



**Bright
Case Management**
Etienne Barnard

How are the forces moving?
&
How should we respond?

Put Differently:
Growing Litigation Practice by
Systems, Client (& Court) Satisfaction

By Systems we mean
case & practice
management systems

Technology to assist as
far as possible but not
take over

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Finley & Figg & The Rocket Docket

John Grisham: The Litigators

Do you have a system?
Do you constantly review your approach to litigation?
Are you improving efficiency?
Your clients deserve it.
You & your practice will benefit from it.

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- **Who?** -Judges more active role
-Lawyers less adversarial
- **What?** -Only cases certified as trial ready are heard
-Settlement considered much earlier
-Postponements and interlocutories avoided or reduced
- **Where?** -In consultations when taking instruction-
-In chamber work or preparation-
-At court
- **When?** -as early as possible
- **How?** -through commitment &
-regulation

MOST IMPORTANT QUESTION: **WHY?**

- Costs
- Time
- Less adversarial
- Better access to justice
- The important role players won't accept litigation without it
 - i.e. **The Courts** | **The Globe** | **The Financial forces**
| **Scenario Planners** | **Authors** | **Researchers** |
Government | **Entrepreneurs** | **Engineers & Project**
Managers | **Technology** | **Colleagues** etc.....lets examine
what they are saying...

Guidance from the Courts

- Think about Pre-Trial Case Management in SA
- Case Management systems in other jurisdictions

• Access to justice

(Justice delayed is often justice denied)

- (Commonwealth countries)
- (Also USA Example-Ohio)

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What the Courts are Saying

- A recent example from practice
- **W v H 2017 (1) SA 196 (WCC)** (5 August 2016)

'In my view, it is the fault of the husband that the divorce trial has taken 50 days of Court time, which I have set out in the first part of this Judgment. He adopted a "scorched earth" policy with a total disregard for the costs involved.'

Weinkove, A.J.

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ALGEMENE BALIERAAD VAN SUID-AFRIKA v BURGER... 1993 (4) SA 510 (T) A 1993 (4) SA p510 for authority.

- Page 525 & 526 Translated: Burger's conduct clearly indicates signs of a shortcoming of that responsibility and honesty that should signify the character of an advocate.... His appearance fee in the application was not only unreasonable but **represents a multiplication** of a few times of what can at the extreme be regarded as an acceptable fee. **His actions regarding the keeping of records shows a surprising don't care attitude.** His association with and approval of a misleading account speaks of extreme irresponsibility.

What the Markets & Clients are telling us

COUNTRY (World Bank Group online at April 2016)	RANKED	DAYS TO ENFORCE A CONTRACT	COST AS PERCENTAGE OF CLAIM	TOTAL INDEX SCORE (OUT OF 18)
SOUTH AFRICA	119th	600	33.2%	6.5
UNITED KINGDOM	33 rd	437	43.9%	15
CANADA	48 th	570	22.3%	10.5
HONG KONG	22 nd	360	21.2%	11
MOROCCO	59 th	510	25.2%	8.5
SINGAPORE	1	150	25.8%	15.5

Gone are the days of "This matter if properly handled can last forever!"

World Bank Group Criteria: **Court Structure and Proceedings**

- Availability of a **specialized commercial court** or division
- Availability of a **small claims court** or simplified procedure for small claims
- Availability of **pretrial attachment**
- **Criteria** used **to assign cases** to judges

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World Bank Group Criteria: **Case Management**

- Regulations setting **time standards** for key court events
- Regulations on **adjournments** and **continuances**
- Availability of **performance measurements** mechanisms
- Use of **pretrial conference**
- Availability of an **electronic case management** system

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World Bank Group Criteria: **Court Automation**

- Ability to **file** initial **complaint electronically**
- Ability to **serve electronically**
- Ability to **pay court fees electronically**
- **Publication** of judgments

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World Bank Group Criteria: **Alternative Dispute Resolution**

- Availability and Regulation of **Arbitration**
- Availability and Regulation of voluntary **mediation** or **conciliation**
- (Think of our CCMA type structure for labour disputes)

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What the Government is saying to us?

- The Constitution Core Value of Dignity
“Do unto others as...”
- A visit from local City management
- New Disciplinary Processes
- Consumer Protection Act
- Legal Services Ombud
- Costs
 - Cut the string (s35)
- The Regulators
 - Law Societies



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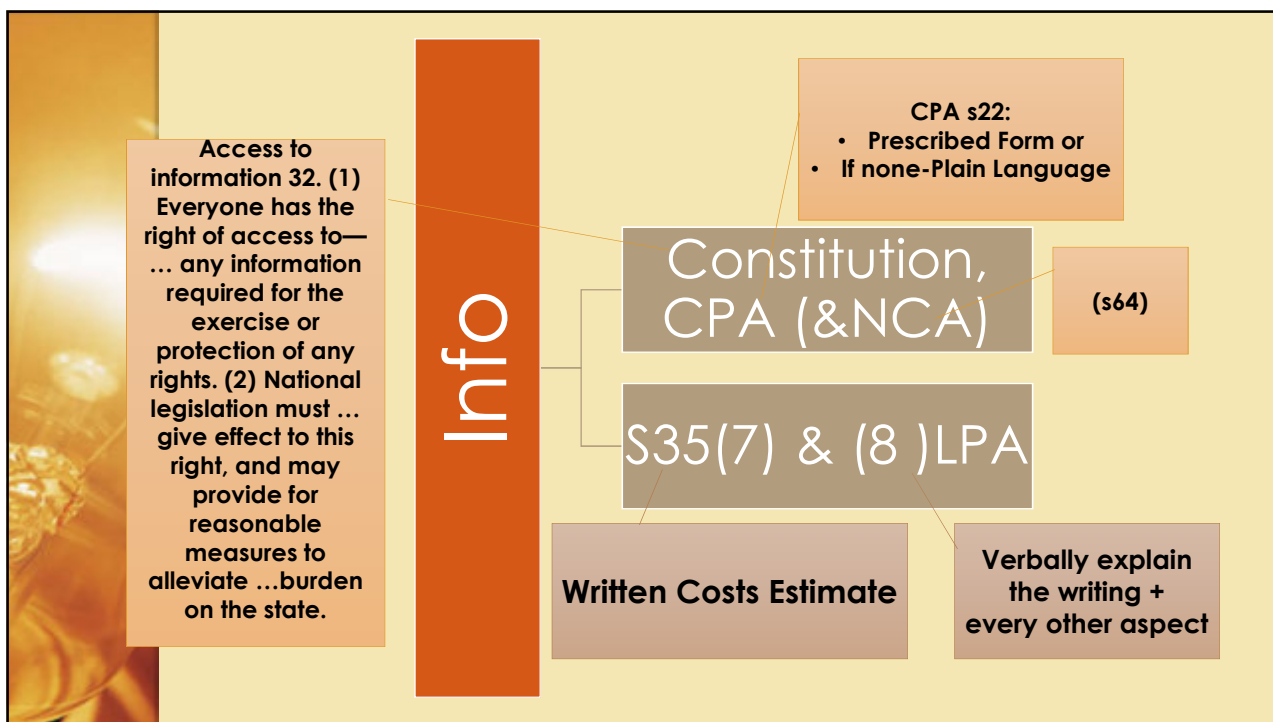
ARE WE READY FOR THE QUOTE AND THE ESTIMATE? CASE PRICING DEVELOPMENTS

- S35 LEGAL PRACTICE ACT

COMPARE LEGALCOSTS.COM

<https://vimeo.com/27282734>

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The Costs Estimate [s35(7) & (8)]

- **Applies to**
 - Attorneys & s34(2)(b) advocates (direct instructions)
- **Which Services:**
 - Litigious & Non-Litigious
- **When:**
 - At first consultation/meeting or
 - as soon as practically possible thereafter
- **Formality:** In writing
- **Content:** All relating to relevant costs including....

Content: All relating to relevant costs including....

- **Likely financial implications (including fees/charges/ disbursements/other costs)**
- LPs hourly rate & explain right of client to negotiate fees
- **Outline work to be done in each stage of litigation process**
- Likelihood of engaging an advocate (& an explanation of the different fees charged by different advocates, depending on aspects such as seniority or expertise)
- **Litigation: Legal & Financial Consequences of client's withdrawal & costs recovery regime**

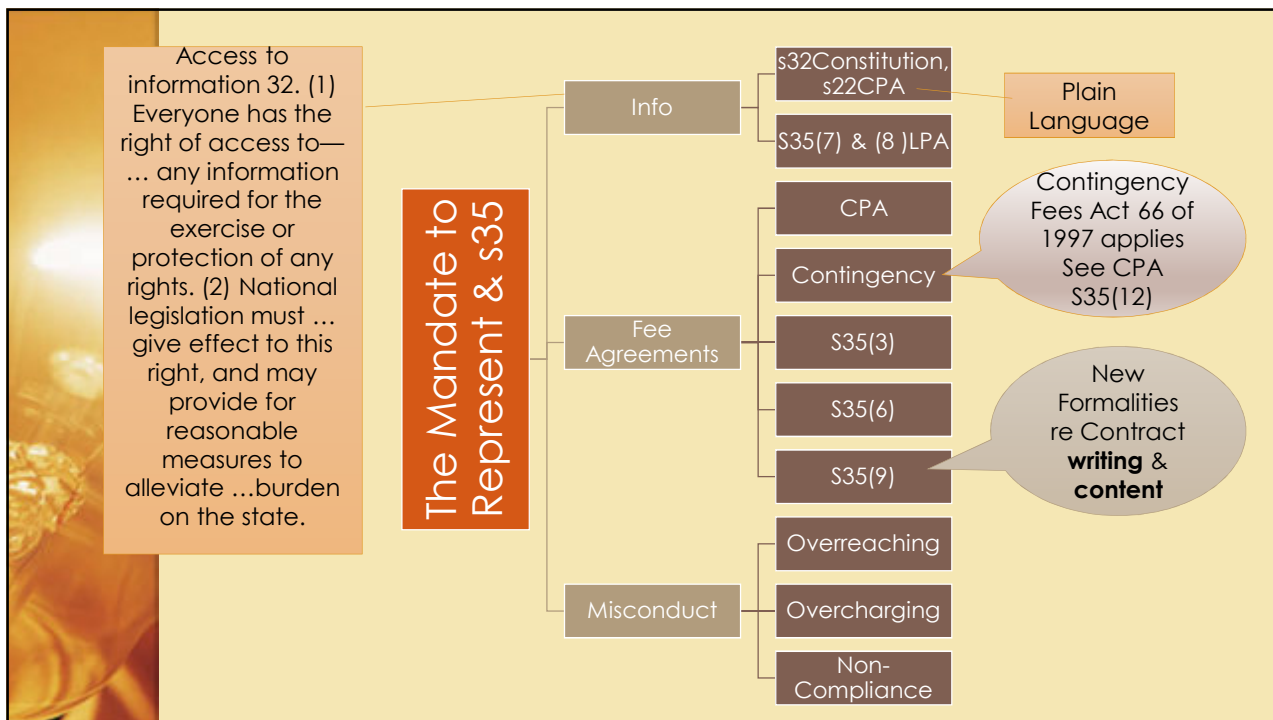
DURBAN

- 20'000
- 6'000
- 25'000
- 41'400
- 10'300
- 13'500
- 39'000
- 4'000

MIDRAND

- 33'000
- 76'800
- 39'000
- 84'000
- 37'500
- 65'000
- 19'200
- 60'000

Free Market example of Estimates



A useful tip

- Consider the conveyancing Pro-Forma Account & how quickly it is settled
- This is where your experience or research can count
- An example from practice

What Law Societies & National Forum are telling us?

- 35.11 Every firm shall, **within a reasonable time** after the performance or earlier termination of any mandate, **account** to its client in writing...
- Current LS rule 40.1 & published draft NF Code of conduct 2.1 Maintain the **highest standards of honesty and integrity**;
- Current LS rule 40.2 & published draft NF Code of conduct 3.3 treat the **interests of their clients as paramount** provided that their conduct shall be subject always to:
 - 40.2.1 their duty to the court;
 - 40.2.2 the interests of justice;
 - 40.2.3 the observation of the law;
 - 40.2.4 the maintenance of the ethical standards prescribed by these rules and generally recognised by the profession;

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What the Law Societies are saying to us?

- Current LS rule 40.4 & NF Code of Conduct 3.5 **refrain from** doing anything in a manner prohibited by law or by the code of conduct of the profession which places or could place them in **a position in which a client's interests conflict with their own** or those of other clients;
- Current LS rule 40.7 & NF Code of Conduct 3.8 account faithfully, accurately and timeously for any of their clients' money which comes into their possession, keep such money separate from their own money, and **retain such money for so long only as is strictly necessary**;
- Current LS rule 40.8 & NF Code of Conduct 3.9 retain the independence necessary to enable them to give their clients **unbiased advice**;

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What the Law Societies are saying to us?

- Law Societies rule 40.9 &
- (NF/LPC) Code of Conduct 3.10
 - advise their clients at the earliest possible opportunity on the likely success of such clients' cases and
 - **not generate unnecessary work, nor involve their clients in unnecessary expense;**

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What the Law Societies are saying to us?

- Current LS rule 40.11 & NF Code of Conduct 3.12no member shall fail or refuse to carry out, or continue, a mandate on the ground of non-payment of fees and disbursements (or the provision of advance cover therefor) **if demand for such payment or provision is made at an unreasonable time or in an unreasonable manner;**

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What the Law Societies are saying to us?

- Current LS rule 40.14 & NF Code of Conduct 3.15 **refrain from** doing anything which could or might **bring the attorneys' profession into disrepute**.
- 49.6 **not overreach a client or overcharge** the **debtor** of a client, **or charge a fee** which is **unreasonably high**, having regard to the circumstances of the matter;

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Assistance from Scenario Planners

- What Colour is His Honour's Collar (Sam Berner)
 - The Law according to
 - Moore
 - Susskind
 - STAR TREK!
- Law Society England/Wales
 - Bleak House
 - Wise Counsel
 - The Mini Club Men
 - The Law is an App
- Dr Spencer Johnson



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A CASE STUDY: OHIO

Top 10 Court Websites
**NA
CM**
2015 WINNER

Ohio | Court of Claims

Mark H. Reed,
Clerk of the Court
 Contact Us »

f in

Claims vs the State | Public Records | Crime Victims Compensation | Legal Community | Press/Media | Online Services | General Info | Resources

Fees & Costs
 Case Search
 Find State Agencies
 Find Colleges/Universities
 Court Calendar
 Journals & Victims Archives
 Transcripts

Fees & Costs

Filing fees and court costs may be paid in cash, or by check or money

<https://ohiocourtofclaims.gov/case-timelines.php>

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OHIO: STANDARD FORMS

- **Administrative Determinations (claims for \$10,000 or less)**

[Claim Form](#) | [Claim Form Instructions](#) | [Application to File Claim Without Payment of Fee](#) | [Claimant's Response to Agency Investigation Report](#) | [Instructions for Responding to an Investigation Report](#) | [Appeal of Clerk's Decision on a Claim](#) | [New Contact Information Form](#)

- **Judicial Cases (claims in excess of \$10,000)**

[Claim Form](#) | [Claim Form Instructions](#) | [Application to File Claim Without Payment of Fee](#) | [Statement of the Existence of Connected Action](#) | [Request for Clerk to Issue Subpoena](#) | [New Contact Information Form](#)

- **For the Legal Community**

[Subpoena in Blank](#) | [Instructions for Service of Subpoena](#)

- **Crime Victims Compensation**

[Notice of Appeal from the Attorney General's Final Decision](#) | [Request for Clerk to Issue Subpoena](#) | [Confirmation of Attendance](#) | [New Contact Information Form](#)

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Alternative Dispute Resolution



Mediation, which is the most effective approach to alternative dispute resolution, uses a third-party person to help parties reach a voluntary resolution. This informal and confidential process helps parties understand the interests and practical and legal choices of everyone involved, saving time and money, improving satisfaction with the court's services and reducing future disputes and offenses. Although the parties--and not the mediator--actually decide on the solution, the mediator helps to improve communication and explore settlement options.

Ohio:ADR

The Court of Claims partners with the Dispute Resolution Section of the Ohio Supreme Court for access to trained mediators. Parties may request mediation by motion or upon agreement. The Court will also, on its own motion, refer appropriated cases to mediation.

Call us today for more information! [614.387.9800](tel:614.387.9800)



Case Search

To search for case details:

Enter Case No:

Find by Case No

or search by multiple fields

File Date Range

Start Date:

End Date:

Case Category

Case Category:

[Click here to select category](#) ▼

Case Type

Case Type:

Ohio: Case Search page continued

← → ↻ | www.ohiocourtclaims.gov | http://www.ohiocourtclaims.gov

Individual Name

First Name:

Last Name:

Company Name

Company Name:

Judgments and Decisions Only

Judgment and Decisions:

Judicial Official

Judicial Official:

Attorney Registration

Attorney Registration:

County

County:

Government Agency

Non State Agency Only:

State Agency:

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How it works



Courts use a process called case management to move all cases from filing to disposition, and this includes all pretrial phases, trials and all events that follow disposition. This process helps to ensure that every litigant receives procedural due process and equal protection. The Ohio Court of Claims uses differentiated case management, a technique that tailors the process and the court's resources to the needs of individual cases. Here's how it works:

- Active case management begins as soon as a case is filed.
- The complaint is screened to ensure that a proper state agency is named as the defendant ([click here](#) for a list of state agencies or [here](#) for a list of state universities & colleges).
- An inquiry is sent to the plaintiff to identify a connected action, or any other court cases or claims that may be related to the case ([click here](#) for the connection action disclosure form).

- The Clerk of the Court reviews the case and places it in the expedited, standard or major trial track, with each one adhering to a different timeline.
- A trial order is issued after the connected action inquiry is filed.
- A case management conference is scheduled for about 60 days after the answer is filed.
- A pretrial hearing is held in most cases, and takes place about 30 days prior to trial.
- Other case management issues are resolved by reviewing the Rules of the Court of Claims or the Local Rules of the Court of Claims.

If you have additional concerns, contact the Director of Case Management at [1.800.824.8263](tel:18008248263).

Case Timelines

- Standard Trial Track
- Expedited Trial Track
- Major Trial Track

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Civil Division
Case Management Timeline
STANDARD TRACK



Standard Track Events

- | | |
|---|-------------------------|
| (A) Complaint Filed | (I) Dispositive Motions |
| (B) Prescreening of Complaint | (J) Pretrial Conference |
| (C) Connected Action Statement and Answer | (K) Trial |
| (D) Trial Order | (L) Post Trial Briefs |
| (E) Case Management Conference | (M) Decision |
| (F) Expert Reports | |
| (G) Rebuttal Reports | |
| (H) Discovery Cutoff | |




Civil Division
Case Management Timeline
EXPEDITED TRACK



Expedited Track Events

- | | |
|---|--------------|
| (A) Complaint Filed | (I) Trial |
| (B) Prescreening of Complaint | (J) Decision |
| (C) Connected Action Statement and Answer | |
| (D) Trial Order | |
| (E) Case Management Conference | |
| (F) Discovery Cutoff | |
| (G) Dispositive Motions | |
| (H) Pretrial Conference | |



Civil Division
Case Management Timeline
MAJOR TRIAL TRACK

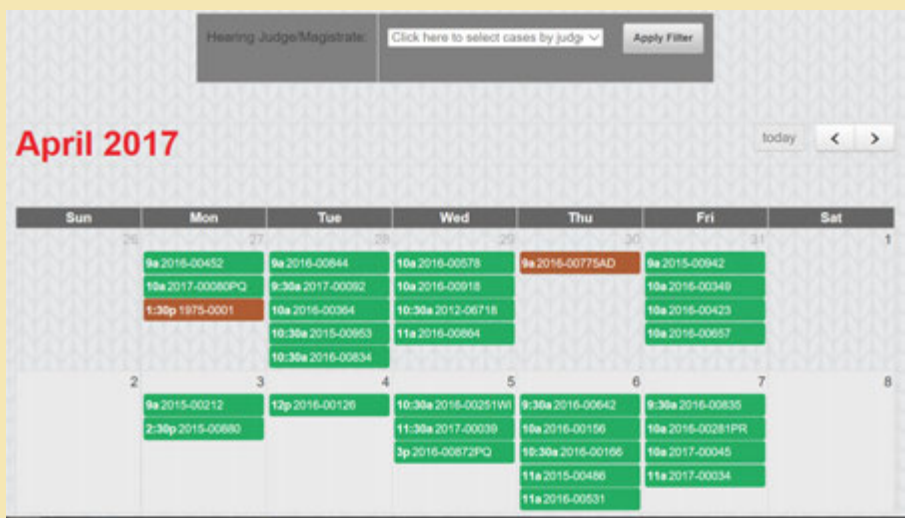
Months

0	1	2		10	12	15	16	17	18		21	24
A,B	C,D	E		F	G	H	I	J	K		L	M

Major Trial Track Events

(A) Complaint Filed	(I) Dispositive Motions
(B) Prescreening of Complaint	(J) Pretrial Conference
(C) Connected Action Statement and Answer	(K) Trial
(D) Trial Order	(L) Post Trial Briefs
(E) Case Management Conference	(M) Decision
(F) Expert Reports	
(G) Rebuttal Expert Reports	
(H) Discovery Cutoff	

Ohio: Online Court Calendar



Hearing Judge/Magistrate: Click here to select cases by judge

April 2017 today < >

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	9a 2016-00452 10a 2017-00080PQ 1:30p 1975-0001	9a 2016-00844 9:30a 2017-00092 10a 2016-00364 10:30a 2015-00653 10:30a 2016-00834	10a 2016-00578 10a 2016-00918 10:30a 2012-06718 11a 2016-00804	9a 2016-00775AD	9a 2015-00942 10a 2016-00349 10a 2016-00423 10a 2016-00657	
	9a 2015-00212 2:30p 2015-00690	12p 2016-00126	10:30a 2016-00251W 11:30a 2017-00039 3p 2016-00872PQ	9:30a 2016-00642 10a 2016-00156 10:30a 2016-00166 11a 2015-00486 11a 2016-00531	9:30a 2016-00835 10a 2016-00281PR 10a 2017-00045 11a 2017-00034	

<http://cases.ohiocourtclaims.gov/cgi-bin/wspd CGI.sh/runcalendar.htm>
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Malcolm Gladwell Research Wisdom

- The Tipping Point
 - Small changes make big differences
- Blink: The power of thinking without thinking (Conversations 60min);
 - How we treat people can manage our risk
 - AIIF
 - We need to manage our risk
 - Risk Management Questionnaire
 - Is your system prepared for the LEGAL SERVICES OMBUD?

Some tips from the Entrepreneurs

- Stop Hauling Buckets & Build a Pipeline (Kiosaki)
- The Go-Giver (Burg & Mann)
 - The Law of Value
 - The Law of Compensation
 - The Law of Influence
 - The Law of Authenticity
 - The Law of Receptivity



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The Law of...

- **Value**- Your true worth is determined by **how much more you give** in value **than you receive**
- **Compensation**-Your income is determined by **how many** people you serve and **how well** you **serve** them
- **Influence**-Your influence is determined by how abundantly you place **other people's interests first**
- **Authenticity**-The **most valuable gift** you have to offer is **yourself**
- **Receptivity**-The key to effective giving is to **stay open to receiving**

...Please read the book

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What to learn from Project Managers

- The costs triangle
 - The elusive side of the triangle
 - How it be regained?
 - Proper Cost Saving Systems

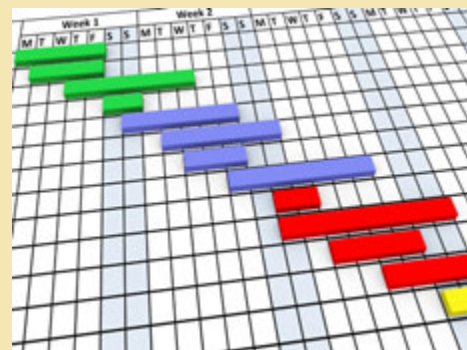


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Project Managers...(2)

- How to deal with many cases
- Gantt
- Where things go wrong
 - Simultaneous action in short staffed practice
 - Lack of co-ordination
 - Office staff meetings
 - Regular Performance appraisals- be honest!



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What Technology is saying to us

- *“We develop and upgrade to make your life easier”*
- Voice Readers
- Audio Note Apps
- Auto Correction functions
- Direct Debiting Apps
- Practice management type systems
- Time management tools
- Electronic diaries
- File diarizing & prescription prevention tools

**TIME & COST
SAVERS**

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What Technology is saying to us (2)

- Bookkeeping Systems beyond just recording finances...but actually using the data to enhance performance
- More paperless (eg. Pdf type notation software)
- Case Automation
- Discovery Tools
- Research tools
- Apps to assist clients

**TIME & COST
SAVERS**

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How can we respond? (1)

- Check Lists for smooth operation
 - (how do pilots land a plane every time?)
 - Review (Compare accident reconstruction when a plane has crashed)
- **Treat clients with utmost dignity**
 - **service, service, service!**
- Work out at an early stage
 - what the actual gripe is
 - How it can adequately be addressed
 - Is there a win-win settlement or an acceptable lose-lose settlement?
- **Consider ADR or ways settlement can be achieved much earlier**

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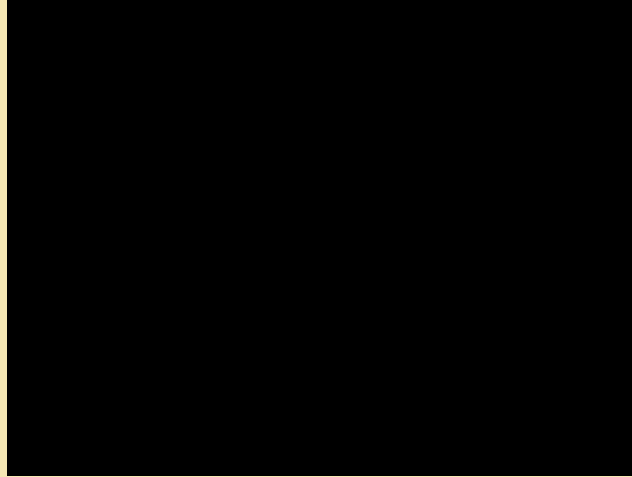
How can we respond? (2)

- Diaries (electronic and hard copy)
- **Time Management to be case oriented**
 - **Tension between admin and fee work in many firms**
- Systems
 - Introduce, Constantly review & improve (remembering dignity above)
- **Automation**
- Checks & Balances
- **Surveys**
 - (Formal & Informal)
 - Processing of info
 - Be consumer driven

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Sometimes its necessary to build the plane in flight



Thank You

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