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THE TECHNOLOGY ROUNDUP

Gerry Morris, J.D.

Solutions for the Spam Problem

Spam drives me nuts. Of the 150 to 200 emails I receive every day on my business email account about half are unsolicited junk. Although I've never responded to any of the offers for stock, software, prescription drugs, fantastic wealth, etc., the stuff just keeps coming. Because my email address is posted on such public web sites as my firms webpage and those of the various professional organization of which I'm a member, my email address is low hanging fruit for the various methods used by spammers to harvest addresses *en masse* from the web. Consequently, the volume of unwanted email will probably increase.

On my desktop computer I used for some time, an anti-spam program called Qurb, now called CA Anti Spam as a result of a recent acquisition of the company. The product can still be found at www.qurb.com. Qurb intercepts spam as it is downloaded from your mail server by Outlook and sends it to a separate mail folder. It identifies legitimate mail initially by searching your mail folders upon installation and putting all the email you've saved on the "Allowed" list to be let through to your inbox. When new mail arrives that is not on the Allowed list or otherwise meets the programs criterion for spam, it diverts the mail to the spam folder. The program notifies you periodically that spam has arrived so that you can check the folder to see



WEEK OF MARCH 12, 2007

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THE COACH'S CORNER

Debra Bruce, J.D.

Marketing: What Are You Already Doing Right?

On a panel for a webcast by the Law Practice Management Program about "Finding and Keeping Good Clients," we discussed the efficacy of public speaking. Rick Albers, a real estate lawyer in Austin, recounted that another lawyer once told him that he had spoken many times at continuing legal education programs, and never got any business from it. Rick's mouth dropped open. He *himself* had referred *four* matters to that lawyer over the last several years. Rick made those referrals because he knew from hearing the lawyer speak that he was knowledgeable in the relevant area of practice.



Many years ago, when I had my own law firm, my father asked me how I got my clients. I blinked, dumbfounded by the question, and finally responded, "I wish I knew, Dad, so I could get more of them." That question spurred me to examine my list of current and former clients. I discovered that 75% of my business came from referrals from other lawyers. To my surprise, many of those referrals came from my competitors!

These stories illustrate one of the shortcomings in the marketing efforts of many lawyers. We don't have a system to measure which activities produce the outcomes we desire.

Find What Already Works for You

When I work with attorneys on business development, many are afraid I will ask them to do something way outside their comfort zone. Often, however, we start by uncovering what already works for them to enhance that, or to better capitalize on existing opportunities.

In my own situation described above, my analysis revealed that something I did for other reasons turned out

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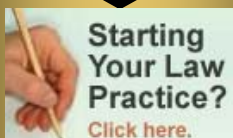
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Law Practice Management
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check the folder to see if legitimate mail has been diverted. If so, you can click a checkmark beside the mail item or click a button on the menu bar and add the mail's address to the Allowed list. If unwanted mail makes it to the inbox you can similarly click a button to add its address to the "Blocked" list.

Qurb works extremely well and is highly rated by those organizations that monitor such products. However, Qurb, nor any other PC based spam blocker couldn't cure the most annoying problem that spam causes for me. I use my Treo 650 when I'm out of the office to retrieve and occasionally send email. Until recently my Treo was configured to download my email directly from my incoming mail server. This means that all the mail on the server, spam included was downloaded. While the Treo mail client works well it is fairly slow. The volume of email I was downloading was beginning to take 10 minutes or so. Although the newer models of the Treo, when using the next generation web access networks, are much faster. Downloading a hundred emails at a time, which I regularly do if I haven't checked my mail in a while, just takes an annoying amount of time.

Recently, I've discovered a solution. A company called Only My Email offers a web based spam filter that captures spam before it gets to your desktop. The web site for the service is www.onlymyemail.com. It offers two classes of services: personal and corporate. The personal service costs \$4.00 per month and handles email addresses receiving up to 400 emails per day. Basically, the service maintains its own mail servers. Their server downloads your email from your incoming mail server, filters spam and then makes the remaining mail available for download by your mail client. After signing up for the service and configuring it to contact your mail server, you must reconfigure your mail client to retrieve mail from the Only My Email POP servers. All this is easy to do.

Because the filtering is done before the email reaches your desktop, the unwanted mail stays on the server. Only My Email sends you an email every evening listing the blocked mail so if the service has blocked something you want to go through you can simply click a link, resend the mail, and add the address to the "Always Allow List." If spam gets through there are a

couple of easy to use options available to add the address or mail type to the "Never allow list." The program can be configured to place a link at the bottom of incoming email to click to notify the service that a particular unfiltered item is spam and should be blocked. You can also go to the service's website and add an address to the "Never allow list." You can also check the list of blocked mail at anytime on the web site. The service has a web mail component so you can check you email and send outgoing messages from a web browser.

The corporate version routes your email to its servers first where the filtering occurs. The mail is then sent to your mail server. There is no limit for how many emails the corporate service will handle on a daily basis. Prices for this service are quoted on a per account basis but the minimum charge is \$30 per month for up to 20 email addresses. This service can be used even where your incoming email server is operated by your ISP if the incoming mail server meets certain configuration criterion. This information is listed on the Only My Email website. It's too technical for me to decipher. If you are interested I suggest you contact your ISP who probably speaks whatever language the information is written in.

The personal version works extremely well and should be fine for most users. I pay close attention to the daily blocked email reports to make sure that I don't miss an important email. I would suggest manually adding to the Always allow list the email addresses that you most frequently receive messages from. For instance, I've added all the addresses associated with my firm. The spam blocking is somewhat content based so even one email sent to me by my legal assistant was blocked before I added her address to the Always allowed list. The email contained some medical terms associated with one of my cases that must have made it read like an ad from an online pharmacy.

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to be a good business development tool. Shortly after the conclusion of a transaction, I often invited opposing counsel to join me for lunch or an adult beverage. I did that to smooth over any rough edges that might have developed from the tensions of adversarial representation. As a result of that habit, I developed lots of relationships of trust and friendship with lawyers who knew first hand the quality of my work. When they could not take on a representation due to a conflict, many of them referred their prospective clients to me.

Track and Analyze Your Marketing Results

Here are some steps you can take to make sure you recognize what you already do well:

1. Ask prospective clients who contact you how they found you. If they found you through the Internet, what search terms did they use? If another lawyer referred you, how did they know that lawyer? If they saw your advertisement, where and when did they see it?
2. If the client was referred to you, contact the referral source to thank her and ask why she suggested your name.
3. Track that information in a way that lets you easily review, reconfigure and analyze it. The system doesn't have to be complicated or high tech, but do take advantage of the features of software you are already using. Look for patterns and commonality.
4. Record every time you "touch" a prospective client, whether in person, by phone, letter, email, speaking, writing, or advertising, and the length of time between the first touch and the date they became a client.
5. Look for evidence of which activities bring in top tier clients, and which tend to attract less desirable ones. That requires you to "grade" your clients so you can recognize the common traits of the more desirable ones.
6. Track the cost and time involved in your various marketing activities to identify the most efficient use of your time and money. High dollar marketing companies track results meticulously and make adjustments based on that feedback. Ask clients for feedback on your firm's services. What did they like? What would they want to see more of? What would they want you to do differently? How do your services compare to other law firms they have used? What would make them feel comfortable in referring friends and colleagues who need your services?

Adapt to the Data

Once you get a large enough sample from tracking this information, you may find some surprises. Those expensive season tickets may not be paying off, especially if you give them away instead of accompanying your client. It may take a lot more touches or a much longer period of time to generate a new client from your marketing efforts than you expected. Sometimes new clients say, "I heard you speak a couple of years ago." You may have a misperception about where most of your business comes from. You may be spending too much time in an arena that brings in lower level clients. You may be doing things right that you never realized.

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Upcoming Events

Legal Support Staff Training is scheduled live in San Antonio April 4, 2007. For more information or to register, call 800-204-2222, ext. 11574 or visit: <http://www.texasbarcle.com/CLE/AABuy1.aspx?sProductType=EV&IID=6902>

Perfecting Your Elder Law Practice is scheduled for video replay in Dallas April 12, 2007. For more information or to register, call 800-204-2222, ext. 1574 or visit: <http://www.texasbarcle.com/CLE/AABuy1.aspx?sProductType=EV&IID=6565>

Legal Support Staff Training is scheduled live in Waco April 25, 2007. For more information or to register, call 800-204-2222, ext. 1574 or visit: <http://www.texasbarcle.com/CLE/AABuy1.aspx?sProductType=EV&IID=6946>

Perfecting Your Elder Law Practice is scheduled for video replay in Austin May 3, 2007. For more information or to register, call 800-204-2222, ext. 1574 or visit: <http://www.texasbarcle.com/CLE/AABuy0.aspx?sProductType=EV&IID=6791>

Planning to Conquer the Real World of Private Practice is a ½ day live program conducted at all law schools for 3-L students and recently-licensed attorneys. This course is free to current law students. The price for licensed attorneys is \$55. For more information or to register, call 800-204-2222, ext. 1518.

Dates:

- March 24, 2007: St. Mary's (San Antonio)
March 31, 2007: Texas Women's University (Ft. Worth)
April 3, 2007: Texas Southern University Thurgood Marshall School of Law (Houston)
April 14, 2007: South Texas School of Law (Houston)

Law Practice Management Webcast

Establishing a Paperless Law Office is scheduled to take place live via webcast on April 4, 2007. For more information or to register, call 800-204-2222, ext. 1574 or visit: <http://www.texasbarcle.com/CLE/AABuy0.aspx?sProductType=EV&IID=6961>

COMMON ETHICAL VIOLATIONS THAT CAN BE EASILY AVOIDED

Deborah Henson, J.D.

I. Introduction

From my experience working with the Louisiana Attorney Disciplinary Board (similar to Texas's Board of Disciplinary Appeals, a/k/a BODA) and representing attorneys in disciplinary matters (a/k/a "grievances" here in Texas), it seems that some fairly common threads run through attorney discipline cases, which do NOT involve outright theft or other outrageous conduct. That is, where an attorney has received a complaint about some ethical wrongdoing of a fairly minor nature (compared to intentional theft of client funds or other fraudulent behavior), the following elements often are present as part of the alleged misconduct.

This article discusses some common pitfalls that could potentially lead to client grievances and presents some suggestions for avoiding those pitfalls. Additionally, not only do the suggested strategies help avoid client grievances, they will also assist in keeping clients happy with your representation, which will lead to more numerous referrals to your practice.

II. The Rules of the Game

As most lawyers know, the Texas Disciplinary Rules of Professional Conduct instruct our practice and require certain ethical behavior in our representation of our clients. The problems that arise in general practice of law, however, especially common in solo or small firm practice, usually involve the business aspects of the law practice.

Most of us did not obtain our MBAs as well as our JDs. We did not go to law school to become business managers or executives. Unfortunately, though, unless we hire an office or law practice manager, we who are in solo or small firm practice must establish office procedures and routines that will protect us in our "business" of law, as well as serve our clients' needs. Therein lies the rub, but all is not lost if a few preventive techniques are employed.

Rule 1.01 requires competent and diligent representation of clients when an attorney accepts a case. The rule specifies, in part:

- (b) In representing a client, a lawyer shall not:
- (1) neglect a legal matter entrusted to the lawyer;
- or
- (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

(c) As used in this Rule neglect signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

Texas Disciplinary Rules of Professional Conduct, Rule 1.01(b), (c) (emphasis added).

Further, Rule 1.02 requires that the lawyer "abide by a client's decisions" except for certain enumerated exceptions, such as fraudulent, criminal, or unethical conduct.

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See Texas Disciplinary Rules of Professional Conduct, Rule 1.02. This requirement may be waived, however, if the client "consents after consultation." *Id.*

Finally, Rule 1.03 requires a certain level of communication with the lawyer's client once the lawyer undertakes representation of that client. Specifically, the rule provides:

Rule 1.03 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Texas Disciplinary Rules of Professional Conduct, Rule 1.103 (emphasis added).

See *Common Ethical Violations* on page 5

Thus, the lawyer is expected to diligently and competently represent his or her client, and to communicate sufficiently with the client to facilitate the client's guidance of the representation. Sounds like a piece of cake, right? No. Here is a list of the common problems this author has seen that can lead to grievances concerning the above rules of professional conduct.

III. Common Problems that can Precipitate Grievances

1. Failure to Pursue the Representation in as Diligent a Manner as Needed

This problem is simply what happens when a busy lawyer takes on too many cases without sufficient assistance, perhaps accepts a fee or retainer (advance deposit), and then fails to follow through with the representation in an effective manner. Especially in highly sensitive matters, such as divorce, child custody, bankruptcy, etc., the client who is at emotional risk and in a heightened state of emotional angst expects the attorney to take care of his or her problems right away. Filing motions to continue hearings or, worse, failing to show up for a scheduled hearing, creates such anxiety with clients that they become easily frustrated and perhaps even angry with the lawyer.

2. Failure to Communicate with the Client

This deficiency is extremely important in preventing problems from developing in one's practice. As simple as it sounds, I have seen many cases of attorney discipline that were exacerbated by a failure to communicate with the client. Often, the lack of sufficient communication becomes the issue when the client tries to get a status update on his or her case.

3. Failure to Refund Unearned Fee

When problems have developed with Rules 1.01 and 1.03, the lawyer may be avoiding the client for whom he or she has done little or no work for obvious reasons. But, the client who demands a refund of any retainer or advance deposit and is frustrated by the lack of prompt response by the lawyer may well be incensed enough to file a grievance against that attorney.

So, these problems may mushroom into grievances, which may be successfully defended or not. But, all of the above difficulties are easily prevented with advance planning for the general operating procedures in your law practice. The following strategies mirror the potential problem areas listed above.

IV. Strategies for Preventing Problems with Clients and Keeping Them Happier

1. Move Cases Along in a Timely Manner; Calendar Deadlines to Avoid Last-Minute Chaos and Total Unavailability to Other Clients

Sounds easy, right? But not always possible to work on each case every week or two when one or two demand intensive effort and time. What to do when some clients' matters are getting back-burnered?? Employ deadline control systems in your office to ensure that you are not flooded with last-minute projects that need your undivided attention for days or weeks at a time. These deadline systems should provide two-week warnings, followed by one-

week and then two-day warnings for project deadlines. The nature of the project should govern the time period for alerting the lawyer of the upcoming deadline; that is, if an appellate brief is due, that would necessitate a longer advance notice to the lawyer than a simple discovery response because of the longer time it takes to complete the brief. These deadline control systems can be computer generated or merely index cards or calendar jottings. The complexity of the system is not the relevant issue, but rather the success of the notice to the lawyer and the latter's dedication in adhering to the notification and starting on the project reasonably in advance of the projected deadline.

Also, the attorney who can predict when he or she will be snowed under with a couple of matters, which may mean postponing work on some other clients' cases, may decide to let those "back-burnered" clients know about the busy period in advance. Notifying especially the demanding/needy clients who may call and not be the most patient will help them anticipate your temporary unavailability. Such notice will be perceived as reassuring; remember that the demanding client is probably just feeling his or her anxiety more strongly than others. If the attorney can assuage some of that anxiety and fear by having staff return telephone calls or emails during busy periods, these clients usually will understand that the attorney simply cannot attend to them at that time. Ignoring these needier clients, however, just reinforces their perceptions that the attorney is forgetting their needs or placing them at the bottom of the priority list. Demanding, needy clients are the ones most apt to file grievances; plan accordingly and make sure that your staff is aware of the need to gently deal with their questions, concerns and anxiety or even anger at your temporary unavailability during deadlines on other cases.

2. Communicate Frequently with Clients Concerning the Status of Their Cases

When busy weeks and months engulf your practice, one strategy to consider is the previous drafting of a client letter that is saved in the general computer database that can be adapted to each "back-burnered" client by a legal assistant. The lawyer can jot a note for each client that personalizes the letter and give it to the assistant to incorporate in the standard letter. The receipt of such a letter from the attorney when least expected by the client will go a long way toward keeping that client happy and reasonably assured that the lawyer has not forgotten him or her even though nothing substantive may be happening in the case. Moreover, although the letter usually would "cost" the client, this type of assuaging letter may not even be charged to the client because of its preventive nature. For example, such a letter may read something like this:

Dear Client:

I wanted to let you know that I am still waiting to hear from your ex-wife's attorney regarding the proposed language for the consent decree that I sent last month for their review and acceptance. I hope everything is going well with the temporary visitation; please let my legal assistant know if you are experiencing any problems with the exchange of [child's name] like those that were previously happening. I will be in touch with you as soon as I have news or if I receive any documents which require your response.

I am tied up for the next couple weeks with several

See *Common Ethical Violations* on page 7

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Marketing legal services often involves planting a lot of seeds that take a long time and a lot of nurturing to germinate and grow to harvest. That time lag can distort our perception of what works. Reviewing the statistics on your successful efforts can bring clarity and give you the necessary encouragement to persist when delayed gratification tempts you to give up too soon.

Debra Bruce (www.lawyer-coach.com) practiced law for 18 years, before becoming a professionally trained Executive Coach for lawyers. She is Vice Chair of the Law Practice Management Committee of the State Bar of Texas, and board member and past leader of Houston Coaches Network, the Houston Chapter of the International Coach Federation. She welcomes your questions and comments at debra@lawyer-coach.com.

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complicated pleadings that are nearing their deadlines, but if you have an emergency, please call and ask for [name of assistant] and she/he will get your message to me.

Yours truly,

Communicative Attorney

Of course, do not just send letters to clients whose cases are taking a back seat. Every time you correspond with a client or send him or her a copy of a letter that was mailed or faxed to another on his or her behalf, that client feels important and reassured that you are pursuing his or her matter. Some attorneys tell me that their clients tell them not to bother with sending them copies of all correspondence, or that they (the attorneys) do not routinely send clients all copies of correspondence and pleadings due to the added cost of such a procedure. Although I am sensitive to adding excess costs to the representation, my experience is that the benefit of copying the clients on everything done for them is every bit worth the added cost, even if the attorney picks up some portion of that additional expense.

Also, given the requirement of Rule 1.02 to abide by the client's decisions concerning the representation, if a client ever files a complaint suggesting that the lawyer did not pursue the matter diligently enough or do what the client desired, the lawyer will have a file demonstrating that the client knew every twist and turn of the representation and was invited to give feedback and direction all along the way. Be sure to include comments such as these in the client status update letters; e.g., "Please let me know what you think of this proposed language before I send it to [opposing attorney]." or "Please contact me with any suggestions of additional questions to ask in the enclosed interrogatories to your ex-husband."

3. Provide Regular, Detailed Accountings and Statements to Clients

Detailed statements of attorney work provided on the case shows the client what activities you are doing on his or her behalf. Use your monthly statement to communicate with your client. Be specific about your activities and those of your assistants and staff even if some of those activities are written off as "No Charge." The clients will like seeing what has been done for them and will especially like seeing some "No Charge" activities from your office.

V. Conclusion

While these problems and suggestions may seem trite and simplistic, regular office practices like the ones suggested in this article go a long way toward keeping clients happy. When clients feel as though their attorney cares about their problems (recall that law is a helping profession, after all!), they are much more forgiving of mistakes or delays in the representation. Happy clients not only prevent grievances – happy clients also refer many others to their wonderful attorneys. Thus, keeping your clients happy is another way of successful, stress-free marketing for your law practice!

Deborah Henson, MSW, (Tulane), JD (Loyola New Orleans), L.L.M. (University of California, Berkeley), is admitted in Texas and Louisiana as well as the U.S. Fifth Circuit and the U.S. Supreme Court. She is also a Licensed Clinical Social Worker (Texas, Louisiana), who provides psychotherapy (specializing in lawyers and relationships) plus consultation to attorneys and mental health professionals regarding working together effectively in the legal arena (e.g., preparing for depositions and trial testimony). Ms. Henson was former Board Counsel for the Louisiana Attorney Disciplinary Board, then represented attorneys and other professionals in disciplinary (grievance) matters for years.

She consults regularly with lawyers and mental health practitioners concerning ethics and risk prevention. Ms. Henson was the former Appellate Brief Writer for the City of New Orleans for the two years prior to Hurricane Katrina, which prompted her to evacuate and settle in Austin. She practices appellate law and is available for contract brief-writing to assist busy practitioners keep up with their deadlines and keep their clients happy!

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