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PRESENTS

*Marketing Initiatives and Business Development for
Female Rainmakers - Ethical Considerations*

Presented by Cynthia Sharp, Esq.
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BUSINESS DEVELOPMENT - ETHICAL CONSIDERATIONS

Most of us have practiced in a landscape where we have been exposed to legal ads on a regular basis. After all, almost 40 years have passed since an attorney's right to advertise was upheld by the U.S. Supreme Court. Because this right to commercial free speech is subject to regulation by ethics authorities in each jurisdiction, many attorneys are reluctant to market themselves for fear of running afoul of the rules. This conservative approach naturally extends to the wild world of social media.

Even those who choose not to engage in an active business development campaign may be subject to ethical scrutiny. After all, marketing is, at its essence, communication and we all communicate in some fashion or other. Consequently all attorneys need to have at the very least a cursory grasp of the pertinent rules.

An excellent place to begin is by examining the resources included in Professionalism & Ethics in Lawyer Advertising (http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_ethics_in_lawyer_advertising.html) published and updated by the ABA Center for Professional Responsibility. Links to pending cases, court rulings and ethics opinions as well as a comprehensive outline of the differences between the pertinent MRPCs and state rules are provided. An attorney must closely scrutinize the precepts of his or her own state in light of the wide variation in rules that exists among the jurisdictions.

Because most states have adopted a version of the Model Rules of Professional Conduct (MRPC), initial reference can be made to MRPC 7.1 - 7.5 (rules governing information about legal services) and the amendments adopted in August of 2012.

Although most lawyers would not intentionally violate MRPC 7.1 by "making false or misleading communications" about herself or her services, some may inadvertently violate this basic rule. Ethics complaints have been filed against attorneys who unintentionally listed outdated or inaccurate credentials on their websites. These cases demonstrate that many attorneys do not review the content developed by marketing companies they hire. The attorney's defense that she was unaware of the content is ineffective since ethical compliance cannot be delegated. It should also be noted that Comment 1 specifies that the reach of the rule extends beyond advertising and applies to **all** communications about a lawyer's services. Some states, such as Virginia, require specific disclaimers that precede the communication of "specific or cumulative case results".

Attorneys are prohibited under MRPC 7.2 from giving "anything of value to a person for recommending the lawyer's services". As this rule covers referral fees, MRPC 1.15 and 5.4 also come into play. Those who have established reciprocal referral arrangements are advised to read Comment 8 of MRPC 7.2. Note that some states require prior filing or approval or an ad, some require filing within a certain period after publication while most require neither pre approval nor filing at any time whatsoever.

Restrictions on solicitation of clients through direct contact, whether in-person, live telephone or real-time electronic contact, are outlined in MRPC 7.3. States have imposed a variety of restrictions, some dictating the number of days which must have elapsed between the date of the accident or catastrophe and time of solicitation. Others focus on the mental, physical or emotional state of the potential client.

Labeling requirements (often including substance, size of font and placement of the text) are detailed in this rule.

MRPC 7.4 should be reviewed with care before communicating information about fields of practice and specialization. In the course of naming a law firm, a cautious attorney will take a look at MRPC 7.5. Although not specifically geared toward advertising, MRPC 1.6 can be brought into play if a lawyer reveals “information relating to the representation of a client” in the course of a communication about legal services.

In addition to the Model Rules of Professional Conduct, the ABA Aspirational Goals for Lawyer Advertising are worth a glance. http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_ethics_in_lawyer_advertising/abaaspirationalgoals.html

The Goals remind lawyers that their ads should be dignified, professional and in good taste. Use of “inappropriately dramatic music, unseemly slogans, hawkish spokespersons, premium offers, slapstick routines or outlandish settings” is discouraged.

Some video ads may pass muster ethically but fail to satisfy the standards established by the Aspirational Goals. Check the following out and judge for yourself. The video ad of a Florida divorce lawyer <https://www.youtube.com/watch?v=y1Qk6QPzuIc> begins with the following: “If you and your spouse hate each other and want to get out of the hellhole you call a marriage, you’ve come to the right place.” The opening may very well be the high point of the ad. Also, take a look at the video of a Pennsylvania criminal lawyer <https://www.youtube.com/watch?v=q7LwRFhfRQc> who states “I make jail visits because I’ll probably be there visiting my friends anyways.”

While new ethical frontiers have opened which may give a lawyer pause for thought, a review of pertinent rules, state advisory opinions, and ethics and judicial opinions will pave the way to an ethically compliant business development campaign.

SOCIAL MEDIA: ETHICAL AND PRACTICAL CONCERNS FOR YOUNG LAWYERS

“You are what you share.”

— C.W. Leadbeater

Newly admitted to the bar, Sharon treats herself to a well-deserved vacation at a remote and private destination. During her week of frolic, she documents her leisure activities by posting on Facebook numerous pictures of herself in various stages of undress, inebriation and general mischief. Although her privacy settings were properly set, her “message” reaches an unintended audience since one of her high school friends shares the photos with *all of her* Facebook friends. Much to Sharon’s personal and professional embarrassment, the provocative photos spread like wild fire through her real-world and virtual communities.

AVOID PROFESSIONAL AND PERSONAL EMBARRASSMENT

Indiscriminate posting can lead not only to embarrassment but also to charges of professional misconduct. Information and documentation posted long ago (before maturity set in) could come back and haunt you when least expected. It is unwise to allow a partner to take sexually explicit photos or videos. Those who have been humiliated by revenge porn, now illegal in over 15 states, undoubtedly regret disrobing in front of a camera.

Adhering to the following rule is a step toward maintaining a pristine online reputation: “Don’t post anything that you wouldn’t want your grandmother to see.” Carrying this concept a step further: “Don’t divulge anything in an email that you don’t want shared with the world.” Nothing stops your frenemies from publishing or distributing the views expressed in your emails. Hackers have also been known to wreak havoc. For example, sensitive information contained in e-mails exchanged by Sony corporate executives was revealed late last year by hackers. Many were cast in a bad light.

While the classic idiom cautions against “closing the barn door after the horse has bolted”, it’s at least worth a try. If another posts a picture of you inconsistent with your professional brand, request removal of the offensive picture and remove any identifying “tag”. Both are proactive steps toward reputation protection.

By the way, NEVER post on social media when you are angry, overly fatigued, drunk or otherwise impaired. Although “private” e-mails, text messages and oral recorded messages don’t fall under the definition of social media, the same advice applies.

Circulating pornography is also a bad idea. (This includes pictures of your own private anatomy. Former state senator Anthony Weiner can attest to the destructive nature of that pattern of behavior.) Former Pennsylvania Supreme Court Justice Seamus McCaffery resigned from the bench in October of 2014 after it was discovered that he had sent 234 emails containing sexually explicit photos and videos to

an agent in the attorney general's office. It appears that even our highest officials can't resist electronic temptation.

A young lawyer apparently forgot that she was Facebook friends with Susan Criss, a Texas state court judge. Judge Criss had granted her a one week continuance in a matter because she claimed that her father had died. After viewing the attorney's Facebook posts depicting a week of relentless partying, Judge Criss denied further requests for adjournment. No lawyer would enjoy this embarrassing predicament.

Even the most highly educated people may suffer a lapse of judgment and make ill-advised comments that they later regret. Unfortunately, social media and other digital communication offer the opportunity to broadcast commentary to over a billion people worldwide, all of whom can preserve these little gems forever by taking a screenshot of the post or message. Even voice mail messages have that forever quality.

ETHICAL ISSUES

Duty of Confidentiality

Sharing client confidences online not only violates Model Rule of Professional Conduct 1.6, but also makes the "posting attorney" a highly visible sitting target for the scrutiny of the ethics committee. This is a prime illustration of "Nowhere to Run, No Place to Hide".

Illinois attorney Kristine Peshek was author of the blog "The Bardd Before the Bar -- Irreverent Adventures in Life, Law, and Indigent Defense" when she posted her career altering rants and disclosures. One of her clients was described as "taking the rap for his drug-dealing dirt bag of an older brother" and according to the disciplinary complaint, clients about which Peshek blogged were easily identifiable. Referring to one judge as an "—-hole and another as "Judge Clueless" certainly added fuel to the fire. She was fired from her 19 year position as a public defender when her supervisor discovered her blog. A 60 day suspension was imposed by the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission in 2010.

Hypotheticals

One of the most valuable resources that lawyers have is each other. When we get stumped while working on a case, we can "phone a friend" and usually get guidance or referred elsewhere. Our expanded spheres afford us the opportunity to seek answers from our virtual communities including Listserves and Linked In Groups.

Comment 4 of Model Rule of Professional Conduct 1.6 sanctions use of a hypothetical to discuss issues relating to a matter "so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved." When you relate the hypothetical to one lawyer, it is usually safe to presume that the "reasonable likelihood" standard is met so long as your description is not too revealing. Can the same be said if the hypothetical is broadcast to a professional online group that may include an adversary in the matter among its members? Even if you are careful with your wording, a lawyer involved in the case may very well accurately identify both the client and the situation.

Reputation Management

Attorney Margaret A. Skinner of Georgia discovered the professional folly of responding to a former client's negative online reviews by posting personal and confidential information obtained during the course of the lawyer-client relationship. Finding that she had posted the client's name, employer, amount paid in legal fees, county in which the divorce was filed and further stated online that her former client had a boyfriend, the Georgia Supreme Court imposed a public reprimand. Ms. Skinner's actions were ill-advised from a marketing standpoint as well. Reputation management efforts approached from a positive standpoint have greater impact than negative campaigns which simply take the original victim down to the attacker's level.

Trial Publicity

Attorneys involved in an investigation or litigation of a matter are prohibited under Model Rule of Professional Conduct 3.6 (a) from publicly commenting on the case if the communication "will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter". This rule extends to posts made on social and electronic media to which jurors, the judge and the media may have access.

Spoilation of Evidence

While posting improvidently can land a lawyer in ethics hot water, deleting or advising a client to attempt to delete certain posts can also have undesirable consequences. Severe monetary sanctions have been imposed upon lawyers and clients alike. Courts have also delivered adverse inference instructions to juries, permitting jurors to make a negative inference against the responsible party regarding the destroyed evidence. In addition to sanctions directly available to the trial court, the lawyer may be subject to disciplinary proceedings. A five year suspension was deemed appropriate in a matter where the attorney had counseled the client to remove postings from the client's Facebook page subsequent to being served with discovery request.

Those interested in exploring this topic in more depth are referred to Proposed Advisory Opinion 14-1 issued by The Professional Ethics of the Florida Bar on January 23, 2015. The opinion summarizes several relevant cases as well as ethics opinions issued by the New York County Lawyers Association, North Carolina, Pennsylvania Bar Association, Philadelphia Bar Association Professional Guidance Committee. Social Media Guidelines published by the New York State Bar Association's Commercial and Federal Litigation Section are also referenced.

CHARACTER AND FITNESS EVALUATION

Under scrutiny even before admitted to the bar, applicants for admission to the bar throughout the United States must submit a character and fitness application. In 2009, Florida's Board of Bar Examiners became the first to set forth a policy of examining social media sites of certain bar applicants including those "with a history of substance abuse/dependence" or with "significant candor concerns".

Careful attention to social media activity will reveal a clean “record” for those seeking future bar admission in Florida or other states adopting similar rules. This policy provides yet another reason to advise younger friends and relatives to reveal only their conservative side to the virtual world.

“WE WERE ALL IN COLLEGE”

Mark Rosch, Vice President of Marketing for Internet for Lawyers, related that he is often asked whether prospective employers can really track down previously deleted posts. First, Rosch differentiated between public and more private posts. He advised that while the deleted digital information may remain indefinitely in cyberspace (in a backup copy of the social network, for example), in practice it would be very difficult to find deleted public posts and nearly impossible to locate deleted private posts. He suggests conducting your own test by making an innocuous public post and once it's posted, make note of the web address for that specific post. Then delete it. There are a number of ways you can test whether that digital information is still readily accessible after you've deleted it. You might try typing the web address into your browser's address bar, conducting a Google search using the web address of the post as your search criteria, or search for posts by your name while logged into a friend's Facebook account. Looking forward, why not set up a Google alert for your name to monitor new public content which may relate to you?

PRIVACY SETTINGS

Most who are actively engaged in the social media community have appropriately adjusted their privacy settings. Carole Levitt, co-author of *Internet Legal Research on a Budget* recommends a periodic check of privacy settings since “social media sites update privacy rules at will”.

ESTATE PLANNING CONSIDERATIONS

Everyone (young and old alike) needs to have a current will and power of attorney granting the fiduciary specific powers to administer digital assets. Don't you want to leave instructions with respect to disposition of private emails, financial and other online assets? Some of these most likely contain confidential information.

A handful of states have enacted statutes (some already outdated) addressing cyber property issues arising after death. In addition, most social media sites and e-mail service providers have developed policies in this regard. If you have access to my recent book, [The Lawyer's Guide to Financial Planning*](#), pages 160 - 163 are devoted to the topic of digital assets and contain both a sample will clause and sample power of attorney clause.

CONCLUSION

Indeed, social media's power cuts both ways. Most have not explored the full panoply of benefits in the worlds of marketing and research. Yet, many have felt the sting of making a fool out of themselves and

have even jeopardized their careers. In most situations, using common sense and restraint of pen and tongue will prevent many of the mishaps described above.

* The book is available at www.ShopABA.org.

MRPC 7.1 COMMUNICATION CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

MRPC 7.2 ADVERTISING

- (a) Subject to the requirements of MRPC 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.
- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
 - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
 - (3) pay for a law practice in accordance with MRPC 1.17; and
 - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
 - (i) the reciprocal referral agreement is not exclusive, and
 - (ii) the client is informed of the existence and nature of the agreement.
- (c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

MRPC 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

MRPC 7.4: COMMUNICATION OF FIELDS OF PRACTICE & SPECIALIZATION

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.
- (c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.
- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
 - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and
 - (2) the name of the certifying organization is clearly identified in the communication.

MRPC 7.5: FIRM NAMES & LETTERHEAD

- (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates MRPC 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of MRPC 7.1.
- (b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- (c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.
- (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

MRPC 7.6: POLITICAL CONTRIBUTIONS TO OBTAIN LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

CREATING A CLIENT CENTRIC BRAND®

“A brand is the set of expectations, memories, stories and relationships that, taken together, account for a consumer’s decision to choose one product or service over another.” - Seth Godin

Professional legal marketers are by and large responsible for the creative and labor-intensive effort involved in developing a strong law firm brand. After all, a brand does not develop by chance but rather is strategically planned, crafted and communicated. As the firm and contextual environment evolves, the marketing team (which may consist of one person) must begin the arduous (and often under appreciated) process of refreshing the brand.

Shaping an Attorney’s Unique Brand

However, the *firm’s* brand represents only one component of the business development matrix and individual lawyers bear a measure of responsibility with respect to establishing and promoting their own personal professional brands. In John Hellerman's excellent article “To Build the Brand, Build Up the Lawyers” featured in July’s issue of *Marketing the Law Firm*, he pointed out that the brands of individual lawyers must be developed because clients hire attorneys and not law firms.

Personal professional branding cannot be reduced to a blueprint. A lawyer’s unique brand is developed as clients and referral sources experience the value offered by the attorney. The key is for each individual attorney to take control of his or her own brand and shape it *authentically*. The marketplace will define an attorney’s individual brand, in large part, on the basis of the breadth and quality of the lawyer’s actions. For example, a lawyer who routinely publishes and speaks in his field of practice will be branded as an expert.

While many facets of a professional brand could be explored, space limitations require me to confine the scope of this article to offering a few narrow perspectives with respect to the branding process in one particular arena - client relationship mastery. Significant economic efficiencies can be achieved if focus is geared toward building a Client Centric Brand®. Most are aware that it is less expensive to obtain repeat business or a referral from an existing client than to go through the arduous cycle of developing a new relationship.

A Brand is a Promise

Many believe that a brand is simply a promise - a promise to prospective and current clients as well as colleagues as to how the lawyer can be expected to behave. Those expectations are based on past actions observed by or conveyed to those we seek to favorably impress.

Example: Wealthy Client of partner in the estates and trusts department confides that she suspects her husband of cheating and wants to revisit portions of her will. Partner gently suggests that she may wish to consult with one of his partners in the firm's family law department. She politely declines and reveals that her best friend used one of the firm's attorney for her divorce. The lawyer did not return calls promptly, was always late for meetings and was exceedingly brusque and unsympathetic. Although her friend's legal result admittedly exceeded expectation, Wealthy Client states: "Divorce is difficult enough. I want my attorney to know how to treat me as a person. There are many lawyers out there who are smart, aggressive and yet compassionate. That's what I need - especially now."

While individual attorneys bask in the sunshine of a robust law firm brand, an attorney with a poor personal brand not only undermines the law firm's brand but also affects the law firm's bottom line, as illustrated above. An attorney with a substandard brand will have difficulty getting referrals from outside sources as well as from his or her own partners. Therein lies one of the dangers in failing to train and coach lawyers to develop behavior consistent with a Client Centric Brand®.

The Client Relationship

In the following section, the client relationship is broken down into six stages. Each stage affords a new opportunity to display a unique promise, to galvanize the individual professional brand and to catapult the attorney into a category of one. Certainly, the law firm brand can also be enhanced throughout the relationship; however, that topic is beyond the focus of this particular article. Not all stages will be relevant to each relationship; therefore, the attorney should simply focus on the ones that do apply.

The foundation of brand differentiation begins with articulation of the firm's philosophy on client relationships and establishing standards of service. The project continues with attorneys reframing certain attitudes and forming new habits so that the lawyer and the firm will benefit with the reward of deeper client relationships.

Six Stages of a Client Centric Brand®

Stage One: Prospective Client (Not-Yet Connected)

Objective: To become known as a thought leader in a particular field of law in order to have the opportunity to serve more clients as well as to re-enforce relationships with current clients and referral sources.

Action: The lawyer frequently writes articles, blogs or books and speaks before a variety of audiences in the area of law in which he or she wishes to be considered an expert.

Implicit Promise: "I promise that I am a thought leader. I keep on top of the latest developments and cutting edge strategies in the legal arena. Even my colleagues rely on me in order to stay current."

Stage Two: Forging a Connection

Objective: To influence a prospective client to retain the lawyer when the need arises.

Action: The lawyer becomes familiar with the prospect (both at an institutional and individual level) without “pushing” for business. This involves extensive research about the prospect as well as the industry. Connections are made and reinforced again and again.

Implicit Promise: I take the time to get to know prospective clients and their industry thoroughly so that I can offer exemplary representation. I’m willing to be patient and show value first.

Stage Three: Serving the Client

Objective: To offer the best possible client service because it is the right thing to do. Of course, great service also inspires client loyalty.

Action: The lawyer consistently under promises and over delivers. Processes are put into place to ensure that prompt attention is given to phone calls and emails. Documents and correspondence are devoid of sloppy errors. The lawyer is always on time and gives the client full attention during meetings and proceedings.

Implicit Promise: I respect you and the value of your time and always deliver top notch professional service. You have my complete and undivided focus when I work on your matter.

Stage Four: Billing

Objective: To establish that fees are simply part of the business relationship and to ensure that they are paid in full on time.

Action: The lawyer sends out accurate, regular and detailed invoices that reflect the terms of the retainer agreement.

Implicit Promise: I am fair in all of my business dealings with you. The amount of an invoice will never be a surprise.

Stage Five: Conclusion of Matter

Objective: To ensure that the client understands that the matter is complete and to solicit feedback regarding the representation.

Action: A closing letter is sent and the client is surveyed. The survey can be conducted in writing, by phone or personal interview.

Implicit Promise: I care about client satisfaction, will respond to all feedback and continuously strive to improve.

Stage Six: Post Matter

Objective: To continue the relationship with the hope of attracting additional business.

Action: The lawyer has a structured process that keeps his or her name at the top of the client's mind. This could include taking advantage of client entertainment opportunities, forwarding articles of interest or reaching out through email or social media.

Implicit Promise: I am your trusted advisor and am always thinking of your interests - even when I am not actively representing you.

Professional brands can be enhanced with small shifts in attitude and action. If each of "your" attorneys committed to work toward improvement in each of the areas outlined above, how would that affect your law firm's OVERALL brand as well as bottom line?

THE LAWYERS' GUIDE TO NO COST/LOW COST MARKETING

A basic framework for creating and implementing a successful attorney marketing plan is outlined below. The intention is to share marketing insights gained over the past 30 years, the majority spent at the helm of a small practice. The mission is also to demonstrate how lawyers without the budget for a professional marketing company can start strong.

Specific suggestions are provided with respect to the following categories: Content Marketing, Relationship Marketing, Direct Marketing and Social Media. Space limitations prevent consideration of other important areas including Advertising, Public Relations and Ethical Implications.

MARKETING PLAN: BASIC FRAMEWORK

Marketing consists of strategically educating potential clients and referral sources as to the scope and benefits of your legal services. No matter the method used to distribute the message, certain steps need to be taken by all entrepreneurial marketers to maximize results.

Step 1. Business Plan

The marketing plan should be an integral component of a well constructed business plan which is part and parcel of a long term strategic plan. Expending efforts and funds willy-nilly in reaction to randomly obtained advice rarely works in the long term. Applying a results oriented approach forces you to quantify expected financial growth.

Benchmarks must be established to measure the marketing plan's effectiveness. Setting forth a specific ideal outcome in writing is a critical component of the process and the goal is normally articulated in terms of a measurable increase in either gross revenue or net income.

Step 2. Initial Assessment

Before committing to new marketing programs, step back and thoroughly assess your current initiatives. Basic questions to address at the inception are:

- (a) Do you have a written marketing plan to which you and all members/employees of your firm adhere?
- (b) Who is your target market?
- (c) What is your current brand?
- (d) What was your marketing budget for the prior year?
- (e) Do you know your top 20 referral sources?
- (f) Do you have a marketing database that is updated at least weekly?

- (g) How do you currently measure the effectiveness of marketing endeavors?
- (h) What has been your past ROI (Return on Investment)

Step 3. Create, evolve and control your brand.

Most businesses and law firms let their brand develop by chance. Well intentioned, many engage in a “visible branding” campaign (consisting of graphic components such as a logo and randomly chosen tag lines), neglecting to strategically develop image and core message.

I recently heard “brand” defined as a promise. The promise is conveyed through strategic communication and action, always evolving. An attorney who consistently fails to promptly return phone calls has so branded him or herself whereas a lawyer who is always prepared for court is branded with that reputation. Implicit in actions are promises about the future.

Start defining your ideal brand by exploring the unique qualities that differentiate you from your competitors. Because the identity of a progressive business is forever growing, its branding process is an ongoing endeavor.

Step 4. Set specific and written monthly goals with respect to marketing activity.

Marketing plans produce results only when carefully laid out steps are implemented on a consistent and persistent basis. Create or adopt an activity management and accountability system that keeps you on track. My process is to establish annual, quarterly, monthly and weekly minimum activity goals, recording progress (or lack thereof) on a spread sheet. For example, I track the number of social media posts to be made, networking events to attend, direct marketing pieces to be sent within a given time period.

Step 5. Establish a specific and ongoing follow up process.

The frequency and method of future contact with the prospective client or referral source is context dependent. Sometimes, the situation calls for immediate lunch or even a phone call. When immediacy is not necessary or appropriate, you could schedule periodic “soft touches” over the course of the upcoming year. “Soft touches” include sending notifications of blog posts, copies of your published articles and invitations to firm sponsored seminars. Connecting through social media is also recommended.

A well run “follow up” program requires the support of a modern marketing database system created and maintained by the law firm. While capturing complete information is ideal, even email addresses alone are beneficial. After all, most marketing is currently done online as opposed to via the “snail mail” route. Additional comments on this topic can be found in the “Direct Marketing” section below. The crucial factor is to constantly update the marketing database with contact information for each and every new potential future client or referral source.

Step 6. Monitor and reassess results.

A structured approach for accountability and assessing (ROI) creates the basis for shifting away from efforts that aren't productive and directing resources (time or money) toward endeavors that prove profitable. A monthly analysis has worked well for me. However, keep in mind that some marketing initiatives take longer than others to produce appreciable results. Data to be reviewed at this juncture includes:

1. The source of each inbound contact whether or not an immediate client relationship is developed, thus enabling you to track the efforts yielding the most results. Each team member must be required to capture this information (in accordance with your system) at the time that the initial inbound contact is made.
2. Current revenue figures compared with past and ideal figures (as identified in Steps 2 and 4 above).
3. Total revenue and time expended on the marketing initiative by you or others in the firm.
4. Determine whether you are satisfied with the ROI (after giving the particular plan a reasonable amount of time to produce results). If not, recalibrate the plan on your own or consider investing in a short term contract with a consultant or coach experienced in law firm marketing to get you on the right track.

MARKETING - SUGGESTED METHODS

The marketing methods discussed below have been used by me personally in either the law firm setting or in my current business enterprise. Although I rely on a number of other methods, the following were chosen because any reader can immediately implement them at no or low cost. My results, like yours, depend on the amount of effort I expend and on my diligence in following the steps outlined above.

CONTENT BASED MARKETING

One of the strongest methods of communicating the value of your legal services is by writing, publishing and speaking. You and your clients benefit because in the course of branding yourself as an expert in your field, you *become* an expert in the field. The research, analysis and preparation pays significant dividends indeed.

Content based marketers strategically write, publish and repurpose the message conveyed in published articles and columns. A column written for attorneys or other professionals (usually referral sources) can be rewritten for the benefit of non-professionals (usually potential clients) and published in an appropriate periodical. Both traditional print and online publications (such as newspapers, newsletters, blogs and journals) are clamoring for valuable information to share with readers. It's up to you to seek them out, determine their specifications (such as word count) and to submit proposals and manuscripts for publication.

Your written word should be leveraged through offering live and/or online presentations. Endless opportunities await the lawyer willing to master the craft of presenting at programs, workshops and seminars. Teaching CLE or CE for other professional groups puts you in front of potential referral sources and further enhances your image as an expert. Spreading the word about your area of expertise at self-sponsored seminars or before community groups will also prove valuable. Make sure that you collect contact information from the attendees to add to your ever growing marketing database.

RELATIONSHIP MARKETING

In a world of “high tech/low touch”, strategic in person networking remains the most powerful ways to create and deepen relationships. Here are a few tips to successful networking at an event or conference:

1. Research the background of any speaker or other attendees (if you have that information). I normally connect through social media prior to the event which warms the atmosphere for an in person introduction.
2. Instead of hanging out with others from your office or social group, be sure to mingle. The purpose is to establish new business relationships.
3. Engage fully while conversing. Glancing around the room, at your watch or cell phone sends an unattractive message to your conversation partner. Many lawyers (and other adults) have unfortunately not mastered basic social skills. Make sure you're not one of them.
4. The most important and neglected part is The Follow Up. Immediately after a networking event or conference (usually before leaving the premises), I take a snapshot of the business cards given to me. Using Evernote, the image is sent to my virtual assistant along with instructions to add contact information to our marketing database as well as the appropriate follow up action (i.e., send a letter, schedule a lunch date or other specific action).

DIRECT MARKETING

Direct marketing campaigns can take many forms. Two that have worked for me in the past are (a) mailings (print or email) “targeted” toward those with a known immediate need and (b) those designed to build or reinforce a loyal referral/potential client base (known as a “drip” campaign),

An example of the first is a bankruptcy attorney who sends mass mailings to individuals involved in foreclosure proceedings. Targeted direct marketing can produce excellent results; however, attorneys must ensure compliance with the rules of professional conduct and design mailers that differentiate them from the sea of mail the potential client will surely receive.

A “drip campaign” consists of pre-designed mailings (usually e-mail) sent at various pre-determined points in time usually via an automated system. Ultimately, a “call to action” message is sent where the recipient is encouraged to make an appointment for a consultation, attend a free seminar or even request additional written information.

An attorney can run a number of these campaigns at once. For example, one mailing may be directed to individuals who recently heard you speak. Another may be directed to potential referral sources, designed to educate as to the intricacies of your practice.

No doubt, you have been on the receiving end of these campaigns. They can be very effective for attorneys especially if the content of the mailings is high quality and relevant.

Those intending to send mass emails are advised to investigate an e-blast platform such as Constant Contact, MailChimp, Emma or one of many other vendors. Client Relationship Management (CRM) Platforms can take your drip campaign to a new level. Infusionsoft, a leading company in the field, offers a free demo on their website which explains the benefits in great detail.

SOCIAL MEDIA

“Content is fire. Social media is gasoline.” - Jay Baer

Often referred to as the digital wild west, the social media landscape has indeed upended the marketing world. The power of content, relationship and direct marketing are combined and supercharged as never before. Fortunately, significant educational and training resources have been developed specifically for lawyers. Make sure that you are exposed to the most up to date information as the major applications evolve rapidly as do the applicable ethics rules.

Keep in mind the following as you become involved in the social media conversation: (1) Distribute excellent content (i.e. curate); (2) Engage with your connections and followers. Don't just blast out information. Social media is NOT a one way street; (3) Strategically build your platform. Michael Hyatt's recent book, [Platform](#), is an excellent resource on this topic; (4) Check out automated systems to assist in distributing content across several social media platforms at once. I use Hootsuite; however, Tweetdeck and others are also effective.

CONCLUSION

Like most worthwhile endeavors, the marketing process requires effort, focus, and commitment. Adherence to the steps outlined above will prove significantly more productive than taking a haphazard approach. Keep up your efforts on a consistent and persistent basis and watch your practice grow!

COMMITMENT TO CREATE A BUSINESS PLAN

Goals that are written with a specific deadline are less likely to fall by the wayside than are general declarations as “I’m going to do more marketing next year.” If you already have written strategic and business plans, kudos! If you don’t, are you ready to make a commitment to engage in the exercise?

What would hold you back from creating an individual business plan?

How would you overcome those obstacles?

What date will you begin your business plan? _____

What date will you complete it? _____

THE ANNUAL VISION BUILDER

Name:

Date:

CRUCIAL RESULT	WHY?	1ST QUARTER GOAL	1ST QUARTER ACTUAL	2ND QUARTER GOAL	2ND QUARTER ACTUAL	FINAL OUTCOME

Accountability Partner & Phone Number: _____

THE ANNUAL VISION BUILDER

Name: Sandy Smart

Date: July 16, 2015

CRUCIAL RESULT	WHY?	1ST QUARTER GOAL	1ST QUARTER ACTUAL	2ND QUARTER GOAL	2ND QUARTER ACTUAL	FINAL OUTCOME
Make a decision Re: expanding into new practice area	Firm expansion opportunity	Make business case	Business case completed	Conduct due diligence; Evaluate external factors	Spent 25 hours researching and have outline report	
Enhance firm's social media presence	Increase exposure	Create Social Media Policy	Got push back	Create Social Media Policy	Social Media Policy created	
Create culture of predictable client service	Satisfied clients are repeat clients	Design & distribute survey	Designed & distributed survey	Discussed feedback with individual lawyers	Discussed feedback with individual lawyers	
Increase number of prospects on our DB by 20%	Improve law firm bottom line	5% increase	5% increase	5% increase	5% increase	
Spend more time with family	I love my family	1 date night per week with spouse	10 date nights	2-4 day weekend trips with family	2-4 day weekend trips with family	
Pay off Home Equity Loan (\$8,000)	Financial Security	Pay \$2500	Paid \$2000	Pay \$2000	Paid \$2000	
Lose 15 Pounds	Health	Lose 3lbs	Lost 4lbs	Lose 2 lbs	Lost 3 lbs	

Accountability Partner & Phone Number: Felix Frankfurter 555-555-5555

THE IDEAL WEEK

Name:

Date:

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
8:00 AM					
9:00 AM					
10:00 AM					
11:00 AM					
12:00 PM					
1:00PM					
2:00 PM					
3:00 PM					
4:00 PM					
5:00 PM					
6:00 PM					

Accountability Partner & Phone Number: _____

THE IDEAL WEEK

Name: Sandy Smart

Date: July 16, 2015

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
8:00 AM	Gym		Gym		Gym
9:00 AM		Attend Practice Group Meeting		Write video scripts	
10:00 AM					
11:00 AM					
12:00 PM	Lunch with Jessica	Buy Dan present	Participate in Marketing webinar	Networking Luncheon	Get haircut
1:00PM					Finalize video scripts
2:00 PM	Meet with Jim to review final CRM options & discuss benefits				
3:00 PM			Coaching session with Margaret		
4:00 PM		Meet with Judy to discuss BD plan			
5:00 PM	Prep for tomorrow	Prep for tomorrow	Prep for tomorrow	Prep for tomorrow	Prep for Monday
6:00 PM					

Accountability Partner & Phone Number: Felix Frankfurter 555-555-5555

THE TAKE CHARGE PLAN

Name: _____

Date: _____

My workday is not complete until the following tasks are accomplished:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

Accountability Partner & Phone Number: _____

THE TAKE CHARGE PLAN

Name: Sandy Smart

Date: July 16, 2015

My workday is not complete until the following tasks are accomplished:

1. Read Johnson Case - 3d Cir. Dec.
2. Contact NAMI Re: Speacking Engagement
3. Respond to settlement proposal - Jones
4. Meet with partner Re: issue with associate
5. Complete Barton Medicaid Plan
6. Make reservation for firm Christmas Party

Accountability Partner & Phone Number: Felix Frankfurter 555-555-5555

THE RELATIONSHIP BUILDER

Attorney:

Start Date:

Objective:

Name	Organization	Position	Phone Number	Best Possible Outcome	Research Completed	Initial Contact	Date & Action	Date & Action	Date & Action

THE NETWORKING MAXIMIZER

Attorney Name: _____ Date of Event: _____ Organization: _____ Event: _____	Preparation:
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Objective:

Networking Maximizer: THE FOLLOW UP

NAME	BEST OUTCOME	FOLLOW UP 1	FOLLOW UP 2	FOLLOW UP 3	FOLLOW UP 4	FOLLOW UP 5	FOLLOW UP 6

THE NETWORKING MAXIMIZER

Attorney Name: Fritz Jones Date of Event: July 23, 2015 Organization: Claims & Litigation Management Alliance - Indiana Chapter Event: Education & Networking	Preparation: <ul style="list-style-type: none"> Research bios of 2 speakers. Plan to meet both of them & add to contact list. Researched bio of Director of Education. Plan to discuss offering program for CLM.
--	--

Objective:

I have developed an excellent program on new developments in the subrogation area. I want to offer it in many professional venues in order to enhance my brand. I want to meet new leads with whom I can begin cultivation a productive relationship.

Networking Maximizer: THE FOLLOW UP

NAME	BEST OUTCOME	FOLLOW UP 1	FOLLOW UP 2	FOLLOW UP 3	FOLLOW UP 4	FOLLOW UP 5	FOLLOW UP 6
Margaret Pruit President Indiana Chapter	Develop relationship; get on board	Send handwritten note					
Tom Jarzyniecki; Director of Education CLM	I speak at upcoming education event	Send proposal					
Ted Blandord, Esq.; Hume Smith	Refer me conflict business	Take to lunch					
Ken Dwyer Sr.; Claims Attorney Central Mutual Insurance Co.	Send me business	Take to lunch					
Kevin Bond; Litigation Supervisor Erie Insurance	Send me business	Send copy of most recent article					

THE 90 DAY GAME PLAN

Name:

Date:

The Career Expander

List 3 Crucial Results that you need to achieve over the next 90 days.

1. _____
2. _____
3. _____

The Gap Analysis

Where are you now? On a scale of 1-5, how close are you with 5 being ideal?

1. _____
2. _____
3. _____

A. Are you willing to commit to self-coaching for a 90 day period? _____

B. How will you feel if you achieve the results? _____

C. How will you feel if you don't try? _____

Accountability Partner _____ Phone Number: _____

Notes



Cynthia Sharp, Esquire Business Development Expert

Business Development Expert and veteran attorney Cynthia Sharp (CEO of The Sharper Lawyer) works with motivated lawyers seeking to generate additional revenue for their law firms. The business development strategies and skill sets that she shares were developed and tested over a period of 30 years in practice and are constantly refined to reflect modern marketing techniques. Private and group coaching programs are available. In house training sessions are also offered. Ask about her popular tele-coaching sessions.

Cindy, author of [The Lawyer's Guide to Financial Planning](#) published by ABA Solo, Small Firm and General Practice Division, is also a Contributor to the Division's publication [How to Capture and Keep Clients: Marketing Strategies for Lawyers](#), as well as the upcoming publication [The Lawyer's Guide to Buying, Selling, Merging, and Closing a Law Practice](#).

She has delivered close to 200 live presentations on behalf of the American Bar Association, 10 state bar associations, the Million Dollar Round Table, Legal Marketing Association Professional Services Marketing Association and numerous other legal, financial and professional groups in addition to private seminars conducted for her clients.

Cindy writes a column on Business Development on behalf of the ABA GP Solo eReport. For the past 2 years, she wrote a social media column for the publication. In addition, she has written well over 120 articles that have been published in various journals throughout the country.

In August, Cindy began serving as Chair of the Publications Board of the ABA Solo, Small Firm & General Practice Division and began a four-year term on the Division's Council. She serves on the Long Range Planning Committee and Finance Committee. Cindy completed her term as President of the Philadelphia Chapter of the National Speakers Association (NSA) in June of 2015 and continues serving on the Board of Directors and is Dean of the Speaker Academy. Cindy was named 2015 member of the year of the Philadelphia Chapter of NSA. She is an active member of the Association of Continuing Legal Education, serving on the newsletter committee ("In the Loop").

Take a look at the website and blog of The Sharper Lawyer for up to date information and commentary on business development issues: www.thesharperlady.com. Contact Cindy at cindy@thesharperlady.com or 609 923 1017.