

New Year's Resolutions for the Practice of Law



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It's that time of year when the diet and fitness industry puts on the full-court press for us to get stronger, lose weight, be healthier, change our ways. Don't stop reading yet. This article is not about adopting a fad or trying to become someone you are not. I don't believe in that. This article is about change that comes from regularly working *on* versus *in* the practice of law—change that can be difficult to initiate because the financial cost at the very outset is greater than the rewards ultimately achieved.

Think back on an improvement you made to your practice 20+ years ago and how much it contributes to your bottom line now, such as word processing and corresponding by e-mail. The lawyer who learned to type on a computer probably did not get rid of his or her legal assistant, but freed up the assistant to do other work and more of it, such as scheduling new client consultations, assisting clients to complete intake questionnaires, tickling tasks, calendaring large group meetings, and other matters not requiring a law degree. (What requires a law degree, by the way?)

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As we enter 2016, let's ask ourselves, "What could I be doing to give my clients the most value using the least amount of resources?" The answer is in applying innovative business process analysis. One such form of analysis even has a trademarked name: LeanLaw™. LeanLaw™ guru Ken Grady is an adjunct professor at Michigan State University College of Law, where he teaches a course called Delivering Legal Services.

Last November, I interviewed MSU law professor Daniel W. Linna Jr., who recruited Grady. "Lean law is not just about more for less. It's about developing a lean systems thinking, continuous improvement culture for the delivery of legal services resulting in less waste, greater value for clients, and better outcomes," said Linna.¹

Still a little lost in the buzzwords, I asked Linna for a more concrete definition. He said, "We tend to see everything as different, each matter as a snowflake, but there are a lot of similarities from matter to matter." If you ask yourself what is the same about each case, you can create standards and accomplish more systematically. And with perhaps more elbow grease from the client, you could reduce the time you and your staff must work on the case, reducing the cost to the client and providing legal relief to more people.

The billable hour is a disincentive to regularly carving out time to work on our operations. Ironically, contracting with clients for varying methods of compensation could vastly improve our efficiency and the value of legal services. Yet we primarily still bill by the hour because our regulatory framework, including our generally accepted understanding of ethics rules, has not yet caught up entirely with modern perspectives on client demands. I hope we see a

shift toward more flexibility in billing structures soon, perhaps guided in principle by the regulations protecting the rights of consumers and lenders to contract for nonlegal goods and services.

Linna will tell you not to wait until that time comes to slim down your practice. "Our clients expect more from us. They expect us to understand their businesses and problems and deliver solutions measured by their value, not billable hours. Technologists and other professionals are entering the legal space and shaking things up. If lawyers don't embrace change, we may lose ground and never regain it." In my meetings with bar leaders nationwide, this sense of urgency for regulatory change is prevalent.

This new business-process thinking requires us to look at what we do from our clients' points of view. Think about something you experienced recently as a customer that greatly exceeded your expectations, and then something that sorely disappointed you.

I will share two of my own examples. I have been a customer of the airline industry a lot more in my role as Bar president. I downloaded the Delta app, and 24 hours before my flight it reminds me to check in. The app asks me if I will have a bag and allows me to pay the baggage fee; I e-mail the receipt to the Bar staff for their records. The app gives me a boarding pass and tells me if I am TSA pre-checked, which instructs me whether to allow extra time for longer lines. When I arrive at the airport, I bypass all the kiosks full of people printing out paper boarding passes and zip-a-dee-doo-dah, I'm at the gate.

On the flip side is grocery shopping. I hate it with a passion. Can't think of anything I would rather never have to do. Why?

The process is so inefficient it makes me want to pull out my hair. I have to touch each item I purchase at least three times—once as I go up and down the aisles gathering what I need, again as I unload the cart at the register, and a third time when I get home and place each item where it belongs. In addition, the cashier touches the item once as he or she scans and places it into a bag. That's a total of four times each item is handled.

A few weeks ago as I was fuming at how long it was taking to get basic sustenance into my household, I e-mailed a friend of mine from the University of Michigan's College of Engineering who is working to create noninvasive glucose monitor devices. He specializes in laser optics technology. I asked him whether it would be possible to invent a structure (like the body scanner in an airport) that I could push my cart into and have all the items scanned and tallied in an instant, bypassing the unloading, scanning one yogurt cup at a time, bagging, and so on. He said I'm 5 to 10 years ahead of my time.

As lawyers, let's get ahead of our time. We can do better.

If you were one of your clients, what ideas could you and your staff dream up to make sure your clients are not pulling out their hair over mundane, cumbersome processes? When is the last time you had a color-outside-the-lines meeting with your staff? Have you ever asked a business-savvy client for a frank review of how he or she sees your firm's operations? Might be a good idea!

By reducing the time and cost of routine tasks, you have more time to listen, observe, and tend to your clients' unique wants and needs. How many of us groan when a client calls at an unscheduled time because he or she is having a panic-stricken moment and needs to be talked off a ledge? Often we groan because we are tending to something someone else could do. But nobody else can talk that client off the ledge because that client hired you. He or she wants you and nobody else. If someone else is doing the repetitive work, we are more available to deliver tailor-made advice to our clients.

You don't need to be a software engineer to be a lawyer, but think of the amazing advantages you would have if you were! (If you know a college student planning to head to law school, send him or her the link to <http://on.fb.me/1KzcsLU> to view Justice Bridget Mary McCormack's advice to Lake Superior State University students.) We need to attract students from all backgrounds, perhaps especially science- and business-minded students, to our profession.

No matter your background, here are simple ideas for delivering better service:

- Every time you close a file, track the amount billed to the client and type of case. This way, when a client asks how much it's going to cost, you'll have an idea. You are the expert in your field, right? How does it sound to clients when you say you don't know what their work will cost? Do they hear that from their dentists? Their car dealers? Their home builders? You can say, "Our data shows past clients have paid from X to Y for this type of case, with the average being A and the median being B."
- Brainstorm with your staff each task routinely performed. Step back and ask:
 - Is the task being done by the lowest-paid person on the staff capable of handling it?
 - Is there a way to combine or dispense with tasks without sacrificing the quality of service?
 - Could the client be brought in as the responsible party for handling certain tasks?
 - Do you have an efficient template for that task?
 - Is the same information being inputted in more than one task and, if so, is there a way to populate all templates from one main data entry point?
- White board topics for your team meeting to help identify areas of practice improvement:
 - It makes me crazy when (fill in the blank).

- Where are the pain points in our business?
- Where are opportunities to make things flow better?
- If I only had (blank), I could do (blank).
- Identify what your firm knows that your clients do not and keep track of that data. For example, on each move-away case you have, how often does Judge Jones grant the request for the parent to move away and how often does he deny it? On each motion for summary disposition, how often does he grant or deny? Referring to your data when predicting outcomes for clients helps manage client expectations and helps them decide whether the investment they are about to make is worth it or not.

To prepare for your team meeting, Linna recommends reading *The Checklist Manifesto* by Atul Gawande.² The book is aimed at reducing mistakes and improving quality.

Like any diet, results cannot typically be accomplished in a day, a week, or even a month. Changing the way you do business requires ongoing self-analysis and self-improvement. How does the Bar fit into these twenty-first century practice concepts? We are revamping our strategic plan. I would not be surprised to see "Assisting lawyers to identify and implement lean practice tools" as a key objective. I would be thrilled to see the Bar serve as a clearinghouse for programs, templates, ideas, and data to help our members get leaner and fitter—for our good and the good of our clients.³ ■

ENDNOTES

1. Telephone interview with Daniel Linna Jr., assistant dean for career development, MSU College of Law; and director, LegalRnD—The Center for Legal Services Innovation (November 11, 2015).
2. Gawande, *The Checklist Manifesto: How to Get Things Right* (New York: Henry & Holt Co, 2009).
3. This article (and all my legal writing) is analyzed before publishing by WordRake, software written by lawyers for lawyers. You can purchase WordRake for \$129 a year; State Bar members get a 10 percent discount by using discount code MICHBAR at checkout. Visit <http://www.wordrake.com> for details. This is a good example of lean law.