Bloomberg
Law Reports®

July 11, 2011
Vol 2 No 2

Law Firm Management

Credit: Joshua Roberts/Bloomberg

Pro Bono: Partnering with Outside Counsel on Pro Bono Matters

Pro Bono

Mintz Levin and its client Liberty Mutual have formed a successful and mutually beneficial pro bono partnership. This article discusses the incentives and rewards for law firms and in-house legal departments to collaborate on pro bono work and the resources available to facilitate such partnerships. p15

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LinkedIn? Twitter? Facebook? Blogs? An effective social media strategy depends on your business case, whether for exposure to new clients, a vehicle for detailed information about yourself, or an edge in winning bids and referrals. p13

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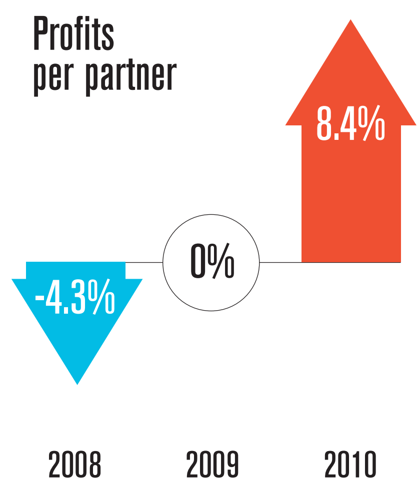
Percentage Increase in Profits per Law Firm Partner



Source: Am Law 100 2011, ALM Media Properties, LLC

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Legal Affairs: Are Lawyers Gouging You? Statistics Say No

Michael S. Smith | Bloomberg News

Lawyers don't get much sympathy

Rightly or wrongly, in the view of much of the public, attorneys are overpaid, litigation-crazy, and insensitive. Former vice president Dan Quayle made bashing lawyers a popular campaign theme last year, and the profession can't seem to shake the ambulance-chaser tag.

Sure, attorneys have their faults. Surprisingly, though, raising their fees isn't one of them right now.

In fact, legal fees is one of the few components of the U.S. Consumer Price Index that isn't going up. The price for attorney services is flat since September 1992. It actually declined slightly this year.

By contrast, costs for most goods and services have risen 0.3% in 1993.

Rich and Fat Lawyer Isn't the Norm

Lawyers who specialize in day-to-day matters like wills, real estate closings, personal bankruptcy or divorce, say that the image of an attorney in a three-piece suit, charging $300 an hour is far from the norm. In fact, they say, they're not getting rich and fat doing what they do; their fees haven't gone up for years.

For one reason: Clients shop around too much. And with 800,000 attorneys in the U.S., a firm that raises prices these days loses clients.

"People would go somewhere else," said Gail Koff, founding partner at Jacoby & Meyers.

She should know. Jacoby & Meyers pioneered the concept of the bargain-basement legal firm, urging accident victims to stand up for their legal rights in slick television ads flashing toll-free telephone numbers.

"In a way, it's our own doing," Koff said. "For years, we've preached that consumers should shop around and get the best deal. Well, they do."

So much so that Jacoby & Meyers recently cut the cost of handling a typical uncontested divorce by $100, to $700 plus court fees. The going divorce rate when the firm opened its doors 23 years ago? About $1,500.

> In fact, legal fees is one of the few components of the U.S. Consumer Price Index that isn't going up. The price for attorney services is flat since September 1992. It actually declined slightly this year.

Corporate Law Firms Also Feel Pinch

Much of the pricing pressure comes from too many lawyers chasing too few clients. Since 1970, the number of active lawyers in the U.S. and its territories rose 160% to 799,760 from 304,938, according to the American Bar Association.

The rate crunch is just as bad among corporate law firms. In the go-go 1980s, when firms by and large dictated fees to clients, attorneys wouldn't think of hiring marketing consultants to entice customers; now it's the norm.

Firms that don't do this risk losing so-called "beauty pageants," said Bob Ericson, managing partner at the New York office of Chicago-based Winston & Strawn. In these, clients invite many firms in, look them over, hear their fees, and then pick one.

At Winston & Strawn, where fees range from $100 to $400 an hour, rates have kept pace with inflation during the past year, but just barely, Ericson said.

"It's tough out there," he said. "There is much more pressure (to limit fee increases) than there every [sic] was in the 1980s. Businesses are much more sensitive to legal costs."

Supreme Court Opened the Door

A 1978 U.S. Supreme Court decision letting lawyers advertise their services and prices has also helped control fees. Since then, attorneys have unabashedly pushed their wares in the Yellow Pages and on the airwaves, injecting competition into a profession that once charged anything it wanted, said Marc Galanter, a law professor who heads the Institute for Legal Studies at the University of Wisconsin in Madison, Wisc.

And consumers now hold attorneys to what they say in their ads. Charlotte Engleman's two-attorney firm in East Brunswick, N.J. took out a half-page Yellow Page ad, offering divorce, real estate, bankruptcy and other representation for "reasonable fees."

When people call, the first thing they ask is "how much will it cost," Engleman said.

Charge a few dollars more than the ad next to you on the page, Engleman said, and the client will go elsewhere.

Engleman said she hasn't raised her basic fees in several years.

The rate crunch extends well beyond the major metropolitan areas like New York, Los Angeles and Washington, D.C.

Attorneys Crowd the Prairie

In Lincoln, Neb., which has a robust local economy, lawyers don't dare raise their fees, because the number of attorneys coming into the area is growing wildly. They're attracted to Lincoln's mixture of rustic prairie America and thriving metropolis, locals say.

Consequently, Jim Lamphere, whose small law firm specializes in real estate transactions, hasn't raised his $90-an-hour fee for years and has no plans to do so: "There's a lot of scurrying for clients."

The situation for attorneys isn't likely to get better soon. Once unthinkable, unemployment ranks include more and more attorneys these days. Also, every year law schools crank out fresh recruits.

In fact, because of this, Koff at Jacoby & Myers says she never hires entry level attorneys anymore. "There are a huge number of experienced attorneys on the market," she said.

For attorneys, there may be some good that comes out of the fee crunch. As the image of too many lawyers fighting over wary, cost-conscious clients gets out, attorneys might finally at least squeeze some sympathy out of consumers. Pennies may be more desirable, but that's better than nothing.

Law Firm Finance

Profitability

Law Firms Trim Their Ranks to Boost Profits

By Roben Farzad | Bloomberg News

The big firms in American Lawyer's rankings are changing their business models. Even partners aren't safe now.

April 28 (Bloomberg BusinessWeek) - In boom times, law firms bill tons of hours advising companies on mergers and acquisitions. When things go bust, they rake in fees presented by bankruptcies, reorganizations, and shareholder lawsuits. Yet the billable-hours set was hit especially hard by the crash of 2008 and is only now recovering. Profits per partner (PPP, the industry's generally accepted bottom-line metric) jumped 8.4 percent last year, according to The American Lawyer's 2011 Am Law 100 report, which tracks law firms' financial performance. That came after a flat 2009 and a 4.3 percent drop in 2008.

Law firms' fortunes rose last year in part because of the economic recovery, which allowed firms to bill more hours and discount fees less. What's most notable in the data is the extent to which firms drove profitability by cutting head count-even expensive, but historically untouchable, partners.

"For many years, equity partners were protected from the vicissitudes of firm finances," says Robin Sparkman, The American Lawyer's editor-in-chief. "Their share of the profits may have gone up or down, but their jobs were secure." The American Lawyer reports that overall attorney head count fell 2.7 percent in 2010, the biggest drop since the magazine started its ranking almost 25 years ago. Am Law 100 firms posted an average profit per partner of $1.37 million.

Atlanta's Alston & Bird shows how lucrative keeping the lid on staffing can be. It achieved a 33.7 percent increase in profits per partner (the highest on the Am Law 100) thanks in large part to a 6.7 percent reduction in head count-even as it increased revenue by 3.6 percent in a year that saw it defend Toyota Motor (TM) from safety-related lawsuits.

Shedding attorneys is not unprecedented. Firms jettisoned lawyers after the dot-com crash. What's "stunning" about last year, says Sparkman, is both the rate of head-count reduction and its breadth across seniority. "Previously," she notes, "firms closed offices, shed support staff, and cut back on perks. Now they've taken an ax to some of the senior lawyers, too.

Peter J. Kalis, chairman and global managing partner of K&L Gates, a Pittsburgh firm that ranked No. 70 on the Am Law 100 list last year, with profits per partner at $930,000, pins the industry's brutal cost management on the Great Recession. "What was once taboo-laying off lawyers and cutting a variety of other costs out of the enterprise-became more mainstream," Kalis says.

During the recession, many clients resisted having their accounts handled largely by junior associates, whose relatively low salaries make them profitable for firms, says Bruce MacEwen, a consultant on law firm economics in New York. "If that prop is removed and the law firm wants to keep its PPP up, it has to finally cut equity partners, the denominator," explains MacEwen. "The decrease in that leverage is a secular trend, and I think it's here to stay."

Topping the Am Law 100 in PPP and revenue per lawyer was Wachtell, Lipton, Rosen & Katz, the firm known for mergers and acquisitions, which had PPP of $4.35 million, across 84 equity partners, and revenue per lawyer of $2.29 million. Moreover, its 63 percent profit margin led the industry. (Like Wachtell, top-five performers Sullivan & Cromwell and Cravath, Swaine & Moore chiefly rode Wall Street's dealmaking resurgence.)

The American Lawyer found that the most cost cutting was among the bottom half of its list of 100. Those firms pulled off a 9.7 percent increase in PPP, compared with 5.7 percent for the top half, largely by cutting equity partners at nearly five times the rate of firms in the top half.

It's not all bad for partners: Sparkman says that top-producing rainmakers with lucrative books of business can expect to get unprecedented millions to move to other firms, especially those that have cleared out underperforming partners, and whose cost structures are primed to squeeze more out of incremental revenue.

The bottom line: *The Am Law 100 shows that 17 firms exceeded $1Â' billion in revenue last year. Previously unthinkable cost cutting helped boost profits.*

Law Firm Spotlight

Why Techies Like to Friend Fenwick & West

By Brad Stone | Bloomberg News

April 7 (Bloomberg BusinessWeek) - Gordon "Gordy" Davidson is one of Silicon Valley's top *consiglieri*. In a career spanning almost four decades, the lawyer has helped Cisco (CSCO) raise venture capital, steered Intuit (INTU) and eBay (EBAY) through their initial public offerings, and helped VeriSign (VRSN) with its $17 billion acquisition of Network Solutions in 2000-still the largest Internet deal ever. He's seen technological waves come and go over the years. The latest, social networks and online media, is a doozy, and his law firm, Fenwick & West, is riding the trend like no other firm in the Valley. "Silicon Valley came out of a recession faster than the rest of the country, and we saw it coming a little bit sooner than our peers," says Davidson, who became chairman of the firm in 1995. "Financially, times are very good."

Unlike larger local rivals such as Wilson Sonsini Goodrich & Rosati and Cooley, Fenwick specializes in startups. Its clients are some of the biggest names on the Internet-Facebook, Twitter, and rising stars such as home-rental site Airbnb and cloud-storage company Dropbox. The firm will almost certainly help Facebook through the IPO process, according to a person familiar with the firm's and the company's plans, which could happen early in 2012. Fenwick "is one of the great indigenous firms of Silicon Valley," says Larry Kramer, dean of Stanford Law School. "It understands how the Valley works better than most, everything from how to raise money, where to incorporate, and how to nurture and grow a startup."

Fenwick was founded in 1972 in the same Palo Alto office building that then housed the older Wilson Sonsini. Fenwick's lawyers made their bones incorporating Apple (AAPL) and taking Oracle (ORCL) public. In 2002 the firm moved to its own six-floor office building in downtown Mountain View, Calif., about two miles from the Googleplex, and has kept its focus on young tech companies. Wilson Sonsini, which has more attorneys than Fenwick (377 vs. 253), has shifted in recent years from startups to more established heavyweights such as Hewlett-Packard (HPQ), Netflix (NFLX), Pixar (DIS), and Autodesk (ADSK). Establishment firms grudgingly acknowledge Fenwick's rise. Sort of. "Given the growth of the tech industry, there's room for a good competitor, as we can't represent everybody," says Larry W. Sonsini, Wilson Sonsini's chairman.

Davidson dismisses that jab as playful rivalry. He can afford to: Revenues rose 8 percent in 2010, after dipping during the recession. As is common for Valley law firms, Fenwick sometimes takes an equity stake in companies it represents-Electronic Arts (ERTS) and Symantec (SYMC), to name a couple. (It does not own Facebook equity, according to a person with knowledge of the matter.)

One of Fenwick's biggest draws is partner Ted G. Wang, a New Jersey transplant who joined the firm five years ago, and who surprised Davidson early on by having an avatar in the online virtual world Second Life. "I'm in that tribe," says Wang, 41, of his geek affinity. "Those are my people." Wang was the original outside corporate counsel for Facebook and now serves in that capacity for Twitter. When the two companies started competing more directly, he passed Facebook work on to his colleagues. Of that transfer, Davidson says, "It was just a question of Ted's time and personal relationships. There's never been a direct conflict."

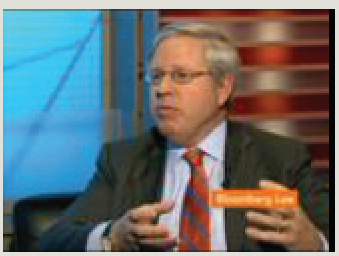
Amit Kapur, a veteran of Myspace (NWS), was looking for a lawyer two years ago when starting his Santa Monica (Calif.) ad-targeting company, Gravity. He went with Fenwick, he says, because he was impressed with Wang's experience and advisory role at two of the Web's highest-profile startups. "We aspire to be a company of that size, and we want to have people around us that can guide us to do that," Kapur says. Fenwick has experimented with ways to cut breaks on fees for startups. Last year, in a program called SeriesSeed, the firm put a half dozen standardized legal documents on the Web for free to help entrepreneurs streamline the process of funding their startups without generating big legal bills. Sutha Kamal, co-founder of mobile-health-information startup Massive Health, used the documents in January to close an infusion of $2.5 million in seed capital. "We got the round closed very quickly and saved money as well," he says, estimating the documents reduced legal expenditures from over $50,000 to $20,000. In another program started last year, called Flex by Fenwick, the firm offers clients who are not ready to hire a full-time attorney access to its network of contract lawyers who do low-cost legal tasks. Fenwick vets the lawyers and covers their overhead costs, such as malpractice insurance. Whatever those programs cost the firm in hourly billings they say is made up in goodwill (and far bigger fees later) should the client turn out to be the next Google (GOOG).

A growth area for Fenwick: helping startups figure out how to deal with the rise of so-called secondary markets, where buyers and sellers trade shares in nonpublic companies. One of the sites, SharesPost, has Facebook valued at $50 billion-plus. Davidson says secondary sales are a potential regulatory nightmare that raises "novel questions." For lawyers, of course, "novel questions" are another way of saying that, financially, times are very good.

The bottom line: *Fenwick & West, retained by Facebook and Twitter, is reaping the benefits from its long-standing focus on startups.*

Bloomberg Law Podcast

Bar President Younger Says Lawyers Need to Change



Steve Younger
Credit: Bloomberg LP

Steve Younger, partner at Patterson Belknap Webb & Tyler LLP and president of the New York State Bar Association, talks with Bloomberg Law's Lee Pacchia about the current state of the legal profession.

View podcast here. Bloomberg Law Podcasts are also available on iTunes and YouTube at http://www.youtube.com/bloomberglaw

Marketing & Business Development

Personal Marketing for Lawyers in a Post-Recessionary Climate

MURRAY WHALEN COMMUNICATIONS

Contributed by Lisa M. Murray, Murray Whalen Communications

- **Lawyers today face pressure to both practice law more efficiently with fewer resources and generate new business.**
- **The most successful lawyers will develop a personal brand and marketing plan to win clients and develop a referral network.**

As law firms emerge from the Great Recession, there are new business dynamics in play. According to the 2011 NLJ 250 survey conducted by *The National Law Journal*, the top 250 law firms are operating with nearly 2,900 fewer lawyers in their ranks, which follows a 6,600 reduction in force in 2009.[1] This dramatic decline has prompted law firms to reengineer themselves into lean, mean professional service machines. The "finders, minders and grinders" model is no longer viable in the changed economy of law firms. Attorneys at all levels are expected to produce more with greater efficiency and, in some cases, much less support. Service or income partners - partners without their own book of business who work on matters brought in by equity partners - are now expected to generate work. Even the top rainmakers face new demands to sell and cross-sell more legal services. Ultimately, this new business ideology means that being a great attorney is no longer a guarantee of success - you need to be a capable salesperson.

Compounding these internal challenges, law firms are facing increased external pressures. The competition for clients is intense as law firms seek to recapture lost revenues since the 2008 market collapse. Clients are managing greater risk with fewer resources and are proactively looking to reduce legal costs. Legal fees are being scrutinized and law firms are tasked with justifying their rates or offering alternative fee arrangements. Operating in this new competitive landscape, law firms have refocused on value and are finding new ways to differentiate themselves. Individual lawyers at all levels should do the same. Clients seek to validate their hiring decisions, and you can help them by differentiating yourself from the peer lawyer at a competing firm. Simply put, you need to become a savvy marketer.

A "Brand" New World

Wikipedia defines a "brand" as the personality that identifies a product, service or company (name, term, sign, symbol, or design, or combination of them) and how it relates to key constituencies: customers, staff, partners, investors, etc.[2] Elements of a brand should help customers/clients to identify and differentiate one product or service from another. In the world of legal marketing, a lawyer's brand should help cultivate new business relationships while strengthening existing ones.

How clients, prospects, and colleagues see you is a reflection of your personal brand, which is a lawyer's primary sales tool. Your brand is the combined strength of your credentials - education, knowledge and work history - as well as your reputation, style and values. Clients want to hire advisors whom they know, like and trust, and your personal brand should package those best assets that will bring the client to the hiring threshold. A strong brand builds name recognition within particular industries or audience groups, which can be effective in attracting new clients and developing a referral network. Similarly, your brand can engender client trust and loyalty. Essentially, your brand will help separate you from colleagues destined for repeated lateral moves or career stagnation.[3]

Think Like a Marketer

The first step in developing a personal marketing program is to start thinking like a marketer. Some lawyers are inherently skilled sales people, but many more find promotion and selling to be an awkward exercise in futility. This latter group will need to change its mindset or risk being overshadowed by competing lawyers who market well.

That said, lawyers provide a sophisticated service, and it would be a professional blunder to sell legal services as if you were selling discounted furniture. As a lawyer, you have an obligation to uphold the integrity of the legal profession while developing new business. The more refined tactic is to engage in education-based marketing that profiles and shares your industry knowledge, legal skills, and experience to clients and prospects. This is a mutually beneficial approach that enables you to proclaim your expertise while providing useful information to your target audience.

Now that you are in the right frame of mind, consider your target market and audience, and immerse yourself in their worlds. A rainmaker tracks - and anticipates - the movements of the market players. Do you want to represent more hedge funds? On a macro level, study the industry by subscribing to relevant trade journals, creating news feeds to aggregate online stories, and engaging with the leading trade groups. On a micro level, develop a contact list of target funds, identify the legal purchasing decision- makers, and tap your networks for introductions to the key people.

Define the value you bring to clients and prospects in each industry niche. There are three basic questions to ask: 1) What skills and experience are in your wheelhouse? 2) How does this expertise relate to specific industries and geographies? 3) What's in it for the client or prospect?

Aligning your knowledge and skills with niche markets empowers you to create and tailor messages that speak to highly targeted audience groups. By understanding how your expertise will serve client needs, you can better attract new clients, increase referrals, strengthen client loyalty, and build your image as an authority - without selling.

Take a predatory stance in seeking marketing opportunities. Marketing opportunities are abundant if you are willing to think broadly about what constitutes one and you are discerning about how to maximize that opportunity. Have you just closed a venture deal or emerged victorious in a litigation matter? Discuss with your client the possibility of drafting or co-drafting a press release or case study. If proposed legislation could affect your client base, consider drafting a client advisory as a direct email piece, and extend the reach by serving as a media source on related legal and business issues. Be a trend-spotter. This requires little more than a combination of market knowledge, keen awareness of what's happening around you, and a willingness to share your observations publicly.

Become a Guru

The term "thought leadership" may be tired, but the underlying premise remains valuable. A 2009 study conducted by BTI Consulting reported on the business development activities that best allow attorneys to garner real hiring consideration from corporate counsel. The study revealed that public relations, and in particular thought leadership activities such as media quotes and attorney-authored articles, were viewed as important "credentialing activities".[4] The report went on to state that a mere three quotes in respected publications served as a third-party endorsement equal to that of an actual peer referral.

In most business circles, legal knowledge and expertise are premium assets that predictably position a lawyer as a respected authority. Attorneys should take every opportunity to educate prospective and existing clients, referral sources, and colleagues. They should serve as media sources (even if only on background to educate the journalist), article and book authors, and public speakers. Newsletters and client alerts are additional forums to educate your audience, as long as you have a distribution strategy in place. After all, if you create a newsletter but have no one to send it to, the effort will net little in return.

Approach topics from a variety of angles such as from legislative, compliance, public opinion, or funding perspectives. A geographic angle can also be quite useful. Energy attorneys at a Boston-based law firm effectively positioned themselves as carbon emissions experts when New England states announced plans to adopt a carbon reduction scheme called the Regional Greenhouse Gas Initiative (RGGI). The attorneys were able to speak to the local legal, business and social aspects of the program as each New England state became a program signatory. These attorneys also addressed the same issues to a global audience by comparing and contrasting RGGI with similar initiatives on the west coast and in Europe.

Fortunately, content can be repurposed quite often, extending the life of nearly any topic and reaching a wider audience. When authoring a client alert, consider how the topic and content can be reused for media pitching or as the basis for a speaking proposal. A good example of this involves a patent attorney who wanted to build his practice around food and drug law, particularly focused on FDA approvals of pharmaceuticals and medical devices. He authored a desktop guide detailing state regulations governing clinical trials and was able to leverage this book for press and speaking opportunities as well as numerous journal articles. With a targeted and aggressive PR campaign, this attorney was able to create a practice niche for himself, and today, is considered a respected authority on FDA matters.

This form of education-based marketing is a powerful tool in helping to establish and build credibility within target audience circles. The library of ensuing published quotes, articles and presentations will serve as credentials that will unequivocally position you as a subject matter guru.

Be Ubiquitous

Are you familiar with the "Rule of Seven"? The Rule of Seven is based on an old advertising maxim that states a prospect needs to see or hear the advertiser's message at least seven times before he or she will take action to buy that product or service. Subsequent studies report that purchasing threshold to be as high as twenty times, but regardless, the takeaway is that marketing and promotion is not a one-shot deal.

To cut through the clutter of messages in today's global market, the marketing effort needs to be genuine, consistent and frequent. Veracity is important because sophisticated clients will rebuff a sales pitch disguised as valuable information. To be a consistent and frequent marketer, try scheduling marketing activities at regular intervals during the month. It is all too easy to procrastinate on a non-billable action item, so you will need to approach marketing as if it were an appointment. Eventually, personal marketing will become habitual. And, once you experience positive results, the business benefits will encourage you to remain on track.

In the New Information Age, it is easier than ever to achieve an air of omnipresence. There are nearly infinite choices for clients and prospects to receive content. The multitude of communication channels today includes, among others, traditional broadcast and print media (newspapers, trade journals, etc.), web-based and mobile media (blogs, podcasts, Facebook, Linked-In, Twitter, etc.), and event-based media (conferences, associations, webinars, etc.). Your quote in Tuesday's print edition of *The Wall Street Journal* can exist into perpetuity on the web, can be shared with your contacts through social media, and can be found by anyone through a simple Google search. But choose your distribution outlets wisely. Let the topic and objective dictate the medium and the distribution, and build a strategy that will maximize your effort. For instance, it may not be appropriate to arbitrarily "friend" the general counsel of a Fortune 100 company on Facebook, but it may be suitable to get an introduction to the GC through a shared LinkedIn contact.

Don't dismiss social media. All too often, attorneys are disinclined to engage in social media, such as blogs, Twitter, and podcasts, to educate and build a reputation as a thought leader. However, a well-planned social media strategy can be highly beneficial. A best practice is to go where your audience gathers. For example, a corporate or IP attorney looking to represent emerging technology companies is likely well-served to engage in many, if not all, of the social media techniques. He/she is catering to a technically savvy audience that likely tweets, links, blogs, friends, and posts. By contrast, a trusts and estates lawyer may not find his primary client pool on Twitter and may find traditional media to be more advantageous for his/her practice.

Ultimately, an integrated marketing approach will help attract qualified prospects to your law practice. By-lined articles, speaking engagements, social media, and press coverage can work together to strengthen your reputation as an authority in your field.

Find a Voice

One of the most effective ways to be heard and remembered over competing messages is to define and exploit your unique differentiators. If you are fortunate to be able to claim a "first" in a particular niche, then you have a ready-made opportunity to distinguish yourself. Most, however, will need to craft a personal brand statement, which can be based on experience, personal attributes, market knowledge, etc. If you are a woman lawyer in a male-dominated industry such as commercial bankruptcy, you may be able to leverage that distinction to your advantage. Even a personal hobby, philanthropy, or commitment to a cause can serve to provide you with a unique voice.

Find a different angle or a new wrinkle on a current issue. Identify a new trend. Take a crystal ball view of the future of your target market. Each of these techniques will help set you apart from your competition, and will garner the interest of the media, trade groups, clients, and your peers.

If blogging is part of your marketing strategy, infuse your personality into the blog posts. Use the opportunity to both inform and entertain your target audience. A good example of an industry blog is Brown Rudnick's Government Contracts Blog (www.brownrudnick.com/blog/governmentcontracts). Blogger and Government Contracts Practice Head, Ken Weckstein, writes frequently about issues and trends in the federal government contracting arena. For many, the overall subject matter is a snore, but Ken provides useful information about federal contracting developments that is punctuated with keen observations about government idiosyncrasies. His delivery is lively, even snarky at times, which affords him a unique voice and nicely sets him apart from competing lawyers.

Play by the Rules

It's important to know the specific state bar rules governing attorney advertising and promotion. Every state's bar association has different rules governing how attorneys can advertise and promote their services. In many states, lawyers are not permitted to use terms such as "expert" and "specialist" unless that attorney is actually certified in that particular area of practice. So, although you are marketing your expertise, you cannot actually call yourself an expert. This is a fine but important distinction according to a number of state bar associations.

In some instances, lawyers are also unable to use client testimonials or quotes that pertain to quality of service or past success. And, in some states, lawyers are required to save or submit copies of advertisements and website pages to the relevant bar.

Many of these rules transcend the prevention of false and misleading information, and it is best to consult your local bar or the American Bar Association website for guidelines. Also, consult the formal marketing and media policies of your own firm to avoid unnecessary conflicts. With a clear understanding of the rules you can make strategic decisions about your marketing program to ensure you remain compliant with industry and firm protocols.

Course Correct (If Needed)

Agility is essential. Sales and marketing can be an imperfect science. Global business is in a constant state of flux, and audiences can be fickle and unpredictable. Evaluate your marketing efforts each quarter to measure the return on your investment. Your marketing efforts should be generating qualified business leads. If you haven't moved the needle, it may behoove you to shift your message or redirect your strategy.

Be a Rainmaker

Attorneys entrenched in the pre-crisis dogma of practicing law may find themselves ill-positioned to thrive (or survive) in the new world order. The 21st century lawyer must retool, and in addition to being technically sound, he or she must become a keen marketer and salesperson. The most successful attorneys will be those who develop their own marketing and brand strategy – a strategy that drives business goals and creates a competitive edge by building a professional profile in specific industries and with high value clients.

Lisa M. Murray is the founder and principal of Murray Whalen Communications. A communications and media relations strategist with nearly 20 years of experience, Lisa specializes in creating sustainable brands for executives, experts, and entrepreneurs. She has developed marketing communications campaigns for an array of professional service and technology companies. Prior to establishing her own marketing consultancy, Lisa served as the Director of Marketing Communications

for the international law firm of Brown Rudnick LLP. Lisa can be reached at lisa@murraywhalen.com.

1 The 2011 NLJ 250, The National Law Journal, ALM, April 25, 2011

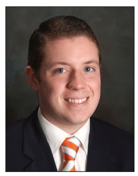
2 http://en.wikipedia.org/wiki/Brand

3 "Self-Marketing Is Key to Being a Top Lawyer," by Shai Littlejohn, *The National Law Journal*, February 03, 2009

4 "The Attorney Hiring Zone: Top Activities to Win New Clients," BTI Consulting for Hellerman Baretz Communications, November 2009 http://www.hellermanbaretz.com/sites/default/files/publications/BTI%20HBC%20Attorney%20Hiring%20Zone%20Study%20vFinal.pdf

What Real Estate Can Teach About Effective Law Firm Award Submissions





HELLERMAN BARETZ
COMMUNICATIONS

Contributed by Spencer Baretz, Mike C. Gray, and Andrew K. Ryan, Hellerman Baretz Communications

- Effective submissions for awards and rankings employ a narrative that is relatable
- Reinforce the narrative with specific details and examples
- Provide context to illustrate the broader significance of your nominee's accomplishments

Recognition for lawyers and law firms in the form of awards, rankings and placement on "best of" lists can be a powerful business development tool. Certain awards and rankings are closely followed by businesses and inclusion on those particular lists can lead to expanded and new business for law firms.

Strategically selecting and effectively submitting award submissions can be difficult and time-consuming. However, law firm marketers can learn from the sophisticated marketing techniques used by professionals in another service sector - real estate - to help expand a firm's reputation and business.

A skilled real estate agent can make a huge difference in selling a home. A good agent knows how to price a home, present it, and entice buyers to pull the trigger. Much the same is true with award submissions. Some of the most useful skills and techniques for presenting award nominations are quite similar to those used by the best real estate agents. Here are six tips, borrowed from the world of real estate, which will lead you to success with professional awards.

Tip 1: Use a Story

The persuasive power of narrative is well-documented and expertly employed by real estate agents. A modest home is a "perfect starter," a smaller house is "charming," and a property that needs some work is a "gem in need of TLC."

Employing a narrative to relay a comprehensive and persuasive story does not focus on misdirection or covering up any blemishes. Rather, it's about offering a narrative that is relatable. In awards submissions, it is essential to construct a clear and compelling story about your nominee that makes the nomination accessible to the judges. It's great to have a string of litigation victories, but what makes it special? Why should a reader care about it? Your firm may have seen dozens of courtroom successes this year, but if it was a breakthrough year for a practice or career-making year for an attorney, your nomination may be much more compelling. It's a story that makes your nomination memorable and noteworthy in the minds of the award judges.

Tip 2: Highlight Best Features

Good real estate agents don't start with the shed out back. They start with the Bolivian Rosewood flooring that takes people's breath away, and they emphasize the best feature(s) continuously.

Likewise, in award submissions you should lead with the best feature of your submission and return to it at the conclusion of your submission. Throughout a nomination, prioritize your top facts and attributes and continue to return to them. A nominee stands out based on his or her work and unique characteristics. Let the nominee's best qualities do the heavy lifting.

Tip 3: Talk About the Countertops

It's important to distinguish between the narrative "wrapping" and fluff. Fluff terms are empty descriptors – "perfect," "amazing," "incredible" – which, when not backed up, ring hollow. They are used too frequently and do not evoke strong, positive images. Good real estate agents know that when persuading others of the value of a home, it is far more effective to speak about its specific features than to offer up empty adjectives. Similarly, a strong award narrative must be supported by specific examples that reinforce the story.

A "chic kitchen" sounds nice, but it is not a convincing way to sell a house. Far better to depict the kitchen as "contemporary" with marble countertops, an island stove, new stainless steel appliances, and a wine rack. These specific details bring the room alive in a far more vibrant manner than hyped-up adjectives.

Talking about an award submission's "countertops" requires thorough due diligence and research. Detailed questions that yield specific facts to include in a nomination are critical to gather the necessary information. The submission subject may even find the questions odd, but they help construct the narrative. For example, ask: How many exhibits did that pivotal summary judgment motion have? How many hours was your key witness on the stand? What restaurant were you at when you finally sealed that deal? And what did you order?

Tip 4: What's the Neighborhood Like?

You can't sell a house in a vacuum. The buyer wants to know about the neighborhood – the parks, the grocery stores, the schools, etc. In drafting nominations, you should broaden your perspective beyond the matter being nominated. Make sure the judges know, for instance, why the M&A deal you're talking about was an important one to the telecommunications industry. Share the unique or innovative characteristics of the deal. Don't hesitate to address the long-term implications of a ruling on a particular sector. Award judges care about the significance of particular precedents. These details fill out the narrative arch and support it. Giving such context helps the judges see the broader significance of your nominated project, which is absolutely critical and frequently overlooked in nominations.

Tip 5: Bring a Critical Eye

Before a real estate agent takes a listing, let alone presents a home to others, that agent has to make his or her own evaluation of it, particularly the home's drawbacks. When preparing an award submission, it is necessary to do the same. Play a game of "devil's advocate" with yourself: Is this really an important case or result? Did our lawyers do something special here? Would this award fit into the firm's identified strategic and business development goals? In order to deliver a persuasive submission, you must believe in it. If you lack confidence in the submission matter after questioning it, you should reconsider it. Not every successful deal, case, attorney, practice group or firm should be nominated for recognition in a given year.

Tip 6: Know When to Put it on the Market

Having a critical eye also means knowing when the timing is right for an award submission. If the most important real estate mantra is location, location, location, then the similar award submission mantra is timing, timing, timing.

If you're having difficulty identifying a narrative, if the details are thin and sparse, and if you're finding it hard to articulate the importance of your nominated project to its wider industry . . . it may be time for a talk with the nominee. Although an effective narrative requires digging, it shouldn't require stretching facts. After all, there is a time to put a home on the market, and there is a time to wait. Perhaps, like the home that could use some paint before going up for sale, your attorneys or firm could use some more successes or experience before putting themselves up for a big awards program. Suggesting as much is not easy, but it is necessary. You can explain the need to have the most persuasive nomination possible and the importance of preserving the firm's resources for that time. In the end, they'll be thankful for your honest counsel – and thrilled when they return a year later to take home the award.

Conclusion

Although the real estate and legal industries do not have much in common, legal marketers can take award submission inspiration from real estate agents. Similar to the ways in which real estate agents approach a potential new listing, law firm professionals should consider nominations for awards, rankings, and lists.

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Social Media

Social Media Unleashed - Applying Everyday Social Media Activities in a Business Context for Marketing Legal Services

Contributed by Jayne L. Navarre, LawGravity LLC

- Effective use of social media starts with identifying a business case.
- Underlying each business case is the need to reach "buyers" (potential clients) at a given stage in their buying process.
- This article describes how to use specific types of social media to reach buyers in each phase of their search for legal services.

Social media can no longer exist in a vacuum – an isolated attempt produces only a scattershot result. Similarly, it is no longer enough to be just *a lawyer on the Internet* as thousands also are. Peak performance in applying a social media strategy requires purpose, focus and discipline. If you want to unleash the power of social media you must first define a business case – a challenge that needs to be solved. Therein lies the catalyst for developing and performing the optimal social media tactics that will allow you to benchmark the return on your investment and ultimately reach your reward.

The Business Case

Social media can be used to address a number of business case scenarios. For example, you may need broader exposure for a new practice area, office or capability. Perhaps keeping current on issues related to clients' industries better enables you to cross sell your services, but you need a more efficient way to accomplish that. You or your law firm may have been short-listed in several potential engagements, but you're having trouble landing the most desirable work. Or maybe you are struggling to keep up with former clients, contacts, and referral sources, and need a way to reach audiences more frequently and in a more meaningful way. Whatever the business or marketing case, there are corresponding social media tactics that you can deploy to reach "buyers" - potential clients - in the process of reaching your business development goals.

The Buyer's Process

Underlying almost every business case is the need to reach the buyer at specific stages of what I refer to as the Buyer's Process. In the context of this process you can better determine what actions to take, for example, which social media sites, services and tactics to employ.

Whenever there is a high involvement purchase, the buyer will typically pass through each of these four stages:

1. Recognition
2. Knowledge gathering
3. Consideration
4. Selection

Recognition. If the buyer does not know you exist, how can they purchase your services? They can't. You, the "seller" of legal services, need to have exposure of one sort or another – 24/7.

Knowledge Gathering. Once a buyer recognizes their options, they will try to discern more specifically how each might help them best solve their immediate or ongoing need. You, the seller, need to help them understand the types of problems you solve, thus increasing your chances of getting "short-listed."

Consideration. With more information at hand, the buyer will analyze the pros and cons of each option. If you have contributed in the knowledge gathering stage, you may be invited to the consideration stage. Here, it is your job to stay with the buyer, affirm your benefits and help them fill in any gaps, doubts or objections.

Selection. If you did everything right in the exposure, knowledge gathering and consideration stages, you may have already received the engagement. If not, you will need to remain top of mind in order to restate your benefits, answer objections and close the engagement. If you were not selected, you'll want to position yourself for a future need or referral.

Today, the buyer's process is not exclusive to the RFP, directory listing or chance meeting at an industry event. A modern approach will combine both off-line – face-to-face tactics and others – and an online social media outreach of multiple touch points.

How It Works

Every social media site, service, and tool can help you reach the buyer throughout the Process phases but some better than others. For example, while there is opportunity on every social media site to introduce your services, expose your knowledge base and maintain a top of mind presence, not all opportunities are equal. Here are just a few observations:

– **LinkedIn**

LinkedIn has very high page rank on search engines. You can be assured that your LinkedIn profile will return early in a search on your name, giving you exposure. A well-crafted profile will insure that if the searcher clicks through to your public profile they can gather information about you. However, it is very important that the information is not simply a rehash of your law firm website bio but rather expands upon the specific benefits of your expertise and service. This will help buyers to consider you and differentiate you from your competition. Further, new features on LinkedIn that encourage "sharing" and "liking" of profiles and content can generate significant on-site exposure to new audiences – these not only offer you broader exposure, they help you to stay top of mind during the consideration phase. Likewise, a fully developed *Company Page* invites viewers to drill down into your team, and can help the buyer compare services. On the minus side, public search engines don't readily index LinkedIn's on-site content, and an incomplete profile or company page doesn't help at all.

– **Twitter**

A Twitter profile also ranks high for an individual's name in public search results. If a searcher links through to your Twitter profile, they will get a sample of your conversations, giving you exposure for your focus and interests, as well as what's on your mind and contributing to the buyer's knowledge gathering phase. Further, adding your practice specific keywords or using hash tags strategically throughout your tweets will improve your chances of getting exposure in *on-site* searches. You can easily add your Twitter stream to other social sites to effortlessly increase your reach and develop your network. The only real down side of Twitter – actually quite inconsequential – is that the links you share in your Tweets are "no-follow." This means that pubic search engines do not index them and thus they offer no benefit for added exposure in the public search timeline.

– **Blogs**

Blogs are unsurpassed for exposure to new audiences. In fact, a recent survey revealed that first time visitors via general search engine queries access blogs most often. This is contrary to what most bloggers believe, i.e., that the bulk of visitors are recurring loyal readers. While there is little or no downside to blogging when it comes to exposure or knowledge gathering and consideration, launching a blog can be troublesome for risk-averse law partnerships. For example, the broader the firm's practice, the more likely the content will need to be neutralized in order to avoid client conflicts. However, one of the very traits that make blogs so popular among readers is when the blogger injects their unique voice, allowing the reader to hear the lawyer think out loud. A blog that is written with a facts-only style, or worse, regurgitates newsletter articles, offers no additional clues for a reader to differentiate. Add to that the need for an acute sensitivity to professional responsibilities and firm policies and blogging may exclude all but the most mature and responsible individuals from utilizing this tool.

– **Facebook**

Facebook adds another impression to your online footprint (your new media bio) by showing up early in search results. However, this exposure is very limited because you have your Facebook Page locked down to FRIENDS ONLY – right? If that is the case, and it should be, there is actually little to be learned except that you have a page on the network. Therefore, the best use of Facebook is for the onsite benefits it offers – think country club, kid's school events and community barbeques. Here, however, you can easily make sure your *friends* know what you do professionally in the event they need legal services or can refer you to someone. You will also find Facebook handy for keeping tabs on what matters most to others, lessening the gap between seeing them at an annual conference or that once a year holiday gala. You'll always have something to talk about when you see them again face-to-face.

For more suggestions on how social media sites stack up in addressing your business case, you may want to visit http://www.lawgravity.com/lawyers-guide-to-social-media/ where you'll find handy, practical guides that you can download for future reference.

Putting It All Together

We do best what we like to do. Not every social media tool, site or service works well for everyone. Your skill sets and preferences will vary, as well the time you are able to devote. Do you like to write? Or do you prefer to network? Knowing your strengths will help you to prioritize. Whatever you choose as your primary focus, working your strengths and mapping a business case to your activities will help you distribute your time wisely and be rewarded.

A business-focused social-media strategy will die out quickly in a vacuum–it needs a purpose. From the Managing Partner, key rainmakers and the COO to the human resources director, CIO and first year associate, social media unleashed can respond to dozens of business cases and ultimately the greater good of the organization.

Jayne L. Navarre offers law firms and individual lawyers direction and implementation of intelligible social-media strategy. Learn more at www.lawgravity.com, follow her on Twitter @jaynenavarre or connect on www.linkedin.com/in/jaynenavarre. Email: jln@lawgravity.com

Pro Bono

Pro Bono: Partnering with Outside Counsel on Pro Bono Matters

Liberty Mutual.

MINTZ LEVIN
Mintz Levin Cohn Ferris Glovsky and Popeo PC

Contributed by Kathleen E. McGrath, Liberty Mutual Insurance Company, and Susan M. Finegan, Mintz Levin Cohn Ferris Glovsky & Popeo, P.C.

- **A pro bono partnership with a corporate client can help to strengthen the law firm-client relationship.**
- **In-house legal staffs, including summer interns, may be exposed to more diverse and challenging pro bono opportunities as part of a law firm-client partnership than they might be on their own.**

Introduction

In-house corporate legal departments who want to increase their participation in pro bono legal work can benefit greatly from partnering with law firms who already have established and diverse pro bono programs. These partnerships benefit all parties involved - law firms, in-house legal departments, legal service agencies that refer the cases, and pro bono clients - by building stronger law firm-client relationships; leveraging existing resources to provide more pro bono opportunities to in-house attorneys; and better serving the needs of the community. The successful partnership between Mintz Levin and Liberty Mutual is a perfect example.

Liberty Mutual and Mintz Levin: Working Together

The legal department at Liberty Mutual was one of the first in Massachusetts to develop a formal pro bono program, and Liberty Mutual attorneys are now engaged in a broad array of pro bono matters, including housing, unemployment compensation, Social Security and domestic violence. To support its pro bono efforts, Liberty Mutual has developed a pro bono policy, a pro bono intranet, and other organizing tools. Liberty Mutual has been recognized, by the Boston Bar Association and others, for its strong commitment to its pro bono program. Mintz Levin is a full service law firm with an extensive pro bono program that was first established in the late-1980s. The firm has been involved in a variety of pro bono initiatives over the years, and its Domestic Violence Project won the American Bar Association's Pro Bono Publico Award in 2010.

Given Liberty Mutual's and Mintz Levin's longstanding and shared commitment to pro bono, it was natural for the organizations to begin working together four years ago when Liberty Mutual expressed interest in expanding its legal department's pro bono offerings. Mintz Levin invited Liberty Mutual to participate in the Massachusetts Legal Clinic for the Homeless, a project with which Mintz Levin has been involved for almost two decades. As a part of this program, attorneys meet at local homeless shelters to conduct intake interviews and to provide consultation advice to shelter residents on a variety of legal issues. Residents who need more extensive representation than can be provided at the clinic are assigned a law firm lawyer to provide additional assistance. Liberty Mutual has found that this type of project suits the needs of its legal department for several reasons: the clinic only requires a four- or five-hour commitment, and can be scheduled in advance; in-house attorneys can be paired with firm attorneys who often have prior clinic experience; Liberty Mutual's non-lawyer legal staff and summer law clerks are able to participate and to make significant contributions; and Liberty Mutual's attorneys can, but are not obligated to, provide ongoing representation to the clients.

For the past four years, Liberty Mutual's in-house legal staff have attended the clinics and worked together with Mintz Levin attorneys in a partnership that has benefited all involved. Naturally, the Liberty Mutual-Mintz Levin collaboration has expanded in several directions. Since Mintz Levin has significant experience managing its own summer associate program, Liberty Mutual approached its partners at Mintz to seek advice about ways to successfully enhance the pro bono experience for Liberty Mutual's summer law clerks. Liberty Mutual hoped to provide substantive pro bono work that could be completed during the summer months since many past projects undertaken by summer clerks were left to be completed by Liberty Mutual attorneys when the summer clerkship program ended. Mintz Levin asked Liberty Mutual's law clerks to join the Firm's own summer associates in its in-house training to represent domestic violence clients in restraining order proceedings. After the training, Mintz Levin connected Liberty Mutual with various legal service agencies so that they could receive direct referrals. In addition, Mintz Levin attorneys serve as mentors to all Liberty Mutual attorneys on these cases, fielding calls on issues relating to protective orders and related appeals.

As Liberty Mutual's in-house program has matured, the pro bono partnership has grown even stronger. Mintz Levin now often consults with Liberty Mutual's in-house team in an effort to learn from their experiences. Such an informal exchange of ideas is critical to achieving success in new pro bono endeavors.

Very recently, we were able to highlight our strong relationship when we both participated in an In-House Counsel Pro Bono Forum. The Forum emphasized the role of our partnership (and ones like it) in finding rewarding pro bono opportunities for in-house legal departments. With more in-house lawyers developing an interest in pro bono work, partnerships like ours are becoming more prevalent and important.

Benefits for Liberty Mutual

Liberty Mutual is exposed to many more diverse and challenging pro bono opportunities, including those appropriate for both senior counsel and summer law clerks, through its relationship with Mintz Levin.

Liberty Mutual is able to take on more discrete or "bite-sized" cases while relying on law firms to take on the more time-consuming matters and to use their pro bono experience and resources to provide support and assistance to in-house attorneys.

Liberty Mutual benefits from the established organization and structure of large pro bono programs that have decades of experience and programming. By joining in the efforts of large firms, in-house counsel are able to participate in established trainings and clinics, work on pro bono matters with constant support and oversight, and build strong relationships working on new matters both with their own in-house colleagues and law firm attorneys.

Liberty is able to work closely with its lawyers on work that is meaningful to both entities. As such, in-house counsel can learn how attorneys at the partner firm strategize on matters and get to know them in a different setting.

Pro bono participation within in-house legal departments is increasingly valued- for example, it is now a central criterion in *Corporate Counsel* magazine's annual 'best legal department' award.[1]

> It is crucial that law firm management supports work that is important to the client, and many law firms highlight their commitment to pro bono in response to Request for Proposals (RFPs).

Benefits for Mintz Levin

The pro bono partnership with Liberty Mutual has allowed Mintz Levin attorneys to strengthen their relationship with an important client. Mintz Levin attorneys are able to demonstrate their legal skills and build strong relationships outside of the traditional client relationship. Senior attorneys use this exposure to gain insight to better understand and serve the corporate needs and interests of the client. Junior attorneys, who may find it difficult to find the appropriate avenue to market themselves, are given a unique opportunity to network when they are paired up with a more senior in-house attorney.

The shared vision of pro bono inherent in this relationship supports the emphasis on pro bono in full-service law firms. It is crucial that law firm management supports work that is important to the client, and many law firms highlight their commitment to pro bono in response to Request for Proposals (RFPs). Mintz Levin has found that many clients, current and potential, consider a firm's commitment to pro bono work when hiring outside counsel, even if they are not yet doing it themselves. These partnerships are a logical extension of the initial queries about a firm's pro bono work - in-house counsel are interested and law firms can foster and support their involvement. In addition, several in-house legal departments, such as Intel and AOL,[2] have sent out formal business RFPs looking to partner with law firms on pro bono matters.

Partnerships between law firms and in-house legal departments also benefit pro bono clients and legal service agencies. In addition to an increasing number of pro bono volunteers available to provide assistance to the clients, these government and non-profit agencies gain leverage and potential funding and support from in-house counsel's participation. Further, where law firm lawyers may be conflicted out of a pro bono representation, as we have in the past, an in-house lawyer could take on the matter, conflict-free.

Available Resources

There are several resources that are available to law firms and in-house legal departments who are interested in either creating a partnership or exploring opportunities to become involved in pro bono work. For example, the Pro Bono Institute[3] works with both corporate law firms and in-house legal departments in order to promote, evaluate, sustain and implement strong pro bono programs. This nonprofit organization is a respected resource and can help promote a successful partnership between law firms and in-house counsel. In conjunction with the Pro Bono Institute, the Association of Corporate Counsel[4] established Corporate Pro Bono[5] to help in-house legal departments establish successful pro bono programs and to organize discrete opportunities, like Clinic-in-a-box, to encourage in-house counsel involvement. In addition, the American Bar Association Standing Committee on Pro Bono & Public Service[6] works to develop and promote strong policies, sustainable initiatives, and cooperative partnerships within the pro bono sector. All of these organizations are available to provide resources and support, strategize and implement potential programs, foster relationships between attorneys and legal service organizations, and answer questions relating to pro bono participation and law firm / in-house counsel partnerships.

Conclusion

There are numerous incentives for both law firms and in-house legal departments to establish a pro bono partnership, and there are many resources and organizations that are dedicated to this effort.

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1 Esther F. Lardent, The Business Case for In-House Pro Bono (Corporate Pro Bono 2006).

2 David P. Hackett, Editor, Pro Bono Service by In-House Counsel: Strategies and Perspectives (Practising Law Institute 2010). (available on www.bloomberglaw.com, under U.S. Secondary Sources, Books & Treatises)

3 For more information on the Pro Bono Institute, please visit http://www.probonoinst.org/.

4 For more information on the Association of Corporate Counsel, please visit http://www.acc.com/.

5 For more information on Corporate Pro Bono, please visit http://www.corporateprobono.org/.

6 For more information on the American Bar Association Standing Committee on Pro Bono & Public Service, please visit http://www.americanbar.org/groups/probono_public_service.html.

If You Want Them to Lead, You Need to Speak Their Language: Strategies for Encouraging Law Firm Leaders to Support Pro Bono Work

Contributed by Benjamin Weinberg, SNR Denton

- Pro Bono partners need to understand what motivates the firm leaders in order to encourage collaboration.
- Having a "business case" for pro bono work can help to motivate all firm leaders to support this work.
- Today, the business case for pro bono typically focuses on clients' interest in pro bono and the opportunity for associate development.

It is now generally accepted that one of the critical components of a successful large law firm pro bono program is leadership from top management.[1] At SNR Denton, [2] like at many other AmLaw 200 firms, firm management is fully supportive of its pro bono program, and this support comes in many forms. Most of the top firm managers do pro bono work themselves - they lead by example. The firm chairman and CEO frequently show firm-wide support of the program through thank you emails and public mentions of pro bono as central to firm culture. But, of course, a firm as large as SNR Denton is not managed solely by the top few with responsibility for overall firm direction. The reality is that there are layers of management, most prominently sector and service line leaders, as well as practice group leaders. In addition, each U.S. location has an office managing partner with substantial management responsibilities. Moreover, there are rainmakers who control substantial business and support numerous partners and associates.[3] For a pro bono program to truly succeed at firms like SNR Denton, the top management's support must be transmitted and replicated at each of these levels of management.

This article will focus on methods for encouraging broader firm management to support pro bono work. In particular, it will highlight different strategic messages that will resonate with firm management.

Strategies to Encourage Collaboration

There essentially are two basic categories of strategy that pro bono partners[4] use to encourage collaboration with firm management: 1) Heart; and 2) Head/Wallet. This is, of course, an oversimplification for illustrative purposes. But, as explained further below, in order to effectively enlist firm leaders' support for pro bono work, the pro bono partner must know what motivates the firm leaders. Some will need no encouragement because they always have done pro bono work and believe it should be part and parcel of every lawyer's practice. Others may never have participated in pro bono projects because they simply are too busy. For these two groups, heart-based strategies often work best. In contrast, other partners will be antagonistic to pro bono work because they see it as a drag on the firm's financial performance.[5] For this group, head/wallet strategies are required.[6]

> A 2009 report by the Legal Services Corporation showed that less than 20 percent of low-income Americans' legal needs were being met. This figure would be even worse without the substantial assistance given by law firm pro bono programs.

Why Pro Bono Matters

The starting point for successful collaboration in encouraging a common message among firm management regarding pro bono is to be very clear about why pro bono matters to the firm overall. At SNR Denton, for example, the firm has had an historic commitment to pro bono work and community service. The firm was started by Jewish lawyers who were excluded from the leading Chicago law firms. From the very start at the turn of the 20th century, firm lawyers saw it as their obligation to provide free legal assistance to those who needed help but were unable to gain access to the justice system by virtue of poverty, race, religion or otherwise. The firm has followed the example of its founders and consistently maintained a commitment to pro bono and community. But the firm's historic commitment is not enough by itself to motivate all of the firm's leaders to take time away from their practices and families for pro bono work.

In addition to the firm's historic commitment, a number of firm leaders are motivated to do pro bono work because they recognize that there is a tremendous unmet need for legal services among low-income Americans.[7] A 2009 report by the Legal Services Corporation showed that less than 20 percent of low-income Americans' legal needs were being met. This figure would be even worse without the substantial assistance given by law firm pro bono programs. In 2010, the 138 firms that reported their pro bono statistics to the Pro Bono Institute performed almost 4.5 million hours of pro bono work.[8]

Moreover, many law firm leaders enjoy pro bono work because it feels good to help someone in need and because their pro bono work allows them to stretch beyond their everyday practice areas. As a former non-profit executive director and Attorney General of the District of Columbia put it:

> The reason to do pro bono work is that it's some of the most challenging, interesting and meaningful work you will do as a lawyer. It reminds us of what made many of us choose the legal profession – it's creative, it's optimistic and it matters. Ask many lawyers about the work they enjoyed most, and you'll find that they'll talk about a pro bono matter.[9]

Similarly, firm leaders may feel that it is every lawyer's obligation to do pro bono work. As Robert Katzmann, Chief Judge of the New York Court of Appeals has explained:

The fundamental basis of the lawyer's responsibility to ensure justice and to address the needs of those in society unable to pay can be understood by appreciating a simple proposition: access to minimal legal services is necessary for access to the legal system, and without access to the legal system, there is no equality before the law. The lawyers become the critical medium by which access to that legal system and the concomitant opportunity to secure justice is achieved.[10]

But the realities of the unmet legal need, the feelings of responsibility, and the personal enjoyment and fulfillment that firm leaders have felt doing pro bono work are not enough today to get all firm leaders to support pro bono work. In order to motivate all firm leaders, it becomes necessary to make the "business case" for pro bono.

The Business Case for Pro Bono

The concept of the "business case" for pro bono is hardly new.[11] It traditionally has focused on 1) pro bono's importance to recruiting new associates and laterals; 2) retention of productive partners and associates; 3) training and professional development; 4) evaluation, supervision, and mentoring; 5) enhancing firm morale and loyalty; and 6) marketing the firm.[12] Thus, the argument goes, pro bono work is financially valuable for the firm because it serves all of these functions. And, for the most part, all of these benefits remain in play today.[13]

However, over the past few years – and especially during the economic downturn – it has become more and more apparent that in order to motivate all firm leaders to support pro bono work, the thrust of the business case has shifted to two overarching concerns: 1) clients; and 2) associate development and training. It used to be that large law firms hired large groups of new associates every year and trained them mostly by staffing them on large teams of lawyers working on litigation or transactional matters for the firm's commercial clients. The junior lawyers would learn their craft by observing more senior lawyers. But as the economy worsened in the mid to late 2000s, firm clients began balking at paying for such training.[14] As a result, law firms began re-examining old methods of associate hiring, evaluation, compensation and advancement and began moving towards what has become known as the "core competencies" model.[15]

Under the core competencies model, associates are not promoted on the basis of seniority or year of law school graduation. Instead, the promotion analysis focuses on the associate's skills and quality of work.[16] But how can associates gain the experience necessary to show that they are meeting core competencies? It turns out that one of the best ways is by doing meaningful pro bono work.

Not only are pro bono matters highly effective training tools, they offer, by their very nature, the opportunity for firm attorneys to exercise judgment and leadership skills far more independently and at an earlier stage than comparable work for commercial clients.[17]

Thus, firm leaders who are most concerned about the business case for pro bono begin to see the value of pro bono work as a cost-effective way for associates to demonstrate core competencies. A senior litigation partner recently called me to praise a junior associate who had second chaired a federal court prisoner civil rights trial. The associate had no prior trial experience, but she had demonstrated such great promise in the trial that the senior partner – who previously had not worked with the associate – told me that she now would be one of the partner's "go to" associates. Moreover, a large commercial client of the firm was very pleased to learn of the firm's recent trial experience before the judge who presided over the pro bono case. As a result of the junior associate's work on the pro bono case, she now was an SNR Denton associate who the commercial client wanted on their substantial paying cases. Not surprisingly, the senior partner now is a strong adherent of the business case for pro bono work.

In addition, the business case for pro bono has been greatly enhanced as law firms' corporate clients increasingly have embraced the concept of corporate social responsibility (CSR). As part of CSR programs, corporate law departments have shown increasing interest in developing internal pro bono programs. Moreover, "in-house counsel have begun requiring firms bidding for business to disclose their pro bono practices. This reflects . . . [a realization] that pro bono has become a moral and professional litmus test."[18] As a result, there are increasing opportunities to partner with clients' in-house legal departments on pro bono matters. This is very much a win-win situation. And, as a result, partners who maintain the relationship with large clients have become major supporters of such collaborate pro bono projects. Again, while these partners may not previously have seen the value of pro bono work, once their clients are involved pro bono work becomes a relatively easy sell.

In the end, although law firm leaders may be motivated by different messages about the value of pro bono work, the bottom line is that SNR Denton and other large law firms provide a huge volume of free pro bono legal services. As Chief Judge Katzmann has explained so passionately, lawyers doing Pro bono work help ensure that more low-income Americans have the access to justice that is indispensable for achieving true equality before the law.[19] And while it is crucial that the top law firm leaders support the firm's pro bono program, without the support and leadership of the sector and service line leaders and other partners with substantial management responsibility, the pro bono program will not be fully enmeshed in the fabric of the firm. Thus, it is incumbent on those who are charged with managing a law firm's pro bono program to utilize strategic messaging in order to motivate firm leaders to think of pro bono work as a genuine part of their overall law firm practice.

As Pro Bono Partner, Ben is responsible for managing the firm's national Pro Bono practice. Prior to joining SNR Denton in 2008, Ben served as Chief of the Illinois Attorney General's Public Interest Division where he was responsible for managing investigations and litigation for six bureaus. Previously, Ben was an equity partner at Jenner & Block in Chicago and clerked for Judge William J. Bauer on the United States Court of Appeals for the Seventh Circuit. Ben began his legal career as a staff attorney in the Englewood office of the Legal Assistance Foundation of Chicago.

1 *See, e.g.*, Scott L. Cummings and Deborah L. Rhode, Managing Pro Bono: Doing Well by Doing Better, Fordham Law Review, Volume 78, Issue 5, 2357 (2010); Ben Hallman, Pro Bono Starts at the Top, The American Lawyer, July 2, 2007.

2 SNR Denton is the collective trade name for an international legal practice. Any reference to a "partner" means a partner, member, consultant or employee with equivalent standing and qualifications in one of SNR Denton's affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see snrdenton.com for Legal Notices.

3 It is particularly important to collaborate with rainmakers who have a great deal of control over numerous firm lawyers. Thus, for example, there is a senior partner at SNR Denton who traditionally did not perform pro bono work and actively discouraged her colleagues from it. I went to her and explained that while the firm was grateful for her leadership and her rainmaking, there were several associates on her team that wanted to do pro bono work, but felt that they should not. Taking this message to heart, the partner sent the following email message to her entire team: "Hell has frozen over. I'm going to do Pro Bono and so should you." Last year, the partner was recognized by the Chicago Bar Association as a pro bono leader, and one of the associates on her team has received recognition for her pro bono work and community service.

4 Full-time attorneys who manage their firms' pro bono programs have an assortment of titles, including Pro Bono Partner, Counsel, Coordinator, Director and several others.

5 Although it usually does not pay to challenge directly this core belief – and instead point to bottom-line benefits that overcome the supposed drag on the firm's financial performance – there is empirical evidence that when examined closely, pro bono programs are "either revenue neutral, or, potentially, even a revenue enhancer." Reena N. Glazer, Revisiting The Business Case For Law Firm Pro Bono, 51 South Texas Law Review, 563, 571 (2010) (citing Jack W. London, The Impact of Pro Bono Work on Law Firm Economics, 9 Geo. J. Legal Ethics 925, 925-26 (1996).

6 It is with this group in mind that I often reference a New Yorker cartoon in which one lawyer reminds the other that the firm can only afford to do all of their pro bono work because of how well "anti-bono" pays.

7 *See* "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans," Legal Services Corporation, 2009

8 *See* "Report on the 201 Pro Bono Institute Law Firm Pro Bono Challenge Statistics," Pro Bono Institute, June 2011. The Pro Bono Institute's Law Firm Pro Bono Challenge was developed by the Institute along with law firm leaders and corporate general counsel to support and enhance the pro bono culture and performance of major law firms in the United States. The Challenge articulates a definition of Pro Boo work and requires signatory firms to pledge that they will devote either three or five percent of their total billable yearly hours to pro bono service and, in particular, to provide pro bono services to low-income and disadvantaged individuals and families, and nonprofits.

9 Linda Singer, "Why Lawyers Should Take on Pro Bono Work," Blog of the Legal Times, August 11, 2006.

10 Robert A. Katzmann, Themes in Context, in The Law Firm And The Public Good I, 5-7 (Robert A. Katzmann ed, 1995).

11 *See* Esther F. Lardent, The Business Case For Pro Bono, Pro Bono Institute, 2000).

12 *Id.* at 4-10.

13 Reena N. Glazer, Revisiting The Business Case For Law Firm Pro Bono, 51 South Texas Law Review 563 (2010).

14 As explained by the Association of Corporate Counsel (ACC), "many traditional law firm business models and many of the approaches to lawyer training and cost management are not aligned with what corporate clients want and need: value-driven, high-quality legal services that deliver solutions for a reasonable cost and develop lawyers as counselors (not just content-providers), advocates (not just process-doers) and professional partners." (*See* "ACC Value Challenge," http://www.acc.com/valuechallenge/index.cfm).

15 *See* Talent Management Trends: Law Firm Core Competencies and Pro Bono, Pro Bono Institute, April 2011).

16 This may strike the non-law firm reader as curious – or entirely obvious – but the reality is that for years, assuming basic competence, associates have been moved lockstep together up towards partnership based mostly on their graduation year.

17 Glaser, Revisiting the Business Case for Law Firm Pro Bono, at 579.

18 Michael Moline, Better to Light a Candle . . ., The Nat'l Law Journal, Jan. 4, 2010, *quoted in* Glaser, 51 South Texas Law Review at 574, n. 48.

19 Katzmann, Themes in Context, in The Law Firm And The Public Good at 5-7.

Professional Responsibility

Ethics of Law Practice Management

- The ABA has proposed new comments on the use of technology-based business development tools.
- The ABA has proposed additional guidance on the use of outsourced services by both lawyers and non-lawyers.
- A recently filed lawsuit challenges the prohibition on outside investment in law firms.

Globalization, technology and the changing law firm business model have prompted examination of ethics rules pertaining to law practice management. This article summarizes possible forthcoming changes and new guidelines to ethical rules governing business development, outsourcing and finance.

Business Development Communications

The ABA Commission on Ethics 20/20 recently considered whether the increased use of technology-based business development tools by the legal profession requires changes to relevant rules.[1] While the Commission has concluded that no new restrictions on the use of technology tools for attorney advertising and other business development communications are necessary at this time, it has proposed additional guidelines for:

- Rule 1.18, Duties to Prospective Client
- Rule 7.2, Advertising
- Rule 7.3, Direct Contact with Prospective Clients

– Communication That Can Render One a Prospective Client

Prior to the wide-spread availability of the internet, an initial discussion about possible legal representation would typically take place during a face-to-face meeting or phone call between a prospective client and lawyer. Today, many people seeking legal representation will initially contact a lawyer through e-mail, a law firm website, social media or other form of electronic communication. To reflect this reality, the Commission proposes to change the Rule 1.18 definition of "prospective client" from one that "discusses" with an attorney the possibility of forming a client-lawyer relationship to one that "communicates" with an attorney about such possible relationship. The new definition would furthermore require there to be a reasonable expectation that the lawyer contacted is willing to form a professional relationship in order for the status of "prospective client" to attach. New Comment [3] to the Rule sets forth the factors that help establish the reasonableness of the expectation and gives these examples:

A law firm website that encourages a visitor to submit a personal inquiry about a possible representation by the law firm but does not include a disclaimer or other cautionary language *might give rise to a reasonable expectation* that the law firm or individual lawyer is willing to form a client-lawyer relationship.

A law firm website that simply provides information about its services and attorneys, including contact information - without an invitation to submit a personal inquiry as noted above - *will not likely be sufficient to form a reasonable expectation* that the firm is willing to form a professional relationship with a person visiting the website.

– Internet-Based Client Leads

Numerous services exist today that will provide, for a fee, client leads for attorneys. Legal Match and Total Attorneys are two such providers. Proposed revisions to Comment [5] of Rule 7.2, Advertising, clarify that although lawyers are not permitted to pay others for *recommending* their legal services, it is permissible for a lawyer to compensate others for simply generating client leads. In order for this practice to be ethical, the marketing service must not solicit on behalf of a law firm or otherwise recommend an attorney to a potential client.

– Solicitation vs. Advertising

Rule 7.3, Direct Contact with Prospective Clients - which prohibits soliciting professional employment except in limited circumstances - would be revised to prohibit solicitation of "potential" clients, now differentiated from "prospective" clients. (The title of the rule would therefore be changed to "Direct Contact with Potential Clients.") Whereas a prospective client is one who has initiated communication with an attorney about a possible client-lawyer relationship, a potential client has not. In proposed new Comment [1], the Commission specifies that a "solicitation" is a communication directed at a specific potential client by an attorney for the purpose of offering legal services for which compensation would be due. In contrast, indirect forms of communication with the public generally advertising a lawyer's services - whether by traditional or new media - are not deemed to be unethical solicitation. Nor is it to be deemed solicitation under the proposed Comment when an attorney responds to a request for information or when a communication from an attorney to a potential client is automatically generated from an Internet search.

Outsourced Legal Services

Law firms are increasingly turning to outside vendors and providers to help manage costs of handling the business of the firm and in individual legal matters. Several bar associations have found that outsourcing does not violate ethics rules provided that stated standards are adhered to.[2] The ABA has opined on the ethics of outsourcing as well, in its Formal Opinion 08-451. Recently, however, the ABA Commission on Ethics 20/20[3] proposed additional comments to the following Rules to help clarify certain questions related to the use of outsourcing:

- Rule 1.1, Competence
- Rule 5.3, Responsibilities Regarding Nonlawyer Assistants
- Rule 5.5, Unauthorized Practice of Law; Multijurisdictional Practice of Law

– Lawyer Services

Rule 1.1, Competence, states that a lawyer shall provide competent representation to a client. In proposed new Comment [6], the Commission advises that a lawyer who wishes to outsource legal services related to a client matter should ordinarily obtain the client's informed consent. The lawyer seeking to outsource legal services must also reasonably conclude that the services of non-firm attorneys will contribute to the competent and ethical representation of the client, taking into consideration factors such as a) the non-firm attorney's education, experience and reputation; b) the nature of the services to be assigned; and c) the legal protections and ethical rules of the jurisdiction in which the services will be performed, particularly relating to confidential information.

– Non-lawyer Services

With respect to non-lawyer services in support of a client matter - such as paralegal and other support and providers of cloud computing, document services and electronic discovery - Rule 5.3 requires that a law firm put in place measures to ensure that the conduct of outside non-lawyer assistance is compatible with a lawyer's professional obligations. Factors relevant to this determination are similar to those set forth above relating to lawyer services.

– No Unauthorized Practice of Law

A single new sentence is proposed to amend Rule 5.5, Comment [1], to clarify that the use of outsourced legal services is not ethical if it facilitates the unauthorized practice of law by the non-firm attorney.

Fee-Sharing

One set of challenges to rules currently in place, if successful, would have important implications for smaller firms. Jacoby & Meyers has filed a lawsuit challenging state ethics rules that prohibit fee-sharing by law firms on various constitutional grounds and violation of state judiciary law.[4] The firm contends that such rules deprive small law firms of "critical sources of funding" that would allow them to compete against large domestic firms and on a global stage. This inability to compete, Plaintiff alleges, "dramatically impedes access to legal services for those otherwise unable to afford them."

The complaint states that the values sought to be protected by the prohibition against outside non-lawyer investment - client confidences, independent judgment by lawyers, and professionalism - have not been compromised in jurisdictions where outside non-lawyer investment in law firms has been permitted. Non-equity ownership is allowed for law firms in Australia and the United Kingdom. In the United States, the District of Columbia permits non-lawyer ownership to the extent of a 25 percent interest, and North Carolina is likewise contemplating relaxing the rule on outside investment, according to Jacoby & Meyers

1 For Comment: Initial Draft Proposals on Lawyers' Use of Technology and Client Development (ABA Commission on Ethics 20/20, June 29, 2011). Final proposals will be submitted to the ABA House of Delegates in May 2012.

2 *See* http://www.nycbar.org/pdf/report/uploads/20071813-ReportontheOutsourcingofLegalServicesOverseas.pdf (NYC); http://www.lacba.org/Files/LAL/Vol29No9/2317.pdf (Los Angeles); http://www.ncbar.gov/ethics/printopinion.asp?id=774 (North Carolina); http://www.sdcba.org/index.cfm?Pg=ethicsopinion07-1 (South Dakota); http://www.floridabar.org/tfb/tfbetopin.nsf/SearchView/ETHICS,+OPINION+07-2?opendocument (Florida).

3 ABA Commissionn on Ethics 20/20 Initial Draft Proposal–Outsourcing (May 2, 2011).

4 Jacoby & Meyers Law Offices v. The presiding Justices of the First, Second, Third and Fourth Departments, No. 1:11-cv-03387-LAK (S.D.N.Y, May 18, 2011); *see also* Jacoby & Meyers Law Offices v. The Judges of Connecticut, No. 3:11-cv-oo817 (D. Conn., May 18, 2011); Jacoby & Meyers Law Offices v. The Justices of the Supreme Court of New Jersey, No. 3:11-cv-02866-JAP-DEA (D.N.J., May 18, 2011).