was any cause of action. If so, I would tell him the best way to approach it. My client said that wasn't necessary. He had done the research and decided he had a good case.

He told me that the tentative assessment I'd made at our last meeting was just wrong. He could do the research as well as I could and had reached a different conclusion. I then spent most of the next hour trying to explain to him why a federal procurement statute he'd found did not actually apply to his case and why a mining industry regulation did not protect his job. He again let me know I was wrong. It was all there, in black and white. He had located it on the Internet and printed it out. At this point, I just gave up. He'd found the perfect lawyer — himself — and decided he didn't need me.

Search engines can help both lawyers and clients gain an overview of a legal problem. Internet research can remind trained lawyers of things they have forgotten or haven't considered. For lawyers who are knowledgeable in their field, it's not a problem to weed out misinformation. But clients who do Internet research before talking with a lawyer often present questions which are not really pertinent to their problem. So the client's questions, rather than being a gateway to understanding the situation, become a barrier that must be overcome before the real problem can be assessed, much less addressed. The whole process takes longer and costs more.

Today's ready availability of information has also changed how clients use our legal advice. There was a time when clients approached a lawyer because they had a problem they felt could only be resolved with the help of specific legal expertise. But in the past twenty years or so, I've noticed our advice is often just another viewpoint.

In a sense, the Internet has democratized information. All sources are treated as relatively equal. Recently, I've had clients thanking me for my "feedback," rather than for my legal advice. Gone are the days when lawyers who graduated from law school and practiced for years had inherent credibility.

The fact is, difficult clients sharpen our game. They force us to reassess some long-held assumptions about how we practice. The legal system may offer limited remedies, but there are non-legal solutions to almost every problem. Many times we need to bring more practical strategy into our practice, more business acumen. The passing of time can change how a client sees

a problem. Sometimes all we can do is wait until our predictions play out and the client sees there is no instant solution.

Clients who see reality from only one perspective still need to be served. We can help make their situation better than it otherwise would be, regardless of whether or not our efforts are appreciated. We entered a profession in which there are winners and losers. That simple fact guarantees that we, and our strategies, won't always be appreciated. Sometimes a big win is getting the other side to walk away.

Happily, there will always be great clients. There will always be appreciative clients. But it is the difficult clients who end up making us better lawyers. And who knows? One day we may even thank them for it.

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