Law Practice Management

Spring 2003

Letter from Our Chair

As I progressed through law school, I gave frequent thought to moving to a warmer climate. During my last year of law school, I strongly considered moving south. I figured that I would apply for a job with a business or government in a southern state. I would remain at the job until I learned the lay of the land. After that, I would go out and start a practice or possibly establish a business outside of the field, or both.

Suddenly, I had an epiphany. I was born and raised in Detroit. My father grew up in Detroit. My mother had been in Detroit since her teens. My father was a respected minister in Detroit. Detroit was the only place that such a great number of people could say that they had known me since childhood. If I was going to establish a law practice, I needed to be where people knew me.

The point I am making is the practice of law is primarily about RELATIONSHIPS. Although many attorneys now liberally advertise, most will tell you that the best way to obtain clients is through relationships. People who know you call you to provide services for them. People who know you refer others to you. Those who have been successfully serviced refer others to you. This is all based on the relationships that you establish with these people.

Relationships with other attorneys are just as important. Relationships with other attorneys will get you referrals. I frequently refer to an attorney who I shared a relationship with long before either of us started law school. I recently attended a session sponsored by the Wolverine Bar Association, where the topic presented was "Being a Successful Solo Practitioner." Both of the presenters

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referred to a certain attorney in the audience as one who received many of their referrals. Needless to say, they considered him to be a good attorney, but they were only aware of his ability because he took the time to build relationships.

Even after you obtain the work, relationships play a part in your ability to do a good job for your client. Your relationship with counsel on the other side may determine whether they will allow extra time to file the Answer to the Complaint, whether they will stipulate to an issue, or force you to file that motion. Your relationship with the attorney on the other side may determine the size of the settlement offer or demand. In transactional negotiations, your relationship with the attorney for the other side just may help everything go a bit smoother.

Relationships help to form your reputation in the legal community, as well as in the community at large. As we all know by now, relationships are not the "end all, be all." Success in our profession requires hard work and study. However, frequently, relationships are the grease that oils the wheels.

When I discuss relationships, I am not talking about anything magical. Definitely do not get the impression that I am advocating that you can go out and be nice to a lot of people so that your career will be more successful. I am simply saying that relationships are important, and easy to establish. To build relationships, you usually only need to incorporate something that you were taught long before law school. . . . "Treat people the way you want to be treated."

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.

"Blogs" seems to be the latest catchword in Cyberspace. Blogs is short for Weblogs and refers to web sites that are maintained by individuals or organizations to provide a frequently updated log on a particular subject. Most seem to be the work of individuals rather than organizations.

Weblogs have been around since 1993 but it was not until 1999 that software became available that permitted any one with a computer to set up their own weblog. Since that time the number of blogs has grown from an estimated few thousand in 1999 to over 500,000 today. Those who maintain blogs are called "bloggers."

While blogs started out in the form of daily journals or logs they now include sites dedicated to all kinds of subjects. Those that relate to law related subjects are now called "Blawgs."

Blogs can also be utilized to store information in the form of files that can be accessible to the public or that can be available only to selected individuals with a password.

Some examples of blawgs that lawyers may find useful for obtaining frequently updated information include the following:

- SCOTUSblog (Supreme Court): *http://www.goldsteinhowe.com/blog/*
- TalkLeft*: www.talkleft.com*
- Tax & Business Law: *www.taxbiz.blogspot.com/*

For a site that has links to a number of blawgs see:

- ErnietheAttorneyLawBlawgs: *http://radio.weblogs.com/0104634/outlines/Law%20Blogs.html*

To learn more about blogs see:

- http://www.blogstreet.com/reference.html
- http://groups.yahoo.com/group/klogs.

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Solo's Corner

By Sylvia Hsieh
Lawyers Weekly USA

Selling Your Practice Vs. Passing The Baton

As small-firm and solo lawyers approach retirement, they are forced to decide what to do with the practice they've dedicated their working lives to building.

"More and more lawyers are heading in the direction of retirement. There are a lot of people in their 50s and 60s who have been practicing for a long time. Especially for solo and small-firm lawyers, it can take a toll on you. They also don't have the luxury of big-firm retirement plans, so they need to start to think about those things," said Patricia Yevics, director of law practice management for the Maryland State Bar, who has recently fielded a number of calls on this subject.

In the past, lawyers were not allowed to sell their practice, but today 33 states permit lawyers to sell all or part of their practice. And a recent change in the ABA model rules now allows lawyers to sell off a portion of their practice, as long as they sell the entire practice area.

But many lawyers are reluctant to quit cold turkey, or they don't want to leave their clients with a stranger. One option is to hire someone who will eventually take over or purchase your practice.

A third option is to simply phase out the practice and wind down existing business with clients.

The biggest mistake lawyers make is not planning early enough.

Most attorneys start only about two years before retiring, said Ellen Freedman, law practice management coordinator of the Pennsylvania Bar Association. "I've even had people call me in March and tell me they want to retire in June."

Lawyers should begin planning at least 10 years before retirement, according to Joel Henning, senior vice president and general counsel of Hildebrandt Inc, a legal consulting firm in Chicago.

"Most lawyers don't think seriously enough about retirement until it's too late. Very often they haven't early enough come up with an institutional plan that will make a transition possible," he said.

Selling Your Practice

Some states allow a sale only of the entire practice, others allow a partial sale, and others have no rule at all.

"Before, lawyers just went out of business and sold their old law books and desks. Now you can get it appraised, establish a value, advertise it and sell your practice," said J.R. Phelps, director of the law office management assistance service of The Florida Bar.

Many small-firm and solo lawyers don't realize they have anything of value to sell, said Edward Poll, the author of a tool kit for buying and selling a law practice.

"It's a very, very serious question. In some cases there truly are things worth buying; in other cases, there truly isn't," said Henning.

Finding a suitable buyer can also be difficult, said Jordan Shapiro, an attorney in Malden, Mass.

After getting out the word that he wanted to sell his collections practice, he approached two law firms to ask if they were interested. "They said, 'Only if you work for us,'" which he was not interested in doing, he said.

He believes this happened because most of his business no longer consists of small collection matters that once were his staple.

"The older you get the more complex cases you take on. Somebody may not be able to take over," he added.

An option for lawyers who have several practice areas is to sell off a portion of their practice.

A recent change to an ABA model rule is intended to make it easier for small-firm lawyers to do this, by permitting a portion of a law practice to be sold.

James L. Schwartz, a Chicago attorney and member of an ABA committee for small firms and solos, explained that under the old model rules, if a small-firm lawyer wanted to slow down, he or she was basically forced to sell the entire practice and cease practicing law.

"We thought this was discriminatory because in a large firm, you could enter into a buy-sell agreement with existing partners," he added.

Under the new ABA Model Rule 1.17, which recently passed, a lawyer may sell a portion of the practice, as long as the entire practice area is sold.

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"If you're doing tax and bankruptcy law and you wanted to slow down, you could sell the bankruptcy practice and keep the tax practice," explained Poll.

But the lawyer cannot pick and choose which files to sell.

"You cannot just get rid of the files you don't want. That would be cherry-picking," Poll noted.

Under the model rule, the lawyer must cease practicing in the practice area that was sold, Schwartz noted.

"If you are an estate planning and probate lawyer, you would have to cease estate planning if that's the area you're selling off. If there is client loyalty there, you would not be able to accept new matters dealing with estate planning. You could refer them to the new attorney, but you cannot accept a referral fee," he added.

For those considering selling all or part of their practice, the advantages are that you can make a clean break as well as recover the equity put into the practice.

The main drawbacks are that some lawyers are not ready to stop practicing altogether and others are uncomfortable turning long-time clients over to a stranger.

Grooming Your Replacement

Another option is to partner with another lawyer or bring in an associate to groom as your replacement.

The main advantage to this option, rather than selling a law practice outright, is that it gives a lawyer the chance to ease into retirement and make sure the clients have a smooth transition to a new attorney.

The downside is that the arrangement with the new attorney could be disastrous, depending on whether the two personalities meld, whether clients accept the new attorney and whether the new attorney has the financial ability to purchase the practice.

Still, this can be an excellent alternative, especially for attorneys who are reluctant to quit practicing all at once.

"Most lawyers don't want to sell their practice entirely because if they do, they die. The color in their skin changes and they lose interest in life," said Poll.

Finding someone to replace you is also the only option for lawyers in states that prohibit sale of a law practice.

This is true in Pennsylvania, for example, which only allows a deceased or permanently disabled lawyer to sell.

The restriction "leaves most solo and small-firm practitioners with a real lack of ability to get out their sweat equity when the time comes to hang up the hat," noted Freedman.

Another advantage is that "it's always better to sell to someone who knows your practice. Just like if you have a house, it's always easier to sell to somebody already in the neighborhood," said Poll.

Working together with a younger lawyer is also one of the best ways to make a smooth transfer of the client base, said Anthony Palermo of Rochester, N.Y., who chairs the "planning for retirement committee" of the ABA senior law section.

"Selling a practice isn't like selling merchandise. You have to have a relationship with people. The clients ultimately have the choice, but if you can establish a working relationship with a younger lawyer and then phase out, frankly it's better than saying, 'I've got a practice to sell,'" he said.

However, in order to make it work, lawyers must plan years in advance.

One reason to plan so early is to hire the right person when interviewing associates.

"When interviewing, you've got to be right up front and say, 'I plan to hang up my shingle in about five years. I need somebody to step up to the plate so I can get my sweat equity out.' Some would say, 'That's fabulous!' Others say, 'Hey, I only want to be an employee.' The time to find out isn't after you've spent five years nurturing the person," Freedman said.

This is the problem encountered by Shapiro, the collections attorney. After training an associate for four years, he decided to retire, but found that the associate was not interested in owning the firm.

"I'm in a Catch-22. I don't need another lawyer to join the firm and I don't want to lose the lawyer I've trained. I certainly think in hindsight if I had thought four years ago I would be looking to retire and sell, I probably would have only hired someone who wanted to take over my practice one day," Shapiro said.

Even if the younger lawyer is interested in buying the retiring lawyer's interest, working out the retiring partner's share and how the new partner will pay for it can get tricky, Henning noted.

"If the practice is highly idiosyncratic and the retiring partner hasn't done anything to transition the clients to the new lawyer, no young lawyer will want to put up money for nothing. It's one thing to buy the law books and computers; it's another thing to pay for a client base that may not transfer to the new lawyer," he asserted.

"Neither can be sure that the clients will accept the new person," agreed Phelps.

Another problem with such an arrangement is that the new lawyer is usually taking a bigger risk by moving his or her practice without any assurances at the outset.

Many small-firm and solo practitioners are workaholics, and simply won't retire.

"The new lawyer may feel frustrated because the profits are still going to the other person. There's no real guarantee the person is going to leave. If you don't have anything to retire into, you've got someone else doing the work, you're still taking in the money, you have a feeling of status in the community because you have your own law firm. The question becomes, 'When are you going to retire?' said Evett Simmons, an attorney in Port St. Lucie, Fla.

"It's a crap shoot for both of them," said Poll.

An alternative, he suggested, is for the lawyer to sell the practice outright but include an arrangement for the retiring lawyer to stay on for a transition period.

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Fifteen Tips, Tools, and Toys from Techshow 2003

By Miles J. Postema, Esq.

If you never have attended Techshow, it is a wonderful collection of legal technology vendors and continuing education on the use of technology in your practice. It is the world's largest legal technology show and conference with more than 1,200 attendees annually. To say that there is something of value to every lawyer is an understatement. Techshow is best experienced firsthand. Techshow included tracks for lawyers in solo practice, firms of various sizes, and lawyers practicing in-house. It included programs on electronic discovery, knowledge management, case management, ethics in the digital age, case management, billing, and much, much, more. If you could not attend, the following is a list of fifteen tips, tools, and toys from Techshow that you can apply to your practice today.

1 **Telephone number but no name**. Do you ever write down a telephone number on a notepad, scrap, or billing edit sheet but then fail to write down the name and wonder a day later whose telephone number it is? Ever wonder whose number is on your telephone billing statement? Use Google's search function to determine the owner of the phone number. In Google's search box, type in the number separated by dashes (for example, "231-591-3894").

2 **Eliminate metadata from your Word documents**. Word documents contain metadata that may include information concerning edits to the document, time spent editing the document, and the subject of revisions and modifications made to the agreement, including information regarding prior clients if documents created for other clients are used as forms or templates. Leaving metadata in Word documents transmitted electronically can be embarrassing or constitute malpractice. You can eliminate metadata by converting Word documents to Adobe Acrobat PDF format, using a metadata removal program (*http://www.payneconsulting.com*), or publishing a document in RTF format.

3 **Comparison shopping from your computer.** Shopping for the best price for technology for the office? There are sites that allow you to compare prices at internet vendors to obtain the lowest price and/or shipping costs. These sites can be used to determine the lowest cost internet vendor or to provide comparison data for negotiating better prices with your local vendor. Some of these sites are the following: *www.shopper.com, www.pricegrabber.com, www.pricescan.com, www.streetprices.com, www.froogle.com.*

4 **Need additional storage capability for your notebook?** USB flash drives/memory sticks give you anywhere from 8 megabytes to 1 gigabyte ranging in price from approximately $30 to $1,000 at the high end. These devices plug directly into your notebook's USB port giving you a new external hard drive available to store documents and programs. Most merchants on the web now stock these devices.

5 **Have you switched to Word but still miss your "reveal codes" function?** A product called CrossEyes from Levit & James (*www.levitjames.com*) may give you the best of both worlds. At $79.95, this program may be the ticket if you cannot live without the "reveal codes" function.

6 **Remote access for your PC**. You can access your computer from remote locations by subscribing to GoToMyPC. This product is available on-line for $14.95 per month.

7 **Determine a client's birthday without asking**. You may be able to determine someone's birthday from a site aptly named *www.anybirthday.com* According to the site it has over 135,000,000 birthdates in its database.

8 **Search the invisible Web**. Do your Internet searches begin and end with Google? Then you may be missing the majority of the information available on the web. Learn about searching for information on the "Invisible Web" at *www.virtualchase.com/iweb/index.html*. Genie Tyburski and Gayle O'Connor's presentation from Techshow will give you essential tools for learning to surf the invisible web.

9 **"Sixty Sites in Sixty Minutes"**. One of the highlights of Techshow is always the session entitled "Sixty Sites in Sixty Minutes" presented by Burgess Allison, Jeffrey M. Flax and Mark Tamminga. Many of the sites do not relate to legal technology or the practice of law, but are humorous diversions between projects. You can tour the sites without the humorous commentary at *http://www.abanet.org/techshow/aba60_03.html.*

10 **10,000 free hours of AOL**. Tired of receiving those CD's from AOL that give you a free month-long trial of AOL that include more hours than exist in a month? These can be useful if you are in a remote location and cannot connect to your regular ISP. Throw one of these CD's in your briefcase for those times when you are away from home and may need Internet access in a pinch. You can download and begin using the Internet (for free) with one of these CD's. And while AOL may not be a good service provider for your law office, it will suffice for emergencies. They have dial-up numbers nearly everywhere in the country.

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11 **Get the most out of Word**. Most lawyers probably use less than ten percent of the features of Microsoft Word. You can put additional features to use by using Tools/Autocorrect for those common words and phrases as well as longer clauses and paragraphs. This will increase your speed and accuracy by creating shorthand abbreviations for commonly used words and longer phrases you use on a repetitive basis. Tools/Autotext is similar to Autocorrect but even better for longer paragraphs, clauses, and form text. Think of Autocorrect as a poor lawyer's document assembly tool.

12 **Find forms fast**. The best source of forms on the web for Michigan lawyers is ICLE's Partnership. Of course, it isn't free. Some free forms can be found at: *www.ilrg.com/forms/index, www.forms.lp.findlaw.com, www.formsguru.com, http://www.washlaw.edu/legalforms/legalforms.html*, and *http://cori.missouri.edu*. Court forms and other records can be found at these sites: *www.courtexpress.com, www.legaldockets.com, www.brbpub.com/PRRN/search.asp*, and *www.vitalrec.com*.

13 **Google viewer tool**. Do you like Google but would like to see a snapshot of the sites listed in your latest search? You can find a Google viewer tool at *http://labs.google.com/gviewer.html*. This tool will show search results in a slide show like format. Another search engine that clusters web sites for your review is *www.vivisimo.com.*

14 **Free advice**. Free advice might be worth what you pay for it but you can get free advice from other lawyers across the country. You can join the ABA's Solosez e-mail list at www.abanet.org/solo/solosez.html. Be prepared, however, to have these e-mails from this listserv directed to a folder on your in-box. It is not uncommon to have more than 75 to 100 in a given day.

15 **Dictionaries and grammar tools**. You can find on-line dictionaries at www.onelook.com and www.dictionary.com and on-line grammar tools at *www.grammarnow.com, www.grammarlady.com*, and *http://englishplus.com/grammar*.

These tips are largely derived from the programs "60 Tips in 60 Minutes" and "60 Tools and Toys in 60 Minutes." You can learn more about Techshow at www.techshow.com. On this site you will find information about next year's show when it becomes available and have access to some of the materials from past Techshows. If you never have attended Techshow, it is well worth the price of admission.

Miles J. Postema is the Deputy General Counsel at Ferris State University and was formerly a shareholder and served on the Executive Committee of Tolley VandenBosch Korolewicz & Brengle, P.C. in Grand Rapids, Michigan. He is the Immediate Past Chair of the Law Practice Management Section of the State Bar of Michigan.

Avoiding Grievances And Malpractice

By Joan Vestrand, Esq.

Before joining the full-time faculty of Thomas M. Cooley Law School, I practiced in the area of professional ethics. I spent several years investigating and prosecuting judges and lawyers for ethical violations. As prosecutors often do, I then left public service and switched sides, spending several years defending lawyers in disciplinary matters and providing ethics advice to attorneys. Eighteen years later, after thousands of investigations, hundreds of prosecutions and many, many cases in which I defended lawyers in disciplinary proceedings, I have come away with some definite conclusions on what lawyers can do to avoid grievances and malpractice claims. It comes down to three simple things: respect, responsibility, and reasonableness.

Respect

The attorney-client relationship is just that - it is a relationship. The impression of a neglectful attorney is created by negligence in handling this relationship. Such negligence is often the primary cause of a suit for professional malpractice.[1] A successful lawyer understands the importance of the relationship to the representation and takes the time and care to nurture and maintain an excellent relationship with the client. In fact, this is made a primary goal of representation. Why? Because the practice of law is a service business. If the service is poor, clients will likely be dissatisfied, regardless of the quality of legal services provided. It is just like a restaurant. The food can be great but if the service is lousy, you likely don't go back.

Clients assume (given the rates that we charge) that they will receive competent representation. Consequently, the measure of their satisfaction with a lawyer is not so much the quality of legal services provided but rather the amount of attention, care, and coddling they receive as a client. A client can lose his or her case and still walk away content if the client believes that we did all we could on the client's behalf. The client's impression in this regard is based more on our level of communication with the client than the legal efforts we put forth in the matter. It is the time we take with the client to really listen, without interruption, to what they have to say - to hear them. It is the time we take to promptly respond to their inquiries, to keep them informed of our efforts on their behalf, and to discuss with them information important to the representation. It is all of the care and concern that lends the impression that they and their matter are important to us.

The lawyer who is dedicated to good client communication has happy, satisfied clients. Happy, satisfied clients will continue to use our services and better yet, serve as a wonderful marketing tool for our practices. They sing our praises and refer business our way. Compare this to a client who, due to lack of communication, brusqueness, perceived rudeness or other neglectful action, is growing dissatisfied (regardless of the quality of the work we are providing) with the representation. This client will be voicing concerns about us to others even while the representation is in progress discouraging others from seeking out our services. Treating a client well is treating a client respectfully. Respectful treatment is deeply appreciated and clients who receive it are much less apt to grieve/sue their attorney. A client can lose his/her case and still walk away content if the attorney-client relationship was to their satisfaction.

Responsibility

The majority of grievances filed against lawyers raise allegations of neglect. Neglect of the client's matter and/or neglect in communication. Neglect serves as the basis for much of the discipline imposed against lawyers. Therefore, it is important to have measures in place in your office to minimize the risk of neglect and maximize your ability to handle matters responsibly. Neglect has many sources, one of which is accepting too much work. Ensure that your caseload is manageable and not too onerous. This is particularly important for the sole practitioner who lacks the assistance of other lawyers in managing a caseload. Carefully take into account the time and resources required for existing matters prior to determining to accept additional work. By the same token, evaluate the new matter for novelty and complexity and any other factors that may bear on the time the matter may require. Assess the strength or merit of the matter and if it is a weak case, consider whether to decline the representation. There is a known tendency of lawyers to ignore working on weak or non-lucrative matters in favor of strong/lucrative ones. This makes certain sense. However, as the clock ticks on the less desirable files, neglect rears its ugly head and despite a lawyer's best intentions, statutes have been known to run.

Another risk factor for neglect is the acceptance of matters outside your area of expertise. The scenario is a common one in the discipline field. Because a lawyer lacks the knowledge and expertise necessary for competent representation, the matter inevitably gets put off. Despite the lawyer's good intentions to become sufficiently versed in the particular area of law, press of business prevents lawyer from doing so. The client loses rights and the lawyer is disciplined. If you are unable to set aside the time necessary to *promptly* render yourself competent in a matter, do not accept the matter. Case closed.

The responsible representation of clients requires a system of internal office controls designed to ensure the proper handling and processing of client matters. Conflict checking procedures must be

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utilized and every lawyer should have a docketing system consisting of multiple calendars and tickler devices. Most malpractice carriers require such controls as a condition to coverage. Multiple calendars (such as a personal calendar and a master calendar posted in the office) reduce the risk of overlooked appointments, hearings and deadlines. Everyone in the office should have the ability to easily and quickly determine what you are doing and where you should be on a particular day and vice versa. Master calendars keep the entire firm on track and serve as an excellent supervisory device. Tickler systems, by whatever method, call up our files for our review on a pre-determined basis. All open files should receive regular review to ensure prompt handling and smooth processing of claims/matters.

Handling matters with responsibility also requires, for the solo practitioner, the creation and maintenance of a written emergency contingency plan. The plan should identify, in the event of the solo's death, disappearance or incapacity, the location of a current client list and all open files, bank account identification information, and the names of one or two lawyers who can take over the practice. The lawyer should have prepared and ready a letter to be sent to active clients advising of the lawyer's inability to continue the representation, the name of any lawyer(s) willing to assume responsibility for their matter, and their right to obtain their files and to locate other counsel of their choice. Our fiduciary duties to a client require that we ensure protection of client rights and interests in the event of our sudden incapacitation and inability to continue representation.

> "It comes down to three simple things: respect, responsibility, and reasonableness."

Reasonableness

So many grievances are filed over fee disputes. Protect yourself. *Always* utilize a written fee agreement and insist that it is signed by the client. First of all, written agreements eliminate risk of misunderstandings regarding the rate and basis for the fee and prove an actual meeting of the minds on these important points. Once you begin to render services, bill on a regular, frequent basis. Understand that detailed billing statements are an effective communication tool. They serve as an excellent means of keeping a client informed of the services being rendered on the client's behalf. In addition, studies show that clients are more apt to accept your fees when billed regularly, e.g. when they are kept abreast of the mounting fees. The risk of being grieved over attorney fees escalates dramatically where lawyer fails to bill on a regular basis and "surprises" client with a large bill at or near the end of representation. There are other reasons to bill regularly. Billing within 30 days of completion of any particular work greatly increases the likelihood of actually collecting the fees. The longer you wait, the more likely you will not collect.

Before sending a billing, review it for accuracy and *reasonableness.* Are the charges reasonable given the work performed? Billing for actual time spent may, in certain circumstances, be unreasonable. Try to conduct an objective evaluation of the billing and make adjustments where appropriate. Remember, too, that *fair* billing is another excellent marketing technique. Clients appreciate fair billing and your billing practices contribute greatly to their satisfaction/dissatisfaction with you as an attorney. Lawyers that charge for every breath they take might well be losing future business they might otherwise have had.

If a client has questions about a bill or contests it, invite the client to set forth his/her position in writing for your consideration. While you are entitled to be paid consistent with the terms of a retainer agreement for work legitimately performed, keep in mind that occasional adjustments in a client's favor can be good for numerous reasons. Client is now happy and pays the agreed upon amount. You have promptly collected fees due and owing (without resort to other collection efforts) and client is unlikely to grieve you over the issue. Keep client happy and client will continue to use your services and may refer others to you as well. Such adjustments or gestures of "good will," can be good for business.

Respect, responsibility and reasonableness - three keys to great success in practice and important aspects of the true professional. To practice in such a manner is to practice wisely and the rewards are yours for the taking.

Joan Vestrand is an Associate Professor of Law at the Thomas M. Cooley Law School where she teaches Professional Responsibility and Civil Procedure. Most recently, she was a partner and shareholder in the firm of Moore, Vestrand & Pozehi, P.C., in Southfield, Michigan where her practice focused on the representation of lawyers in disciplinary proceedings and court matters involving attorney contact. She is a member of the Oakland County Bar Association where she served as chair of the Professionalism Committee during 2001-2002; the State Bar of Michigan, where she served on the Grievance Committee; and the State Bar Law Practice Management Committee. She can be reached at vestranj@cooley.edu.

Endnote

1 Mallen, Legal Malpractice, at 46 (West 1981).

Book Review

By Miles J. Postema

Winning Alternatives to the Billable Hour: Strategies that Work, Second Edition, **by Mark A. Robertson and James A Calloway, 287 pages, Retail Price $149.95, LPM Price $129.95**

As lawyers, we are well aware of the changes affecting the legal profession and the increasing pressure on our rates and our fees for services. *Winning Alternatives to the Billable Hour* (as its name implies) is a comprehensive guide to alternatives to the billable hour. While the billable hour continues to be the standard by which fees are measured and charged, consumers of legal services now view legal fees by their perception of the value delivered. Increasingly, service providers are seeking alternatives to billing by the billable hour. The real question for lawyers is, "What is the value being delivered to the client?" The answer to this question should determine the price of your services.

This book does a nice job providing an overview of the changes that have created a demand for alternatives to the billable hour. Winning Alternatives contains forms, proposals, and templates to assist in using the alternatives described in the book. It includes a diskette with sample language for fee agreements, alternative fee agreements, and guidelines for alternative fee arrangements.

Chapters in the book include the following:

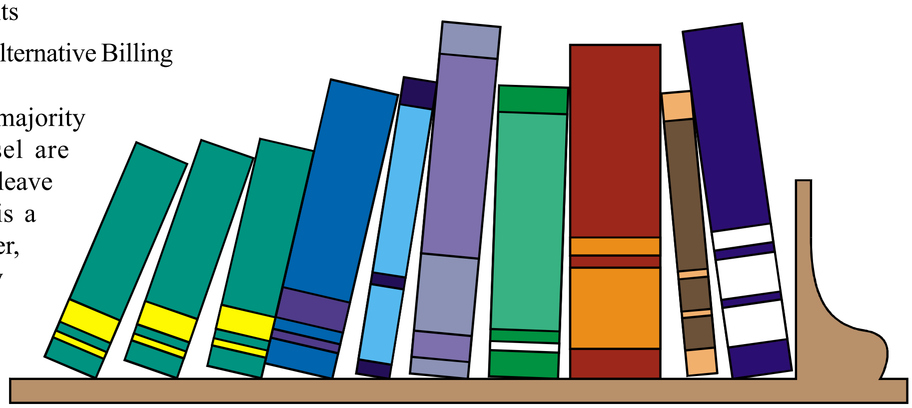
- Chapter 1: The Search for the Meaning of Value
- Chapter 2: The Changing Legal Profession
- Chapter 3: Ethical Rules and Practices
- Chapter 4: Pricing Legal Services
- Chapter 5: Pricing Legal Services for the Solo and Small-firm Lawyer
- Chapter 6: Foundations on Which to Build a Billing Method
- Chapter 7: Billing as Part of the Communication Process
- Chapter 8: Technology and Billing
- Chapter 9: Developing the Case Plan or Transaction Plan
- Chapter 10: Alternative Methods of Billing
- Chapter 11: Implementing Value-Based Billing
- Chapter 12: Legal Representation Agreements
- Chapter 13: Evaluating Results of the Use of Alternative Billing

Hourly billing is certainly not dead. The vast majority of the legal bills I receive as in-house counsel are expressed in hours billed. Lawyers are reluctant to leave the hourly billing model since they believe it is a valuable cost accounting tool. Hours billed, however, measures only effort and not results. The majority of our outside counsel continue to deliver their services on an hourly billing basis. However, more and more, we are seeking fixed priced arrangements, "not to exceed" arrangements, and other alternatives to the billable hour. Hourly billing arrangements continue to, in many cases, penalize the more efficient lawyer while rewarding the inefficient lawyer. The saving grace for lawyers using hourly billing arrangements are those that compare and review the hours worked with the value received, and who reduce accordingly when the two do not correspond. Those that do not engage in this review will have their bills challenged and may ultimately lose their clients.

What really matters is what your client is willing to pay for your services. The analysis should focus on what is the value and what are the results being delivered to the client. *Winning Alternatives to the Billable Hour* explores some of the alternatives to the billable hour and leaves you with the tools to implement these alternatives. It describes the best ways to implement an alternative billing method at your firm and how to communicate it to your partners and to your clients.

Winning Alternatives to the Billable Hour is not inexpensive. At a retail price of $149.95, however, it is less than the cost of one billable hour at nearly any firm. If you are interested in exploring alternatives to the billable hour, or if your clients are interested in alternatives to the billable hour, this book is worth a place in your library. Like most ABA Law Practice Management books, Winning Alternatives delivers helpful and practical information in a way that is readily adaptable to your practice. I know of no other work that is as complete and comprehensive a resource on alternative billing methods.

Miles J. Postema is the Deputy General Counsel at Ferris State University and was formerly a shareholder and served on the Executive Committee of Tolley VandenBosch Korolewicz & Brengle, P.C. in Grand Rapids, Michigan. He is the Immediate Past Chair of the Law Practice Management Section of the State Bar of Michigan.



Solo's Corner
Continued from page 4

The retiring lawyer would have "a contract to continue to practice and help the new lawyer over a period of time. It could be as short as a month or as long as several years," he explained.

Phasing Out

Many small-firm lawyers simply phase out their practice and gradually wind down their cases.

This may be the best option if "you feel you don't have any young lawyers to trust and you'd rather send clients elsewhere," said Henning.

In some cases, this is also the only option for lawyers who didn't plan well in advance of their retirement.

But even phasing out your practice requires some planning.

Carlton Green, a 58-year-old attorney in College Park, Md., recently decided he wanted more time to himself after 32 years of running a general practice.

He is gradually advising his clients that the other two lawyers in his firm will be the primary attorneys.

"You don't just turn off the lights and close the door. You make sure client matters are put in somebody's hands where they're going to be addressed. It's real important to meet with the client and the new lawyer, so they can build up a relationship, particularly with clients you've dealt with for years. They know they can come back and get a problem solved and whoever is doing it is going to do it right," he said.

Having represented many clients over the years, he said he doesn't feel comfortable selling them to a stranger.

"From my viewpoint, it's not something I was going to sell. I don't attach a monetary value to them, like furniture or equipment. It's not a situation where I'd say 'Here are 200 clients. Give me a couple hundred dollars.' I simply say to my clients, 'I'm cutting back on my time. Here's a couple of attorneys I can recommend to try to help you the best they can,'" he said.

For the next four to five years, before he officially retires, he plans to leave the trial work to other attorneys while maintaining some cases, mostly in estate planning where he can govern his own schedule.

"I don't have anything more to prove by going to court. I've been there, done that and it's not my motivating factor. At this point my motivating factor is time. Often, time is not your own when you're practicing law and working 14-hour days to meet every deadline. I'm sort of paying myself back," he added.

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Representative Assembly Seeks Nominees for Michael Franck Award

The State Bar of Michigan's Representative Assembly is seeking nominees for the Michael Franck Award, which will be presented during the 2003 Annual Meeting September 11- 12 in Lansing. This award is given annually to a member of the profession who has made an outstanding contribution to the improvement of the profession. The recipient's contribution may have been made during the past year or by virtue of cumulative effort or service.

- Any member in good standing with the State Bar of Michigan is eligible.
- The State Bar of Michigan Representative Assembly will make the selection.
- All nominations, including those that are faxed to 517-372-2410, must be received no later than **July 25, 2003**.
- Nominations should be addressed as follows:

Attention: Glenna Peters
Michael Franck Award
State Bar of Michigan
306 Townsend Street
Lansing, MI 48933-2083

The State Bar of Michigan Representative Assembly, composed of 150 lawyers from throughout the state, is the final policy making body of the State Bar of Michigan.

Interested in writing an article for the newsletter?

Articles should be 500-1500 words in length. Suitable 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:

June 20, 2003 for the Summer 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.

If you would like to raise a question or begin a discussion on the listserv,
just address your message to:
lawprac@lists.michbar.org

For those responding to a comment or question, send your response to the list. This is easily done by pushing the **Reply to All** button and typing your answer. If you want your answer to be sent only to the author, find the author's address and respond directly to him or her. By pushing the **Reply to Author** button, you may be sending your response back to the list if you are not careful. Of course, we have more fun when we can all join in on the conversation.

State Bar of Michigan

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