Business Development 101: Tools and Techniques to Build a Successful Law Practice

March 21, 2014
1:00 p.m. to 5:00 p.m.
WSBA #366977 – 1.0 Ethics Credits
Seattle University School of Law CLE
Business Development 101: Tools and Techniques to Build a Successful Law Practice

This cutting edge program will demonstrate how you can build a law practice successfully and ethically. You will hear some of the best tips and techniques to connect with potential clients and referral sources, maximize marketing opportunities within your comfort areas, learn the importance branding your practice, identify creative ways to expand your practice, navigate the ethical uses of social media, and create higher visibility for your law firm. You have limited dollars to spend on client development activities; sign up for this program to learn what will work for you.

Click on the red boxes to go to the materials for each session.

Date/time: March 21; 1:00 p.m. to 5:00 p.m.
Location: Sullivan Hall, Room C5

1:00 - 1:10 Welcome and Introductions
Jennifer Willner, Halvorson Losie Willner PLLC, Bellevue | Bellingham
Ann Guinn, G&P Associates, Kent

1:10 – 1:40 Law Firm Branding: Distinguishing Yourself in a Competitive Marketplace
Rob McNair-Huff, Jay Ray, Tacoma

1:40 – 2:10 Selling Legal Services: Developing a Rainmaker Psychology
Jennifer Willner

2:10 – 2:20 Break

2:20 – 3:10 The Rainmaker’s Toolbox: Tips, Ideas, Methods and Suggestions to Build Your Law Practice
Gil Price, Price Management Group, Seattle

3:10 – 3:40 Developing a Niche Practice and Other Creative Business Opportunities
Ann Guinn

3:40 – 3:50 Break

3:50 – 4:50 The Ethics of Using Social Media
Greg McLawsen, Puget Sound Legal, Tacoma

4:50 – 5:00 Question & Answer
Speaker Biographies

Jennifer Willner, Halvorson Losie Willner PLLC, Bellevue | Bellingham
Jennifer is a principal in the firm Halvorson Losie Willner PLLC with offices in Bellevue and Bellingham, WA. The firm's partners have over 70 years combined experience representing employers throughout the Northwest in the entire range of labor and employment law matters.

Our law practice seeks to provide fast, cost effective, advice on labor and employment law matters when it is needed and where our clients are located. This business philosophy translates into being available by phone and email late into the evening and on weekends and travelling to our client’s place of business when face time is requested or required. Our firm has implemented the latest technology to be mobile, paperless and accessible.

Our clients are diverse: very large government contractors, construction and manufacturing companies, municipal governments, non-profit associations, charitable organizations, and small private employers. Labor and employment law is all we do, put us to work.

Jennifer is the immediate past Chair of the Washington State Bar Association Solo & Small Practice Section and is a member of the Employment Law, Administrative and Elder Law Sections. She enjoys talking with other solo and small firm attorneys around the state about the practice of law. She is writing a book which will be published by the American Bar Association sometime in 2014.

Ann Guinn, G&P Associates, Kent
Ann M. Guinn, Principal of G&P Associates, is a law practice management consultant to solo and small law firms. Drawing upon her 30+ years’ experience in the legal community, Ann helps her clients transform their current practices into highly profitable businesses that are designed for maximum productivity, efficiency, and client experience. In addition to one-on-one consulting, Ann regularly offers teleseminars, membership coaching groups, and CLEs. She has served with the Executive Committee of WSBA’s Solo & Small Practice Section since 1994. Ann has been a featured speaker on law practice management issues at ABA meetings, as well as solo and small firm conferences across the U.S. She is serving her third year as co-chair of the WSBA Solo and Small Firm Conference. Ann’s book entitled Minding Your Own Business: The Solo and Small Firm Lawyer’s Guide to a Profitable Practice (ABA May 2010) is now available on five continents, and in the U.S. through the ABA webstore at www.americanbar.org.

Shari Campbell, Vice President & Co-Owner, Jay Ray, Tacoma
Practical solutions to complex issues delivered with insight and humor. That's Shari, whether she's tackling a marketing challenge, helping leaders identify the soul of their organizations or finishing a building project at the family cabin in Leavenworth. Shari brings together data-driven, left-brain strategic sense with creative, right-brain sensibility. From facilitating the launch of a new hospital service line to exploring new ways to increase a client's business, Shari adeptly applies the right tools for the job.

Shari brings business acumen that spans eras and industries. Clients appreciate her creative problem solving style and thoughtful partnership when dealing with complex matters. She
relishes the opportunity to dive into research data and craft exciting brands and advertising campaigns—and enjoy a glass of Washington wine.

Shari holds a BA from Western Washington University (Go Vikings!) and earned her MPA, Business and Public Administration at Seattle University.

Rob McNair-Huff, Jay Ray, Tacoma
Rob knows that every communication should be strategic—and on message. A longtime resident of Tacoma and Pierce County, Rob is deeply rooted in the community. His approach is always thoughtful, placing the client front and center before devising a smart way to transform communications into results. He can craft messages and campaigns to reach thousands of people or influence a few dozen. Before joining JayRay, Rob served as a government communicator and spokesperson. In a former life, he worked on the media side as a reporter. When Rob isn’t shaping communications he is writing books, running with the Tacoma Runners group he helped found or biking around Tacoma. He might also be spied taking photos, watching birds and living life out loud on social media channels.

Gil Price, Price Management Group, Seattle
Gil Price brings more than 25 years of management experience to PMG. Gil takes pride in his professional, ethical and "it's my firm" business philosophy as he strives to achieve the same smooth operation, high levels of professionalism and ethics, and success for your business as he does for his own. With PMG, you get the best of both worlds - the objective professional perspective and flexibility of a consultant, as well as the dedication and engagement you would expect from a partner or dedicated employee. PMG's law firm management consultant services will be provided directly by Gil Price or by PMG's team under his supervision. The PMG team consists of experienced professionals, subcontractors, specialists and vendors who have been carefully selected for your special needs. Whether working directly with Gil or team members under his personal supervision, you avoid the costs, time, commitment, and aggravation of hiring an employee.

Greg McLawsen, Puget Sound Legal, Tacoma
Greg McLawsen is the principal attorney of Puget Sound Legal where he represents families in the U.S. immigration system. Greg goal is to use technology and innovation to deliver excellent legal services efficiently and affordably. Greg is active in the leadership of the American Immigration Bar Association and Solo and Small Practice Section of the Washington State Bar Association. He routinely publishes and presents on subjects relating to immigration law, legal ethics and law practice management.

Greg entered law school planning to pursue a career in public interest law at non-profit organizations. He attended the University of Nebraska School of Law, where received a year of immigration law training as a student attorney at the school’s Immigration Clinic. During law school Greg worked as a law clerk at a non-profit firm representing low-income families in class action lawsuits. After graduating Greg worked as a research editor for Immigration Law and Procedure, the country’s leading immigration law treatise. Greg then served two years as judicial law clerk in Washington State Superior Court for Kitsap County, where he judges in their judicial work.
A BRIEF PRESENTATION ON MARKETING

March 21, 2014

MEET OUR TEAM

Shari Campbell
Co-Owner

Rob McNair-Huff
Advisor

TODAY

- Brand Exercise
- Branding 101
- Five Tips
BRAND EXERCISE

WHY IS A BRAND IMPORTANT?

- Describes
- Distinguishes
- Delivers your promise
- Drives awareness, credibility and support
STRONG BRANDS

DESCRIBES

- Stand out
- Simplify the selection process
- Engage, connect and inspire
- Create long-term loyalty

DISTINGUISHES
DELIVERS YOUR PROMISE

BUILDS BUSINESS

BRAND = EXPERIENCE
5 TIPS FOR YOUR FIRM

THINK LIKE YOUR CLIENTS

CRAFT A PLAN
RECAP

- Always start with your client—What's in it for them?
- Create a marketing plan
- Consider uncontested market space (Curves, Cirque du Soleil)
- Differentiate in multiple ways
- Don’t promote like your competitors
THE PSYCHOLOGY OF RAINMAKING

March 2014

By: Jennifer R. Willner

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JENNIFER R. WILLNER is a partner in Halvorson Losie Willner PLLC. The firm’s attorneys have over 75 years combined experience representing employers throughout the Northwest in the entire range of labor and employment law matters. Jennifer is very active in the General Practice, Solo & Small Firm Division of the American Bar Association. She is the immediate past Chair of the WSBA Solo & Small Firm Section and a past Chair of the WSBA Continuing Legal Education Committee. She is a three term officer of the Whatcom County Bar Association and a member of the Mt. Baker Chapter of the Society for Human Resource Management. Jennifer received her B.A. in Psychology from Reed College and her J.D. cum laude from Seattle University School of Law.
I. INTRODUCTION

Solo and small practice attorneys make up the majority of practicing attorneys in the United States. The latest statistics from the ABA estimate that 75% of all actively licensed attorneys are in private practice. Of these, 49% are solo practitioners and another 20% are in firms of 2 to 10. But no matter what your practice setting, solo practitioner or Big Law, you need to be able to generate business. Business development means survival for solos and small firm attorneys and it means career advancement for attorneys in larger firms.

Building a law practice takes an immense amount of hard work and time. Business development skills do not come naturally for most people. Unless you are lucky enough to be in a law firm setting where there is a designated practice development/firm marketing person, or in a firm that hires one of these professionals (call Gil Price at Price Management Services) you will need to develop the skills to generate a book of business in order to survive. Most attorneys don’t really enjoy this aspect of running a law firm. But I’m here to tell you that you can be yourself and be a rainmaker. The trick is to find out what kind of business development activities feel comfortable for your particular personality and what kinds of activities you enjoy. Simple! Okay, not so much.

II. THE PERSONALITY OF A RAINMAKER

According to Sylvia Coulter, in her book *The Woman Lawyer’s Rainmaking Game*¹, (Glasser LegalWorks, 2004) there are certain qualities of a strong rainmaker. There’s no coincidence that many of the qualities of a good rainmaker are also the qualities you need to be a good lawyer. I believe these attributes can all be developed with practice and with coaching.

<table>
<thead>
<tr>
<th>Positive attitude</th>
<th>Good listener</th>
<th>Sociability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidence</td>
<td>Curiosity</td>
<td>Passionate</td>
</tr>
<tr>
<td>Persistence</td>
<td>People skills</td>
<td>Audacity</td>
</tr>
<tr>
<td>Sense of humor</td>
<td>Good talker</td>
<td>Reputation</td>
</tr>
<tr>
<td>Creativity</td>
<td>Likeable</td>
<td>Enthusiastic</td>
</tr>
<tr>
<td>Appearance</td>
<td>Knowledge of practice area</td>
<td>Self-motivated</td>
</tr>
<tr>
<td>Organized</td>
<td>Focused</td>
<td>Trustworthy</td>
</tr>
</tbody>
</table>

Of course, “personality” is standard equipment on human being models but is your personality positive and is this positive outlook obvious to the clients you wish to attract? The best rainmakers have a positive, optimistic and likeable personality; people are drawn to those individuals who are likeable and whom they can trust.

Developing the skills you need for rainmaking activities meaning stepping outside your comfort zone and showing others a little about who you are as an individual. I’m convinced that good rainmakers are those people who genuinely like other people, who enjoy talking to people, hearing their stories, finding out what needs or problems they have, and then working hard to meet those needs and solve those problems. I believe everyone can be a rainmaker because at the heart of rainmaking is really caring about the welfare of others.

¹ Glasser Legal Works (2004)
Do you have any other qualities that you believe are important to being a rainmaker?

____________________________________________________________________________________

III. TAKE AN INVENTORY OF YOURSELF

The more business development activities you engage in, the better your chances of attracting more clients. But you also need to identify what comes naturally to your particular personality and interests. Most human behavior experts agree that it's important to tap our natural abilities. This is where a psychology assessment becomes useful, one focused on how people behave in the workplace. Appendix A provides a quick personality assessment which is loosely (very loosely) based the Myers-Briggs Type Indicator. The MBTI is one of the most common personality assessments used in business. Once you have discovered your four letter personality “type” go to this website to read about yourself: https://www.personalitypage.com/high-level.html.

Forcing ourselves into roles we aren't suited for requires us to waste energy on reinventing ourselves, our actions, and our thought processes. Which is far different from working a little outside our comfort zone to master new information, behaviors, or attitudes. The point being is that you can’t (and shouldn’t) try to change your personality, but you can manage it. You can learn to suppress traits which don’t work for you and accentuate those traits that do work for business development purposes.

Assess your strengths and preferences for some of these business development activities:

<table>
<thead>
<tr>
<th>My strengths</th>
<th>Areas of Improvement</th>
</tr>
</thead>
<tbody>
<tr>
<td>I like meeting and talking with people</td>
<td>I need to focus on following up with potential contacts and referral sources</td>
</tr>
<tr>
<td>I am passionate about helping others</td>
<td>I need to practice being comfortable in large groups of people</td>
</tr>
<tr>
<td>My passion to help others comes through</td>
<td>I need to update my contacts list</td>
</tr>
<tr>
<td>I enjoy educating people about my practice area</td>
<td>I need to feel comfortable talking in front of groups</td>
</tr>
</tbody>
</table>

IV. CREATE SOME RAINMAKING HABITS

There is broad support in the psychological literature that repetition of a task creates a habit and habit creates changes in behavior. The point here is to create some positive business development habits. Appendix B has some ideas on developing new rainmaking habits.
For example, a positive business development habit might go something like this. Every Sunday afternoon, sit down in your home office and decide which of your contacts you want to be in touch with during the coming weeks. Then quickly sketch out a to-do-list of items, such as set up a lunch date with Jennifer, call Marijean to hear about her trip to Italy, shoot an email over to Greg with a useful article on social media. Wait, Greg already has all the useful articles on social media, send him something else. Then establish a corollary habit of initiating each of those action items first thing on Monday morning.

I have a goal of writing a book. In fact, I agreed to write a book on Rainmaking for the American Bar Association, so I have an actual deadline. My new habit is getting up in the mornings at 6:30 am and writing for 60 minutes each day, Monday to Thursday. I started on December 31 and have found it surprisingly easy to do. I made my sit down and start writing time 7:00 am because I like to have some coffee before I engage my brain. Plus, I stay up too late. I immediately discovered that starting my day with a productive hour filled me with energy and made me feel satisfied with accomplishing something important before eight o’clock. I am tracking my progress and will consider adding another new writing habit once this one is fully established.

To get your positive habits aligned with your business development goals follow this simple recipe:

1. Identify the goal.
2. Visualize accomplishing it. How does it feel?
3. Answer the question why is this goal important?
4. Decide what positive habits you will develop in order to achieve that goal.
5. Answer the question why are each of these habits important to achieving the goal?
6. Set the minimum performance target for each goal. Not every habit has to be repeated each day.
7. Start your new habits. I suggest you stagger your start so that you give yourself time to focus on getting one establishes before adding another.
8. Track your progress daily by asking “did I accomplish my habit today yes/no?” Calendar your success and be prepared to feel terrific.

You might also consider building in some rewards commensurate with the degree of success you achieve. If you attend a networking event, which you didn’t really want to go but made yourself anyway, congratulate yourself and treat yourself to something special for successfully meeting your new habit formation targets. Sometime success is its own reward, such as the pleasure of walking into a tidy office each day. For me, I like to reward myself with some small shopping pleasure, even if it’s just an overpriced latte.

V. BUILDING BUSINESS MEANS BUILDING RELATIONSHIPS

Business development is essential to the survival of your practice. In order to build your business, you have to connect with people, develop relationships both with potential clients and referral sources. Personal relationships are vital to establishing trust and credibility among professionals. Law is a people business; if you are perceived as trustworthy, genuine and
likeable, you will build relationships that build your business. In order to start building relationships that lead to business, you must achieve rapport with the potential client. Can the art and science of rapport be taught? The answer is, yes.

Rapport is a form of “connection.” You can connect on a conscious and non-conscious level by using questions in conversations that create a sense of trust and understanding. The questions must be asked in your own words and language style, or they come across as fake and contrived. You also need to be sensitive to timing and context. Lawyers are great at asking questions. When you ask a prospective client questions about themselves and their business, you are creating a rapport that will lead to the perception that you are a person who can be trusted and who understands them.

You may wish to ask these questions over a series of conversations, not just over one lunch meeting. After each question, you must be quiet and listen, really listen. When your prospective client has answered the question, then you need to demonstrate that you really heard their answer by making one or more comments back to them, summarizing their response or acknowledging the content in some fashion. Sometimes, it’s helpful to actually use one or two of the same words, but this must be done carefully or it comes across as patronizing. Only if appropriate within the context of your conversation, and if the other person will be comfortable, should you transition to the next question.

Here are the questions:

1. What are your business priorities? What’s most important to you?
2. What keeps you up at night? What are the threats/challenges you are facing in your business?
3. Where are the opportunities for growth in your business? Where are the opportunities for gain?
4. How can my firm and I support you?

If you reach the fourth question with a prospective client, you could encourage them to expand on their answer to the “how” question with another soft query asking for more details. In your interactions with a prospective client, you must at all times approach them with the utmost sincerity, respect and genuine interest.

Developing and maintaining relationships takes time and energy. The results from your efforts may not be seen for quite a while. Don’t give up. Your marketing plan and business development activities must be geared towards letting potential clients and referral sources know who you are, what you do and why you should be the “go to” trusted advisor.

The best business development advice I was ever given was always be nice to everyone. It costs nothing. Being nice lowers your blood pressure. Being nice is a selling secret. Being nice evaporates any attack on you by a not-nice person. By being nice, a potential client will come to like you or like you more. Being nice will lead to more business.
APPENDIX A

PERSONALITY SELF-ASSESSMENT

I. Your Natural Energy Orientation

While these are two different but complementary sides of our nature, most people have an innate preference for either the Extraverted (E) or Introverted (I) energy orientation.

<table>
<thead>
<tr>
<th>Extraverted Characteristics</th>
<th>Introverted Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Act first, think/reflect later</td>
<td>• Think/reflect first, then Act</td>
</tr>
<tr>
<td>• Feel deprived when cutoff from interaction with the outside world</td>
<td>• Regularly require an amount of &quot;private time&quot; to recharge batteries</td>
</tr>
<tr>
<td>• Usually open to and motivated by outside world of people and things</td>
<td>• Motivated internally, mind is sometimes so active it is &quot;closed&quot; to outside world</td>
</tr>
<tr>
<td>• Enjoy wide variety and change in people relationships</td>
<td>• Prefer one-to-one communication and relationships</td>
</tr>
</tbody>
</table>

Choose what best fits: Extraverted (E) ______ Introverted (I) ______

II. The Way You Understand Your World

The Sensing (S) side of our brain notices the sights, sounds, smells and all the sensory details of the present. It categorizes, organizes, records and stores the specifics from the here and now. It is reality based, dealing with "what is." The Intuitive (N) side of our brain seeks to understand, interpret and form overall patterns of all the information that is collected and records these patterns and relationships. While both kinds of perceiving are necessary and used by all people, each of us instinctively tends to favor one over the other.

<table>
<thead>
<tr>
<th>Sensing Characteristics</th>
<th>Intuitive Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Mentally live in the Now, attending to present opportunities</td>
<td>• Mentally live in the Future, attending to future possibilities</td>
</tr>
<tr>
<td>• Using common sense and creating practical solutions is automatic-instinctual</td>
<td>• Using imagination and creating/inventing new possibilities is automatic-instinctual</td>
</tr>
<tr>
<td>• Memory recall is rich in detail of facts and past events</td>
<td>• Memory recall emphasizes patterns, contexts, and connections</td>
</tr>
<tr>
<td>• Best improvise from past experience</td>
<td>• Best improvise from theoretical understanding</td>
</tr>
<tr>
<td>• Like clear and concrete information; dislike guessing when facts are &quot;fuzzy&quot;</td>
<td>• Comfortable with ambiguous, fuzzy data and with guessing its meaning.</td>
</tr>
</tbody>
</table>

Choose what best fits: Sensing (S) ______ Intuition (N) ______

III. Your Judgment and Choices Orientation

The Thinking (T) side of our brain analyzes information in a detached, objective fashion. It is our logical nature. The Feeling (F) side of our brain forms conclusions in an attached and somewhat global manner, based on likes/dislikes, impact on others, and human and aesthetic values. It is our subjective nature. While everyone uses both means of forming conclusions, each person has a natural bias towards one over the other.

<table>
<thead>
<tr>
<th>Thinking Characteristics</th>
<th>Feeling Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Instinctively search for facts and logic in a decision situation.</td>
<td>• Instinctively employ personal feelings and impact on people in decision situations</td>
</tr>
<tr>
<td>• Naturally notices tasks and work to be accomplished.</td>
<td>• Naturally sensitive to people needs and reactions.</td>
</tr>
</tbody>
</table>
• Easily able to provide an objective and critical analysis.
• Accept conflict as a natural, normal part of relationships with people.
• Naturally seek consensus and popular opinions.
• Unsettled by conflict; have almost a toxic reaction to disharmony.

Choose what best fits: Thinking (T)   _______   Feeling (F)   _______

VI. Your Action Orientation

All people use both judging (thinking and feeling) and perceiving (sensing and intuition) processes to store information, organize our thoughts, make decisions, take actions and manage our lives. Yet one of these processes (Judging or Perceiving) tends to take the lead in our relationship with the outside world.

Judging Characteristics
• Plan many of the details in advance before moving into action.
• Focus on task-related action; complete meaningful segments before moving on.
• Work best and avoid stress when able to keep ahead of deadlines.
• Naturally use targets, dates and standard routines to manage life.

Perceiving Characteristics
• Comfortable moving into action without a plan; plan on-the-go.
• Like to multitask, have variety, mix work and play.
• Naturally tolerant of time pressure; work best close to the deadlines.
• Instinctively avoid commitments which interfere with flexibility, freedom and variety

Choose what best fits: Judging (J) _______   Perceiving (P) _______

Your 4 Personality Type Letters

Now that you have your four letter “type” go to https://www.personalitypage.com/high-level.html to read up on your type. Other great resources on the personality types are:

Please Understand Me II, by David Kiersey (1998)
Work Types, by Barger and Kirby (2010)
APPENDIX B

BUSINESS DEVELOPMENT TO DO LIST

A. 30-DAY TASKS
   1. Develop your individual marketing action plan.
   2. _______________________________________________________
   3. _______________________________________________________
   4. _______________________________________________________
   5. _______________________________________________________

B. 3-MONTH TASKS
   1. Research newsletters/periodicals for practice-related writing opportunities.
   2. _______________________________________________________
   3. _______________________________________________________
   4. _______________________________________________________
   5. _______________________________________________________

C. 6-MONTH TASKS
   1. Develop a seminar and invite colleagues to participate with you.
   2. _______________________________________________________
   3. _______________________________________________________
   4. _______________________________________________________
   5. _______________________________________________________

D. 12-MONTH TASKS
   1. Review your marketing action plan and edit it for the next 12 months!
   2. _______________________________________________________
   3. _______________________________________________________
   4. _______________________________________________________
   5. _______________________________________________________
DEVELOPING A RAINMAKER PSYCHOLOGY

Jennifer R. Willner

Establish justice
Seattle University School of Law
Continuing Legal Education
March 21, 2014

THE ECONOMIC REALITY

- LAWYERING ISN'T AN EASY WAY TO MAKE A BUCK
- PRIVATE PRACTICE REQUIRES CONSTANT EFFORT AT CLIENT DEVELOPMENT ACTIVITIES
- PRINCIPAL, PARTNER, ASSOCIATE OR SOLO, YOU ARE EXPECTED TO BE A RAINMAKER
- SELF-EMPLOYMENT ADDS ANOTHER LAYER OF CHALLENGE

QUALITIES OF A RAINMAKER

- POSITIVE ATTITUDE
- CONFIDENT
- ORGANIZED
- SELF-MOTIVATED
- PASSIONATE
- PERSISTENT
- SINCERE
- AUDACIOUS
- PROFESSIONAL
- RESOURCEFUL
- GOAL ORIENTED
- SOUND FAMILIAR?
THE RAINMAKER PERSONALITY

- You genuinely like people
- You enjoy talking to people
- You enjoy listening to the stories of others
- You are passionate about helping others
- You enjoy finding solutions to problems

ASSESS YOURSELF

PERSONALITY PSYCHOLOGY

- There are four temperaments
- No wait, there are sixteen personality types
- My ID made me do it
- No, the collective unconscious made me do it
- It's because I had a rotten childhood
- I'm striving for self-actualization
- Ring my bell
WHAT COMES NATURALLY?
• MEETING AND TALKING WITH PEOPLE
  • BIG GROUP NETWORKING OR ONE ON ONE?
• I LIKE TO EDUCATE OTHERS ABOUT MY PRACTICE AREA
  • SPEAKING
  • BLOGGING
• I ENJOY RESEARCH AND WRITING
  • ARTICLES
  • BLOGGING

WHAT CAN BE LEARNED?
• OVERCOMING FEAR
  • FACING IT AND PRACTICE
• OVERCOMING PROCRASTINATION
  • LEARNING NEW HABITS
  • THIS CHANGES BEHAVIOR
• STEPPING OUTSIDE YOUR COMFORT ZONE
  • PUBLIC SPEAKING
  • NETWORKING
  • USING TECHNOLOGY

CREATE RAINMAKING HABITS
HABIT CHANGES BEHAVIOR

- Identify your goal
- Visualize accomplishing it. How does it feel?
- Why is the goal important?
- What habits will help you achieve the goal?
- Why are these habits important?
- What are the minimum performance targets?
- Pick a day to start the new habit
- Track your progress daily: Did I accomplish my habit today yes/no?

MY NEW RAINMAKING HABIT

- Goal: to develop a contacts' address database
- Categorized by type of contact (attorney, client, referral source)
- I can use this database to mail out postcards announcing my new law partner and new office
- Every Sunday I will spend 60 minutes adding names & addresses into the database
- I will bribe or coerce my daughter to help me

RAINMAKING TAKES TIME
RAINMAKING TAKES TIME

• Even if you only set aside 30 minutes a week, it's 30 minutes more than you've been probably doing
• Create a task list that is achievable each week (1 or 2 items)
• Chart your progress daily
• Create a marketing action plan
• Set 30 day, 3 month, one year goals

RAINMAKING GOALS

• 30 Day Tasks
  • Develop a marketing action plan
  • Start work on contacts database
  • Identify referral sources
  • Start a rainmaking habit
• 3 Month Tasks
  • Identify publication opportunities
  • Schedule meetings with referral sources

• 6 Month Tasks
  • Develop a seminar
  • Offer to speak to a relevant group
  • Write an article for publication
• 12 Month Tasks
  • Review and update your marketing plan
  • Create a business development group
START NOW…

• Assess your personality and preferences
• Set goals
  • Track your progress
• Develop rainmaking habits
  • Track your success
• Run your practice like a business
• Read motivational books
• Get help from others
• Give it 100%

AND THE POINT IS…

BUSINESS DEVELOPMENT: IT’S ALL ABOUT RELATIONSHIPS

• To build your law practice, you must work on building relationships
• Building relationships takes a long time
• All things being equal, people buy you
• Your ability to build lasting relationships depends on getting clients to like you, trust you and buy you
30+ Marketing & Business Development Tips in 45 Minutes to Boost Your Practice

GIL PRICE, PRICE MANAGEMENT GROUP

1. Set goals.
   - DREAM BIG & WORK BACKWARDS
   - Document what you hope to achieve and know what success looks like.

2. Provide great client service.
   - Be exceptional.
3. Focus, focus, focus.

The narrower, the better:
- Wine law
- Snow mobile injuries
- Franchise law
- Cruise ship law
- Cannabis law
- Etc.

4. Know your clients' businesses.

- Subscribe to at least one publication they read.
- Put together a fact sheet for yourself of their products, competitors.
- Visit a client each month.
- Here's your test: "What's happened in the last two weeks that's most important to my client?"

5. Join a trade association and get active.

- Make contributions - articles, speeches, conference attendance, etc.
- Pick groups with few lawyer members.
- Take leadership roles.
- Take Board and Committee roles.
6. Update your bio regularly.

- Your website bio (on firm website) is your #1 tool. LinkedIn is #2.
- Have a colleague, friend or client review, edit it.
- Regularly add new matters, speeches, articles, seminars.

7. Install Google Analytics on your website.

- It details what search terms got people to your site and how long they stayed there.
- Use it to determine popular search terms for your site.

8. If you like to write, launch a blog.

The best tool for establishing your reputation.
- See advice on www.lexblog.com
- Link your blog to your website.
- Post 2-4 times/month.
- 250-400 word posts.
- Blog titles: tell us why we should click on the link.
9. Make sure your website works on mobile devices.

- In-house counsel are reading daily general business media on their smartphones (53%), tablets (39%) and mobile apps (23%). *

*From In-house Counsel New Media Engagement Survey - 2013

Marketing Tips

10. Know why clients hire you.

- Ask them over informal lunches, meetings.
- Annual satisfaction surveys.

Marketing Tips

11. Write down your annual and weekly marketing goals.

- Check them every day.
- Hire a coach to keep you accountable, if you need one.

Marketing Tips
12. Move to online advertising.

- If you are considering or already advertising, bring online into the mix.
- Highly targeted
- Measurable
- Easy to test messages

13. Read, read, read.

- Subscribe to the Puget Sound Business Journal.
- Wall Street Journal
- Trade publications for your clients
- 1 hour/week to review your favorite blogs


- They communicate your values.
- VistaPrint.com, Moo.com
- There’s no substitute for a professional designer.
15. Efficiency is a competitive advantage.

- Know your costs. Determine your pricing.
- Use technology wisely to manage documents, accounting, etc.

16. Read *Never Eat Alone* by Keith Ferrazzi.

“Relationships are all there is. Everything in the universe only exists because it is in relationship to everything else. Nothing exists in isolation. We have to stop pretending we are individuals that can go it alone.”

- Margaret Wheatley

1. Grow your client list.

- Start with whom you know.
- Review old client files - a great place to begin making a list of the names of people you have worked with on a case or project.
2. Assess old prospect files.

- Similar to the old client files, do the same with this list of names. A client that considered hiring you is a good contact. One's needs change so call them.

3. Attack the business cards on your desk.

- Divide them into 'hot and 'cold' prospect' and piles. Start with the hot ones and move onto the cold ones.

4. Review phone directories from employers and make a list.

- Current and former colleagues can be great referral sources.
5. Review school alumni directories and make a list.

- Former classmates are a great resource. People typically want to do business with people they know, like and trust.

6. Review WSBA, KCBA, etc. directories and make a list.

- Create a list of the attorneys you know, have worked with or have been opposing counsel. People typically want to do business with people they know, like and trust.

7. Talk to colleagues.

- People that work for your firm (employee, intern, office shareholders, executive office suite tenants, office service providers, or contractors) can be great sources of referrals.
8. Contact alliance partners.
- Put your contacts from these important organizations on your list and call them.

9. Review affinity group directories and make a list.
- Lions, Rotary
- Church, Synagogue, Mosque, Temple
- Bar sections (S&SP)
- Professional groups tied to industries (i.e.; construction, etc.)
- Niche practices (LGBTQ, etc.)

10. Speak to others serving your clients.
- Accountants, CPA’s, Bankers, Investment managers, Insurance Broker, Hairdresser, Legal Service Providers/Vendors.
11. Contact friends and family.

- Add them to your list if you are comfortable with it.

12. Meet competitors in your industry.

- Think about what happens when there is a conflict or capacity issues.
- Ask to be put on their referral list. Learn about their niche and let them know yours.

13. Invite LinkedIn & LinkedIn Groups.

- Make sure your profile is complete. Invite your contacts to connect with you on LinkedIn.
14. Speak at seminars, educational seminars, presentations.
- Create your own seminar.
- Ask your audience to connect with you on LinkedIn during the conference.
- Include a game to collect business cards, etc.

Business Development Tips

15. Have a pitch for holiday and other events.
- Take your business cards.
- Have a clear, concise response to “What do you do?”

Business Development Tips

16. Learn from your activities.
- Measure your ROI.
- Monitor what works and adjust your plan accordingly.
- Tweak. Work Backwards!
Thank you.
DEVELOPING A NICHE PRACTICE
AND OTHER CREATIVE BUSINESS OPPORTUNITIES

March 21, 2014
Seattle University School of Law

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Ann M. Guinn, Principal of G&P Associates, is a practice management consultant to solo and small law firm practitioners. Drawing upon her 35+ years’ experience in the legal community, Ann helps small firm attorneys develop and implement strategies to build and maintain successful and satisfying law practices. She shows them how to increase profitability, attract more of the right clients, and manage their resources for maximum productivity and efficiency. In addition to one-on-one consulting, Ann regularly offers webinars, private membership groups, and CLEs. She has served with the Executive Committee of WSBA’s Solo & Small Practice Section since 1994. Ann has been a featured speaker at American Bar Association meetings, as well as solo and small firm conferences across the U.S. She is a member of the LexisNexis Firm Manager program Advisory Board and a contributing blogger for LexisNexis. She has served on the Steering Committee for the WSBA/Solo & Small Practice Section’s annual conference since inception in 2006. Ann’s book entitled Minding Your Own Business: The Solo and Small Firm Lawyer’s Guide to a Profitable Practice (ABA May 2010) is available through the ABA webstore at www.americanbar.org. To receive Ann’s free law practice management tips newsletter and notices of her programs, please e-mail her at ann@annguinnconsulting.com.
I  INTRODUCTION

Finding a way to stand out in the crowded legal marketplace is a challenge that can be daunting, at best. You can find yourself in a constant struggle for clients with dozens of other attorneys in your same practice area. That’s a frustrating place to be – and you can end up spending far too much time on marketing your services instead of performing your services. Yet, by simply refining your practice and your business model a bit, you can cut both the financial and time costs associated with marketing and enjoy a steady flow of new clients while giving your existing clients the benefit of your full attention.

So, how do you do this? Let’s look at how you can claim the spotlight – and better serve your clients at the same time.

II  FINDING YOUR NICHE

Perhaps the best way to distinguish yourself from your legal counterparts is by developing a niche within your chosen practice area that enables you to do something or offer something that others can’t. “Why should I care?” you ask. Simple – you’ll save a bundle marketing your focused practice when you only have to get your message out to a segment of the population and not the whole town. Also, you’ll get known for something – and that elevated reputation is the best marketing tool you can have. Instead of taking CLE courses covering a variety of legal issues, you can zero in on those that deal with your specific niche.

Now, when we think of a niche practice, we tend to think of something really unusual like serving clients who’ve been bitten at a petting zoo or who want to start an intergalactic space cemetery. While those would certainly qualify as niche practices, there are many other ways to develop a niche (or focused) practice, even within more common practice areas like family law or estate planning. Not convinced? How about the family law attorney who represents fathers in custody disputes, women who seek a divorce after suffering domestic violence, or divorced/divorcing parents whose children have been spirited out of the country by an estranged spouse. Or estate planning attorneys for folks who wish to provide for their pets through their estate plans, or who have children with special needs, received a large sum for long-term care through a personal injury lawsuit, sizable estates and want to minimize the tax impact on their heirs.

So, how do you find your niche? Start by taking inventory of your current clients and their needs:

- What legal services are you currently providing?
- Do you clients ask for any service you don’t currently offer?
- How many people ask for these additional services?
- How do you handle these requests? Do you refer them away?
- What problems might arise for your client as a result of their current legal issue?
- What other services will your clients need as a result of your work for them? (For example, everyone who goes through a divorce needs a new estate plan, a foreclosure client may also need to file for bankruptcy, etc.)
• If your client was referred by another client, what was the criteria for that referral? (For example, you offer evening and weekend appointments, you are responsive to, and accessible for, your clients, your office is conveniently located, or you have a great track record in your practice area, you are full-service, etc.)

• If your client was referred by another professional, what was the criteria for that referral?

By closely examining your current clients and their legal issues, you may spot a specific need that you aren’t meeting, and that isn’t being sufficiently met by others. As your clients talk to you, please listen carefully for clues as to some of their other needs. For instance, a client may mention in passing that her father is in a skilled nursing facility that doesn’t seem to be providing the level of care he needs. She has noticed some unusual bruising on his body during recent visits. This may be a sign of nursing home negligence or abuse – and if Dad is a victim of such abuse, you can be assured he isn’t the only one.

Next, take a personal inventory of your skills, experience, personal interests, and passions. What do you already know that could help others?

• What jobs did you have before you became a lawyer?
• What volunteer work have you done?
• To which organizations do you belong?
• What are your hobbies?
• What challenges have you overcome in your life?
• What is your favorite subject in reading materials?
• What legal issues have you dealt with on a personal basis?
• What segment of the population especially appeals to you?

A few years ago, a family law attorney realized he was burned out on his practice, and he could hardly face coming to work every morning. Rather than give up the practice of law, he decided he needed to change his practice area. In looking back over his life, he fondly remembered his summertime jobs with his uncle’s construction company while he was in college and law school. While he enjoyed being part of a team that was building something to last, he was also constantly reminded of the dangers associated with this work. He had actually handled a PI case for a construction worker a dozen years earlier, but that was his one and only foray into the area of construction site injuries. He decided to turn his focus to helping construction workers who’ve been injured on the job. It was a great choice because he understood what a construction site is all about, where the dangers are, what contractors are required to do to protect workers, and so on. Voila – a new niche practice was born. In the past year, the attorney successfully handled his biggest case ever for a construction worker – and received the largest fee he’s ever gotten in 20+ years in practice – all because he followed his passion and cashed in on his personal experience.

Sometimes a niche practice can develop by accident. An attorney in Southern California has become the “go to” guy for wrongful termination suits against Kaiser Permanente Hospitals after winning a big award for a doctor who was terminated after filing a complaint over ethical violations in the hospital. This attorney’s reputation was solidified within the medical
community after that one, and he’s had to add another associate attorney and a new staff person to help handle all of the work coming his way.

There’s another attorney who agreed to handle a dog-bite case as a favor for his neighbor. He achieved a remarkable victory for the neighbor, and now finds himself deluged with a flood of animal-bite clients, as well as requests to serve as an expert consultant to other attorneys handling similar cases.

Another way to find a niche is by paying close attention to what’s happening in your locale. Make it a point to read the weekly business journal, as well as your local and regional newspapers. Watch for opportunities in the headlines. As you read, ask yourself “what legal issues could be involved here?” and “who is taking care of those needs now?” Watch for underserved people, businesses, or issues.

Regularly check with your local Chamber of Commerce for changing demographics in your community. Lots of seniors moving in? Great – that potentially opens up more work for estate planning attorneys, nursing home and housing construction, home health care workers, elder abuse, Medicaid planning, pension issues, social security or disability issues, and so on. A new manufacturer setting up shop nearby? Smells like opportunity for attorneys due to issues in the areas of employment or labor law, pensions, employment discrimination, construction, land-use, real estate transactions, tax, trucking, air quality, hazmat, and so much more.

Get creative in rethinking your practice, and you’ll come up with things that others haven’t thought of yet. First to market helps you to corner the market, so get those wheels rolling now and build a niche practice designed to help those with specific needs that aren’t being met by other practitioners.

III CONCLUSION

By developing a niche practice, you channel all of your resources and direct your marketing efforts toward meeting the needs of a specific segment of the population. Finding a commonality amongst your clients is a good starting point. Tapping into your personal experience can help you identify underserved needs for your target market, as well as help you connect on a personal level of with your clients. After all, there’s not much that serves to bond us to others faster than shared experiences.

No matter which direction you choose, make it your goal to become the very best attorney you can be in that practice area. Build a strong reputation for superior skills in dealing with specific issues and you’ll find that new clients will be seeking you out on a regular basis. What a wonderful place to be!
MAKE A NAME FOR YOURSELF:
FOCUS YOUR PRACTICE

When your great-grandfather opened his law practice, lawyers were like the old general practice doctors; they handled anything and everything that came along. Need a will? I can do it. Got cheated on a horse swap? I’ll take care of it for you. Want to stake a claim to a section of the river that you think holds the Mother Lode? No problem, I’m on it. You’ve got an idea for a new ramrod to help you load your rifle? Step right this way to apply for a patent. Want to buy the old Hackelman place? It’s as good as yours.

Times have changed and so have clients’ needs. The simplicity of the law was lost many years ago, and in its place is a monstrous tangle of ordinances, regulations, and laws covering everything from who gets Grandma’s china when she didn’t leave a will to which country has rights to a pod of orca whales frolicking in the Pacific Ocean. It’s too much and a single attorney cannot possibly know it all. So, if you’re trying to be all things to all people — give it up.

Going back to the doctor analogy, think of it this way. You awaken one morning with a severe pain down your left arm, dizziness, chest pains, and shortness of breath. Quick, who do you call—a general practitioner or a cardiologist? You aren’t sure what’s wrong, but wouldn’t you feel a whole lot better having someone who deals with these symptoms all the time checking you over? Someone who knows when chest pains are heart-related and when they are the result of indigestion? Someone who knows exactly what to prescribe and the correct dose for your age and body size? Someone who knows the right questions to ask and what to do with your answers?
Law firm clients feel more comfortable dealing with someone they perceive to be an expert.

Clients feel the same way about attorneys as you do about a doctor treating your chest pains—they want someone who has been down this road before and knows what to do. They understand that an experienced attorney has a high level of expertise, and because of that, the practitioner can do the work much more quickly than someone who is learning as he goes. The faster the work is done, the less it will cost. Clients don’t like paying for an attorney’s learning curve.

Even with the complexity of the current laws, many small firm attorneys still tend to handle multiple practice areas so they don’t lose any potential clients. This puts a lot of stress on the attorneys, and could jeopardize the client through faulty, but well-intentioned work.

Focus with a purpose.

Focus your law practice on one or two practice areas that are complementary, thus allowing for cross-selling of your services. An example would be adding estate planning to a family law practice. Everyone who goes through a divorce needs a new estate plan. Why refer that work away when you could do it yourself? How about family law paired with criminal defense for matters of domestic violence.

Why focus your practice? It’s pretty simple; you’ll:

- earn 10-15 percent more than generalists, on average;
- become more efficient with your work, and that leads to increased productivity and profitability;
- increase referrals by building a reputation. You are much more likely to become known for your expert knowledge in a particular practice area than for your general knowledge of multiple practice areas. When you and your fellow attorneys talk about the experts in your field, how many times does the name of a general practitioner get mentioned first? Would you rush to sign up for a CLE on the new Social Security laws if it was taught by an attorney who handles family law, bankruptcy, personal injury and criminal defense in addition to helping an occasional client with a Social Security issue? How likely are you to refer a client to a generalist over a specialist?
- attract high caliber talent who want to work with you;
- reduce or eliminate your competition;
- be able to increase your rates above your competitors;
- save CLE dollars because you won’t need to take programs in multiple practice areas; and
save marketing dollars because you’ll know exactly who to market to and how to reach them in the most effective manner.

Other than that, I can’t think of a reason to focus your practice. Now, for the sake of fairness, I am perfectly prepared to hear your reasons for not focusing your practice. Okay, we both know I can’t hear you, but I have heard plenty of other attorneys try to convince me that listing five separate practice areas on their business cards makes sense—and I have yet to buy into one of their explanations.

**What it means to focus.**

So, let’s look at what it means to focus your practice. *Focus* doesn’t necessarily mean you have only one practice area; rather, it can refer to a practice that meets the needs of a particular segment of the market. For instance, if you want to focus on the needs of business start-ups, that could encompass entity formation, policy manuals, employment issues, IPOs, copyright and trademark work, patent applications and defense, real estate development, and more. You see the focus here is on helping new businesses with all of their legal needs, not just incorporation. That’s what I mean about complementary practice areas; they help you provide fuller service to your clients to meet their needs. You’ve also got a built-in channel for new work as your clients grow their businesses.

Another example is family law. I’ve never understood why family law refers primarily to dissolutions. If you were a true family law attorney, you would be serving the needs of the greater family. That could include estate planning, probate, Medicaid issues, adoptions, nursing home abuse, guardianships and conservatorships, end-of-life issues, and so on. You could even throw in personal injury because that certainly is a family issue in many cases.

A relatively new practice area is animal law. I think of dog-bite cases when I think of animal law, but an animal law attorney may also handle purchase/sell agreements for race horses, importation of animals from other countries, sale of livestock across state lines, animal abuse, injury or death of an animal caused by the negligence of a paid caretaker, or injury caused by an animal.

It’s so much easier to market your practice when you are known for something. One of my clients is well on her way to becoming known as “the trademark attorney for green businesses.” She lives and breathes green. She donates a portion of her earnings to environmentally conscious groups. Her office and home are 100 percent wind powered. She sends me thank-you notes on beautiful biodegradable note cards that are impregnated with wildflower seeds. The instructions on the back tell me to plant the card in a pot, add water, and watch for the miracle to happen. She goes to every conference, trade show, and forum in this burgeoning industry. She serves on the boards of several environmentally friendly nonprofit organizations. She knows exactly who to market to and how to do it because her
practice has such a sharp focus. She spends no money on Yellow Pages ads. When she networks, it’s with targeted people in specific settings. In all my years, I’ve never seen a more focused practice. You cannot separate her personal commitment to sustainability from her law practice. They are one and the same. In just a few short years, she has built a name for herself, and it’s not one that you would recognize. But, her potential clients know her—and that’s what counts.

**How to focus.**

To figure out what new services you might add, you first need to know if there is a need for these services. Solicit information from your local chamber of commerce on the demographics of your community. Read the local business journal and the business section of your newspaper. Find out what businesses are coming in, then think in terms of what that could mean to your practice. As an example, a new data center is being built on the edge of town. What does that mean for attorneys? Employment, real estate, pension plan, land-use, construction, housing, and easement issues are a few of the practice areas that could be needed.

Watch for trends in segments of the population. Is your community growing because of an influx of senior citizens looking for affordable living? That will mean senior housing and independent, assisted living, and skilled nursing facilities will probably come in, as well. Estate planning and probate work could pick up. Pension plan issues and securities litigation could increase.

Let’s say you pick up the paper tomorrow morning and find that a local manufacturer is laying off 370 people. What legal issues might arise there? Wrongful termination, pension-plan collapse, age discrimination, retaliatory treatment, and unemployment benefits issues are among the many that come immediately to mind.

There is opportunity all around you, in any economy. The key is to recognize it and incorporate it into your business plan. Develop a focus to your practice and become known as the attorney to go to for specific issues. Your clients will appreciate working with someone who specializes in particular problems because you’re going to save them time and money, and they just might end up with a better resolution because of your heightened expertise. And, they’ll love bragging to others that they went to the best attorney in town for their problem!

**Tip:** Sharpen your focus and you’ll find yourself standing out from the crowd!
An Ethics Survival Guide to Legal Marketing on Social Media

Greg McLawson

In days of yore, advertising legal services was not only frowned upon, but outright prohibited. Bar organizations have dramatically departed from this traditional view and now see legal marketing as an important way for the public to learn about legal services, especially individuals who have not yet worked with lawyers. The vast majority of law firms now rely on some form of social media marketing, which may be a means of reaching traditionally underserved populations.

The prevalence of social media advertising suggests that most attorneys will have a working understanding of the interactive online platforms encompassed by that term. For a quick roundup, the principal players in the field can be glibly summarized as follows:

Facebook-I like doughnuts
Twitter-I'm eating #doughnuts
Instagram-Here is a polaroid-esce [sic] photo of doughnuts [..]
Youtube-Here I am eating doughnuts [on video]

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1 See RPC 7.2, cmt. [2] (“…Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services…”).

2 According to a study by ALM Legal Intelligence this figure is nearly 85%. See John G. Browning, Facebook, Twitter and LinkedIn – Oh My! The ABA Ethics 20/20 Commission and Evolving Ethical Issues in the Use of Social Media, 40 N. KY. L. REV. 255, 256 (2013) (citing Am. Lawyer Media, 2012 ALM Legal Intelligence Survey (2012)).

3 Useful engagement with the ethical issues discussed in this article does not require a crisp legalistic definition of “social media,” and the rapidly changing nature of the technology landscape has made such definitions quite slippery. See, e.g., Oxford Dictionary, http://tinyurl.com/kqxxr6d (last visited Mar. 6, 2014) (“Websites and applications that enable users to create and share content or to participate in social networking”); Meriam-Webster, http://tinyurl.com/6gehdkq (last visited Mar. 6, 2014) (“forms of electronic communication (as Web sites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (as videos)”).
LinkedIn

My skill includes doughnut eating. 

Perhaps looming largest for many legal marketers, the “blawg” (or legal blog) might be characterized as follows:

Have you been injured while eating a doughnut?
Here are my knowledgeable comments about others injured while eating donuts. (Note: comments apply only to doughnuts consumed in the State of Washington).

Take out “doughnut” and substitute a variety of legal subjects, and the attorney/social media author will find herself wading into an emerging field of legal ethics. This article provides attorneys with practical guidance for engaging social media while keeping on the ethical straight and narrow.

Not every form of internet marketing relies on social media per se, and this article will not address such topics as pay-per-click advertising, or “daily deal” sites such as Groupon and Living Social. Also, an attorney’s use of social media marketing is regulated by law in addition to ethics codes, but discussion of those laws is beyond the scope of this article.

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5 Webopedia, http://tinyurl.com/ttmerdu (last visited Mar. 6, 2014) (defining blawg as a “[s]lang term used to describe an online blog that is written by lawyers, or one that is focused on providing legal-oriented content”).
6 With pay-per-click advertising an attorney pays for “lead generation” where a website channels individuals looking for legal services to the paying lawyer. The comments to RPC 7.2 allow the use of such services so long as certain precautions are taken, such as ensuring the service is not vouching for the attorney’s expertise in a domain of practice.
7 On daily deal websites consumers receive deeply discounted (usually 50%) prices for a good or service offered on the site for a limited time. Possible ethics issues include the possibility such sites would impliedly endorse an attorney offering services there, or inadvertently create an attorney-client relationship with a consumer purchasing a service. For the view such sites can be used ethically by attorneys see Greg McLawsen, Window Cleaning, Wine Tasting... And Wills? Ethics of Attorney Marketing on 'Daily Deal' Websites, Vol. 67, No. 5 NWLAWYER 7 (July 2013).
Certainly attorneys need to exercise their own professional judgment when interpreting their ethical responsibilities, and it is recommended they do so deliberately. By adopting an office policy on social media use attorneys force themselves to articulate how they will comport themselves. 9 This article attempts to offer practical rules of thumb that could serve as the basis for a social media policy. The article identifies “real issues” that merit serious attention from attorneys, and suggests defensible rules of thumb for contending with these issues. The article also identifies “red-herring issues” that, in this author’s estimation, are mostly academic. Reliance is made on the Washington Rules of Professional Conduct where possible. But in this rapidly evolving area of legal ethics, the article also references guidance from other jurisdictions, and the American Bar Association’s Commission on Ethics 20/20.10

I. Real issues.

1. You are neither an “expert” nor “specialist.” Sorry.

What rules?

RPC 7.1, 7.4(d)

An attorney can make neither false nor misleading statements in her marketing materials. 11 Likewise, an attorney may not claim specialization or expertise in an area of practice except upon issuance of an appropriate certification (and Washington

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10 The Commission on Ethics 20/20 was formed in August 2009 with the goal to assess the impact of globalization and technology on attorney ethics. Glen M. Vogel, A Review of the International Bar Association, LexisNexis Technology Studies and the American Bar Association’s Commission on Ethics 20/20: The Legal Profession’s Response to the Issues Associated with the Generational Gap in Using Technology and Internet Social Media, 38 J. LEGAL PROF. 95, 115-16 (Fall 2013).
11 RPC 7.1. False or misleading statements are also prohibited in other areas of the Model Rules. See RPC 4.1 (Truthfulness in Statements to Others), RPC 4.3 (Dealing with Unrepresented Person), RPC 4.4 (Respect for Rights of Third Persons), and RPC 8.4 (Misconduct). A threshold question for all ethics questions about social media use is whether the use constitutes advertising for purposes of the RPCs. This author agrees with other commentators that it is “difficult to see” now most use does not constitute advertising, as client development is generally the ultimate goal. Steven W. Kasten, Professional Ethics and Social Media, 55-Sum. B. B.J. 40, 42 (Sum. 2011).
recognizes none).\textsuperscript{12} For these reasons attorneys need to look carefully at representations a social media platform may be making about the attorney using the platform. Does it hold her out to be an “expert”\textsuperscript{13} or as having a “specialty”?\textsuperscript{14} If so, the attorney could be in trouble, since she would not be allowed to make such claims herself. Avvo allows attorneys to designate “practice areas” and LinkedIn allows users to designate “skills” that include areas of legal practice. Neither of those labels implies are problematic.

Practice tip

Log out of your profile on a social media platform, then navigate to the profile as though you were a user seeing it for the first time. Ask yourself, does the website assert that this attorney is an expert in a particular area? If so, that’s a problem.

2. \textbf{On Q&A forums, avoid “you.”}

What rules?

RPC 1.18

On legal Q&A forums like Avvo, users post anonymous questions seeking input from attorneys. If an attorney answers such a question, might the forum user become a prospective or actual client of the attorney? If so this would trigger duties on the part of the attorney to safeguard confidential information and screen for conflicts.

Avvo’s General Counsel takes the position that no client relationship could form given the anonymity of the forum user.\textsuperscript{15}

\textsuperscript{12} RPC 7.4(d) (“A lawyer shall not state or imply that a lawyer is a specialist in a particular field of law…”).

\textsuperscript{13} South Carolina Ethics Opinion 12-03. Cf. Tom Mighell, \textit{Avoiding A Grievance in 140 Characters or Less: Ethical Issues In Social Media and Online Activities}, 52 \textit{THE ADVOC. (TEXAS)} 8, 10 (Fall 2010) (advising against answering questions on LinkedIn where sufficient answers could result in the designation “expert”).

\textsuperscript{14} New York State Ethics Opinion 972

\textsuperscript{15} He opines:

…attorneys who answer questions in the offline world may end up with “prospective client” obligations under ABA Model Rule 1.18. But on Avvo Q&A this isn’t a concern because the askers are anonymous – this inherently protects against inadvertent formation of the attorney
An individual becomes a prospective client by engaging the lawyer in a “discussion” with the reasonable expectation there is a possibility of forming an attorney/client relationship. The General Counsel’s view appears to be that it is per se unreasonable for the user to believe an attorney would be agreeing to form a relationship with an anonymous individual. But it is less clear whether a user could reasonably believe that an attorney might be considering formation of a relationship with the anonymous user, and that identity would be revealed if the relationship was formed. Whether this could give rise to duties owed to a prospective client is not clear.

Assuming the anonymity of users does not automatically prevent the user from becoming a prospective/current client, how can the attorney safeguard herself? Commentators routinely suggest attorneys avoid giving “fact-specific legal advice” and instead give only “general” information. This standard is difficult in practice, since virtually all forum users are seeking advice on legal issues specific to their own needs. Few forum users care about the theoretic intricacies of the Rule Against Perpetuities.

A good rule of thumb may be to ask whether a forum response requires use of the second-person personal pronoun (“you”).

Example

*Question.* “My landlord is trying to evict me from my apartment. He told me this over the phone, then emailed me this legal document. I have court next week, help!?”

*Bad answer.* “Your landlord did not comply with the legal requirements for serving the document required to evict you. You should object in court that service was not proper.”

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16 RPC 1.18(a). See RPC 1.18, cmt. [2]. The ABA 20/20 Commission advised replacing the verb “discusses” with “consults”. 17 Ariz. Ethics Op. No. 97-04 ("Lawyers should not answer specific legal questions from lay people through the Internet unless the question presented is of a general nature and the advice given is not fact-specific"). Cf., Lackey & Minta, supra note 17, at 164.
**Better answer.** “There are very specific rules landlords must follow when starting an eviction lawsuit. These include strict rules for sending the tenant the document required to start the lawsuit. You should consult an attorney immediately to find out whether your landlord followed these rules.”

Despite the amount of attention this issue receives from regulatory bodies and commentators, it is unclear how often forum users claim a protected relationship with an attorney who answered a question. Although the Avvo forum fields “millions” of user questions, its General Counsel is aware of no incident where a user claimed formation of a relationship with an attorney/answerer.¹⁸

### 3. Include a disclaimer (but’s it’s no panacea).

Judging by signature blocks on emails, attorneys are fond of disclaimers, and seem to have great faith in their totemic value. It seems attorneys believe that magical words at the end of an email can prevent waiver of evidentiary privilege, erase disclosures of client confidences, and pretty much safeguard against any potential ill worked by a poorly-directed email. This author is extremely skeptical such disclaimers have any legal significance, and is likewise skeptical that most disclaimers have much value in social media contexts. But they also don’t hurt.

A simply-worded disclaimer should be included wherever an attorney participates in information-sharing social media forums. The goal of the disclaimer is to undercut the reasonableness of any misperception by a user that she is forming a client relationship with the attorney. Since the content of the posting will often constitute legal advertising, the disclaimer should either include the attorney’s name and office address or provide a link to that information.¹⁹

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**Example**

*The discussion above is general information only and does not constitute legal advice. By sharing this information I am not agreeing to be your attorney.*

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¹⁸ Email from Josh King, *supra* note 15.  
¹⁹ See RPC 7.2(c).
You should consult an attorney to receive legal advice specific to your situation. Information about me can be found at <<URL link>>.

As just one example of why lawyers should be skeptical of disclaimers, whether or not an exchange qualifies as legal advice is a matter of law. A plumber cannot escape liability for the unauthorized practice of law by advising an individual about the enforceability of a running covenant, then announcing that her advice was intended only as “general information.” Nor can an attorney erase the nature of fact-specific statements made to a user on a social media platform. At most, “general information” disclaimers serve to underscore to the user that an attorney/client relationship is not intended. In other words, disclaimers undercut the reasonableness of a user’s belief that she is forming an attorney/client relationship.

4. Don’t talk about clients/cases without a signed release.

What rules?

RPC 1.6

Attorneys may be tempted to discuss client matters over social media in at least a couple contexts. First, it is tempting to broadcast client success stories on blawgs, Facebook and LinkedIn, letting colleagues and prospective clients know about your good work. Second, an attorney who receives a negative review from a client on a rating website such as Yahoo Local, Yelp or Google+ may want to share her side of the story (“yes it took three months to file the petition because you dropped off the face of the earth”).

Any law student would hopefully understand that she cannot broadcast personally identifying information about a client over social media, such as a client’s name. Yet the broad protection of client confidences includes all information relating to a

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20 See, e.g., In re Skinner, 740 S.E.2d 171 (Ga. 2013).
21 Or so one would hope. See Michael E. Lackey Jr. and Joseph P. Minta, Lawyers and Social Media: The Letal Ethics of Tweeting, Facebooking and Blogging, 28 Touro L. Rev. 149 (2012) (discussing a case in which an assistant public defender “referred to ‘clients by either their first name, a derivative of their first name, or by their jail identification number’”) (quoting In the Matter of Kristine Ann Peshek, No. 09 CH 89 (Ill. Attorney Registration & Disciplinary Comm’n Aug. 25, 2009)).
representation, encompassing far more than just information that could be traced to an individual client. 22 This broad scope far exceeds information about the client that is personally identifying. 23

An attorney needs her client’s permission before announcing a client success on the firm’s website or social media. 24 Certainly an attorney is best protected by securing this permission in writing. Such an agreement need not be elaborate.

Example

The author had an immigration client successfully approved for permanent residence. On the way out of the immigration interview, the client asked to have someone snap his photo with the author. When the client sent the photo to the author, the following exchange took place:

Author: “Thanks! Is it okay if I share this on Facebook? (I won’t use your name, of course).”

Client: “It’s ok u can tag me id that’s ok with u.”

For attorneys currently or formerly in Big Law, greater caution will need to be taken to ensure they do not discuss matters without realizing they pertain to a client. Before discussing a case or legal situation online the attorney should turn to her conflict checking system to insure she will not be discussing a current or former client. 25

22 RPC 1.6. See also RPC 1.9 (former clients) and RPC 1.18 (prospective clients).
23 But some jurisdictions hold that an attorney’s first amendment rights may protect the ability to discuss some publically-available information about his client matters, even for commercial speech purposes. See, e.g., Hunter v. Virginia State Bar, 744 S.E.2d 611 (Va. 2013).
24 See ABA Formal Opinion 10-457.
5. Monitor endorsements.

A plethora of websites – LinkedIn, Avvo, Yelp, Google+, etc. – allow attorneys to receive endorsements and recommendations (or critiques) from individuals including current/former clients. If an attorney elects to participate on those websites then she is responsible for the content of those recommendations to the same extent as if they were statements of the attorney herself. In essence, the statement is that of the attorney’s by adoption.

The attorney’s core responsibility here is to ensure the endorsement is not false or misleading. Misleading statements include those that have a “substantial likelihood” of leading the reader to form a false conclusion about the lawyer, as well as those that give the impression the attorney is guaranteeing similar results to those achieved for other clients.

Practice pointer

Most websites allowing user ratings and feedback allow settings to alert a user when she has received a rating. Make it a practice to monitor your inbox for these alerts and to review the rating soon after receiving it.

27 South Carolina Bar Ethics Advisory Comm., Formal Op. 09-10
28 RPC 7.1.
29 RPC 7.1, cmt. [2] (“...A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation”).
30 RPC 7.1, cmt. [3] (“An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case...”).
31 Some commentators suggest the volume of ratings, and their iterations on different websites, will impose “quite a burden.” Comisky & Taylor, supra note 26, at 316. Most attorneys, however, are unlikely to receive tidal waves of feedback from clients. Those who do should have the resources to delegate to ethics counsel, who they presumably will have the resources to retain.
An additional question arises when attorneys agree to *quid pro quo* endorsements: agreeing mutually to exchange endorsements on, for example, LinkedIn. It is unsettled whether such an arrangement is an impermissible offer of value in exchange for a recommendation, but the attorney must ensure the endorsement is truthful and not misleading. If an endorsement is based principally on the anticipation of a reverse endorsement, it is the view of this author that the endorsement is misleading.

Example

The author once got into a discussion on a law practice list serve about the ethics of endorsement-swapping, taking the view it is not allowed. An attorney the author had never heard of, who was involved in the discussion, immediately endorsed the author. It seemed the endorsement was made as a joke *quid pro quo* endorsement, so the author deleted it.

II. Red-herring issues.

1. **Blogs and Q&A forums aren’t direct solicitation.**

   What rules?

   RPC 7.3(a)

   A bedrock principle of legal marketing prevents attorneys from real time solicitation of prospective clients. Can an attorney run afoul of this rule by posting replies on legal blogs, or answering

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32 RPC 7.2(b) (“A lawyer shall not give anything of value to a person for recommending the lawyer’s services…”). *Cf.* Robert L. Shaver, *Legal Ethics Rules Apply to Attorneys’ Social Media and Websites, 53-FEB. ADVOCATE (Idaho) 16, 17 (Feb. 2010).

33 The *quid pro quo* endorsement scenario is distinguishable from reciprocal referral agreements, which are endorsement by the comments to RPC 7.2. See RPC 7.2, cmt. [8] (“A lawyer also may agree to refer clients to another lawyer in return for the undertaking of that person to refer clients or customers to the lawyer”). The issue in *quid pro quo* endorsements is the reasonable understanding of a third party viewing the endorsement, which she is entitled to believe is based on independent merit and not self-interest. By contrast, the potential ethical pitfall with reciprocal endorsements is the exchange of value for client referral. *See id.*

34 RPC 7.3(a).
forum questions? After all, those electronic replies will be delivered instantaneously – are they real time solicitations?

The answer is: almost certainly not. The prohibition against real time solicitation protects consumers from being pressured into representation, since after all, attorneys are supposed to be professional persuaders. Yet despite the speed at which forum replies are electronically delivered, the communication medium lacks the hallmarks of an exchange where the consumer could be pressured into hiring the attorney. As one bar committee explained, real-time communications include “electronic modes of communication used in a way in which it would be socially awkward or difficult for a recipient of a lawyer's overtures to not respond in real time.”35 It is easy enough for a consumer to simply ignore an attorney’s response on a forum, and probably consumers generally do.

2. Discipline for conduct in other jurisdictions.

What rules? ____________________________

RPC 5.5(a)

Jurisdictions across the United States vary significantly in their approach to many ethics issues, including use of social media. Even if an attorney thoroughly knows her own jurisdiction’s rules, her social media will be broadcast nationwide. Can she ensure a blog post doesn’t run afoul of marketing rules in Alabama or Hawaii? Specifically, commentators warn that attorneys may inadvertently engage in the practice of law in other jurisdiction with their social media use, offering legal advice where they are not licensed to do so.36

A practical approach to this question is to ask whether the attorney is interested in soliciting clients from other jurisdictions. If the attorney’s practice is limited to the state or states in which she is

36 See, e.g., Lackey & Minta, supra note 21, at 163 (“the same technology that allows lawyers to easily send information across global networks also makes it easy for lawyers to engage in law practice within jurisdictions where they are not licensed”). See RPC 5.5(a) (“A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so”).
licensed, it is hard to imagine another jurisdiction would have an interest in vetting her conduct. Likewise, the attorney will want to ensure she has not provided advice in social media so specific it might be construed by the reader as instructions for drafting a legal form in another jurisdiction, which could constitute the practice of law. But as described above, it is always sound advice to avoid this level of specificity, regardless of where the user is located, to avoid creation of an attorney/client relationship.

For attorneys such as immigration practitioners, whose license permits them to engage clients in other jurisdictions, greater caution is warranted. If a firm is attempting to build a nationwide client portfolio, it may need to calibrate its social media marketing based on the most conservative jurisdiction reached by its outreach campaigns.

3. Inability to include firm information.

What rules?

RPC 7.12(c)

Some jurisdictions, including Washington State, require that legal advertising include the name and office address of the attorney responsible for the advertisement. Some commentators have suggested that “it can be impossible” to comply with this requirement on a platform such as Twitter, whose 140-character limit leaves too little space for the attribution. Unlike print or billboard advertising, formats like Twitter make it easy for the consumer to click through to the attorney’s profile page, which can easily include all the required information about the attorney. It is difficult to imagine an attorney would face sanction for a Tweet – assuming it qualified as advertising – if her name and office address was readily identifiable on her profile page.

37 This practical view is suggested by Prof. Bruce Green at Fordham University School of Law. Gary Munneke, A Conversation About Legal Ethics and Social Media, 84-Sep. N.Y. St. B.J. 10, 18 (Sep. 2012).

38 See Michael H. Rubin, The Social Media Thicket for Mississippi Lawyers: Surviving and Thriving in an Ethical Tangled Web, 31 Miss. C. L. Rev. 281, 286 (2012) (citing cases in which an attorney sold legal forms and assisted a consumer in completing forms).

39 Washington RPC 7.2(c) (“Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content”).

40 See, e.g., Lackey & Minta, supra note 21, at 157-58.
4. Imperm issibility of friend requests.

What rules?

RPC 7.3(a), 7.3(b)

Some commentators voice concern that the prohibition on direct solicitation could be violated by a Facebook “friend request” or LinkedIn “invitation” sent by an attorney with the hopes of wooing a potential client.\(^\text{41}\) In fact, at one point the Kentucky bar proposed a rule that would require attorneys to pre-screen and pay a fee for any advertisement posted on Facebook.\(^\text{42}\) The “friending” concern appears to be misplaced, since only “real-time electronic contact” falls within the scope of the direct solicitation prohibition.\(^\text{43}\) Friend requests and invitations are more like postal mail than a live phone call, in fact they will often be received via e-mail.

5. Clients revealed through LinkedIn/Facebook connections.

What rules?

RPC 1.6

On networking forums like LinkedIn and Facebook, once User A becomes connected to User B, she is typically able to see all of User B’s other connections on the forum. If User B is an attorney who is connected to her clients on the forum, does that mean she has violated RPC 1.6 by allowing User A to view her list of connections? Some commentators appear to believe so,\(^\text{44}\) but this view is overly cautious. Most active LinkedIn users have hundreds of connections. The author of this article has 426, of which only a handful are current or former clients. A far greater percentage of

\(^\text{41}\) Christina Vassiliou Harvey, Mac R. McCoy & Brook Sneah, 10 Tips for Avoiding Ethical Lapses When Using Social Media, 2014-Jan. BUS. LAW TODAY 1, 2 (Jan. 2014) (“a Facebook “friend request” or LinkedIn “invitation” that offers to provide legal services to a non-lawyer with whom the sending lawyer does not have an existing relationship may very well rise to the level of a prohibited solicitation”).

\(^\text{42}\) See Browning, supra note 2, at 272.

\(^\text{43}\) RPC 7.3(a).

\(^\text{44}\) Margaret M. DiBianca, Ethical Risks Arising from Lawyers’ Use of (And Refusal to Use) Social Media, 12 Del. L. Rev. 179, 189 (2011) (“every connection in a user’s network will be able to view who is in the user’s online Rolodex, which could lead to the inadvertent disclosure of an attorney-client relationship”).
the author’s connections probably have an attorney/client relationship with one or more other attorneys on any number of legal matters. A LinkedIn user would have no way of determining whether the author’s connection to another user suggested a client relationship versus any other professional or personal affiliation. Nothing prevents an attorney from meeting a client for an informal cup of coffee at a public location, even though the two could be publically observed together. Also, it is unlikely that the mere fact an attorney is connected to a client on LinkedIn reveals the existence of a client relationship or other information protected by RPC 1.6.

6. De gustibus non disputandum est. 45

What rules?
RPC 7.2

For whatever reason, social media – more than other marketing media – seems to invite attorneys to break new ground on the tacky and uncouth. At what point does racy or tasteless marketing cross the line into sanctionable unethical marketing? In this author’s view, probably not before the attorney’s business implodes. Generally, the RPCs recognize matters of taste as subjective judgments beyond the purview of ethical censor. 46 While egregious tackiness might rise to the level of misleading advertising, this boundary is probably less restrictive than what the free market is likely to tolerate. In other words, an attorney should likely be more concerned about whether the advertising conveys the desired image of herself in the community than whether it will exposure her to bar sanction.

III. Conclusion.

A conservative reading of the Rules of Professional Conduct will leave an attorney quivering in her boots at the thought of social media marketing. Attorneys who are willing to think critically about the goals underling the Rules, and who are willing to exercise professional judgment, should be able to venture off into the realm of social media in a responsible manner. At the same

45 Latin, meaning roughly, matters of taste cannot be disputed.
46 RPC 7.2, cmt. [3] (“Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment…”).
time, social media outlets also present a wealth of opportunities for attorneys who are more inclined to expound on intractable ethical dilemmas in the more legally conventional realm of law review articles. But those looking for responsible means of promoting their private law practices will need to separate the “real issues” from “red herrings.”

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