



Make More Money by Being More Ethical

BY CHAIM STEINBERGER

Many believe that professional rules of ethics encumber us, make us less efficient, and prevent us from making more money. Actually, quite the opposite is true. 'Turns out that "good ethics," in addition to keeping us out of trouble, is also "good business."

BY FOLLOWING ETHICS BEST PRACTICES, you will operate your business in a manner most likely to provide more repeat business, generate more referrals, and ensure that a greater percentage of your invoices are paid. Follow these philosophical and technical rules and you likely will have more work, more clients, and more money in your pocket.

1. Be client-centric. Like successful dieting, it's not just one single thing that has to be done, but rather a way of life, an attitude, a frame of mind. Consider how everything you do will look and feel to the client. Being client-centric should affect every aspect of your practice. Here are some of the ways it can help you make more money.

- **Demonstrate care and concern for clients** over and over again. Studies show that, surprisingly, many attorneys do not know what is most important to their clients. Though many attorneys believe that clients are most worried about (1) costs, and (2) results, clients report that their attorney's *concern* for them is the *single most important factor* in determining whether they will rehire the lawyer. (J. Harris Morgan & Jay G. Foonberg, *How to Draft Bills Clients Rush to Pay* 77–78 (2d ed. 2003), citing the Missouri Bar Prentice-Hall Survey: A Motivational Study of Public Attitudes and Law Office Management 67 (The Missouri Bar 1963) (the "Missouri Study").

The wise lawyer, therefore, will demonstrate genuine

care and concern for clients at every opportunity. This includes simple courtesies like not permitting clients to wait when arriving at your office, personally escorting them into and out of your office, and not allowing yourself to be interrupted or distracted by phone calls, e-mails, or other office pressures while with the client. Giving a client your complete, undivided attention demonstrates powerfully how important the client is to you.

Analogously, it is widely reported that doctors with a good bedside manner are less likely to be sued for malpractice than those with a poor bedside manner. Likewise, patients are more understanding and forgiving of a “caring” doctor’s mistakes. The same is true of legal clients. Clients are more likely to pay for legal services and less likely to file a grievance or malpractice action if they feel the lawyer is dedicated to them. Indeed, grievance committees have confirmed that the single most important thing an attorney can do to reduce complaints is to return telephone calls promptly. Obviously, this is a good business practice, too.

2. Draft time entries and invoices that convey your effort and dedication to clients.

Instead of limp, lifeless, passive time entries, use powerful, active present-tense verbs that give life and vibrancy to the many hours you devote to the client’s matter. For example an entry like “Review every reported decision involving a parent whose income exceeds the CSSA cap to determine client’s maximum child support exposure” is likely to be more meaningful to the client than the vague “legal research—15 hours” type of entry most of us are accustomed to seeing. Your efforts are more likely to be appreciated and paid for, too.

Avoid time entries that would cause a reasonable person to raise an eyebrow. For example, never include two separate but identical entries. Distinguish them so that it is obvious that you are not asking the client to pay twice for the same work. For example, when charging for a phone call, specify what was accomplished, or attempted, during the phone call. Show the value the client is receiving for the money.

3. Always treat the client as you wish to be treated.

That’s the Golden Rule. Even better is the “Platinum” Rule: Treat each client in the way that client wishes to be treated. Here’s how:

- **Never surprise a client.** We all hate surprises, unless they’re the good kind. Lawyers’ bills rarely are. We don’t ever want to be surprised when we pick up our cars from the mechanic. Our clients shouldn’t be surprised when they get our bills either. Anytime a client is surprised, it means that the lawyer has dropped the ball.

Avoid surprising the client by calling ahead of time. Yes, I know it’s uncomfortable. No one ever wants to be the bearer of bad news. It’s still better to call clients ahead of time to personally explain why a bill is higher than

expected. Even better, call the client before you do the extra work to explain what happened and why you need to do additional work and what it will likely cost. The client will feel more in control, and the work you do will more likely be appreciated and paid for. As one of our colleagues recently posted on the Family Law Section’s listserve, “As between doing the work and not getting paid and not doing the work and not getting paid, I’d prefer the latter.” A bill, or for that matter anything else in the lawsuit, should never surprise the client.

- **Keep clients informed.** Another way to avoid client surprises is to establish a mechanism within your office to ensure that clients are always kept informed of each development in their cases. By forwarding to them copies of each letter, e-mail, and motions, they see the work as you are doing it. They can, therefore, better appreciate the time you are devoting to their matters. At the end of the month when they receive your bill, the entries remind them of all the work you’ve done, and they’ll appreciate it more and pay for it more easily. Of course, this also cuts down on clients complaining that they don’t know what’s going on in their cases.

Avoiding client surprises also requires you to spell out early and clearly what the client must pay for, approximately how much it will cost, and when and how to pay. Do all of this in your initial retainer agreement. Every potential client is concerned about costs and likely feels uncomfortable raising the issue. By raising the issue early, you demonstrate your integrity, alleviate your client’s anxiety, and build trust and respect. In addition, doing so avoids misunderstandings and reduces challenges to your bills or grievance complaints against you.

4. Bill “early and often.”

Clients are more apt to pay bills immediately before or immediately after the work is done. The more time that passes after the work’s completion, the less likely the client is to recognize its value or pay for it. Like the old saw warns, “The value of a service decreases dramatically after it’s been rendered.”

An added benefit to frequent billing is that the client stays informed about the status of the case and the cost of your services. The more work you do for your client, therefore, the more often you should bill. This will help your cash flow and keep your clients happier. As studies show, yet another benefit of frequent billing is more referrals from existing clients. So by billing more frequently you’ll have more clients, happier current clients, better cash flow, greater realization on your billings, and fewer complaints.

- **Track time religiously.** In order to bill early and often, you must track your time religiously and contemporaneously as you do your work. Your time records will be more reliable, will generate fewer challenges to your bills, and your records will better protect you in the event of any dispute. More frequent billings also will help you

make more money. Lawyers who have a system in place for recording and billing their time earn 40 percent more money than lawyers who do not. Morgan & Foonberg, *supra*, at 67.

- **Invoices must look and be reasonable under the circumstances and be accurate.** Do not issue an invoice that you would be unhappy or offended to receive.

5. Maintain and project ethics and integrity in everything you do. According to the Missouri Bar study, the second most important thing clients value is the attorney's integrity. Morgan and Foonberg, *supra*, at 2. If you show that you treat opposing counsel, the courts, or others deceitfully, your clients won't trust you either. By maintaining and demonstrating the highest ethical standards, you will earn and keep your clients' trust, confidence, and respect. This will lead to more business and more referrals. Ensure that all of your bills and time entries are correct and appear, both objectively and subjectively, reasonable. If they do not, then provide greater detail on bills to show why the time devoted was necessary.

6. Run your business competently like the business that it is. That means:

- **Do not let any client get (too far) behind in payments,** because the value of a service diminishes rapidly. Every day that passes after the work is done dramatically decreases the likelihood that your client will pay—no matter how genuinely or earnestly the client promises payment.

You expose yourself to additional risks, moreover, when you allow a client to owe you a lot of money. The easiest way for a client to avoid paying your bill is to claim that you did something wrong. Thus, the more delinquent the bill, the greater the incentive for the client to file a grievance or malpractice action against you. The “nicer” you are to clients and the longer you “carry” them, the more incentive they have to betray you. At some point, the temptation may become too great for mere mortals to resist.

- **Get out of a bad situation sooner, rather than later.** About the only thing worse than a client stiffing you for your fee, is a client stiffing you for twice that amount and filing a grievance against you to boot. Although it's hard to walk away from work, particularly in troubled times, if a client is having trouble paying, consider withdrawing from the case (with leave of court, where leave is required, of course). Cut your losses and devote your time to productive matters.

Remaining in a case in which a client is not paying you is problematic for another reason, too. When a client owes you a significant amount of money, your ability to collect will likely hinge on your success in the

action. You have now, therefore, been converted from a dispassionate advocate on behalf of another, to an unnamed *de facto* silent party in the suit. You may feel pressured now that your own interests are at stake in the litigation and it may affect your judgment, impinge your objectivity and detachment, and increase the likelihood that you will commit a sanctionable error. Don't let yourself get caught between a rock and this hard place.

7. Use client challenges as marketing opportunities rather than attacks against you. Whenever a client questions or challenges your bill, try not to become defensive. Instead, use this as an opportunity to forge an even stronger relationship with the client. Treat each complaint as if it were an honest, good faith request for additional information. View it as an opportunity to explain your billing practices, the quality of the work you do, and your dedication to clients.

Begin by trying to find some common-ground principles regarding payment to which you both can agree. This might be something like, “I don't want any money from you that I am not legitimately entitled to, and I assume that you want to pay me the money you agree I am legitimately entitled to. Is that right?” Articulating such principles converts the negotiations from “positional bargaining,” to what Fisher, Ury, and Patton, in *Getting to Yes, Negotiating Agreement Without Giving In*, call “principled negotiations.” You can then discuss whether you are “legitimately entitled” to the money you seek without getting angry, threatening, or demeaning one another. This allows you to argue your claims without harming your underlying relationship.

Next, ask the client open-ended, probing questions that elicit how and why the client is unhappy and feels the charges are not legitimate. Even if you already know why or believe you do, giving the client an opportunity to explain it directly to you will help the client feel better and dissipate his dissatisfaction. Of course, try not to take any attacks personally, and respond in a measured fashion, not aggressively or defensively. Find out why the client feels the money you're asking for is not fair and what, in the client's view, would be fair under the circumstances and why.

Listen “actively” or “reflectively” to the client by repeating in your own words what you hear the client saying. This will demonstrate that you “get” it. Then ask if you have understood the client correctly or if you're missing any part of it. Allow the client to speak again. Then restate what the client has just told you. Wash, rinse, and repeat, over and over again, until the client feels completely heard and understood. Use this active or reflective listening technique any time you want to establish a powerful, deep connection with another human being.

When reflecting the client's position and then stating

your own, use clear, but nonjudgmental, nonaccusatory language. For example, you might fairly recharacterize a client's statement: "You stole our money from the escrow account," to "If I understand you correctly, what you're saying is that you think we were not entitled to the money we withdrew from your escrow account. Is that correct? Did I understand you correctly?" Using nonjudgmental language will help reduce passion and tensions, and allow each of you to hear the other without erecting mental barriers that make further conversation pointless.

Empathize freely and easily with the client's emotions, even if you disagree with the substance of the claims. It will make the client feel heard and understood, without your conceding your own position. "I understand that this lawsuit cost you a lot more than you intended to spend," can go a long way in making a client feel understood and allowing negative feelings to dissipate.

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Recognize that there's a difference between responsibility and blame. Try to accept responsibility freely and easily for your role in the matter, without feeling blamed or defensive about it. This will allow you to apologize for the way your client felt, with everyone recognizing that such an apology (such as, "I'm sorry you felt neglected") is not an admission of guilt, fault, or failure and goes a long way toward dissipating hard feelings.

Next, review the issue from your own point of view. Again, use only nonjudgmental, nonaccusatory language. In addition to the facts that dispel the client's claim, review the value the client received from your work. Be sure to address the client's feelings as well as the logic of her arguments.

As the authors recommend in *Getting to Yes*, "be hard on the problem, but soft on the people." See, hear, and feel what the client is complaining about and try to assuage the client's hurt feelings. Be empathetic and understanding. Oftentimes, that will get you more money than fighting will give you.

In one fee dispute in which I served as a mediator, the client, a doctor, was outraged that his lawyers kept him waiting for more than an hour when he came for a scheduled meeting. He passionately explained how he would *never* permit his own patients to wait that long and, as another professional, he knew and respected the value of time. He

also complained that the lawyers did not keep him apprised of what they were doing and did not return his phone calls. He also received some information that cast doubt on all of the "law" the lawyers had told him throughout the case and said he didn't trust anything they said or did anymore.

Although he had already paid 90 percent of the lawyers' bill, he was disputing the last ten percent. I was convinced that the doctor would pay the entire fee if the lawyer only apologized. I asked the lawyer if, before addressing the substance of the claims, he had anything to say about how the doctor felt. The lawyer, unfortunately, felt threatened or attacked and needed to deny the doctor's claims and justify his own actions. He could not "hear" what the doctor was saying and, because he was too intent on denying the "waiting incident," despite my prodding, could not bring himself to concede that it might have happened. He could not empathize with his client's hurt feelings. The result was that

the parties became entrenched. Although the amount in dispute was reduced to a negligible sum, as "a matter of principle" neither party accepted the other's terms. As negotiations broke down, the client promised to sue, not only to avoid paying the final 10 percent, but also for return of a substantial portion of monies already paid.

Had the lawyer acknowledged that the doctor had once been kept waiting and apologized for it, had he empathized with his client, and, perhaps, offered to implement procedures that would ensure that clients would never again have to wait, he likely would have been paid his entire fee and ended up with a happy client and more money in his pocket. Instead, he now has a fee battle with a disgruntled client.

Good ethics and good business practice are not at odds. Both help lawyers work smarter, rather than harder, keep more money and clients, have fewer worries, spend less time chasing bad money and defending grievances, and leave law practices healthier. More importantly, they leave the lawyer with a healthier and happier lifestyle. **FA**



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