

SOLO AND SMALL FIRM THE PRACTITIONER

CALIFORNIA
LAWYERS
ASSOCIATION

VOLUME 30 | ISSUE 2

AUTUMN 2024



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ALWAYS FOLLOW THE RULE OF THREE

Peter Weinberger, Esq.*



The human mind loves things in threes. Plays are written in three acts. Jokes have three parts. Christianity has the Father, the Son and the Holy Ghost. For lawyers, however, there are two important rules of three.

I. NEVER BE THE THIRD LAWYER ON A CASE

We have all been approached by potential clients who have gone through two lawyers. They promise to pay their retainer and the monthly bill. And they assure you they will follow your advice.

The first question to ask yourself is why they are switching lawyers. More often than not, you will find they either have not paid their bill, or they refuse to follow their lawyer's advice.

Taking over the case from one prior lawyer does not present the same red flags as being the third lawyer on the file. My law practice thrived on taking over cases from big firms. Clients tired of paying associates to "work up a case" were delighted to hire an experienced lawyer who focused on getting the client the best return on their legal fees' investment. I was the right size law firm for cases that made no economic sense for a large firm or the client.

If you are the third lawyer, however, the problem is often not a mismatch between the size of the firm and client but rather a client who will never be satisfied. Tread carefully before you become the third victim of this client.

II. PRINCIPLE STOPS AT THE THIRD BILL

We have all had clients who say "I'd rather pay you than settle this case. **IT'S A MATTER OF PRINCIPLE!**" This

solemn oath is usually uttered at the beginning of the case. Three months and \$40,000 later, the client has sticker shock over their bill and inevitably blames the lawyer for the opposing party's not immediately surrendering.

One of my legal mentors warned me about this type of client when he told me, "Principle stops at the third bill."

As a mediator, I often hear the self-righteous proclamation of principle from parties to litigation. You cannot tell this person they are being childish. Telling them the truth will just make them shut down. In this situation, I put aside my typical bluntness and engage in an exercise with the party and his lawyer.

First, I assure them that it is virtuous to stand on principle. Then, the client's lawyer and I work up the full cost of taking the case through trial. I make sure we include every possible contingency and fee in coming up with the total. When the lawyer is in agreement, I present the client with the bill:

It will cost you \$150,000 to try this case. Since you're determined to go to trial, why don't you pull out your checkbook and write your lawyer a check for \$150,000? 'Pull the band-aid off' and pay it now rather than suffer death by a thousand cuts (or two dozen monthly bills).

When they stop protesting and internalize the fact that \$150,000 is the cost of going to trial, they miraculously become more flexible about settlement. More importantly, it gives them an emotional off ramp from their demand that the only end to the case is a complete surrender by the other party. They realize "principle has a price." Most importantly, you are doing your client a favor by showing the client the true cost of principle.

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