HOW TO RESPOND PROACTIVELY TO CLIENT COMPLAINTS:
TO WIN CLIENT TRUST, INCREASE LOYALTY AND DECREASE LIKELIHOOD OF MALPRACTICE SUITS

By Noelle C. Nelson

IN THEIR WORLD, CLIENTS HAVE INFLUENCE. It doesn’t matter whether the client is a blue-collar employee with a medical malpractice suit or a CEO defending against a horde of angry customers, both have impact in their world.

Clients expect to be treated with respect at all levels and in all stages of their case—much as they would expect to be treated in other aspects of their lives. However, in most lawyers’ eagerness to get on with what they see as the important parts of the case—pleadings, motions, contractual intricacies, negotiations, settlement conferences, trial strategies—they often treat clients as just another piece to move on the chessboard. They are very surprised when that piece shows signs of life and squawks loudly!

Interestingly enough, when clients are unhappy they rarely “squawk” about the lawyers’ legal strategies or decision-making. They complain most about the failure of lawyers to inform or involve them in the case process.

This failure leads to the four most common client complaints:
Unreturned telephone calls
Unexpected billing
Unannounced changes
Unanticipated change of staffing

Unreturned telephone calls

Clients highly resent when their lawyer fails to return telephone calls promptly. Clients feel less than appropriately represented when their concerns are left dangling for two or three days. Timely returning telephone calls is the number one way lawyers can show respect to clients and assure clients of their professionalism. Calls should be returned within 24 hours, no excuses, no exceptions. Calls may be returned personally, or assigned to an assistant as long as the client has been told of the arrangement in advance. If an assistant returns your call to the client, the client should be reassured that the content of the conversation is confidential.

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FROM THE CHAIR

Our August issue of The Bottom Line arrives during the quietest month for many law firms. The rhythm of work slows as clients and lawyers take their summer vacations. The mood of many firms tends to lighten during this warm and sunny month. We tell ourselves it’s a great time to take advantage of the lull and get caught up on all those non-urgent matters we’ve left hanging for so long. We may even take a breath, close our eyes, and think about Augusts past.

I remember my father trying to teach me how to ride a bike one August summer vacation many, many years ago. It was hot and humid, and my father, though a gifted athlete himself, was struggling with the lesson. As I fell and crashed time after time, he was at a loss to communicate the basics of bike riding to me. Finally with great frustration he said, “If you feel yourself falling to the right, then lean to the left; if you feel yourself falling to the left, then lean to the right. All you have to do is practice your balance!” Then he left. I practiced more, didn’t improve, assumed I had lousy balance, and quickly lost my enthusiasm for bike riding altogether.

I had to wait another six months to learn the secret that unlocked the mystery and pleasure of bike riding for me. One day a friend told me, “When you’re falling to the right, just turn your front wheel slightly to the right; your bike will come back underneath you and you’ll be back in balance.” At first his suggestion seemed like a joke—I’m going to turn in the direction I’m falling rather than away from it—that’s going to make the crash worse, no way! Counter-intuitive though it may have been, after watching him do it again and again, I tried it and found it worked very well.

As I practiced bike riding with this new “secret” I learned two other useful things. First, though these “corrections” are hard to do when you’re first starting up or going slow, they get much easier when your bike is going faster. Second, my father’s balance technique was more appropriate for tight rope walking than for bicycling. And though I didn’t realize it at the time, these experiences would be the foundation for what I would later learn and teach about stress management.

Traditional approaches to stress management are a lot like my father’s approach to bike riding: if you’re falling to one side, compensate by leaning to the other. If you’re feeling overly stressed, then compensate by relaxing. To some extent we all take this approach, and in situations of short-term or moderate stress we’re often successful in maintaining our balance. But when stress is intense or prolonged, this approach breaks down and there are indeed crashes.

A recent study by the American Bar Association found that one of every four lawyers suffers from stress and that lawyers ranked first in depression when compared to 105 other occupations. Compared to the general population and other occupations, a disproportionately high number of lawyers commit suicide. [“Help Is Available” Robert A. Stein, ABA Journal, Volume 91, June 2005.] These statistics suggest that current approaches to stress management in the legal profession are not working well, or at the least need to work a lot better. Some of this can be traced to the choices some lawyers make in seeking relaxation. The old “work hard – play hard” ethos can lead to problems with substance abuse as well as disorders involving gambling, sex and eating. Studies estimate that from 15 percent to 18 percent of U.S. lawyers have problems with alcohol abuse (compared to approximately 10 percent of the general population), and that most disciplinary problems involve chemical dependency or emotional stress. The magnitude of these problems has caught the attention of bar
associations across the country, and assistance programs or committees serving lawyers impaired by drug or alcohol problems now exist in every state. Most of these programs also help lawyers deal with stress and clinical depression, as well as other addictive behaviors. [Information on the California State Bar’s Lawyer Assistance Program can be found by clicking on “Lawyer Assistance Program” on the left-hand menu of the State Bar’s home page www.calbar.ca.gov or at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?sCategoryPath=/Home/Attorney%20Resources/Special%20Services/Lawyer%20Assistance%20Program.]

Even when lawyers make healthier choices for relaxation, the balancing act approach can be impractical. One of the paradoxes of stress management is that the times we’re the most stressed are usually the times we have the least opportunity to relax. How many times have we said to ourselves, “Now that I really need to get to the gym (or take a walk or meditate, etc.), I don’t have the time to.” Yielding to the pressures of immediate deadlines and urgent matters, we typically tolerate the stress as best we can and defer our relaxation until the weekend or maybe that August vacation. It’s a common approach and far better than not relaxing at all, but it can easily lead us to overlook the toll that accumulated stress takes on our bodies and our performance. [For an excellent discussion of the physiology and biochemistry of stress see Kim Allen and Bruce Cryer’s article on peak performance at http://www.abanet.org/lpm/lpt/articles/mba05061.shtml.] Rather than letting our health and effectiveness suffer, we need to find small, in-the-moment ways to deal with stress.

The most useful techniques function like the subtle steering corrections we make when riding a bike: they help us regain our balance and bring the bike back under control. Many simple, practical techniques are available to the stressed lawyer. Taking a couple of minutes each few hours to sit quietly, listen to calming music, stretch, walk, meditate, or just breathe can help to significantly mitigate the effects of stress. I once worked with an elderly CEO who had almost superhuman stamina. He could sit through more than fourteen hours of difficult meetings day after day without losing his concentration or composure. As I got to know him better, I realized that he would periodically close his eyes for thirty seconds or so and then return to the meeting sharp and refreshed. One evening I asked him about this and he laughed. He said that few people noticed his behavior and most simply thought he was an old man taking naps. He went on to explain that he took those moments to clear his mind and “find his center.” He explained that when he first started doing this it took him several minutes to achieve a relaxed and reenergized state. As he practiced more and developed a better sense of when he was stressed, he found that shorter breaks were all that was necessary. Regular practice of clearing and centering—even when he wasn’t stressed—greatly increased his overall ability to handle stress: he felt it somehow “immunized” him from the effects of stress.

Talking with him opened my eyes to the value of stress reduction, and I soon became skilled in a handful of relaxation and centering techniques. They helped me for many years, but I was still troubled by what seemed like unending levels of high stress. At that point I did the figurative equivalent of turning my wheels in rather than away from the direction I was falling: rather than continuing to avoid responsibility for the stress in my life, I finally decided to get curious about it. I had always thought that my stress was the result of the “external” situations and circumstances in my professional and personal life. I was working on the premise that the demands, difficulties and dilemmas I was encountering were the sole source of my stress, and the best I could do was to foresee those challenges, solve them quickly, and keep on practicing my stress reduction techniques. It seemed like a tall (and stressful) order to do all that, but I didn’t see any other way of handling it.

My breakthrough in dealing with stress was much like my breakthrough in riding a bike. I needed the help and guidance of a friend (actually several people) to finally grasp that stress isn’t about what is happening outside; what’s happening inside is of far more consequence. I had been so totally focused on external

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THE LATEST NEWS ON SEXUAL HARASSMENT

By Olivia Goodkin

There are two types of sexual harassment: (1) quid pro quo; and (2) hostile environment. “Quid pro quo” occurs when a supervisor demands sexual favors in exchange for employment or a raise, bonus, promotion or other favorable treatment. Sexual harassment based on a theory of “hostile environment” traditionally means that words, physical conduct and/or visual slurs have created a workplace hostile to one or the other gender.

Several recently decided cases clarify the definition of sexual harassment. One case concerns a common scenario of the angry, screaming boss, not necessarily an unheard-of event in law firms. Another case involves a supervisor engaged in sexual relationships with three different subordinates at work. The third case is the “Friends” case, where the court found there was no hostile work environment created by the writers for the television show, notwithstanding the writers’ verbal sexual banter.

**Screaming and Foul Language, if Directed Primarily at One Sex and Impacting Primarily on One Sex, Constitutes Actionable Sexual Harassment**

Yelling and profanity, without sexual overtones, usually does not constitute sexual harassment. In the past, the remedy for an employee who disliked a screaming boss was to quit.

Now, however, even yelling can be actionable under certain circumstances. In the case of EEOC v. National Education Association, the Federal Court of Appeals for the Ninth Circuit decided that if hostile remarks and swearing is directly mostly to women, as it appeared to be in the case at hand, it could constitute sexual harassment.

The supervisor working for the National Education Association had a history of yelling and swearing at the female employees. He also leaned across tables and shook his fists at the female employees. None of his comments included anything sex or gender related. He was just an angry person, though the males at the office were far less often the targets of his anger.

The court found that even if the manager did not intend to harass the female employees or drive them from the workplace, if his conduct had that effect, the company could be liable for his actions.

**Consensual Sexual Relationships Can Create a Hostile Work Environment**

In another significant case, the California Supreme Court decided that a hostile environment was created when a supervisor had multiple sexual relationships with women at work, and then treated them favorably in employment decisions. In Edna Miller v. Department of Corrections, the chief deputy warden of a prison had sexual relations with three different subordinates. Both the warden and the women manipulated the workplace to favor the women engaging in the relationships over the other women at the prison. For instance, one of the women who had had sexual relations with the warden told her female co-worker that the warden would be forced to give her a promotion, or she would “take him down” with her knowledge of “every scar on his body.” Indeed, the three women in relationships with the warden were promoted over women who were better qualified and had seniority.

The Edna Miller court held that the warden’s sexual favoritism was widespread enough to constitute a hostile work environment. Specifically, the warden’s conduct conveyed...
the message that female employees at the prison were sexual playthings or that the way for women to get ahead was to engage in sexual conduct. Interestingly, the sexual relationships created a hostile work environment even though the female complainants had not themselves been sexually propositioned.

**If the Context Calls for Sexual Discussions and Profanity, No Hostile Environment is Created**

In the recent case of *Lyle v. Warner Bros. Television Productions*, a female assistant to the writers of the television show “Friends” claimed that she had been subjected to a hostile work environment. The Friends series was about six sexually active and attractive adults living in Manhattan. Many of the episodes included references to sexual behavior among the characters.

As part of the creative process, the writers of the show met together and exchanged their own very personal stories of sexual acts, including numerous subjects that would never make it past the censors for NBC. The plaintiff was an assistant who was subject to these discussions, although no one had ever directed any of the sexual discussions towards her. She had never been propositioned or threatened physically.

The California Supreme Court decided that the writers’ conduct did not violate sexual harassment laws. The court held that the use of sexual language alone does not constitute sexual harassment. A plaintiff in a hostile environment case needs to show that the conduct was not merely offensive, but actually constituted discrimination because of sex or gender. (Note that the National Education Association court reached a slightly different conclusion, stating that if the recipients of repeated profanity were primarily women, then the profanity did not have to be sexually tinged in order to constitute actionable conduct.) Second, the court noted that the language was not directed at the plaintiff, and that the context allowed for the writers to discuss their personal sex war stories.

The Lyle court follows a U.S. Supreme Court ruling that a swat on the behind by a football coach could not be considered sexual harassment in the context of the world of football.

**What Should Employers Do?**

First, employers need to rid the workplace, as much as possible, of generally hostile behavior. Profanity, yelling, physical closeness or intimidation—even if on its face it is not directed to a particular person or group of persons—may have an effect on one gender as opposed to the other. If so, a claim could be made that a hostile work environment exists. Employees that violate a policy against hostile conduct should be disciplined.

Second, how can employers regulate sexual relationships among employees? In short, you can’t! However, what you can do is make sure that all employment decisions, such as promotions, raises and lay-offs, are made in an even-handed manner and by someone who is not sexually involved with any of the persons who are the subject of the proposed employment action.

Third, while the work environment of the “Friends” staff meetings is unlikely to be replicated in law firms, there is still a lesson to be learned. Employers in California must protect their employees from harassment by vendors and clients, as well as by supervisors and other employees. If you are aware of a particular client who uses foul language, or if your law firm works with an industry (such as the adult movie industry) where your employees may be subject to explicit images, you should be upfront with your employees that these issues may occur. You could even include in your offer letter to the employee a notice regarding the nature of the industries that you service, and an acknowledgment from the employee regarding the disclosure. This kind of disclosure has not been tested in court, but it could support a defense that the plaintiff was aware of the nature of the environment in which he or she would be working.

Finally, remember to have regular educational seminars for your entire staff regarding appropriate workplace conduct. Not only does California law require
Marcia Watson Wasserman

The elders of the baby boomer generation turn 60 this year, with thoughts of retirement entering their consciousness. Many boomers are in leadership positions in their firms, controlling significant books of business and it can take between three and five years to successfully transition a lawyer’s practice. As these firm leaders move toward retirement, what steps can their law firms take to position themselves for future success?

To begin, each firm should have a written transition plan incorporated as part of its overall strategic business plan. The written strategic business plan should also include such topics as: core values (fundamental beliefs and principles shared by the partners, e.g., hard work, accountability, honesty) a firm wide marketing plan, an analysis of practice areas, internal strengths and weaknesses, external trends affecting the legal profession, external opportunities and threats and financial projections.

There are five areas that should be covered in the transition plan:

- Firm management
- Leadership training
- Policies on retirement
- Legal expertise
- Client transition

**Firm Management**

The first component is developing a plan to transition firm management. A written “job description” for the managing partner should be developed that describes not only the essential duties of the role but also the knowledge, skills and abilities required of the managing partner. At this time, the term of office of the managing partner and the incorporation of term limits should be evaluated.

If the firm’s managing partner is a senior partner, a well-respected partner with leadership ability should be groomed to take over that role.

When considering candidates for the managing partner position, someone who possesses a different personal style and different strengths than the current managing partner has greater likelihood of success, particularly if the current managing partner has served for a long time. If the firm is larger than 50 attorneys, serious consideration should be given to creating an executive committee to replace the role of managing partner. Various responsibilities such as finance, administration, marketing and human resources could be divided up among the committee members. However, the executive committee is not a replacement for a legal administrator. It should be involved in the “big picture” and leave day-to-day operations under the direction of the firm’s administrator.

If the firm is small or decides to retain the managing partner’s position, the transition from one managing partner to another can be accomplished over a period of several years by giving the managing partner in training (“MPIT”) responsibility for discrete management projects (e.g., supervising the firm’s administrator in the selection of a new computer system), having the MPIT sign firm checks, having the MPIT run partners’ meetings, with increasing responsibility over time. A written management transition timetable should be established with areas of responsibility listed and targeted dates for the transition of each item. The outgoing managing partner should also be available to serve as a mentor for the first year of the new managing partner’s term.
Leadership Training

Another important component of the transition plan is how the firm will develop leadership. Leadership training needs to commence early in a young attorney’s career in order to develop future firm leaders. Associates should be included as members of standing firm committees or assigned responsibility on task forces in order to involve them in decision-making. Their unique skills and experience should be considered when assigning them to firm tasks. For example, associates with strong ties to their law schools can be included as members of the recruiting committee, and serve as mentors to law clerks and new associates. Associates who are innovators with new technology can play a critical role on the information technology committee in the selection of new computers and software. As they become junior partners, they can chair firm committees and become assistant practice area department managers.

Young lawyers should be encouraged to join local bar associations and actively serve on committees. Moving up the ladder in a bar association provides valuable leadership training and networking opportunities for future firm leaders.

Retirement Policies

The next area that needs to be covered is how the firm handles retirement. What are the firm’s policies on retirement? Are retirement provisions adequately addressed in the firm’s partnership agreement? Does the firm require mandatory retirement at a certain age? How would the firm deal with a partner who wants to take an early retirement? Is the retirement plan unfunded and if so what would the impact of several simultaneous retirements be on the firm’s finances? How will retiring partners be compensated? Can retired partners continue to work for the firm? These are all important questions that need to be answered. Some of the responses may vary depending on firm culture but all have financial ramifications.

Firms with mandatory retirement ages may benefit from allowing a retired partner to stay on as “senior counsel” on a reduced hour basis, particularly if the partner has a unique practice niche. In some firms a retiring partner only receives a return of paid-in capital. In other firms, a retiring partner receives a return of paid-in capital as well as a return of an ownership interest of work in process, accounts receivable and fixed assets as of the retirement date and possibly a percentage of ongoing fees received from the retiring partner’s clients. This is often paid out over a period of several years to minimize the current financial impact on the firm (and may include a limitation on the number of partners who can retire at the same time and a cap on the percentage of net profits (e.g., no more than 10 percent) that would be allocated to pay retired partners).

Legal Expertise

Each senior partner in the firm possesses a legal expertise and practice niche for which he or she is generally well known. For instance, the firm might have an environmental litigation department, but the particular partner may be the only partner with a reputation for litigating eminent domain matters for municipalities. Years of experience and substantive knowledge cannot automatically be transferred to the next generation of lawyers. Senior partners need to mentor lawyers over a period of years by working closely with them on matters and taking the time to share their unique perspective. Where knowledge gaps exist, attorneys can take substantive continuing education courses to gain

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greater subject matter expertise. If too large a generation gap exists between the retiring partner and the more junior lawyer who works with that individual, consideration should be given to recruiting a lateral attorney with the necessary expertise and reputation.

**Client Transition**

Finally, the firm needs to address the transition of clients. Does the firm’s compensation system reward institutionalizing clients? How does the system reward finders, minders and grinders? Long before retirement becomes an issue, the structure of partner compensation should be reviewed. In firms in which all the credit, and therefore most of the compensation, goes to the originating/responsible attorney, clients are not viewed as “firm” clients by the partners. They tend to zealously protect their relationships and not allow others to participate. At a minimum, responsible attorney credit should be shared among the lawyer who brings in the client, the lawyer who maintains the relationship with the client and the lawyer who does the legal work (realizing that in some cases only two lawyers are involved). A better way to institutionalize a client is to phase out the responsible attorney credit over time. The best way is to make all clients firm clients and pay people for their overall firm contribution.

As part of retirement transition planning, the partner with the client relationship needs to make sure that other lawyers working on the client’s matters are known to the client. Meetings should be arranged long in advance of the actual retirement date for the client’s team to get better acquainted with the law firm team. As a firm policy, attorneys on the team should routinely visit the client’s place of business and know about the client’s business.

A retiring partner’s referral sources should be introduced to other members of the firm. One easy way to encourage such introductions to routinely happen is to regularly schedule firm wide mixers inviting referral sources for all partners, which are often bankers, accountants and other lawyers. Junior partners and senior associates should participate in the mixers as well. Or, on a more informal basis, the retiring partner can schedule a lunch with a referral source and invite each person to bring another member of his or her firm along. Referrals are based on relationships and people tend to better relate to their own contemporaries.

In conclusion, the baby boomer generation is starting to plan its retirement and some of its members may already be retired. Now is the time to document a transition plan, and by following the suggestions contained in this article law firms can position themselves for successful futures after the boomers are gone.

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**www.calbar.ca.gov/lpmt**

To access the LPMT members only section of the site, you now need to first register at the "My State Bar Profile" page ([https://members.calbar.ca.gov/register.aspx](https://members.calbar.ca.gov/register.aspx)).

After you have registered, you can visit the members only section of the site by entering your State Bar number and the password that you created.
calls comes directly from the lawyer, and that using the assistant allows the lawyer to communicate to the client quickly and efficiently. In addition, clients should be introduced to the assistant as their primary telephone contact so they do not feel they are simply being “passed off.”

The above system works well only if the assistant is well trained. The assistant must be able to take accurate notes of client requests and pass the information to the lawyer promptly, get the appropriate response, and reply to the client in a timely and respectful manner.

The advantage to using assistants to field calls is their availability to place any number of calls to clients at various times of the day, while the lawyer’s availability to do so is limited. Also, the information required by most clients is brief, however the time the lawyer might have to spend on the telephone to convey the information could be considerable. Designating an assistant to make the call frees the lawyer’s time while still answering the client’s concerns.

**Unexpected billing**

There are now a myriad of ways billing is handled by law firms: hourly, fixed fee, incentive fee, flat fee, performance bonus, consultation retainer, and other methods that fit loosely under “value billing.” When it comes to client satisfaction, the type of billing is less important than making clear to the client what the billing entails.

The concept of hourly billing, for example, is familiar to most clients. However, what goes into that billing is not necessarily familiar. Some lawyers rigorously bill telephone calls by the minute, while others bill calls in 10-minute increments. Some firms bill separately for secretarial services; some include secretarial services within the more global lawyer fee. Lawyers need to let clients know ahead of time what is being billed and how.

Nothing irritates a client more than unexpected items on their invoice. Clients who are billed separately for a service they feel should be included in the general fee will conclude that lawyers are living up to their sometimes predatory reputation. Clients, on the other hand, who expect to be billed for a certain service may not like paying the required sum, but at least they won’t be surprised and feel ripped off by the billing.

Clients should be informed not only about what types of services may be billed separately, but also why they are necessary. For example, the need to pay filing fees, and for expenses to outside experts and for research should all be explained to the client up front. This will counter the fear many clients have that lawyers have no regard for client funds, and spend client money unnecessarily and indiscriminately. Such explanations will reassure clients that the law firm is treating the client’s money as its own—cautiously, judiciously and within reason.

At the outset of the relationship, lawyers should have a clear and detailed discussion of fees and services with clients. When clients express concerns about high costs, lawyers should not avoid or sidestep the issue, but instead ask clients how they believe the concern can be handled. For example, a client may say, “If charges go over X dollars, I want to be consulted before I approve them. And perhaps I can review the first billing and get back to you if I think I can perform some of the work in my own offices less expensively.” As long as the lawyer is satisfied that this arrangement would not interfere with the performance of legal work, the lawyer should consider accepting such a proposal, or negotiate the sharing of activities so the proposal is acceptable.

By approaching billing concerns in this manner, clients feel a measure of control over their case. It shows them that the attorney respects them as active parties to decision making, especially when it comes to their pocketbook. After the billing discussion, lawyers should provide clients a clearly written description of all charges, services and billing procedures so there are no misunderstandings.

**Unannounced changes**

Keeping clients informed throughout their case is another key to client satisfaction. New venues, shifts in strategy, surprises from opposing counsel and other changes need to be communicated to clients promptly. Clients resent finding out such changes at the last minute.

**Unanticipated change of staffing**

A major source of client dissatisfaction is the failure of most law firms to tell clients which lawyers are...
going to handle which part of their case. In many
firms, clients may have interviewed with lawyer #1,
but lawyer #2 will handle their deposition, lawyer #3
will conduct further interviews (interrogatories, etc.),
and lawyer #4 will prepare them for trial. This can be
confusing, disorienting and distressing to clients. They
often state, “But I hired lawyer #1!” and feel betrayed
and abandoned when a new lawyer suddenly appears
on the scene. They end up angry and frustrated, which
is clearly not conducive to good client relations.

Lawyers should explain to clients in the initial inter-
view which lawyers will be handling which parts of
their case, and provide reasonable justifications why
these different lawyers are involved. For example, the
lead lawyer can inform the client that lawyer #2 is par-
ticularly skilled at doing depositions and is therefore
best suited to undertake them. If it is impossible to spec-
ify who will handle which tasks in the early stages of a
case, the lead lawyer should inform the client that other
lawyers will be involved in specific areas and why.
The lead lawyer should also explain the extent of his
or her involvement and what the client can expect from
the lawyer personally. By doing so, the client will most
likely cooperate with the different lawyers and will
feel well taken care of, not betrayed.

Invariably, cases run into difficulties, but the good-
will developed with a solid lawyer-client relationship
enables lawyers to deal with these inevitable problems
without alienating clients or damaging the positive
level of client satisfaction. In addition, by being forth-
right and responsive to their clients, lawyers can win
client trust, increase client loyalty and even decrease
the likelihood of malpractice suits.

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SPECIAL CONSIDERATIONS continued from page 5

dissemination of harassment laws, education may
actually help prevent the behavior that leads to claims.
Every firm must have in place a procedure for report-
ing any incidents of harassment. Incidents must be
promptly and thoroughly investigated. Companies
must then fashion an appropriate remedy, assuming it
agrees that harassment occurred. Both the harasser
and the victim should be told the results of the investi-
gation.

In a recent case, a male employee claiming that his
boss asked for sexual favors reported the alleged
harassment six months later, but told the human
resources director that he would “take care of it.” The
company followed up with the employee, but again he
dissuaded the company from conducting an investiga-
tion. When he later sued, the court found in favor of
the employer, since the employer had in place a writ-
ten anti-harassment policy and a procedure for
addressing harassment, and the plaintiff unreasonably
failed to take advantage of preventive or corrective
opportunities.

Conclusion

The worst thing to do in a case of sexual harassment
is to ignore it. If an employer is aware of any situation
that could be construed as harassment, or if an
employee claims harassment of any sort, the employer
should take action. By doing so, the employer not
only potentially prevents liability, but also improves
the work environment, leading to a more efficient, pro-
ductive and enjoyable workplace.

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ogoodkin@rutterhobbs.com.
1. Client satisfaction is solely a matter of winning their case.  
   True or False

2. You should always return client phone calls personally.  
   True or False

3. Staff should be trained in the appropriate manner to make and return calls to clients.  
   True or False

4. Clients almost always prefer to remain uninvolved in the case process.  
   True or False

5. Calls to clients should be returned within 24 hours, no excuses, no exceptions.  
   True or False

6. The type of billing you use is less important than clearly explaining to clients what your billing entails.  
   True or False

7. Clients accept only two kinds of billing: hourly or contingency.  
   True or False

8. Client satisfaction is high when clients are told ahead of time exactly what will show up on their bill and why.  
   True or False

9. You don’t need to tell clients that you bill for telephone calls; that is expected.  
   True or False

10. If you let clients know the anticipated or potential costs of experts and other consultants up front, they’ll never agree to those expenses. It is better to wait as long as possible.  
    True or False

11. It’s best to have a clear and detailed discussion of fees and services with clients at the beginning of the relationship.  
    True or False

12. Client concerns about high costs should be addressed promptly and directly.  
    True or False

13. It’s not necessary to tell clients ahead of time which lawyer will handle which part of the case.  
    True or False

14. Clients are more satisfied when they are given reasonable justifications as to why different lawyers are involved in their case.  
    True or False

15. Changes in venue, shifts in strategy and unexpected developments should be communicated promptly to clients.  
    True or False

16. Working with your client to keep costs down increases a client’s level of satisfaction.  
    True or False

17. It is unnecessary to provide your clients with a written description of all charges, services and billing procedures once verbal agreement has been reached.  
    True or False

18. Being forthright and responsible to clients in matters of billing, strategy and case progress decreases the likelihood of malpractice suits.  
    True or False

19. Clients complain more about their lawyer’s legal strategies than they do about their lawyer’s failure to inform them or involve them in the case process.  
    True or False

20. Clients are more cooperative and more satisfied when they feel respected as active parties to the lawyer’s decision-making.  
    True or False

HOW TO RECEIVE MCLE CREDIT

After reading the MCLE credit article, complete the following test to receive 1.00 hours of MCLE credit  
• Answer the test questions on the form below. Each question has only one answer.  
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• Make checks payable to The State Bar of CA  
• Correct answers and a CLE certificate will be mailed to you within eight weeks.

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CERTIFICATION: The State Bar of California certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education. This activity has been approved for the minimum continuing education credit by the State Bar of California in the amount of 1.00 hours which will apply to General Credit.

QUESTIONS: RESPONDING PROACTIVELY TO CLIENT COMPLAINTS

1. Client satisfaction is solely a matter of winning their case.  
   True or False

2. You should always return client phone calls personally.  
   True or False

3. Staff should be trained in the appropriate manner to make and return calls to clients.  
   True or False

4. Clients almost always prefer to remain uninvolved in the case process.  
   True or False

5. Calls to clients should be returned within 24 hours, no excuses, no exceptions.  
   True or False

6. The type of billing you use is less important than clearly explaining to clients what your billing entails.  
   True or False

7. Clients accept only two kinds of billing: hourly or contingency.  
   True or False

8. Client satisfaction is high when clients are told ahead of time exactly what will show up on their bill and why.  
   True or False

9. You don’t need to tell clients that you bill for telephone calls; that is expected.  
   True or False

10. If you let clients know the anticipated or potential costs of experts and other consultants up front, they’ll never agree to those expenses. It is better to wait as long as possible.  
    True or False

11. It’s best to have a clear and detailed discussion of fees and services with clients at the beginning of the relationship.  
    True or False

12. Client concerns about high costs should be addressed promptly and directly.  
    True or False

13. It’s not necessary to tell clients ahead of time which lawyer will handle which part of the case.  
    True or False

14. Clients are more satisfied when they are given reasonable justifications as to why different lawyers are involved in their case.  
    True or False

15. Changes in venue, shifts in strategy and unexpected developments should be communicated promptly to clients.  
    True or False

16. Working with your client to keep costs down increases a client’s level of satisfaction.  
    True or False

17. It is unnecessary to provide your clients with a written description of all charges, services and billing procedures once verbal agreement has been reached.  
    True or False

18. Being forthright and responsible to clients in matters of billing, strategy and case progress decreases the likelihood of malpractice suits.  
    True or False

19. Clients complain more about their lawyer’s legal strategies than they do about their lawyer’s failure to inform them or involve them in the case process.  
    True or False

20. Clients are more cooperative and more satisfied when they feel respected as active parties to the lawyer’s decision-making.  
    True or False
THE PROACTIVE ATTORNEY: USING FREE E-MONITORING AND E-ALERTS TO KEEP A STEP AHEAD

By Carole Levitt and Mark Rosch

Being proactive rather than reactive is one of the keys to becoming a sought-after attorney. Being proactive requires being a step ahead of others about the issues that affect your firm, your profession and your clients (this includes current, past and potential clients). Setting up online E-monitoring and E-alert services can be your secret weapon. Instead of trying to keep up to date by manually scanning information from the myriad of news articles, pending legislation and regulations, dockets, and websites you can set up an E-monitoring/E-alert service to automatically monitor this assortment of information for you and have an e-alert e-mailed to your in-box.

Some e-monitoring services require the user to go to a website to view new alerts, while others automatically send e-mail alerts to the user. While there have been subscription-based e-monitoring and e-alert services for years, free e-monitoring and e-alert services came into existence with the rise of the Internet.

Monitoring Federal Legislation

Federal legislation offers an example of how e-alerts can benefit the practice of law. The official federal legislative site, “Thomas,” does not have an e-monitoring or e-alert feature to track pending legislation, but GovTrack does. (GovTrack, www.govtrack.us, was developed by a graduate student at the University of Pennsylvania’s Department of Linguistics.) At GovTrack, information from a variety of official sources—including Thomas (for bills and committee reports) and the U.S. Senate and House websites (for voting records)—is integrated into one database for ease of monitoring legislation and sending e-alerts.

GovTrack is easy to use. For example, an immigration attorney can use GovTrack to research pending legislation on torture if the attorney has clients claiming they would be tortured if returned to their country of origin. To find pending legislation, the attorney would click on the “Legislation” tab and either select “Search Legislation,” enter the word “torture” into the “Find a Bill” search box and choose a year back to 1999, or click on the “What Interests You?” tab, select “T” from the alphabetical list and then click on “torture.” In both cases, 15 bills appear. If the attorney is only interested in one bill, such as Senate Bill 654, clicking on the bill would display the status of the bill and links to the full text of the bill. The attorney can request that GovTrack monitor the bill by selecting a tab labeled “Monitor”. To end the monitoring, click “Stop Monitoring.” To monitor all bills under the topic “torture,” use the topic search.

To receive an e-alert from GovTrack about Senate Bill 654, go to GovTrack’s home page, scroll down to “Track,” and then click on “Sign Up.” Then, enter an e-mail address and select a password. Return to the home page, click on “Monitor,” and then select “Login and email updates settings.” From here, the user is able to select from a drop-down menu. One setting is “Send Me Daily Updates,” and another is “Send Me Weekly Updates” and the other setting is “Don’t Send Me Updates.” Once a selection is made, click on “Update Settings.”

Monitoring Federal Regulations

If an attorney’s practice involves federal regulatory law, subscribing to a free daily e-alert for the Federal Register’s table of con-
tents is in order. Sign up by entering your name and e-mail address into the form found at http://listserv.access.gpo.gov and selecting “FEDREGTOC-L Federal Registers Table of Contents” from the drop-down menu. Unfortunately, there is no option to limit the alert to a specific agency’s regulations. Each day subscribers receive a nicely formatted e-mail containing the table of contents of that day’s Federal Register. Next to each entry are links to access the entry either as text or PDF.

Monitoring California State Bills
An attorney monitoring a California state bill can take advantage of a free e-monitoring service by visiting the Assembly site (www.assembly.ca.gov) or the Senate site (www.sen.ca.gov) and clicking on “Legislation.” Then, enter a bill number, key word, or author into the search box. After finding a relevant bill, link to it and click on “Subscribe” (located on the left side of the Senate page and at the bottom of the Assembly page). On the next screen, enter an email address into the “Enter E-mail” box and click “Submit” on the Senate site and “OK” on the Assembly site. The Legislative Counsel site, LegInfo (www.leginfo.ca.gov/bilinfo.html) also offers this feature for Assembly and Senate bills. An added feature at the Assembly site is the ability to send a comment via e-mail to the member of the Assembly who authored the bill. Click on the “Comment” tab located at the top of the screen (it is also located at the bottom) of any displayed Assembly bill. Although Assembly bills are also searchable at the LegInfo site, the “Comment” feature is not available there. The Senate site does not have this feature for Senate bills.

Monitoring California Court of Appeal Cases
The California Court of Appeal’s official site offers a free e-monitoring e-alert service of its docket. To search for the case to monitor, a user may visit http://appellatecases.courtinfo.ca.gov/search.cfm?dist=2. Once the case is selected, the user can request an e-alert by entering an e-mail address and the case number. The user then selects the case activities for which notification is to be sent (for example, brief filed, calendar notice, disposition, record on appeal filed, and remittitur issued) and then clicks the “Register for Notification” button. Six months after a case is complete, e-alerts are deleted from the system. If a case is reinstated, re-registration is required. No alert is sent to notify a past user of this reinstatement.

Monitoring California Court of Appeal Cases and Los Angeles Superior Court Filings
The Los Angeles County Bar Association offers two free e-alerts to its members. The Daily EBriefs are daily summaries of appellate cases sent directly to LACBA members via e-mail. Case summaries are sorted by legal area and by court. Each summary also has a link to the full text of the decision. Members may subscribe at www.ebriefs.com. The Association also offers the Daily Case Filings Elert. This provides a complete listing of all cases filed in the Los Angeles Superior Court since the prior daily alert. In addition to listing the parties and subject matter, this daily report includes the plaintiff’s counsel, the filing date, and a link to the case summary on the Association Web site. Members may subscribe to the Daily Case Filings Elert at www.lacba.org/elert.

Yahoo and Google Alerts
For those who want access to a broad amount of information, the e-monitor and e-alert features at Yahoo and Google are the answer. To set up a Google e-alert, visit www.google.com/alerts and enter your key words (for example, client names, company names, competitor names, words describing an industry, and so on) into the first box. Then choose the type of alert (Web, news, or both) and how often the alert should be e-mailed (daily, weekly, or as they occur). Next, enter a recipient e-mail address. On the bottom left of this Google page, a “Manage Your Alerts” sign-in offer appears. The benefit of this process is continued on page 14

Setting up online E-monitoring and E-alert services can be your secret weapon.
that every time you log onto Google Alerts, you can view your list of alerts, run an e-alert search on the spot (when you cannot wait to receive an automatic e-alert), and edit or delete e-alerts. For example, one may create a daily Web e-alert with Iraq as the topic. Later, it is simple to revise this alert to add “news” to monitor Google’s news database, in addition to monitoring the Web. The alert can be edited to send news as it happens rather than daily. If a user does not select the “Manage Your Alerts” sign-in offer, editing e-alerts is not an option. In this case, the alert must be deleted entirely (by clicking on a link at the bottom of an alert e-mail) and a brand new alert must then be created to the new specifications that are desired.

To use Yahoo e-alerts, see http://alerts.yahoo.com. Unlike Google, Yahoo requires users to set up accounts (for free) before being allowed access to the feature. Once logged into a Yahoo account, a user can add key words to an alert search or modify a search by excluding key words (by adding them to a “Do Not Include” box). Yahoo offers fewer delivery frequency choices than Google, but Yahoo offers more options for where it delivers its alerts. To choose Yahoo alerts once daily or as they happen, users click the “Change Delivery Options” link near the bottom of the alert setup screen. To receive alerts via e-mail, Yahoo Instant Messenger, or a text-message-enabled cell phone, users can click on the “My Alerts” tab. Because Yahoo and Google do not monitor all the same sources, it may be useful to set up an e-alert on both services.

Watch That Page

Another way to keep tabs on a company is to monitor its website for any changes. To accomplish this, users can sign up for a free service at “Watch That Page” (found at www.watchthatpage.com). After signing up, a user enters one or more URLs (for example, www.lacba.org) into the “Add Pages” box. When a page on a monitored site changes, Watch That Page sends an e-alert on a daily or weekly basis. One can choose an e-alert that displays only the URLs of the pages that have changed or one that shows what text on the page has changed. Websites belonging to clients or opposing parties are prime candidates for Watch That Page monitoring.

Clicking on “Add New Channel” on Watch That Page allows the user to have new content on all watched pages collated into one email message or separated into several messages. Users can also restrict the monitoring to specific key words on the watched pages instead of all changes on a page. Watch That Page can be used to monitor the dockets of courts that do not offer docket monitoring of their own. To monitor the docket of a pending U.S. Supreme Court case (and receive an e-alert for any new action about the pending case), visit the court’s website (www.supremecourts.gov) and click on “Docket.” Enter a party name or a key word into the “Search For” box to find a case. Select the link to the case, and note the URL for the case’s docket (for example, http://www.supremecourts.gov/docket/03-1238.htm). Copy this URL into the Watch That Page monitoring page. Watch That Page will monitor the docket sheet and send an e-alert when the page changes.

Go Ahead and Set up an E-alert Now!

Shortly after signing up for e-alerts, they begin to arrive in your designated mailbox. E-alerts offer an excellent supplement to research because they can be a way for a busy attorney to stay ahead of the competition by keeping track of the news, legislation, regulations, and dockets that are important to his or her practice areas. Best of all, many e-alerts can be established for free.

Carole Levitt and Mark Rosch are Principals of Internet For Lawyers (www.netforlawyers.com). They are nationally recognized speakers and writers about Internet research. They co-authored the ABA published Lawyer’s Guide to Fact Finding on the Internet (www.internetfactfinder.com/book_details.htm) and The Cybersleuth’s Guide to the Internet (both published in 2006). Carole is a past Chair of LPMT.

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ANOTHER WHACK AT DISASTER PLANNING

By Mike Tonsing

Ever since Hurricane Katrina tap-danced on New Orleans, we all have been treated to at least a million articles about law firm disaster planning. I myself, and others who also reside here at The Bottom Line, have contributed to the glut. Backup, backup and more backup. You cannot say a good thing too often, I guess.

Let me take a whack at saying something you have not heard before on the subject of backup, backup and backup: you should back-up a lot of stuff that is not in your case file filing cabinets.

If you rely on vendors, if you have a lease on space or on a photocopier, if your office has incurred expenses on behalf of clients and awaits payment, if your office has general correspondence that is not case related, there just may be some things that are slipping between the cracks in your disaster plan.

If the unthinkable happens and the figurative equivalent of a tap-dancing hurricane unexpectedly arrives in your neighborhood, you may have neither the time nor the presence of mind to gather up important documents that are not case related and evacuate them to the figurative equivalent of higher ground.

Now is the time to collect key documents, digitize them, and safely store the digitized copies. Here is a five-part plan that is both practical and practicable.

Your first task, part one of the plan, is to think through your answer to the following question: if you had to evacuate your office with no notice, what documents and information would you wish you had with you? Depending on the current state of your organizational skills, or those of your office manager, the gathering of the documents to answer that question could be quick; or, it could be the biggest part of the project. You may need to track down copies of insurance policies and leases. Certain other documents may not be needed, but data from them may be helpful. For example, you might decide that you will need bank account numbers, but that you would not need all bank account records (figuring the historical records could be reconstructed from the bank’s own backups if they were ever needed). The same may not be true of business credit card information, where it might be useful to have information regarding, for example, credit limits and daily cash borrowing amounts, as well as the detail, for the sake of future tax computations. You may decide that your firm’s list of vendor telephone contacts and e-mail addresses is an asset that also should be preserved. You might also want to consider saving the firm’s already filed tax records.

Some items should be preserved as text files; other items should be scanned. Scanning the paper documents you have identified as candidates is the second task in this project. Scanning in gray scale should suffice, so this should take little time. However, be sure that you use a scanner resolution of at least 300 pixels per square inch so that if copies of documents must be printed from the electronic file, they will still be legible.

You will probably be assembling the electronic files on an office hard drive; this would be a good time to think through the best way to index and label the files you are creating.

The third task is to prepare an electronic inventory of all physical assets of the firm. Desks, filing cabinets and the like should all be listed, together with any necessary identifying information (like model and serial numbers). Do not forget the high priced art-

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YOU TALK. IT TYPES:
SPEECH RECOGNITION

By Ray Simon

Speech Recognition isn’t just something you see on TV, in Star Trek or in futuristic movies. It’s real, it’s available now and it’s being deployed at hundreds of law firms nationally to cut costs, increase productivity and drive profits.

Speech Recognition Technology (SRT) Defined
SRT is defined as the ability to have a computer accurately understand what you say, then type it, word for word, and follow your verbal commands. Few people are exposed to such technology; in fact, most are unaware that there are systems actually capable of understanding what they say.

Today’s advancements in technology enable Speech Recognition Systems to type up to 160 words per minute (wpm) with an accuracy of 95 percent. Consider these speeds vs. 20 wpm for a hunt-and-peck typist or 50 to 70 wpm for a fast touch typist.

How is SRT Being Used?
SRT is used by attorneys for dictating, correcting and formatting with their voice. It’s being used by lawyers who are operating their computers with their voice: saving files, checking e-mails, saying “reply” and other commands, rather than using their mouse. SRT is also being used by attorneys as a more efficient, less expensive alternative to dictating to tape. In short, anywhere you would type, you can save keystrokes and dictate to the PC. Speech Recognition is compatible with:

- Microsoft Office programs such as Word and Excel;
- Corel Office such as Word Perfect and Quattro Pro;
- E-mail programs such as Microsoft Outlook, Hotmail and AOL;
- Time tracking software.

It’s important to note that SRT is not just a software package. It also encompasses software add-ons, audio hardware that’s compatible with your computer system, installation and training (See “The Four Components of SRT” and “Software and Hardware Overview” Sidebars).

A Real-Life SRT Scenario To Save Money
Let’s say you work in a law firm with five attorneys and one fully occupied administrative assistant who transcribes dictation and proof reads. Now, let’s say your firm was looking to hire two more associates, but that would mean adding one more non-billable administrative assistant, who would negate much of the profits generated by the new associates.

What can you do to increase productivity, reduce costs and maximize revenue? Don’t hire an extra administrative assistant. Instead, consider implementing a Speech Recognition system to decrease the workload enough to hire the new associates and keep only one administrative assistant on staff. In fact, this is exactly how several firms recently solved a staffing dilemma.
Creating Letters, Summaries and Pleadings To Save Time
Perhaps you need to send a formal letter requesting clarification from an expert witness, Dr. John Jones. This is how SRT works. You say “new letter,” which opens a template of your office letterhead with today’s date and your signature at the bottom. You say, “John Jones address” which inserts his name, title, and office address. Then, sitting comfortably back in your chair, you page through the case file, compose your thoughts and say, “Dear Doctor Jones…” You dictate a two-page letter to the computer and it types the letter as you are speaking. When you are finished, you say “print two copies” and then “save as” and give the file a name. If there is a special folder on the network where letters are saved, you can tell it that, too.

Operating and Checking E-mail Without Typing
You say “check my e-mail” and Microsoft Outlook launches and retrieves several e-mail messages. The first one is an unsolicited advertisement. You say “Junk Mail” which deletes the message and permanently blocks the sender’s address.

The next one is from Tom, a colleague requesting a noon meeting next Wednesday. You say “personal reply” to create a new e-mail with the Tom’s reply e-mail address and a salutation to Tom already in the e-mail. You say, “I’ll be looking forward to seeing you at noon Wednesday. I’ll bring the file.” When you are done, you say “send” and the e-mail is delivered, without you even having to touch your keyboard or mouse.

A Better, Faster, Less Expensive Way to Dictate
Like most attorneys, if you are pressed for time and need to do research in preparation for a trial, you would typically dictate into a tape machine and send the tape to a transcription company or give it to an administrative assistant who transcribes it and returns it to you. As you know, this can take a few hours or a few days. Sometimes, the tape machine does not record properly. Other times, you get the document back and there are blocks of text that are wrong or missing. Then you have to do rework. But with Speech Recognition, you just dictate into the computer, which records your voice digitally, while transcribing what you say. Better yet, you are able to see an immediate rough draft of your work. When you are done, your assistant accesses the document and the voice file, cleans it up with formatting and corrections, and you get the finished product fast.

Shifting The Legal Paradigm with SRT
Some attorneys are used to having an assistant perform their transcription along with formatting and editing and have no intention of changing how they do their work. But my clients throughout the San Francisco Bay Area are adapting, even embracing this technology. With SRT, they simply dictate to the
SELLING YOUR PRACTICE: WHAT ARE THE PROFESSIONAL AND BUSINESS CONSIDERATIONS?

By Ed Poll

Even though selling a law practice is no longer against most ethics codes, many state bar associations, and many lawyers, still haven’t warmed to the idea. I have testified before the California State Bar Ethics Commission, urging that the provisions allowing the sale of a law practice be maintained and expanded.

From the business side, it is hard to understand why the legal community hasn’t recognized the benefits of selling a law practice. After investing years of hard work and financial resources in growing the practice and building goodwill, why would a lawyer forego the opportunity to reap the benefits of that years-long investment? Rather than closing a practice when it’s time to retire, the most beneficial choice for all involved is to sell it to another qualified lawyer (or lawyers). The buying and selling lawyers benefit, but the clients also benefit when they are smoothly transitioned to receive competent representation from a qualified buyer. This is, in fact just one of three major ethical considerations that support selling a practice.

Reasons for Selling

Selling helps the client. Aging lawyers or lawyers committed to closing their practices emotionally leave their clients long before they close their doors. This often results in less effective representation long before the actual closing. Lawyers able to sell and transfer their business to lawyers who want to grow it tend to continue active and effective representation until the sale, because a vibrant client base can bring a higher selling price.

Selling gives solo practitioners more protection. Large law firm lawyers “sell” their practices now. They simply call the process something else, like “retirement,” or becoming “special counsel,” or taking “emeritus status.” The result is the same; another lawyer in the firm takes over the client list. Solo practitioners can only receive the same advantage when they sell a practice outright; ethical rules to the contrary, particularly those that prohibit realization of “goodwill,” put solos at an unfair disadvantage to big firm lawyers.

Selling part of a practice creates greater efficiencies. ABA Rule 1.17 allows the sale of an area of practice. This rule should be adopted by states uniformly, because it allows lawyers to focus on areas of practice in ways that benefit them and their clients. For example, if a lawyer can no longer maintain both a probate and an estate administration practice, he or she should be permitted to sell one or the other in order to focus energies and client attentions in one area.

Professional Considerations

You shouldn’t venture into selling a practice until you’re serious about getting out. It is possible to sell your practice and move to another city or a different firm to start a new one absent a covenant not-to-compete (which would lead to a violation of contract law). However, if you sell your current practice and then, ten days later, decide to return to your own practice, and solicit previous clients, this would be a violation of both contract law and the rules of professional conduct.

The State Bar of California holds that the decision to conclude your practice by sale or closure implies that you are quitting the practice of law and that you will either resign from or adopt inactive status with the State Bar. Whatever your decision, you must notify the State Bar of your intent. Choosing to remain an active member continues your
obligations to pay dues, comply with mandatory continuing education requirements and remain subject to the bar’s other requirements. Also, the State Bar doesn’t consider you retired if you remain attorney of record in any matter.

California’s Business and Professions Code section 6180.1 provides the basic requirements for notification of the change in status of your practice. It says that you must inform clients, opposing counsel, courts and agencies where you have pending matters, your errors and omissions insurer, and the Office of the Chief Trial Counsel of the State Bar. There are rules governing your fiduciary obligation to keep client property safe, or return it as appropriate if your clients do not choose to be represented by the lawyers to whom you’ve sold the practice.

Setting the Price

A business is worth only what someone is willing to pay for it, and time is an important consideration. The value may be different at different points in time. Valuation and price may not be the same thing. But, in the context of buying a business, even a law practice, one must look to the future. When valuing a law practice, one should also look to the expected future earnings of the practice. Many people believe that the price to be paid must be based only on this figure, revenues to be generated by the existing practice. In some cases you can also include future earnings that may be based on the buyer’s talents brought to bear on the purchased practice.

Some lawyers want to make their practice more attractive to a potential buyer by “enhancing” its name or apparent performance. Caveat emptor does apply to law firm buyers, but ethical rules apply to sellers. If you are John Doe, solo practitioner, you should not call your firm “John Doe & Associates” to make it inaccurately appear bigger. By contrast, every small law firm involves creative accounting. It’s the buyer’s obligation to separate real income and expenses from the creative tax accounting normally performed by sellers.

Such issues are why I recommend sellers should retain a professional business consultant or broker for representation when selling a law practice. A professional consultant, involved in selling law practices, knows how to sort through the many non-qualified potential buyers to get to the few who actually have the means and motivation to buy the law practice. Once the unqualified potential buyers have been culled out, still only around 50 percent of these folks eventually buy a law practice.

Make a Timeline

If all of this sounds complicated, it is. Making sure you get everything done right requires creation of a timeline that includes descriptions of tasks and completion dates for everything you need to do, in the order you need to do them. Ethical considerations relating to people, and practical considerations relating to business, should be the focus. Your timeline must, at a minimum, include the date that you decide to conclude practicing, the date that your current lease runs out, and the date that you would like to have all steps in the process completed. Establishing a timeline at the beginning of the process and keeping it up to date as events unfold gives you a tool to help you focus your efforts and track the various elements of transitioning your practice, up to the moment that you hand over the keys, walk into the sunset and begin a smooth and happy transition to the next phase of your life beyond the law.

Those wanting more information on selling a practice can find it in my latest book, Selling Your Law Practice: The Profitable Exit Strategy. The stated purpose of the book is to help lawyers get maximum return for their practices when it’s time to retire, relocate or simply walk away. For details, go to www.lawbiz.com.

Edward Poll, J.D., M.B.A., CMC, is a nationally recognized coach and certified management consultant, author and speaker on law practice management topics. He also is Board Approved as Coach to the Legal Profession by the Society for the Advancement of Consulting. Ed has written several law practice management books including Selling Your Law Practice: The Profitable Exit Strategy; Collecting Your Fee: Getting Paid from Invoice to Intake (ABA). Ed’s latest works include More Secrets of the Business of Law (2006) and Business Competency for Lawyers (2006). To make suggestions or comments about this article, call (800) 837-5880 or send an email to edpoll@lawbiz.com. You can also order a free e-zine or visit Ed on the web at www.lawbiz.com.
work you have hung on your walls, of course. As a substitute for the asset list, or as a redundancy that may some day be very valuable, consider walking through the office with a digital camera, creating images that can actually become a part of the electronic file. While you’re at it, consider scanning or photographing the receipts showing the purchase information regarding these firm assets.

Now that you have assembled the data on a hard drive, decide how to store it off-site. Consider using a CD or a DVD. These formats facilitate easy off-site storage (e.g., in a safe deposit box and/or a fireproof safe) and allow several copies to be easily and cheaply made so that they can be maintained at several locations. Distributing the risk is good, but of course distributing what could be sensitive or confidential information should be done with some degree of care. Remember that any CD or DVD you give to another can be reproduced and distributed to whomever they might choose without leaving a trace. Choose wisely. For example, your office manager may seem like a perfect candidate until you give them a negative work review and he or she begins looking elsewhere for work. Getting your CD back could be a problem at that point in time.

Lastly, realize that the task you have just accomplished is not the end of this project. The project will never end as long as your firm is in business. An archive of obsolete documents and pictures may be of marginal interest to a museum, but it will be of huge value to you or your firm. Set up a schedule for renewing your database and distributing new copies. Assign the task to the appropriate person now, before Katrina’s brothers and sisters start tap-dancing again, and (Californians) before The Big One shows up on your front porch.

Michael J. Tonsing practices law in San Francisco. He is a longstanding member of the Editorial Board of The Federal Lawyer, the monthly magazine of the Federal Bar Association, and he writes a monthly column on legal technology for that magazine (called The Federal Lawyer in Cyberia). He also writes a regular online column on e-discovery issues (entitled The E-Discovery Disco) for a website called Discovery Resources (www.discoveryresources.org). In addition, as an adjunct to his own litigation practice, Mike mentors less experienced litigators, second chairing their trials. See www.YourSecondChair.com. Mike is a member of the Executive Committee of the Law Practice Management & Technology Section. He can be reached at mtonsing@lawyer.com.

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computer rather to than a tape machine. The computer transcribes their words and also makes a digital recording of their voice. When they are done, their assistant can access the voice file along with the document. Instead of typing the entire document from scratch, the assistant now makes minor corrections and formatting. The person who dictates has the advantage of immediately seeing a rough draft of their document and also getting a final copy in less time. Plus, the assistant benefits by receiving a rough draft as well as a digital file rather than just an analog tape that must then be transcribed from scratch.

The Bottom Line: Three Little Words

So remember the three key words about why Speech Recognition is taking this industry by storm: Dictate, Operate, Automate. Or if you can’t remember those, then at least remember these that can have a positive affect on your bottom line: Better, Faster, Cheaper.

Ray Simon has a background in IT support, hardware and software sales, and is an associate member of The State Bar of California. He launched www.JustTalkNow.com after observing the frustrations of attorneys and how technology could increase their efficiency and reduce their overhead.
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Monterey Marriott, Salon 209
Held in conjunction with the 79th Annual Meeting of the State Bar of California

5:30 p.m. - 7:00 p.m.

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For further information please call Tod Green at (415) 538-2520
or visit our website at www.calbar.ca.gov/LPMT

(Location subject to change. Please check the Annual Meeting program.)
The Witkin Institute, part of Thomson West, recently named the winners of the 2006 Roger J. Traynor California Appellate Moot Court Competition. The competition was held on April 8–9 at Southwestern University School of Law in Los Angeles.

The Roger J. Traynor California Appellate Moot Court Competition is a nationally recognized appellate moot court competition developed by the California Young Lawyers Association of the State Bar of California nearly 30 years ago. Under an arrangement with the State Bar of California, the Witkin Legal Institute and Thomson West have administered the competition since 1999.

The Traynor competition prepares law students for the future by analyzing a problem drawn from a California Court of Appeals case. The case is selected from the appellate court because this is where the majority of California lawyers appear most frequently; briefing and arguing a case from this court holds the most practical value for the students. The Witkin Legal Institute prepared the problem and administered the competition.

The Traynor competition draws participation from several California law schools. This year, 38 students from 14 schools participated. Teams were judged on two elements: the written brief and the oral argument.

The California Academy of Appellate Lawyers awarded $1,200 to the team with the best brief, and West provided each student participant with a $500 voucher to purchase volumes in the Witkin Library.

The Witkin Legal Institute is named for Bernard E. Witkin, California’s preeminent legal scholar. The Institute is devoted to continuing Bernard E. Witkin’s legacy of public service to the bench, bar and other law-related organizations, and to undertaking projects that serve the ongoing education needs of California lawyers, judges and law students. For more information, visit www.witkin.com.

Prizes were awarded in three categories:

**Best Oral Argument:**
- The Roger J. Traynor Award
  - First place – UC Davis School of Law
  - Second place – U of San Diego School of Law
  - Honorable Mention – UCLA School of Law
  - UC Hastings College of the Law
  - Empire College School of Law

**Best Brief:** The California Academy of Appellate Lawyers Award
- First place – Empire College School of Law
- Second place – UC Davis School of Law
- Third place – Thomas Jefferson School of Law

**Excellence in Appellate Advocacy:**
- The Bernard E. Witkin Award
  - First place – UC Davis School of Law
  - Second place – Empire College School of Law
  - Third place – UC Hastings College of the Law

In addition, the top individual advocates were recognized:

**Outstanding Individual Achievement in Oral Argument**
- Katherine Oyama – UC Berkeley School of Law
- Rachele Breglund-Bailey – San Joaquin College of Law
- Danny Barak – UC Davis School of Law
- Sherry Powell – UCLA School of Law
- Anthony Flemmer – UC Hastings College of the Law
- Kraig Jennett – Thomas Jefferson School of Law
- Mark Kafka – U of San Diego School of Law
- Mark Thuesen – San Francisco Law School
situations and circumstances, that (aside from relaxation techniques) I had paid little attention to what I was feeling when I was stressed. “Stressed” had become a convenient catch-all description for any number of difficult and uncomfortable emotions that I didn’t want to identify let alone consciously feel or talk about. Over time, I realized that my stress was largely self-induced, an outgrowth of many of my old attitudes about work, career, and the world. As I challenged and replaced several of those beliefs, I experienced far less stress. External events continued to be demanding, but as I became more familiar and comfortable with the emotions they were stirring up, I felt less overwhelmed and more resilient. Figuratively speaking, it had become a lot easier to keep my balance on the bike.

A totally stress-free life now seems neither realistic nor even desirable. I see stress now as a normal part of growth and change. Between relaxation techniques, a better understanding of what I’m feeling when I’m stressed, and the support and assistance of others, I feel well-prepared to deal with stress. And as they say about riding a bike, “Once you learn, you never forget.”

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