10 Ways To Work Smarter, Not Harder, And Be Ethical

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Your Firm
1. Surround yourself with good, happy people

• Law practice is stressful
• Stressed people do dumb things
• Minimize your stress

• And you may be responsible under Rules 4-5.1 and 4-5.3
Get the "Right People on the Bus"

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<th>Delivers Results</th>
<th>Culturally Aligned</th>
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<td>Yes</td>
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- **Big Question** – Attempt to keep but be willing to lose
- **Keeper** – Reward, retain, and enjoy
- **Lost Cause (?)** – Likely not worth keeping
- **Weak** – Likely worth a little more effort
2. Compensate Fairly

• Money (alone) will not motivate the best employees

• Need fair compensation
  – External
  – Internal

• Assess what else makes employees tick
  – Cause
  – Work to live
  – Interesting/exciting work
Motivation – Daniel Pink

• Autonomy – urge to direct own life
• Mastery – desire to get better and better at something that matters
• Purpose – Yearning to do what we do in the service of something larger than ourselves

3. Use Employment Agreements

• Four things for all lawyer employment agreements
  1. Sharing of fees – or that fees are not shared
  2. Confidentiality provisions
  3. Notice upon departure
  4. Return of firm property

• Omit the non-compete for lawyers – it likely violates Rule 4-5.6(a)
Hess v. Bresney (7th Cir. 2015)

- Hess was terminated from K&A
- Hess sued for fees for cases where he "did all the work" before his termination
  - Employment agreement included bonuses based upon fees generated
- Potential ambiguity – "generated" versus "received"
4. Consider Some Lawyer Help

• Flexible staffing ethics
  – "Contract attorney" – "in" firm
    • Imputation of conflicts
    • Likely no limit on fee sharing
  – "Temporary attorney"
    • Notice if independent or fee sharing
    • Possible imputation of conflicts – segregation from firm
    • Charge as expense (with any surcharge disclosed to client) or bill as fees (reasonableness limitation)
Your Practice
Whom Do You Recommend?

A teenage relative has been charged with a significant crime. Whom would you recommend?

A. Your best friend, a solo lawyer who "does everything"
B. A friend who is building a criminal defense practice, seems very competent, and has tried to send you work
C. Star criminal defense attorney Michael Tigar
Why?

• Familiarity
• Relationship
• Reciprocity

• Choosing "good enough" – people don't look to make the superior choice, but to avoid making a bad choice

  – Harry Beckwith, *Marketing the Invisible*
Why Focus?

"Narrow your focus to broaden your appeal."

Harry Beckwith, Selling the Invisible
5. Focus on a Niche

• Helps you maximize value to clients
• Encourages "competent" practice as required under Rule 1.1
• "Top of Mind"
• Clients through referrals
Client's Perception of Importance

Low

High

Price Sensitivity

Low

High

Standardized Services – Focus on Speed, Efficiency, Price

Client-Tailored Services

"Bespoke" Services

Low
Possible Focus

- Scope of Practice
- Industry
- Geography
Inherit a Niche

• Already have clients
• Learn on the billable clock
• Already have credibility among targets
• Senior can open doors

• Disadvantages
  – Waiting for succession
  – Practice or competition may change
  – Success of senior may be personal
Be a Pioneer

• Identify and follow passion
• Target your own connections and relationships
• Results depend upon you and your actions

• Disadvantages
  – Results depend upon you
  – Must blaze own trail
  – Fewer resources in place, will take longer
The **One-Off Niche**

- Already have (potential) clients
- (May be able to) learn on the billable clock
- Already have credibility among targets
- Senior can (help) open doors
- Better sense of industry and opportunities
- Ability to develop passion

- Disadvantages
  - Limits on freedom
  - Must deal with senior's shadow
  - Limited by existing practice
6. Identify Your Desired Prospects

• Key factors
  – Feel some passion for the work
  – Will use your services
  – Can support your life(style)

• Prospect may be client, or referral source/payer
7. Communicate with Targeted Prospects

Decent, competent lawyers with solid marketing

*Out-earn*

great lawyers with little marketing
Prime Limits on Marketing
What Works

61%  Visiting clients

9%   Firm-sponsored seminars

12%  Organizational Involvement

3%   Speeches

0%   By-lined Articles

2%   Website

3%   Newsletter

10%  Other
Business Development Continuum
LinkedIn Buzz

422 Profile views
Last 90 days

42 Viewers found you from Google Search

6 Viewers who work at Bryan Cave

33 Viewers with the title Non-profit Board Member / Advisor

Profile views
Projected Views
Actions Taken

Feb 15 – Feb 21

319 Profile views
Up 2,568% from the previous week

30 Actions taken
Up 650% from the previous week

What you did:
• Added 18 connections
• Edited 8 positions
• Endorsed 3 people
• Changed your photo

Get more profile views

DOWNEY LAW GROUP LLC
Please RSVP soon if you can make the Downey Law Group party on April 19 to celebrate a successful first year. 1.0 credits of Missouri Ethics CLE followed by food and drinks at the Cheshire Inn. Details attached.
Ethics Regulations of Solicitations

• Marketing techniques not allowed
  – In-person or real-time solicitation of strangers
  – Paying others to refer you work (but pay-per-click and pay-per-lead are probably okay)
  – Using "runners" or sharing fees with non-lawyers
  – Illegal activities
  – Improper claims as "specialist" or "expert"
Most other techniques are allowed, but keep everything absolutely candid.

Rule 4-7.1 – Any Communication

Rule 4-7.2 – Advertisements

Rule 4-7.3 – "solicit" real-time

Rule 4-7.3 – "solicit" in writing
8. Screen Your Clients

BAD CLIENTS WILL STEAL YOUR SOUL
Protections from Bad Clients

• Establish "warning signs"
• Talk about matter up front – what are the expectations
• Engagement letters
• Retainers
• Beware slow payers
• Beware "shoppers"
Dealing with Dangerous Clients

• EAR Statements
  – Empathy
  – Attention
  – Respect

• Ask them to evaluate alternative courses of action
• Focus on future not past conduct
• Consider terminating the representation
Get Paid
9. Tell Clients What It Will Cost

• Rule 4-1.5 comment [2]
  – [2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible.
  – In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established.
  – Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee, and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation.
    – A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.
10. Consider “Retainers”

• “Retainers” – needs an explanation
  – How much?
  – Where do you deposit them?

• Where should a lawyer put an advanced payment of a fixed fee?
Basic Rule on Handling Funds Paid for Legal Services

Payment
Trust Account

Work

Payment
Operating Account
"Tricky" Transactions

• "True" retainers
• Fixed fees paid in advance – in trust or not
• Funds subject to dispute

• "Advance payment" retainers
Retainers by Credit Card

• Where do fees paid in advance go?
  – Majority – Trust account (must track bank fees)
  – Minority – Operating account

• Consider lawyer-specific credit card service
  – Advance payments can go to trust account, but bank charges and chargebacks come from operating account
11. Consider Alternative Fees

- Time-based (Hourly)
- Contingency
- Fixed or flat
- Asset-based
- "Value"
Assessment for AFA

Outcome

Certain

Uncertain

Effort

Fixed

Risk-Sharing

Uncertain

Certain
12. Terminate Problem Clients

• Rule 4-1.16(a) requires termination when a representation is illegal, unethical, against client's will

• Rule 4-1.16(b) permits termination when there is "good cause" or the termination can occur without causing the client "undue prejudice"
Mandatory Withdrawal – Rule 4-1.16

• Except as stated in Rule 4-1.16(c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

  (1) the representation will result in violation of the rules of professional conduct or other law;
  (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
  (3) the lawyer is discharged.
Permissive Withdrawal – Rule 1.16(b)

• Except as stated in Rule 4-1.16(c), a lawyer may withdraw from representing a client if:
  (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
  (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  (3) the client has used the lawyer's services to perpetrate a crime or fraud;
  (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
  (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
  (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
  (7) other good cause for withdrawal exists.
Court Approval – Rule 4-1.16(c)

• A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
Protecting Client's Interests – Rule 4-1.16(d)

• Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as
  – giving reasonable notice to the client,
  – allowing time for employment of other counsel,
  – surrendering papers and property to which the client is entitled and
  – refunding any advance payment of fee or expense that has not been earned or incurred.

• The lawyer may retain papers relating to the client to the extent permitted by other law.
13. Don't Let Your Client's Problem Become YOUR Problem

• Would you surrender your license for a client?
Thank You

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