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Ethical leadership reduces risk and increases revenues

A few weeks ago, I was in Washington, D.C., at the American Bar Association's National Legal Malpractice Conference. As a member of the ABA Standing Committee on Lawyers' Professional Liability, I really enjoy hanging out with lawyers who represent lawyers. We are all constantly trying to find ways to either keep lawyers out of trouble or to better serve lawyers who face professional liability claims.

There were many informative and interesting sessions such as "A Primer on Cyber Damages and How to Avoid Them," "Protecting Privilege and Risk Management for Lawyers Who Represent Insurers" and "Insurance Marketplace Update."

In the session about the marketplace, a panel of insurance industry professionals provided an update on recent developments affecting the market for lawyers' professional liability insurance.

One of the panelists made a prediction that really caught my attention. He predicted that there would be an increase in malpractice claims because many lawyers and firms lack ethical leadership and because they fail to create ethical firm cultures.

What is ethical leadership? In a paper titled "Ethical Leadership" by Jane A. Van Buren of Noonmark Nonprofit Services, Van Buren explained ethical leadership this way:

"What is ethical leadership? Let's start with some definitions. Ethics are the principles, values and beliefs that define what is right and wrong behavior.

"Leadership is the process of influencing others to achieve goals. Thus, we can define ethical leadership as the process of influencing people through principles, values and beliefs that embrace what we have defined as right behavior."

Note that ethical leadership is influencing people to do the right thing to further the goals of the organization.

Most organizations identify and clearly state the values and principles that govern how they conduct business. They communicate those values and principles to their employees and expect them to exemplify them in the performance of their duties.

By contrast, most lawyers and firms focus mostly on how to avoid action that will result in a disciplinary or malpractice claim. While it is important and required by Rule 5.1 for law firms to implement internal controls to ensure that all lawyers in the firm comply with their ethical obligations, it is not always enough.

Indeed, firms with internal controls can still have a firm culture where lawyers inflate their billings, cut corners, hide mistakes, blame others and/or otherwise engage in negative or unprofessional behavior. It is easy to see how the risk of malpractice claims for firms with this kind of culture would be high.

Ethical leadership can set the tone for a more ethical firm culture which in turn can result in increased profits. In the April 2015 issue of the Harvard Business Review, there was an article titled "Measuring the Return on Character." It describes a study conducted by KRW International, a Minneapolis-based leadership consultancy.

They identified four moral principles as universal — integrity, responsibility, forgiveness and compassion and sent anonymous surveys to employees at 84 U.S. companies and nonprofits and asked, among other things, how consistently their CEOs and management teams embodied the four principles. They also reviewed and analyzed the organization's financial results.

WOODWISE ETHICS

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The leaders with high ratings on all four principles were reported as being leaders who frequently engaged in behaviors that revealed strong character, i.e. standing up for what is right, expressing concern for the common good, letting go of mistakes and showing empathy.

At the other end of the spectrum, the leaders with the lowest scores were often described as warping the truth for personal gain and caring mostly about themselves.

"CEOs whose employees gave them high marks for character had an average return on assets of 9.35 percent over a two-year period."

Notably, the researchers found that "CEOs whose employees gave them high marks for character had an average return on assets of 9.35 percent over a two-year period. That's nearly five times as much as what those with low-character ratings had. Their return on assets averaged only 1.93 percent."

As Bruce Weinstein, The Ethics Guy (theethicsguy.com), explains in his new book, "The Good Ones: Ten Crucial Qualities of High Character Employees," "When managers and employees exhibit the qualities of high-character people — honesty, accountability, fairness and gratitude, among them — clients want to continue to do business there.

"These clients also tell their colleagues and friends about the excellent service they receive from the business. In the long run, high-character employees strengthen a business' bottom line by promoting positive word of mouth, developing and maintaining good relationships with clients and caring deeply for how products and services are delivered."

Weinstein, who teaches ethics to attorneys across the country, feels that the purpose of ethics is to help good people make the best possible choices. He believes this includes hiring and promoting high-character people so that you don't have to worry about the reputation of your firm.

Firm leadership should go further than just assessing how to avoid professional liability. Firms should consider the character and values of the people they hire, promote and place in positions of leadership.

In determining whether a proposed action should be taken, firm leadership should review the ethics rules and also assess: (1) What is the right thing to do and (2) whether the intended action is consistent with the firm's core values.

If a firm has a high rate of malpractice claims, they should look at their leadership and examine the culture.

As former Supreme Court justice Potter Stewart is quoted as saying "Ethics is knowing the difference between what you have a right to do and what is right to do." Firm leadership that understands this difference will profit more.