



**LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET CC
INTRODUCTION TO CLIENT DEVELOPMENT**

Worksheet CC is intended to facilitate a discussion about methods of client development that have been successful for the mentor and other techniques for business development, including any relevant ethical concerns and the most professional practices in this regard.

* * *

- Share with the new lawyer methods of client development that have been successful for you. Share methods which have been unsuccessful and discuss the reasons you believe said methods failed.
- Discuss the importance of professionalism in client development.
- Discuss the client-development tips suggested in the attached outline. Ann-Marie Ahern, *A Young Lawyer's Guide to Client Development: Building a Law Practice in a Small Firm*.
- Discuss how such satisfaction adds to the successfulness of your overall practice. Share specific tips for creating client satisfaction. Read and discuss the attached article. Mark Merenda, *How to Really Set Yourself Apart From the Competition*, LAW.COM, June 13, 2005.
- Discuss the role your billing statements play in marketing your services. Read the attached article. Bob Weiss, *Your Most Important Marketing Copy – What Your Bill Says*, LAW PRACTICE TODAY, Sept. 2005. Share tips for creating professional and descriptive bills.
- Discuss ethical constraints on advertising and marketing your law firm if the new lawyer takes part in these aspects of firm promotion. See Prof. Cond. Rules 7.1 – 7.4.

RESOURCES

OHIO RULES OF PROFESSIONAL CONDUCT

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VII. INFORMATION ABOUT LEGAL SERVICES
RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make or use a false, misleading, or nonverifiable 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.

Comment

[1] This rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

[4] Characterization of rates or fees chargeable by the lawyer or law firm such as "cut-rate," "lowest," "giveaway," "below cost," "discount," or "special" is misleading.

[5] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Ohio Rules of Professional Conduct or other law.

View further information about this rule at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule7_1



RULE 7.2: ADVERTISING AND RECOMMENDATION OF PROFESSIONAL EMPLOYMENT

(a) Subject to the requirements of Rules 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 pay any of the following:

- (1) the *reasonable* costs of advertisements or communications permitted by this rule;
- (2) the usual charges of a legal service plan;
- (3) the usual charges for a nonprofit or lawyer referral service that complies with Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio;
- (4) for a law practice in accordance with Rule 1.17.

(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.

(d) A lawyer shall not seek employment in connection with a matter in which the lawyer or *law firm* does not intend to participate actively in the representation, but that the lawyer or *law firm* intends to refer to other counsel. This provision shall not apply to organizations listed in Rules 7.2(b)(2) or (3) or if the advertisement is in furtherance of a transaction permitted by Rule 1.17.

View comments at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule7_2

RULE 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 from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless either of the following applies:

- (1) the person contacted is a lawyer;
- (2) the person contacted has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by *written*, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact even when not otherwise prohibited by division (a), if either of the following applies:

- (1) the prospective client has made *known* to the lawyer a desire not to be solicited by the lawyer;
- (2) the solicitation involves coercion, duress, or harassment.



(c) Unless the recipient of the communication is a person specified in division (a)(1) or (2) of this rule, every *written*, recorded, or electronic communication from a lawyer soliciting professional employment from a prospective client whom the lawyer *reasonably believes* to be in need of legal services in a particular matter shall comply with all of the following:

- (1) Disclose accurately and fully the manner in which the lawyer or *law firm* became aware of the identity and specific legal need of the addressee;
- (2) Disclaim or refrain from expressing any predetermined evaluation of the merits of the addressee's case;
- (3) Conspicuously include in its text and on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication the recital - "ADVERTISING MATERIAL" or "ADVERTISEMENT ONLY."

(d) Prior to making a communication soliciting professional employment from a prospective client pursuant to division (c) of this rule to a party who has been named as a defendant in a civil action, a lawyer or *law firm* shall verify that the party has been served with notice of the action filed against that party. Service shall be verified by consulting the docket of the court in which the action was filed to determine whether mail, personal, or residence service has been perfected or whether service by publication has been completed. Division (d) of this rule shall not apply to the solicitation of a debtor regarding representation of the debtor in a potential or actual bankruptcy action.

(e) If a communication soliciting professional employment from a prospective client or a relative of a prospective client is sent within thirty days of an accident or disaster that gives rise to a potential claim for personal injury or wrongful death, the following "Understanding Your Rights" shall be included with the communication.

UNDERSTANDING YOUR RIGHTS*

If you have been in an accident, or a family member has been injured or killed in a crash or some other incident, you have many important decisions to make. It is important for you to consider the following:

1. Make and keep records - If your situation involves a motor vehicle crash, regardless of who may be at fault, it is helpful to obtain a copy of the police report, learn the identity of any witnesses, and obtain photographs of the scene, vehicles, and any visible injuries. Keep copies of receipts of all your expenses and medical care related to the incident.

2. You do not have to sign anything - You may not want to give an interview or recorded statement without first consulting with an attorney, because the statement can be used against you. If you may be at fault or have been charged with a traffic or other offense, it may be advisable to consult an attorney right away. However, if you have insurance, your insurance policy probably requires you to cooperate with your insurance company and to provide a



statement to the company. If you fail to cooperate with your insurance company, it may void your coverage.

3. Your interests versus interests of insurance company - Your interests and those of the other person's insurance company are in conflict. Your interests may also be in conflict with your own insurance company. Even if you are not sure who is at fault, you should contact your own insurance company and advise the company of the incident to protect your insurance coverage.

4. There is a time limit to file an insurance claim - Legal rights, including filing a lawsuit, are subject to time limits. You should ask what time limits apply to your claim. You may need to act immediately to protect your rights.

5. Get it in *writing* - You may want to request that any offer of settlement from anyone be put in *writing*, including a *written* explanation of the type of damages which they are willing to cover.

6. Legal assistance may be appropriate - You may consult with an attorney before you sign any document or release of claims. A release may cut off all future rights against others, obligate you to repay past medical bills or disability benefits, or jeopardize future benefits. If your interests conflict with your own insurance company, you always have the right to discuss the matter with an attorney of your choice, which may be at your own expense.

7. How to find an attorney - If you need professional advice about a legal problem but do not know an attorney, you may wish to check with relatives, friends, neighbors, your employer, or co-workers who may be able to recommend an attorney. Your local bar association may have a lawyer referral service that can be found in the Yellow Pages or on the Internet.

8. Check a lawyer's qualifications - Before hiring any lawyer, you have the right to know the lawyer's background, training, and experience in dealing with cases similar to yours.

9. How much will it cost? - In deciding whether to hire a particular lawyer, you should discuss, and the lawyer's written fee agreement should reflect:

a. How is the lawyer to be paid? If you already have a settlement offer, how will that affect a contingent fee arrangement?

b. How are the expenses involved in your case, such as telephone calls, deposition costs, and fees for expert witnesses, to be paid? Will these costs be advanced by the lawyer or charged to you as they are incurred? Since you are obligated to pay all expenses even if you lose your case, how will payment be arranged?

c. Who will handle your case? If the case goes to trial, who will be the trial attorney?

This information is not intended as a complete description of your legal rights, but as a checklist of some of the important issues you should consider.



*THE SUPREME COURT OF OHIO, WHICH GOVERNS THE CONDUCT OF LAWYERS IN THE STATE OF OHIO, NEITHER PROMOTES NOR PROHIBITS THE DIRECT SOLICITATION OF PERSONAL INJURY VICTIMS. THE COURT DOES REQUIRE THAT, IF SUCH A SOLICITATION IS MADE, IT MUST INCLUDE THE ABOVE DISCLOSURE.

(f) Notwithstanding the prohibitions in division (a) of this rule, 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.

View comments at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule7_3

RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law or limits his or her practice to or concentrates 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 trademark practice may use the designation “Trademarks,” “Trademark Attorney,” or a *substantially* similar designation.

(d) A lawyer engaged in Admiralty practice may use the designation “Admiralty,” “Proctor in Admiralty,” or a *substantially* similar designation.

(e) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless both of the following apply:

(1) the lawyer has been certified as a specialist by an organization approved by the Supreme Court Commission on Certification of Attorneys as Specialists;

(2) the name of the certifying organization is clearly identified in the communication.

View comments at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule7_4

A Young Lawyer's Guide to Client Development Building a Law Practice in a Small Firm

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I. Overview

Professionalism is an integral part of building a small practice. Your reputation among clients and the community may be the single most important factor in building a successful practice. In a small firm, "client development" differs in some material respects from a large firm. If you represent plaintiffs, repeat business from the same client is unlikely and even undesirable. In most every small firm, it is not economically feasible to develop client relationships through wining, dining, or entertaining. Instead, small firm practitioners should capitalize on "client development" opportunities presented in the ordinary course of their practices. These opportunities present themselves most frequently in the form of client interaction, community involvement, and networking within the legal community.

II. Client Interaction- Building a referral base is essential to any small practice. The best way to build a referral base is by word of mouth through satisfied clients.

A. Interacting with Potential New Clients

1. For many of the people visiting your office, this may be the first time that they've ever hired a lawyer. Do not use "high pressure" tactics to sign the client. With the public perception of lawyers at an all-time low, this technique is likely to backfire.
2. Be sure to explain the entire lawsuit process from start to finish.
 - a. Explain how a complaint is filed and served.
 - b. Define "discovery" and explain the various discovery techniques that are permitted and how they will be utilized.
 - c. Explain that our actions are governed by the Rules of Civil Procedure and other court rules to debunk any misconceptions that the client may have from watching courtroom drama television.

3. Give clients a realistic expectation of the time commitment, monetary commitment, and range of potential results that will be involved in pursuing legal action.
4. If you decline representation, assist potential new clients in finding appropriate counsel. Even if you can not ultimately take on representation of the potential new client, if treated with dignity and respect, that “rejected” client will remember your assistance and may be the source of your next big case.

B. Reasonable Accessibility to Clients

1. Always return phone calls.
2. Make sure clients feel that they can always get in touch with you. Provide clients with multiple methods to reach you.
3. Explain to clients the demands on your time. Explain that there will be times when it will not be possible to return a phone message immediately.
4. Make sure clients are introduced to your clerical staff so that they can always reach a person in your office in the event of an emergency.

C. There is real value of explaining the concept of “wait your turn” to clients. Some people say that every client should be made to feel like they are your only client. But we all have multiple clients and multiple demands on our time associated with representing a number of clients. Managing client expectations is critical.

1. In a small firm, it is unlikely that every matter that you are handling has your complete attention and focus simultaneously. Instead, you dedicate blocks of time to matters as deadlines approach and as other matters are resolved.
2. Clients need to understand that their matter is not the only matter pending in your office. Explain from the *onset of the case* that there will be lulls in activity on their case, but that there will also be periods of intensity where their matter will be the sole focus of your attention. Clients hope and expect that when the activity on their case intensifies, they will have your full attention. Conversely, when you are absorbed in another matter, they will understand that they will get the same type and level of attention when their time comes.

D. Your client should feel like you’re the best lawyer in the world

1. Always make your client aware of what you've done to advocate on his or her behalf. Send them copies of major briefs filed. Invite them to watch you argue at a hearing or before the Court of Appeals. Direct your client to the court's on-line docket so that they can see activity in the case.
2. Dress the part/ act the part.
 - a. Always look professional in your dress. Make sure that your staff does the same.
 - b. Treat every client as if they are your biggest client. Chances are, the legal matter in which they are involved is a significant event in your client's life and should be treated as such by you.
3. Always prepare your client. Make sure that your client knows what to expect at every pretrial, every deposition, and at every juncture of the process. Thoroughly explain the purpose, physical location and procedure at every step of the litigation process. Eliminating fear of the unknown will engender your client's confidence in you.

III. Community Involvement- the importance of making a name for yourself and your firm in the community cannot be understated. Chances are, you will not have a sophisticated marketing department to get your name out. You must be your own promoter and you must not be shy about letting people know about the services that you offer.

- A. Get involved in charities; serve on committees and boards.
- B. Become involved in groups that complement your practice area and groups that are most likely to come into contact with people who may need your services.
- C. Tell people about what you do. Instead of saying "I'm a lawyer" when you meet new people, say "I'm a lawyer that represents people in divorces, helps people write wills or represents people accused of crimes or represents people in employment disputes, etc. As the general practitioner seems to be disappearing, people are grateful for the contact."

IV. Networking in the Legal Community

- A. Make the most of your bar association memberships. Make sure that you are involved in a variety of bar associations, including state, local, practice area associations. For instance, while you may get relevant information about your practice area from a specialized bar or section of a bar association, membership in organizations with members whose practices are diverse from your own practice will create more networking opportunities and more referral sources.

- B. Whenever possible, take on a visible role in those organizations. If you demonstrate your competence as a member of an organization to your colleagues, you are expanding your referral base.**
- C. Never turn down an invitation to speak (provided it is on a topic that you know). Any ability to demonstrate competence in your practice area should be seized upon.**
- D. Develop and update your Curriculum Vitae regularly.**

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How to Really Set Yourself Apart From the Competition

Mark Merenda
Marketing the Law Firm
06-13-2005

I'm always coming across articles and books by marketing gurus about how you must differentiate yourself from your competition. Their writing is usually peppered with advice on how to "position" yourself and "brand" your practice.

And many attorneys spend a lot of time, energy, and money trying to convince potential clients that they are somehow different (read: better) than others who provide the same service.

It's a fool's errand, and I'll tell you why.

First, you aren't really a whole lot better or worse than others in your field. Oh, I know, I know, you're terrific. But guess what? You're not the only one who's terrific. There are others who are pretty darn good as well. Maybe even better than you.

But let's assume you are much better than everyone else. This brings us to our second point. Your potential clients can't tell the difference. They do not have your expertise in the complicated financial and legal strategies in which you deal every day. What you tell them may sound compelling, but then so did what they read in *Money* magazine, or what their friend told them at a cocktail party, or what another advisor told them last week. It all sounds good, but they have no real way of judging. As far as your potential clients are concerned, any special knowledge or strategy or technique you advocate is simply a claim you are making.

I hope you're the world's greatest attorney. Maybe you are. But in marketing terms, that won't do you much good. Believe me, you can be world's most brilliant lawyer and still starve.

But don't despair. I am going to tell you the real secret -- how you can differentiate yourself, blow your competition away, and have an endless line of referrals at your door.

Are you ready?

Develop great customer service.

Let's face it. In most businesses, the service stinks. There isn't a week that goes by that my friends and I don't exchange anecdotes about the cable company, the phone company, the bank, or some retail or service business that actually seem to be going out of its way to alienate everyone who deals with them.

SERVICE PLEASE

Service everywhere is bad. But that's good for you.

It presents you with an opportunity. It means that if you can deliver even halfway good customer service, people will rave about you and tell their friends.

Unfortunately, most lawyers don't know the first thing about customer service. And the first thing they have to change is how they think about themselves and their business.

Here's the concept I want you to understand. You are not a law firm. You are a customer service organization whose work product happens to be legal documents.

Let me quote from Jack Mitchell, CEO of Mitchells/Richards, one of the most successful clothing stores in the U.S., serving the upscale clientele of Connecticut and New York:

"At Mitchell's, clothes are not our priority. It's not the first thing we think of, nor the last. Don't get me wrong. We like fabulous product, and we search the world to get it, but we're all about customers.

"Now that may sound amazing. A clothing store that isn't about clothes? But it's true. And if we were a restaurant, we wouldn't be about food. If we were an electronics store, we wouldn't be about DVD players. Businesses have lost sight of the idea that customers, not product, are the most important priority. Most companies think all you have to do is have plenty of great product and the right value and customers will descend like locusts on their stores. Many stores have those things. You can buy a great blue blazer or black skirt anywhere. You can buy a great flat-screen TV at any electronics store. You can get a great sofa at a lot of furniture stores. It's how you treat customers that determines your long-term success."

I'm here to tell you that creating client satisfaction -- or better yet, joy -- is your job. Not drafting legal documents, not creating legal strategies, not giving legal advice.

HOW TO CREATE CLIENT SATISFACTION

In their seminal book, "The Experience Economy," B. Joseph Pine II and James H. Gilmore put forth the proposition that customers do not buy goods and services as much as they buy experiences. "Work is theatre," they write, "and every business is a stage."

Surveys show, for example, that 75 percent of the people who travel to Las Vegas, go expecting to lose. What a great vacation concept, right? Come to our city and lose money! But millions do, every year. Why? Because the end result isn't what is most important. They are going for the experience.

The masters of this approach, of course, are the people at Disney theme parks. Every customer is a "guest," every employee is a "cast member" and every day's business is a "show." What are people really going for? A couple of rides and some souvenirs?

So how do the lessons of "show business" apply to a staid law office?

First, you have to determine what you want your client's (and potential clients') experience to

be when they call or visit your office. You need to "script" exactly what will happen.

Questions to ask yourself include: What does the client see when they enter? How does the receptionist behave? Are they escorted to the conference room? What will you offer them? What does the client see as he or she looks around the conference room? Does the attorney walk into the conference room at precisely the appointed time? How does the attorney greet the client?

I suggest, in deciding what you want your "script" to be, you solicit the ideas of your employees. It will greatly help the process of getting them to "buy in" to the new way of doing things.

The client comes in the door and sees a sign that says: "The Smith Law Firm welcomes Mr. and Mrs. Jones, June 1, 2005." The receptionist rises from behind her desk and greets the Joneses warmly by name. They are escorted to the conference room and automatically served a glass of water from a carafe. They are asked if they would like anything else -- coffee, soda, etc. The conference room is decorated with personal memorabilia and warm objects that reflect the values of the firm's clients. (Example: If the firm specializes in elder law, there are photos of the attorney's parents, a 1930's era antique radio, a copy of Tom Brokaw's "The Greatest Generation.") The attorney enters the conference at the precise time of the appointment and greets Mr. and Mrs. Jones warmly.

This is your script -- the exact sequence of words and events that will create the desired client experience.

The next step is to turn your script into a series of protocols for your employees. This is how we answer the phone. This is how we greet visitors. This is how we speak about our firm and its attorneys.

And then, finally, training, training, training. Make sure everyone understands the protocols, has "bought in, and has practiced until it is second nature. Arrange to have one of your friends pose as a prospective client, and test your new script.

Remember this, above all else: the fact that you have not scripted your client's experience, does not mean that the client will not have one.

When you think about it, scripting a great customer service -- hugging your customer, as Jack Mitchell calls it -- is a much easier way to differentiate yourself, than all the positioning, all the branding, all the continuing education or new designations or niche marketing.

It feels good. Your employees and clients will love it. You will love it. And your bottom line will reflect it.

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ABA LAW PRACTICE MANAGEMENT SECTION
MARKETING • MANAGEMENT • TECHNOLOGY • FINANCE

Law Practice TODAY

Your Most Important Marketing Copy — What Your Bills Say

Bob Weiss

September 2005

The most important marketing copy you write isn't on your Web site. It isn't what you say in your firm brochure or in your latest proposal.

It's in your monthly bill.

General counsel, chief executives, and financial officers tell us they routinely get long-winded promotional brochures and expanded service proposals from law firms they use, and from those that want to get their attention. They also say these materials often provide little information that makes much of difference in their selection of counsel, or in the decision to maintain their relationship with a firm or refer that firm to someone else.

They further report that up-to-date information on legal issues affecting their day-to-day operations, either on a Web site or in the form of an electronic or printed newsletter, is much more valuable to them. So are brief explanations of transactions or litigation in which your firm has been involved.

But the single most important promotional copy you produce every month—what amounts to a monthly direct mail piece every client carefully reads—is your invoice. And, general counsel and executives want it to clearly explain what you have done.

"It should tell me the story of that month's work from beginning to end," one recently told us. "If we can't discern what was done and by whom it undoes a lot of the good work and results by that outside counsel," said another.

Poorly worded or vague billing causes a client to question both the value and quality of your services. Every lawyer carefully reviews and edits filings, correspondence and many do the same with new alerts and brochure copy—do you have the same exacting standards for your billing?

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