

The ElderLaw Report

How to Get Paid a Fair Price for What You Do

By Jan Copley

As much as you may love the law, you are in business to make money. You work so you can support yourself and your family, and to have the lifestyle you want. Unfortunately, many attorneys struggle with creating a profitable business—no matter how hard they work, they just can't seem to make as much money as they would like. So what can you do to make sure your business is profitable? A first step is to make certain that you are paid what you are worth for what you do.

From my previous career as an estate planning attorney, as well as in my current life as a coach for lawyers, I've learned that many attorneys haven't learned pricing skills. We really don't appreciate the value we bring to our clients. Additionally, we are our own worst enemies. Here are some ways we sabotage ourselves:

- We assume our clients are price-resistant and we discount what we charge.
- We worry that if we charge too much we will lose a retention.
- We don't charge for everything we do because we're afraid to, we don't see the value of what we do, or we forget to charge when someone asks us to do "just one more thing."
- We take on unprofitable work because we need the cash.

My hope is that with this article, I will give you tools to make more money. We will cover six rules of engagement for pricing; client and case selection; pricing deliberately; maintaining cash flow; and collecting what is owed.

Six Rules of Engagement

I open my discussion by suggesting that you adopt six rules of engagement for pricing and collections, as adapted from R. Holden and M. Burton, *Pricing with Confidence* (Wiley 2008).

The first rule is to *replace the discounting reflex with a little arrogance*. Too often, we let our own frugality get in the way of setting our prices. Just because you're cost conscious doesn't mean your client is! Set a price

that reflects the value you are providing to a client by: (1) focusing on the client's need; (2) communicating how you can solve the client's problem; and (3) quantifying the value for the client (e.g., "My charge to protect you from losing all your wealth to the cost of long-term care is about equal to the cost of one month of nursing home care").

The second rule is to *understand the value you offer to your client*. The best way to price your services is based upon what a potential client thinks your work is worth. So how do you determine this? All you have to do is *have the client tell you what the value is*. Ask her to articulate what she is worried about. Feed what the client says back to her, and then see if you can get the client to quantify what solving the problem is worth to her. Then, without getting lost in legal technicalities, explain that you can solve the client's problem.

The third rule of engagement is *price to increase profits*. Some attorneys think the potential for increased sales will make up for revenue lost from a lower price. That may or may not be true. Not all work is profitable. When you set your prices, consider the following: (1) increased sales don't necessarily increase profits; (2) raising your prices is the quickest way to increase your profitability; and (3) if you double your prices and lose half your clients, you will make the same amount of money—in only half the time!

The fourth rule of engagement is to *present your services in a way to give you pricing flexibility*. Sometimes we get caught in a rut in our services and prices. We may think a client needs to do something but the client has different ideas and we don't know how to respond. To give you some flexibility, think about creating a range of services and allowing the client to choose among the options you provide. However, when you do this, remember that any innovation should be designed for growth of your practice and priced for profit; *don't* add something that is just a loss leader.

The fifth rule of engagement is to *build your selling backbone*. I think one reason attorneys have trouble with effectively pricing their services is because they're scared a potential client will say no. If that's the case, know the value of your services; learn a little about a potential client before you quote a price so you can explain what you provide in terms that are valuable to him; and don't

negotiate your prices—if you do, you’ve lost all leverage for future dealings with that person. If a prospect says no, he probably wouldn’t be a good client anyway.

The last—and perhaps most important—rule of engagement is to *remember who you are*. Although you may not think what you do is special, it is. Think about it: we, as lawyers, enable people to reduce their tax exposure by thousands and thousands of dollars; we can help them protect their hard-earned wealth from the catastrophic costs of a chronic illness; we can make sure our clients’ loved ones are cared for upon the clients’ death or disability. These are not small accomplishments! It takes education and experience to effectively represent someone. Price accordingly. You deserve to be paid well for what you do.

Be Deliberate About Your Pricing

Another thing to remember about pricing *is to be deliberate about it*. What this means is that you think about what you are charging for your services and why. Base your prices on factors relevant to your business rather than on what the attorney down the street charges. Thoughtful, careful pricing is key to the profitability of your business.

Deliberate pricing for profitability requires you to ask the following questions:

- How much do I want to take home?
- What’s my monthly overhead?
- How much revenue do I need to generate to meet my goal?

Once you’ve answered these questions, you can put some metrics in place. For instance, based on historic performance in your office, you can estimate the number of trust-based estate plans, the number of Medicaid planning cases, and the number of trust administration matters you are likely to generate this year. With this information, you can price *deliberately*—that is, you can determine how much you need to charge for each matter to meet your revenue goal.

Part of your goal-setting should be a determination of how much you need to charge to make money on a case. Try this: review your numbers and determine your weekly overhead. Divide your overhead number by 20, which will give you the amount you need to generate *each hour* to determine what you need to earn to break even. (Why 20? Because you probably can spend only 20 hours a week working as an attorney—you should use the remaining time to market and run your business.)

Then, think about the amount of time a typical retention takes you. Multiply that time by your hourly rate of overhead. Does the amount you collect equal or exceed your break-even point? Using this formula, you can determine if what you charge for a matter makes money.

If what you are charging isn’t enough to generate a reasonable profit, then you need to raise your prices. I know this concept is scary, and it’s one reason why some lawyers keep their prices artificially low. But why are you working if you’re not going to make money? I spend a lot of time as a coach urging my clients to make money; as a general rule they report that they receive very little resistance. So, give it a try—a few profitable retentions are better than a lot of cases that don’t make money.

Client Selection

One very important step to profitability is to work with clients who provide you with profitable work. At Atticus, under whose auspices I coach attorneys, we classify clients as “A,” “B,” “C” and “D” clients.

An “A” client is your dream client. This client appreciates the value you provide, is willing to pay your prices, pays on time, provides you with interesting work you are equipped to handle, listens to your advice and follows it, has a potential for future work, and refers friends to your office. These are the kind of people you want to work with and, when you do, you enjoy the work and make a nice profit.

A “B” client is someone who is a good client, but not a dream. Your relationship with the client will probably be profitable.

A “C” client is someone who may create problems. This is the client who will eventually pay what you ask, but you will breathe a sigh of relief when the retention is completed. You might break even.

A “D” client is the person who generates lots of problems. This client complains about your prices and tries to negotiate them. The client never pays on time, doesn’t listen to your advice, has unrealistic expectations of what you can do, and drives your team crazy. A classic “D” client is the person who starts an initial meeting by asking, “How much is it going to cost me?” You’ll probably lose money.

If you work with “A” clients, you’re likely to run a profitable practice; if most of your clients fall within the “C” and “D” category, you’re probably struggling with your cash flow. So, be careful about your client selection and *fire your “C” and “D” clients*. When you do, you’ll realize three benefits: (1) you won’t be working on money-losing cases any longer; (2) you’ll have time to market for “A” and “B” clients; and (3) you’ll be happier.

Case Selection

You also need to look at the type of *case* you are asked to take on—is it something you can handle profitably? Just as there are “A,” “B,” “C” and “D” clients, there are “A,” “B,” “C” and “D” cases.

What makes a case a “D” matter? First and most obviously, it’s a case where you won’t make money. If you are asked to take on a matter and you know it won’t be profitable, turn it down! Refer it to someone else and, if your state law allows, take a referral fee.

Additionally, learn to issue-spot. What are the red flags that make a case more difficult? In a trust administration matter, are there too many beneficiaries to make the trust settlement easy? Is there conflict within the family? Are there weird assets? If so, charge a price that will cover the extra work you have to do. If the prospect balks, it’s a double indication you don’t want the case.

You may want to consider some things that are personal to you before accepting a matter. Is this the kind of work you like to do? Or will it keep you awake at night? Do the rhythms of this case fit the rhythms of other things you do? If you have too many wrong answers, the case may not be worth taking.

Keep the Pipeline Full and Maintain a Reserve Account

A lot of us make pricing mistakes when we are short of cash. If you have a quarterly tax deposit due, you may discount your price or accept a matter you don’t want just so you have the cash you need. You may also take a “C” client or a “D” case because you don’t have much new work coming in. Of course, if you continue to do this, you’ll always have a cash crunch and you’ll forever be on the treadmill of chasing cash flow. You’ll also regret working with clients you don’t like and cases that aren’t fun.

I have two recommendations to avoid this trap.

First, never, ever, ever, stop marketing! Many attorneys experience cash flow crunches because they don’t market consistently. It’s a vicious cycle: the attorney markets, brings in new work, and then thinks he or she is too busy to market. Unfortunately, after a while, the attorney wakes up and realizes there isn’t enough money in the pipeline. So, the attorney takes a bad case to tide her over while she starts marketing again.

It doesn’t have to be like that. Consistent marketing consistently produces new work. This gives you the luxury of being able to charge based upon what your work is worth, rather than upon your immediate cash flow needs. You’ll also be able to turn down the cases and clients you don’t want.

You may object that marketing takes time. That’s true — but it’s one of the most important things you can do to sustain your business. And, if you have a constant flow of work coming in, you can charge more and be more selective about the clients and the cases you take on. So, build time into your day, every day, to do some form of marketing.

A second way to avoid the empty pipeline trap is to have a reserve account to cover expenses that arise when

Indiana Ends Recovery from Second Spouse to Die of Benefits Paid to First Spouse

Indiana has amended its Medicaid statute to prevent estate recovery at the death of the second spouse for benefits previously paid to the pre-deceased spouse.

Bluffton, Indiana elder law attorney Keith Huffman, who informed us of the change, said it was one of the revisions to the probate rules proposed by the Indiana Probate Code Study Commission. Although the state did not have a judicial decision on the issue of whether federal law allows estate recovery at the second death for benefits paid for the first to die, Indiana had a statute that required this. Huffman said there was no opposition to the change, which takes effect July 1, 2012.

you’ve had a dip in cash flow. One of the best pieces of advice I ever got was to set aside 10 percent of my gross revenue in a separate account until I had sufficient funds to cover three months of overhead. One of the smartest things I ever did was take that advice. By doing so, I had a reservoir of cash available as I needed it. I never had to sweat meeting payroll. I could take advantage of extraordinary opportunities when they arose. I could afford to turn down undesirable cases. If I had to dip into my reserve account, I again set aside 10 percent of my gross revenue until I replenished the account. Although creating and maintaining it took time and discipline, my reserve account more than paid for itself over the long run.

Be Assertive About Collecting

Another key to making money is to be proactive about *collecting* what is owed you. There are two aspects to this: the way you communicate your prices, and how you get the funds from the client into your bank account. Here are nine key points to effective collections:

Make sure you make your expectations clear to your client—including the expectation that you will be paid. Tell someone what the price is—don’t beat around the bush.

Tell the client how you get paid and when you expect to be paid. Make sure that when your assistant calls to remind a client about a meeting, your assistant reminds the client to bring his checkbook.

Don’t take on a case without a retainer. If you start working for free, believing that the client will eventually pay you, you run a high risk of being disappointed. Instead of being perceived as generous, what you’ve really done is discount the value of your work.

Set up an “evergreen” retainer system—that is, require your client to replenish the funds you hold in your trust account when the balance drops below a certain level. If the client refuses to replenish the retainer, you should have enough on hand to withdraw from the matter without losing money.

Create a pricing sheet to show to prospective clients. Set out price ranges for what you do. Then, when you are talking with a prospect, you can show that person your price schedule and base your quote on what’s on the sheet. There are three advantages to this: (1) it will prevent you from negotiating with yourself (if your pricing sheet says you charge \$3,000 for something, you’re less likely to reduce your charge to \$2,000); (2) it gives you credibility with a prospect because she doesn’t believe you are pulling your price out of the air; and (3) clients won’t think what you’re charging them is based upon their net worth.

Be rigorous about billing. The longer you wait to bill for the work you’ve done, the less likely you are to be paid. Think about it: when does your work have the most value to someone? The answer is that your work is most valuable when you do it—not 30 days later. So, bill when you’ve finished the work—don’t wait.

Bill regularly. Some attorneys don’t quite get around to billing and don’t have a regular process for getting it done. The result is that they leave a lot of money on the table. Make sure to get the bills out at least once a month. Tell your staff members that billing is the most important project they handle—it’s what pays their salaries and keeps the doors open. Set a schedule to get the pre-bills on your desk on the last day of the month, and the bills in the mail by the second day of the next month.

Follow up on open invoices. Occasionally, despite all the careful client and case screening you’ve done, you’ll wind up with an unpaid invoice. The key to getting paid here is to follow up on it rigorously and regularly. This means implementing a system to watch your accounts receivable and setting procedures and protocols for following up. Set scripts and timelines for calls to clients who owe you money.

Don’t throw good money after bad. If a client stops paying, stop working! If someone is not paying you now, it’s very unlikely he will pay you for additional work. So, let the client know that you are not in a position to continue to represent him until you’ve been paid. This is another reason to have an evergreen retainer—with any luck, you’ll have enough money in your trust account to cover the expenses you incur when you have to withdraw.

Conclusion

Despite what they taught you—or didn’t teach you—in law school, running a law practice is running a business. That includes having processes and procedures in place to make sure the equity holders of the business—in this case, *you*—make money. And that means developing the skills and the backbone to price for profitability, and with an eye to the value you provide to your clients. I hope with this article I’ve given you some tools to do so.

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