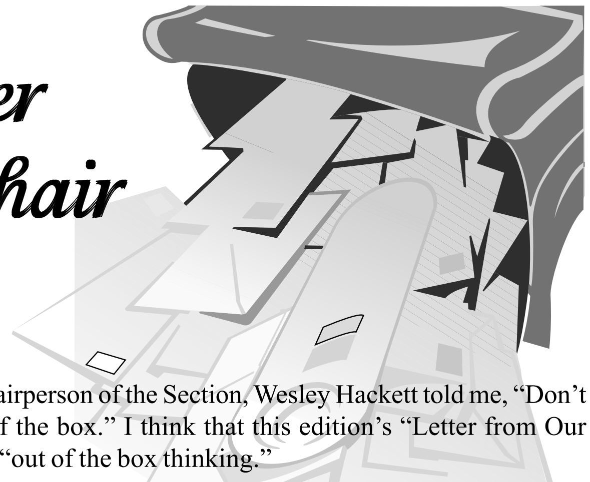
LawPractice Management

Winter 2003

Letter from Our Chair



When I became Chairperson of the Section, Wesley Hackett told me, "Don't be afraid to think out of the box." I think that this edition's "Letter from Our Chair" is an exercise in "out of the box thinking."

I can remember being a small child with a strong desire to grow up and become a lawyer. Although I had a few other jobs along the way, my desire to be a lawyer continued to burn strong. After years of hard work, I became a lawyer. The day I received information that I passed the Bar exam was one of my happiest.

Looking back after seventeen (17) years of practice, I sometimes wonder, "If I had known this as a child, would I still have dreamed of becoming a lawyer?" Would I, had I known that my average workweek would be sixty (60) hours with an additional average of twenty (20) hours of work-related responsibilities? Would I, had I known that I would leave home at 8:00 a.m., (taking kids to school) and regularly return at 8:00 p.m.? Would I, had I known that I would drop off clothes at the cleaners, on the fly, and pick them up when I got a chance? Would I, had I known that I would get home too late and too tired to regularly work out, resulting in my weighing more than I want? Would I, had I known that my circle of adults that I most frequently communicated with would be those at work, with the parents of my children's friends being a close second?

Creators of technology have always sold us on the fact that the new technology (whatever it was at the time) would make our lives more comfortable and free up our time. Now there are computers with Internet access, allowing

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people to work from virtual offices. That way, people can work all day at their "actual" offices and then all night at their "virtual" offices. When enhanced with a notebook computer, work becomes transportable, allowing people to work even on vacation. Wait a minute, when did vacation become a time for work? The cell phone, another product of technology, was supposed to free us from the office. In essence, the cell phone allows us to be in touch with our clients while driving, dining, worshipping, partying, spectating at sporting events (a couple of years ago I worked out a settlement with an attorney on his cell phone while he was at the Detroit Tigers' home opener), or even while "relaxing" on vacation. I guess the cell phone gave us the freedom to do these things, just not the freedom to enjoy them.

By now, I am sure someone is nodding in affirmation and saying, "I know what he means." However, most of you are probably scratching your heads and asking, "What is he talking about?" Let me assure you this is not a Ted Kaczynski anti-technology manisfesto.

When I look back and personally answer all of the questions I posed at the beginning of this letter, I must say that I am glad that I dreamed of becoming an attorney. I am even more grateful that my dream came true. "So what is my point," you may ask? Simply, as members of the Law Practice Management Section and the Council of the Section, we focus, a great deal on equipment. We even sometimes focus on staff. However, we rarely focus on ourselves. Next to our clients, WE are the single most important aspect of Law Practice Management. Without us, there is no law practice to manage. We must begin to realize that to better manage our practices, we must better manage our health and well-being.

Among other things, during my tenure, I intend to focus on things that make us sharper: things such as having and maintaining healthy diets and work-out routines. We need to identify businesses with user-friendly hours and search out quick and easy get-away locations. We will also explore how to relax close to home.

Make no mistake; I feel that PC's, laptops, the Internet, email, voicemail, cell phones, etc., are extremely important to the practice of law. However, we must maintain ourselves in order to be able to use these tools. Never lose track of the fact that self-maintenance is the most important aspect of Law Practice Management. Until next time.

Reginald Dozier, Esq.

If you have comments, suggestions, or criticisms, please feel free to contact Reginald Dozier at (313) 961-2550 or rdozier@lewismunday.com.

Site Watch

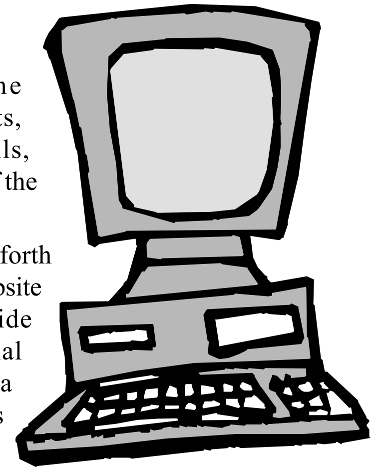
By Ernie Gifford, Esq.

A starting point for legal research for Michigan lawyers could be ICLE's website at *www.icle.org*. There, under the link MI LAW, links are provided to databases of Michigan Supreme Court decisions since October 1995 and Michigan Court of Appeals decisions since August 1996.

Each of these can be searched by using either a party name or by a keyword. Also searches can be conducted using a "practice area" selected from a provided list to obtain a list of all decisions dealing with that practice area. Once an interesting decision is found it can either be printed or viewed on the website.

Clicking on "Michigan Compiled Laws" on the website will take the user to the website of the Michigan Legislature, (michiganlegislature.org) which has the complete Michigan Compiled Laws in searchable format. The laws can be searched either by MCL Section or by keyword. Again a copy of the selected section of MCL can be printed from the website.

The Michigan legislature has recently inaugurated a notification service. A user of the site can sign up to be notified by e-mail when there is any activity with regard to any items of interest reported on the website such as public acts, resolutions, particular bills, statutes, or selected topics of the law.



All of the services set forth above are free. The ICLE website does, however, also provide links to several commercial services which charge a modest fee for case copies and searching.

Ernie Gifford is a principal in the firm of Gifford Krass Groh Sprinkle Anderson Citkowksi, PC located in Birmingham, Michigan. He can be contacted at 248-647-6000 or by email at egifford@patlaw.com.

Solo's Corner

By Joan R. Bullock, Esq.

Taking Care of Business

The beginning of a new year often is a time of encouragement—a time where we become more open-minded to exploring new options and trying different approaches to solve old problems. As with any business and more so in the current economic market, the struggle is to find ways to obtain more with less. How can the business become more successful with fewer resources devoted to the task? How can service to clients be increased utilizing less manpower and less man-hours? How can owners operate a leaner operation and yet squeeze more from their businesses?

In a prior article, I wrote about striving to have your business work hard for you rather than you working hard for your business. Making this happen requires an appreciation of the fact that your legal practice is a business and should be operated as one. We all understand the importance of having smoothly operating administrative systems. However, many of us fail to take advantage of the benefits that are available to those who own and operate their own businesses.

For example, your practice, as a business, can provide a variety of benefits that you may be paying for currently out-of-pocket. Following are a few ideas you may want to run by a tax attorney or certified public accountant to see if any present a viable option for you to consider and implement in your business.

Employ Your Child

If your child is under the age of 18 and you are a sole proprietor, you may be able to keep money in the family and save on taxes. By having your child work for you, you can shift income to a family member who, more than likely, will be in a lower tax bracket than you. Moreover, by hiring your child, you can save on payroll taxes at the same time. Children under the age of 18 are exempt from both unemployment and social security taxes. As an extra benefit, employed children can start on their retirement savings plan by contributing to an IRA. It's never too early to teach them about the value of saving for retirement. I.R.C. §§ 408A, 3101(a), (b); 3121(b)(3)(A), 3301, and 3306(c)(5).

Obtain Childcare Services for Employees

If you are in need of childcare services, your business can receive a 25% business credit for incurring qualifying childcare expenses. Expenses qualifying for the credit include costs of obtaining childcare services from a qualified childcare facility. Such a facility is one that has open enrollment for the employees of your business and does not discriminate in favor of highly compensated employees. Having the business obtain the credit is generally better than employees utilizing the current dependent care credit that requires them (and you) to pay for this service with after-tax dollars and then obtain a credit capped at 20% for childcare expenses. I.R.C. § 45F.

Obtain Health, Medical, and Long-term Care Insurance

If your business is organized in the form of a C corporation, the business can use pretax corporate dollars and obtain a full tax deduction for providing accident, health, and long term care insurance for its shareholder-employees. Under certain circumstances, the shareholder-employee has tax-free income to the extent of this employer-provided coverage. I.R.C. § 106(a).

If your business is organized as an S corporation, or as a sole proprietorship, partnership, or LLC, the employer-paid health, accident, and long term care insurance premiums must be reported as income to the owner-employees with the employees taking the 60% above the line self-employed health insurance deduction and the balance claimed on Schedule A as a medical deduction. I.R.C. § 162(1). This 60% self-employed deduction is further restricted by I.R.C. § 213 which limits deductions for long term care premiums based upon the owner's age for proprietors, partners, LLC members, and more than 2% shareholders of S corporations.

A variety of resources should be consulted to make sure your business works hard to serve you well. The Internal Revenue Code is just one of these resources. Take time during this new year to seek out new ways to achieve success. Afterwards, don't forget to take care of business by following through on what you find.

State Bar of Michigan Annual Meeting
Law Practice Management Section
Marketing for the Millennium

On Thursday, September 26, 2002, the Law Practice Management Section assembled an outstanding faculty that provided those in attendance with critical information to enhance the effectiveness of their marketing efforts. Conference attendees acquired knowledge on how to successfully compete as a service organization in the current market environment and received best practice tips from experts in the legal industry and from world-class organizations. The faculty included Connie Cook Laug, Director of Client Services at Graydon Head & Ritchey, LLP and President of Client InSight, LLC located in Cincinnati, Ohio, who discussed "Living Your Brand: Where Marketing and Operations Meet to Achieve Results"; Milton W. Zwicker, Managing Partner of Zwicker Evans Lewis of Barrie and Orillia, Ontario, who discussed "What Does it Take to Win in the New Marketplace?"; Henry S. Gornbein, Of Counsel at Strobl Cunningham Caretti & Sharp, P.C., of Bloomfield Hills, who discussed "Building a Successful Specialty Practice Through a Website"; and Barbara L. Silkworth, Marketing Director of Miller, Canfield, Paddock & Stone, who discussed "Developing and Implementing a Successful Marketing Program in a Larger Law Firm." Austin Anderson, a Principal of the AndersonBoyer Group, Ann Arbor, moderated this well-attended session.

As a service to our members who were unable to attend this informative event, excerpts of the discussions are presented below.

Living Your Brand: Where Marketing and Operations Meet

By Connie Cook Laug

Marketing in the Millennium

- Integrated Management Strategies
    - Quality Improvement and Customer Service
    - Knowledge Management Systems
    - Professional Development
    - Management and Operations
    - Marketing

Evolution of Law Firm Marketing

- Corporate Identity, Public Relations, Community Affairs
- Increased Client Communication & Education
- Client Surveys
- Positioning Strategies
- Branding
- Strategic Planning
- Reorganization (practice groups)

Living Your Brand: Walking the Walk

- Strong Leadership
- Sense of Purpose/Shared Vision
- Shared Commitment to Processes
- Consistency of Message
- Measurement
- Follow-through

Living Your Brand?

- Living your brand goes beyond promotion; it's knowing what your customers are buying, it's delivering what you've promised…
    - Is it the truth?
    - Is it believable?
    - Is it real?
    - Do you "walk-the-walk?"

Establishing your Brand: Talking the Talk

- Mission, Vision Statements
- Corporate Identity Programs
- Positioning Statement Tag Lines
- Brochures and Promotional Materials
- Web-sites
- Advertising Campaigns
- Sponsorships

Connie Cook Laug, Client InSight LLC
1900 Fifth Third Center, Cincinnati, Ohio 45202
513/629-0300 *www.clientinsight.cc*

TO HAVE AND TO HOLD:
The Story Behind Divorce Online

By Henry S. Gornbein

The Internet can be a fabulous marketing tool – if properly handled. I would like to share my experience with the Web site I helped create. **Divorce Online** (*http://www.divorceonline.com*).

During the summer of 1995, I created **Divorce Online** along with Dessa Rosman, a therapist, and John Thawley of Creative Communications, a specialist in Web site development. The purpose of **Divorce Online** is to provide information to the general public and to look at divorce in a nonthreatening manner. The site provides articles on typical legal, economic, and psychological issues people face when coping with all the components of a divorce. We hope to reach as many people as possible while they are relaxed and in the comfort of their own homes or offices.

We launched the site in October 1995. Within three weeks, **Divorce Online** was ranked in the top five percent of all Web sites by Point Rating Service. It was rated one of the "hot spots" on the Internet by Prodigy. Net Magazine, in February of 1996, gave it a four-star designation. It has been given the highest score by *Luchman's,* a World Wide Web Yellow Pages and rating service.

Presently, **Divorce Online** has approximately 63 articles written by lawyers, therapists, and financial planners. It also provides input from several judges, including Ann Kass from New Mexico and Edward Sosnick, the presiding judge of the Oakland County Circuit Court in Michigan.

Visitors Vent, Commiserate, and Learn

Part of **Divorce Online** is a survey entitled "Your Two Cents," where we conduct and tabulate polls. Topics range from "What Broke Up Your Marriage?" to "Violence" to "Pros and Cons of Joint Physical Custody."

In May of 1996, we added a "He Said…She Said" bulletin board to the site. Currently, more than 250 people take the opportunity to post thoughts, feelings, fears, and questions every day. Numerous concerns are raised and discussed. "What do I do?" "Can the Judge do this?" "I'm scared." "Smile; it makes them unhappy." "She slept around." "She's serving me with papers." "Am I normal?" Visitors to the site can vent, commiserate, and learn.

The site has fostered some happy events we could not foresee. People have met and gotten married through "He Said…She Said." One marriage proposal was posted on the site!

Recently, **Divorce Online** added a bookstore dedicated to divorce and self-help topics. It has received a tremendous volume of orders.

High-Quality Clients

From a marketing standpoint, I have found that the caliber of clients is excellent. Surveys show that **the average** income of computer users and those on the Internet starts at about $75,000. The typical person who has contacted and retained me is sophisticated and is not a shopper.

Usually, after reviewing the site (which carries my résumé), visitors interested in my services come for an initial consultation. If they decide to proceed with a divorce, I frequently am retained on the spot. This usually is not the way it happens when inquirers find me through other media, such as the Yellow Pages.

In April of 1999, I received a telephone call from a prospective client. We set up an appointment. The man is a physician in Oakland County, Michigan, where I practice. The divorce involves millions of dollars and the retainer was $20,000. He told me a friend of his had researched my site on the Internet. If not for that, he would not have known about me. His friend is in New York!

The power of the Internet is that people can find you, no matter where you are.

A Network of Experts

One of the goals of **Divorce Online** is to create a network of professionals who contribute to the site. We have family law attorneys, therapists, and financial planners. Each member is listed not only with name, address, and phone number, but also with a color photograph and full résumé.

The professions who participate are encouraged to write articles. These works are hyperlinked to each Web page, providing vast exposure. As our base grows, the professionals who have signed on as participants are being retained by an excellent clientele.

Statistics

Divorce Online receives an average of more than one million hits per month. The average number of page views per day on the site is 7,050; the average number of user sessions each day is at least 2,000. Most significant is the fact that the average person who visits the site spends almost 24 minutes per visit, either downloading articles for later review or communicating through *"He Said…She Said."*

For my practice, the Internet and **Divorce Online** have made the world smaller. Recently, I was contacted by a canon attorney from Rome who was interested in doing work with **Divorce Online** in the area of annulments in the Catholic Church.

The potential is unlimited. I truly believe niche marketing through Web sites like **Divorce Online** is a key to the development and viability of a prosperous, successful practice.

Henry S. Gornbein
Attorney at Law
4190 Telegraph Road, Suite 3000
Bloomfield Hills, MI 48302
248/594-3444
e-mail: *henry@divorce-online.com*

Marketing for the Millennium: Elements of Successful Marketing

By Barbara L Silkworth

Definition of Marketing

- Generating awareness and creating opportunities

Marketing's Six Steps

- Plan
- Process
- Involvement
- Persistence
- Patience
- Amalgamation

Plan

- States what you intend to do
- Defines purpose
- Describes characteristics

Process

- Two levels with different objectives
- Tangible and Intangible

Involvement

- Multi-level

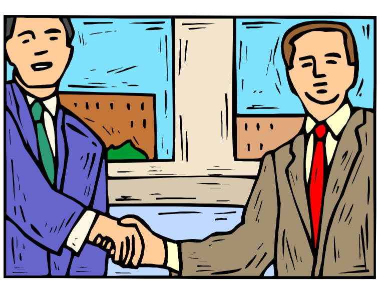
Persistence/Patience

- The two most difficult steps

Amalgamation

- Leveraging marketing efforts

Barbara L. Silkworth
Marketing Director
Miller, Canfield, Paddock and Stone P.L.C.
Ann Arbor, MI



What Does it Take to Win in the New Marketplace?

By Milton W. Zwicker

To survive and thrive in this new marketplace, lawyers now have to excel at marketing their services in the midst of stiff price competition and competing services from banks, trust companies, financial planners, accountants, electronic forms, will kits, and many more. Today's lawyers, like many business owners, to deliver winning services must grapple with a host of complex issues. These include:

- What new services can we offer our clients?
- How can we find ways to provide added value?
- How can we position our services and processes so they stand out from our competitors?
- How well are we serving our current clients and how can we improve?
- What clients could we serve that we are currently not serving?

Lawyers who craft solutions to these issues will find that there are great opportunities in the new economy to build a successful estates practice. However, to accomplish this feat you need to combine the right marketing strategy using technology. Together they are the key drivers necessary to build what I call an E-Practice Model.

This model links four drivers of the New Economy. Branding you, making the invisible visible (design), relationship building in real time, and the right fee strategy are not only the drivers of the New Economy but the framework around which to build a modern law practice.

Driver One: Branding You

The collection of feelings and perceptions clients have about your services is your brand. Don't let the term branding obscure or steer you away from the soundness of the principles behind this concept. Branding is more than a buzzword; it is the crux of how to build a great practice area. What competitive edge do you have if you don't build a brand identity? Creating a strong brand identity builds "mind share" with clients and prospects. The idea behind a brand identity is that you want clients and prospects to think of your firm when they think of your service category.

In the homogenous world of legal services, clients and lawyers can benefit from a brand identity. The perception you have of your services is not the one that counts. How clients perceive you is the one that counts. The right marketing in a marketplace where the competition for estate planning services is intense can spell success or failure. To select the correct strategy, you must understand what's important to clients and prospects. Many lawyers believe that the best strategy is to say, "we are a full service law firm." Don't embrace the "full service" concept. Instead, take a reverse approach. Clients prefer lawyers who can deliver specialized services. Yet, many lawyers in small firms and solos try to achieve the impossible—being all things to all people. A brand cannot be all things to all people. Branding is based on the idea of focus—targeting individuals in a personal way.

Smart marketers use their specialties to focus on industries or niches. You can find many examples of how to gain an edge in the marketplace if you focus your marketing efforts on the needs of a particular industry or group. These niches can include high-net-worth individuals, baby boomers, trust officers, and financial planners. This approach is recognition that individuals and businesses have specific needs. You require effective marketing to address these needs that will benefit both clients and lawyers. Clients benefit because you have a deeper understanding of a particular industry's issues and trends. Enhanced client relationships flow from your in-depth industry knowledge.

Differentiating Your Services

Focus is essential to build a successful estates practice but your competition is out there picking off your clients by catering to their specific needs. To pre-empt or halt the competition from nibbling away at your market share you must learn to differentiate. Differentiation means satisfying clients better than anyone else in your marketplace. Differentiation gives people a reason to choose your services over any other competitive choice. This is an area where you need to be creative. Get rid of the idea that one size fits all.

Driver Two: Making the Invisible Visible

Clients and prospects evaluate the quality and value of legal services by what they see more than by any other factor. In fact, people hear what they see. The power of visual experiences is rooted in our information-processing capacities. A picture is worth a thousand words. Compared with words, pictures are highly distinct, and thus may be recalled for a long time.[1] Lawyers are at a disadvantage compared to the sellers of products. Clients and prospects can't see our services because services are invisible, most lawyers believe. Thus, lawyers spend little or no time thinking about the power of visual experiences. This is a mistake and severely limits the way and how lawyers communicate with people. As you go about the process of serving your clients' needs, remember how people learn. We remember more of what we learn when we use more of our senses and can apply what we learn. "Getting [clients] for an intangible product requires the product to be tangibilized."[2] How can lawyers turn intangible service traits into attractive tangible service features?

How to Make Tangible That Which is Intangible

The less tangible the generic product, the more powerfully and persistently the judgment about it is shaped by the "packaging"—how it's presented, who presents it, what's implied by the metaphor, simile, symbol, and other surrogates for reality.[3] Clients don't see most of the work lawyers do for them. Thus, it's often difficult for clients to appreciate the work product and services they are asked to pay for. Lawyers can add their price tags but often the price tags have a different value in the eyes of clients. A big reason clients and lawyers have such divergent views about the price of legal services is lack of visual clues. Clients and prospects will pay more for what they see than what they hear.

How can lawyers represent the invisible work they do to clients? We can now use charts, diagrams, graphs, tables and maps to enhance and explain a large array of information and data. Most lawyers pay little attention to the design of information. Lawyers can use typography, layout, and colour to enhance what they do. Thus, spend more time on better ways to design your services. Give your clients those visible and memorable clues to increase the value of the work in clients' eyes. Information design is an essential part of better communication. The better you become at communicating information with clients, the more valuable you become in their eyes. Clearly the more clients know about the work you do the more valuable you are to your clients.

Design for Prospects

As so often is the case, when you are with prospects or new clients, they are enthusiastic and energized. But after you have gone, they may cool off and possibly change their mind about your service. So what can you leave with them to reinforce the sale until your next contact?

Provide them with some tangible representation of your intangible service! This might include:

- A report on a topic of interest to the client, preferably related to your service.
- Reprints of articles you have written.
- Client referral letters.
- Past copies of your newsletters.
- Audio tapes of workshops or seminars you have led.
- Fax bulletins with advice on improving their business.
- Regular e-mails to further communications.
- A content-rich website for them to visit.
- Brochures and other promotional material.

All of the above credentializes you, thereby reducing your clients' perceived risk, and serve as a reminder of the services you offer. Although seemingly obvious, each is a valuable component to any marketing plan and just might win over your next big client.

Driver Three: Relationship Building in Real Time

Every lawyer, I bet, has experienced clients who send fax and e-mail messages and a short time later telephone, wondering why there has been no immediate response. The demand for this type of quick response will intensify. "Real time occurs when time and distance vanish, when action and response are simultaneous."[4] We and our clients now participate in many daily real time events. The proliferation of communication technologies and computers open a myriad of real-time-client-lawyer-contact possibilities.

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Lawyers can use technology as a competitive differentiator. Technology can make one lawyer's service stand out from the others. Thus, the stakes in the delivery aspects of legal services are going up. The challenge lawyers face is to provide bold, fast, unexpected, innovative, and customized service. Lawyers, to meet this challenge, must believe and treat client information as a strategic asset instead of merely case data.

Client Information – A Strategic Asset

Client relationships are ultimately about individuals interacting. Lawyers, to sustain long-term client relationships must stay in touch, respond, and anticipate each client's needs. You can't understand and respond to clients' needs without information about them and their environment.

You can't keep the information you need about hundreds of clients in your head. Our multi-channel universe makes your job more difficult. We now have dozens of ways to make contact and gather information—phone, fax, e-mail, web sites, cyber calls, online chat groups, and yes, face-to-face. You need to gather the information from these many contact points and assimilate it into a central database. In the business world, marketers know this central database approach as customer relationship management (CRM). Organizations that use CRM can build a single view of each customer, regardless of the communication channels their customers use.

At a time when clients find it difficult to see little difference between the quality and price of legal services, giving clients access to service information and staying in touch is one of the few remaining ways you can differentiate yourself from the competition. Now, computer power gives us the ability to track unbelievable amounts of information on clients. Just as important, the Internet gives us the ability to share our knowledge with clients.

How do you transform a client's needs into a competitive edge? You do it by the skillful use of information. To become a client-driven firm, you must track how your clients really think and act. Track every use of your service, the results you achieve, contacts, fees, relationships, affiliations, likely future needs, and future contact dates and information requirements. These are huge information needs, even for a sole practitioner, so a computer database is essential.

CRM—The Key to Niche Marketing

You can make all kinds of assumptions when you're doing mass marketing. But when you're after the niches, you've got to have good information. You must find out what delights your clients and not guess what is suitable. The A-B-C-D's of successful niche marketing is to "Always Be Collecting Data." Successful niche marketing requires many bits of information gathered over time. Make client information gathering a way of life. This is essential because people change. They grow older. They become more sophisticated. They take up new hobbies. They pursue the latest fads. Don't overlook the geographic differences of your clients. So take a close look at your client base. Look at it by region and by city. Look at it by urban neighborhoods versus rural neighborhoods. Look at it by zip codes or even by city blocks.

CRM is about a transition from shotgun marketing to targeted marketing. Its aim is to help you get to know who your clients are—what they want and why they buy what you sell.

Building a CRM System

A CRM system is a long-term investment, but you can start your investment with three steps. First, start with the development of a client inventory system that divides them into industry groups. You need to know your client sources. If you want to conduct a seminar for clients, you need a mailing list. A good client inventory system will segment clients by industry and legal problems, determine areas of profitability, identify sources of new clients and point out cross-selling opportunities. Existing clients and prospects are two important categories. A database for clients should contain enough information to know why they became clients and remain clients of the firm. Thus, it becomes possible to perceive how to tailor marketing to prospects.

Second, keep a tally of not only your clients, but why they choose your firm. You can get client input into this process from a wide range of information gathering techniques, such as market research, focus groups, and client surveys. For a small firm, a questionnaire is a good method. You can, for example, ask clients to complete questionnaires after their first interview. The information you gain from this technique is essential, if you want to build on your strengths.

Third, stay in touch. To take this step, you must set up a system for regular communication with clients. This requires a good mailing list and, thanks to computers and the Internet, staying in touch is easy. Regular contact with clients is essential if you are to maintain their loyalty and business. It is also essential if you want to keep your name in front of your clients. Companies advertise their products or services in repeat ads for this purpose.

Too often, lawyers think of their clients as cases, instead of assets with long-term value. This thinking is evident from the databases they use to track and manage their cases. Lawyers and their vendors call the software they use for this purpose Case Management. Fortunately, there are examples of case management software, despite their names, that can help lawyers move toward a CRM environment. Two examples are: *www.timematters.com* and *www.amicusattorney.com*.

Driver Four - The Right Fee Strategy

Lawyers' fees are clients' costs. That's why fees are at once the most powerful lever to grow your firm's revenue and at the same time the most risky and controversial.

Smart lawyers recognize that one misstep and their chief competitors may take charge of their best clients, so they first try to bolster in other ways besides fee increases. They add associates and legal assistants to increase the volume of fees. Some law firms leverage revenues geographically by opening branch offices or by finding new niches.

There are still other ways to boost revenues without boosting fees too. Law firms, in some jurisdictions, start ancillary businesses. Some firms, for example, have established companies that offer career counseling.

Any of these strategies can be a revenue-generating alternative to fee increases. But sooner or later, in the face of mounting costs for associates, rent, marketing, technology, legal assistants, and other expenses, lawyers must face one of life's harsh realities: Fee increases are necessary to grow or sustain profits when costs outpace revenue growth. So any lawyer who wishes to come to grips with this central fee challenge should think through the "six timeless truths about fees."

1. **The right fee structure depends on the correct market share strategy.**

   They're like Siamese twins. Let me give you an example. For many years, the well-established firm of Gold & Marble had record growth in fees and profits from the health care industry serving its market area. Then, all of a sudden, another firm moved in with fees 18% below those of the well-known firm. As a result, the other firm captured 45% of the health care market served by Gold & Marble within two years. During this same period, Gold & Marble lost some of its bright young lawyers to the new firm and a large volume of its high profit health care work. So Gold & Marble faced a clear choice—either cut fees or lose all its clients in the health care industry. Recognizing that if they didn't hold onto their share, they could not fight back, they chose to cut fees. Today, Gold & Marble is back in the game and recaptured a large number of its previous clients and added some new ones. Gold & Marble was able to recapture market-share by emphasizing new skills, improving quality, fee reductions, and aggressive automation of their services.

   So your fee arrangements should always include a market-share strategy. Once you decide to hang onto market-share, you usually have to tough it out and take your lumps, which can mean losing money until you can improve your margins and get your clients back.

2. **Setting fees must always involve some kind of cost analysis.**

   All fees are made up of cost and profit components. Many firms may not know what these components are but if you know what costs are included in your rate structure, you can better revise rates or set rates for new services. In marketing language, you must know how and where costs are incurred for your core services (80% of your total volume) you offer.

   Knowing these costs encourages the people in your firm to find cost savings. Some of those savings will be found through the better use of time, budgets, and some through substituting more expensive lawyers for legal assistants. In some cases it will mean reformulation of the service itself, in others it will mean automation, or a variety of other firm improvements.

   There's still another reason why a good understanding of costs is such a key part of fee setting. At some point, a firm has to decide how much of a cost improvement will benefit clients in lower fees and how much will flow to the bottom line. You may decide that you can be more fee-competitive within your market, so all of the cost saving will go into lower fees. This can be a dangerous strategy, unless you know your costs.

3. **A good billing strategy must take into account the supply and demand for legal services in your marketplace.**

   If you provide standard consumer services, wills, for example, you're probably not going to get much more than bargain basement fees. If, on the other hand, you offer "specialized estate planning", you should expect to command some premium fees. Instead of asking, "How fee-sensitive are clients?" ask the reverse: "How value sensitive are clients to our extra performance, experience, and reputation?" It's kind of a mind-set, a confidence about the value and benefits of your services, rather than continually trying to reduce your fees to some standard. This notion of value billing, in which the worth of the services rises or falls with the size of the fees charged, is important in service marketing.

4. **Fees must always reflect the market segment you're after.**

   Most firms use "standard fees," such as one hourly rate, to price their services across market segments. This often results in their leaving money on the table, because they simply are not exploiting the fragmented and splintered nature of most markets. To cite an example: Whom do you think cares most about the size of legal fees—household clients or businesses? A recent survey of small businesses asked managers, "What are the factors you use to choose a lawyer?" They answered that a mix of reputation, recommendation of a friend, and time to complete the work were the most important. Do you know where fees placed on the list of factors? Sixth. But if you look at the fees many lawyers charge, you'll see it's across-the-board hourly rates. Many lawyers don't differentiate between the household client, who is looking for the lowest fee, and the business manager who is required to protect some vital business interest.

5. **Upward fee leverage requires continuous investment in cutting-edge legal services.**

   In the commercial world, many companies achieve their higher prices by investing in brand equity. High brand equity just naturally goes together with high price. In the legal world, what services go together with high fees? The answer: Specialized services. The question lawyers have to ask is "How and what services do I invest in to ensure that I can keep my fees as high as possible?" Three factors are involved. First, you've got to position your firm as leader in the markets it serves. Firms that have leadership positions are those that have consistently positioned themselves over the years so that clients know exactly what to expect when they buy their services. You've got to be the first firm clients think of when they want the best.

Second, you've got to know what clients consider good value. Taking on and developing unique and experiential legal work helps to build loyal clients. So, you find ways to demonstrate, you are on the cutting edge, for example, with writing, lecturing and seminars that deal with the new and unusual. You must reinforce, in the minds of clients, the nature of your practice.

Third, you've got to deliver on the explicit and implicit promises you make. You can't be out lecturing and writing and lack the talent and resources to make good on your promises. Thus, lawyers who don't invest the time, training, and other resources necessary to focus their talents will fall by the way side or survive on low profit retainers.

6. Use a fee plan that meets the value needs of each client.

Each market and client you serve come with their own fee challenges. Clients in each market have a sense of value. Their sense of value results from a combination of things, mostly from the benefits that flow from your service. Thus, you can offer different clients different fees based on their buying habits and other characteristics. Lawyers have more breathing room with fees than they can imagine. How do you extract the best fee from services you have to offer? The answer comes in two parts: First, make sure your services reflect the value you believe clients receive from your services. Second, make fee arrangements that will capture as much of this value as possible. Thankfully, for this purpose, there is a wide variety of fee arrangement you can use. They are:

- A fixed or flat fee
- An hourly rate
- A blended hourly rate
- A fixed or flat fee plus an hourly rate
- A percentage fee
- A retrospective fee based on value
- A retainer
- A retainer deposit against future services
- The relative-value method
- A statutory or other scheduled fee system

Fees are never as sexy a topic to lawyers as clients and legal specialties. But sensible approaches to these timeless truths can put enough money in the bank to warm the heart of even the most fee-shy lawyer.

Endnotes

1 Scmitt, Bernd and Simonson, Alex, **Marketing Aesthetics: The Strategic Management of Brands, Identity, and Image,** The Free Press, New York, NY, 1997, p. 45.

2 **The Marketing Imagination**, New York, The Free Press, 1986, p. 109.

3 Supra, pp. 97-98.

4 McKenna, p. 5.

Interested in writing an article for the newsletter?

Articles should be 500-1500 words in length. Sutiable topics of interest include those that assist attorneys in improving their understanding of the economics of law practice; that promote the effective use of non-lawyer personnel and technology in order to render legal services more economically and efficiently; any topic that assists attorneys to improve their service to their clients, or serves the public interest.

Publication deadline for the upcoming issue:

March 1, 2003 for the Spring 2003 issue

Submissions should be sent to Joan Bullock at joan.bullock@famu.edu

Section Listserv

The **Law Practice Management Section** currently has a listserv available for questions and comments on any topic relating to law practice management. If you would like to subscribe to our listserv, please address your request to Barry L. Brickner whose e-mail address is barryl2@mich.com.

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Michael Franck Building
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