

SOLICITORS FEES: The value of intangible services.

Each time solicitors' fees are to be paid then the way solicitors price themselves or the way clients price solicitors is in issue. Have you noticed that a client - purchaser of real estate - has no qualms paying a road side estate agent 5-10% on a deal but sees no reason why the lawyer he engaged should get 2.5%? As regards solicitors work you would often hear a client attempt to justify paying a pittance by asking: What did you do? The motive for the question is not always proper, but the question itself is not improper in that it request for a fee justification. Coming to think about it, how do you justify your "fat" fee to this client who is bent on watching his bottom line? So you tell me – What did you do? I think the crux of the matter for a solicitor in this situation is making client understand the value of intangible services or showing tangibility for services that are not readily classified as tangible. How can we achieve this? Let me proffer a few suggestions:

1. Understand the value in your service

Very often the Solicitor ascribes the wrong value to the service or reaches a value from a wrong premise. For example, negotiating principally from the standpoint of the transaction value can be a wrong footing because one may be faced with the same transaction tomorrow and the same client but with a transaction value that is extremely low. Is it not the same effort you require to close a N100 million naira property sale that is required for a N10 Million naira transaction? Oftentimes the lower denominated transactions are more complex. So what should be uppermost in valuing the services of a Solicitor? Let us take a cue from the Legal Practitioners (Remuneration for Legal Documentation and other Land matters) order that governs fees for land matters and **“any other business not otherwise regulated and not being business in any action or transaction in any court”**. Scale 3 of the order states that fees should be “fair and reasonable having regard to the circumstances of the case”. Then it goes on to particularize “circumstances” in this order: (a) Complexity, difficulty and novelty of the matter (b) skill, labour and specialized knowledge applied (c) number of documents – without regard to length (d) time expended (e) amount or value of transaction (f) importance of the business to the client. Note that (a) (b) (c) cover what is aptly referred to as “intellectual property” - the greatest item a solicitor sells to a client. Note that (c) refers to documents prepared but downplays the length of the document. So a ten page document may require greater legal wizardry than another document of 50 pages. What is important is the “intellectual property” traded! You may also note that (d), (e) and (f) deal with the secondary issues that we typically try to use to justify our fees - time expended, value of transaction and importance to the client. Intellectual property input is a higher sell and the primary thing.

2. Make the intellectual property input more apparent

It is one thing to tell a client that he is paying for intellectual property which is tangible and empirically quantifiable, but it is yet another issue to make the client see the value added result from the intellectual import. Sometimes solicitors in a bid to display competence tend to trivialize issues – making the work look so simplistic and saying to the client – “it is so straightforward, all we need to do is ABC”. But is it not

so easy because you know something the client does not know? It is like saying that removing the appendix is a simple surgery. Indeed it is but only qualified doctors can do it! If we make the client believe that this is so easy then justifying your fee later becomes an issue. The client fails to realise that the reason why you are quick to find a solution is because you have gathered experience over the years, and you have spent money to attend courses and you have invested in the right reference books and someone has laboured to research and to come out with a solution that seems like “common sense”. So how do we make the intellectual import apparent? Give the client a thorough brief before, during and after your work. If there are legal intricacies and hurdles to cross do not spare your client the detail. Let the client into the problems arising that require a creative legal solution. How else will a client appreciate you as a solution provider without knowing the enormity of the problem? If the problem was never appreciated, then your input will seem negligible or intangible. Go to town with highlighting problems and solutions, imminent risks and mitigating advice and more. Where a client simply sees a document without understanding the intricacies then defending your fee is difficult. It is therefore advisable to work the client through the document, explaining your input and the legal ramifications of each clause. Write an initial letter recapping your brief and state the issues and how you intend to deal with them. At each turn (if a procedural transaction) write a letter stating how far you have come, the challenges ahead and how you intend to tackle them.

3. Go real time with the client

Going by the Legal Practitioners order quoted above, “time” is also a valuable asset that a solicitor sells. The “amount of time expended” is therefore a criteria for billing. This can be understood in many countries where the hourly rate system is advanced and part and parcel of the economy – even a road sweeper is paid hourly wages. It is advisable to devise ways of giving your client a fair idea how much time you spend on his matter. How? By advertising your processes! Copy the client on every letter you write; inform the client in writing the outcome of every telephone conversation or every meeting; send the client extracts of the results of every research you did and how it should impact the matter at hand; send an email or letter to let him know what your thoughts are on a particular problem and tell him you would get back to him when you have thought it through; get back to tell him when you have thought it through and detail how you arrived at a decision; call him any day you are up late pouring through files or documents regarding his matter to let him know that you are working on his matter and ask a quick question; send an abstract of every in-house brainstorm session held by your firm on the matter. Whatever you do just keep the client “online real time”. The client must share in the pain of the process as you plod along. This way one is less likely to be confronted on pay day with – What did you do? Whilst talking about time being a sold item we must remember that it is difficult to sell to someone what he knows you do not value. So if we do not behave like time is money (and it is money) then it would be a hard sell to tell the client how much time you expended. Many solicitors never have a semblance of being busy (indeed some are not) so they sit with a client for a whole day and follow him about his daily chores like personal assists. Such a client will place little value to your time. Why? Neither do you! Learn to look at your wristwatch after a while and say “I really have to go if you remember anything else send me an email”. Often many of us hang out until the next visitor comes to chase us away and the client will dismiss us or excuse himself.

4. Add value and advertise it

One of the most effective ways to add value is to look for a way to save your client money on a transaction. This gives you instant leverage in negotiating fees. It makes tangible your services in a glaring manner. Where you save money, bring out your trumpet and blow it to the clients' hearing – particularly where it is a tidy sum. I was once involved in a transaction where a client was buying 70% of the shares in a privately owned company and the share capital was going to be increased to accommodate the buy-in, but it was to have been done on the target company's account after the deal is done. Therefore the stamp duty would have been paid by seller and buyer since they would then be in bed together. Then we posed a question to the seller: If what you are selling is shares, where are they? You should increase you share capital and ask our client to buy, not the other way around. The seller finally conceded to netting off the cost of the share capital increase from the purchase price. The stamp duty on this ran into millions of naira. When the time came to negotiate our fees, it was smooth sailing for us – the boat was powered by the savings the client made or rather the savings we made for the client.

Next time a client is bold enough to ask: What did you do? Here are some good retorts: Ask the client to review his file to see all your correspondence, ask him to give you a refund on some of the money you saved him, remind him of the danger you averted by the advice you gave, ask him how much he thinks you are worth per hour and how many hours you may have spent on this matter. Whatever you do, make the service tangible. If you fail to do so, you set a bad precedent for yourself and the next lawyer in line.

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