Solutions:
Overcoming the Obstacles of Going and Being Solo in a Down Economy
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Discuss This Course Online

Visit http://www.abanet.org/cle/discuss to access the discussion board for this program.
Discussion boards are organized by the date of the original program, which you can locate on the preceding page of these materials.
Welcome to the ABA Recession Recovery Program

\textbf{Solutions: Overcoming the Obstacles of Going and Being Solo in a Down Economy}

\textit{June 2, 2009}

\textbf{Speakers}

- \textbf{Heather Rafter} (Moderator) founder of law firm, RafterMarsh USA, San Francisco, CA

- \textbf{Anthony Butler}, is the managing principal at Butler & Associates in Baltimore, MD

- \textbf{Carolyn Elefant} is the creator of \textit{MyShingle.com}, author of \textit{Solo by Choice: How to Be the Lawyer You Always Wanted to Be}, and principal attorney in the Law Offices of Carolyn Elefant, in Washington, DC

- \textbf{Jay Foonberg} is the author of \textit{How to Start and Build a Law Practice} and is working on the book \textit{Getting Paid in Good Times and in Bad - Being Creative to Get Paid} in Beverly Hills, CA.
Jay Foonberg
Foonberg Law
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Getting Started

YOU CAN LEARN HOW TO BE SUCCESSFUL
Cash, Client, Courage

- Cash
- Client
- Courage

Clients

- Basic Premise
- Every person or organization with which you have any direct or indirect contact is a potential client or referrer of clients if you know what to say or do when you have an opportunity.
- How to Inform Clients and Potential Clients That You Are Available
Clients cont.

• The “Of Counsel” a New Tool in the Toolkit
• The Importance of Planning – How to Plan
• Making a Business Plan and a Personal Cash Flow Plan (Where to Get Free Templates)
• Having a Case Management System

Cash

• Having Enough Cash to Survive Until the Practice Provides Cash
• Other Lawyer’s Best Source of Immediate Cash Fees
Courage

- It May Take 6 Months to a Year or Even Longer to Have a Successful Practice
- Courage Is Needed
- Family, Friends, Church and Other Lawyers Can Be the Needed Support System to Avoid Isolation and Depression

Carolyn Elefant
Law Offices of Carolyn Elefant
Washington, DC
Office Considerations: Options

- Home Office
- Virtual Offices (e.g., part time, per diem space)
- Sublet
- Shared space w/other lawyers
- Shared space, generic building
- Own office

Office Considerations

- Home Office
  - Pros: cheap, convenient for parent, convenient for clients (with virtual law practice or “house calls”)
  - Cons: can be isolating, need discipline, plans to meet clients
Office Considerations

• Rented Space
  – Pros: Can work with others, possible overflow or opportunities to work together
  – Can be expensive; hard to make rent

• Virtual Office (per diem space)
  – Pros: great address and fancy space at small cost
  – Can get costly if used frequently

Retainer Agreement

• Protects Clients (Bar’s view)

• Protects You

• Vital in unbundling, perhaps not as critical for sophisticated clients
Critical Terms of Retainer Agreement

- MOST IMPORTANT: COMPLIANCE W/ Bar rules & magic language
  - Red flags: contingency, SSA, workers comp
- Scope of service
  - Critical for unbundling
- Fee or estimate, billing practices (see next slide)
  - If billable hour, try to give estimates
- Sunset provision
  - Don’t want client to come back too late
- Out clauses
  - Grounds to withdraw if case goes south
  - Office policies (can be separate document)
- Fee dispute provision
  - Arbitration? Some lawyers don’t bother - since they have money back guarantee.

Office Policies/Practices (for retainer or separate addendum)

- Billing practices
  - Do you charge for research?
  - Phone calls?
  - Photocopying?
  - Billing for travel practices?
  - If flat rate, are other costs covered, or included? If billable hour, consider upping rate and rolling in these charges
Office Policies: Client Communication (manage expectations)

• How will you communicate with client?
  – Phone? Email? Extranet? (also, note ways you WON’T communicate)

• What response time do you offer?
  – Set expectations up front & stick. If 24 hr. response time, stay w/it.

• What are your office hours?
  – Will you take voice mail or email after hrs.

• Do you charge for all calls?
  – Consider comp’ing short calls, calls for additional information to encourage client candor

How Do You Bill?

• Billing practices?
  – Electronically? By snail mail? Are there unique features of billing? (some billing systems let clients comment on and track bills)
  – Late fees/penalties for late payments? What are they?
Document Retention

• How long will you keep files? How long must you keep files?

• If paperless, where (or will) you keep hard copies?

• When can client retrieve file?

Office Policies - Extras (options)

• Insurance
  – Some states require disclosure, but if not, you can still warrant insurance - enhance professionalism v. risk lawsuit

• Green practices
  – Consider ABA green office program or other certification

• Security
  – How secure are your systems? Describe to clients? Any data protection security in place? Use of encryption?
Malpractice Insurance

• Get It!
• Issue isn’t liability - you want coverage if a client grieves you.
• Shop around - not as costly as you think
  – Can get low amt. of coverage, pay monthly, sometimes if you take CLE or classes, insurer will give you discount
  – Note - bar provider isn’t necessarily cheapest

Tech: Basic Concepts

• Mobility, mobility, mobility

• Keep costs down - use what you have if you can

• Keep it simple so you’ll use it
Basics

- Smart Phone (iPhone, Blackberry)
- Laptop
- Scanner - paperless (Snapscan - get Adobe w/it)
- Software as a service for:
  - Email (Gmail or communicate over client portals via Zoho or Basecamp or Clio)
  - Practice management (Clio, Rocket Matter)
  - Back up (Mozy, Norton)

Anthony Butler

Butler & Associates in Baltimore, MD
Developing a Marketing Plan

Marketing Plan

Marketing: Skill/Will Assessment

- What am I good at doing?
- What do I like doing?
- What do I want to learn to do?
- Put it in writing!
Marketing Plan

Marketing: Building Your Brand

- Firm name
- Logo
- Website
- Collateral Material
- Elevator Speech

Marketing Plan

Marketing: Getting the Word Out

- Everyone is a potential client or referral source
- Announce Everything!
  - Develop a press release template
  - Email distribution lists (Constant Contact)
  - Website
  - Social Networking
- Collateral Material
- Professional Services
Marketing Plan

Marketing: Networking

- Bar Associations/Professional Associations
- Community Groups
- Referral Systems
  - Lawyer Referral Services
  - Criminal Panel (State and Federal)
  - Court approved mediators
- Pro Bono Work
- Speaking Opportunities

Setting Fee Structures
Setting Fee Structures

• Points to Consider
  – Practice Area
    • Civil v. Criminal
    • Transactional v. Litigation
    • Administrative
      – Fee’s may be set by statute
  – Market
    • Fee surveys from bar association
    • Other Lawyers

• Hourly Rates & Retainer Fees
  – Market driven
  – Typically used for unknown and complicated factors
  – Determined by area of practice; expertise; experience

• Contingency
  – Plaintiffs work (personal injury, employment law)

• Fixed Fee
  – wills, start-up incorporation, uncontested divorces, drafting of routine documents,

• Incremental Fees
  – Client incurs fees at certain pre-determined milestones during the representation.
Building Your Team

- Administration Support
  - Salary v. Contract

- Practice Support
  - Subject Matter Experts
  - As needed Co-Counsel
  - Docket Coverage
Disaster Recovery

- Firm Obligations
- Safety of Employees
- Business Maintenance
Disaster Recovery

**Preparation**
- Create a written plan
- Educate personnel- Distribute and review your plan
- Establish alternative methods of communication
- Create a “phone tree”
- Purchase and store emergency supplies
- Put one person in charge of the plan and execution, per office or per floor if the office is large enough
- Practice building evacuations (for fire, tornado or other disaster needing immediate evacuation)
- Review insurance policies and coverages routinely
- Take inventory
- Arrange for your personal crisis

Disaster Recovery

**Document Preservation**
- Back up your computer system to an off-site location
- Test your back-up system
- In a fire, water and wind safe location preserve:
  - software licenses
  - CD-ROMs of original software
  - Executed wills
  - Insurance policies
  - Documents that cannot be easily replaced
- Learn the storage facility safeguards
- Keep insurance paid up and in force
  - Fire, flood, windstorm and business interruption
- Consider an electronic system to maintain copies of paper files
- Impending trial document preservation
Jay Foonberg
Foonberg Law
Beverly Hills, CA

Getting Paid

• The Importance of Foonberg’s Rule of “Cash Up Front”

• First Client Contacts

• Knowing When to Hold ‘Em and Knowing When To Fold ‘Em
Getting Paid cont.

• Avoiding Bad News Clients

• Being Creative
  – Barter, Collateral, Evergreen Trust Accounts, Suing a Client, Imposing Liens on Arbitration

• Statutes
Starting a Law Firm

Where to Locate?

Work for Space

Pros/Cons

You don't generate revenue
If desperate, may be good in short term
Lessor generally gets better bargain

How to Find?

Ask around
Do due diligence on arrangement

How many hrs. req'd?

Is value you give > cost of lease?
Does lessor want to help, or rip you off?

Virtual Space

Pros/Cons

Can be costly if used many hrs.
Pay for only what you need
More attractive space than could otherwise afford
Space can be generic

How to Find?

Online
Other lawyers

Home Office

Pros/Cons

Cheap
Convenient
May be hard to discipline to work at home
Some still look askance

Other Issues

To tell or not to tell?
Where to meet clients?
Courthouse
At their place
Go completely virtual
Does bar allow completely virtual firm?

Separation work/life

Use separate space
Separate phone, office equip.

Use home address?

can use PO Box
use virtual address
Decision depends on practice

Staff?

Use virtual workers
Can others work in your house?

Rent Space

Pros/Cons


Can be costly
Can make good impression
Can get overflow work
May be inconvenient for lawyer/parents

How to Find
Craigs List
Bar Journal
Leads from other lawyers

How long is the lease?
Can I afford it?
Will it help generate clients?
Do I need it for discipline?
What's the best location?
Close to court?
Close to clients?
Roadside visibility?

Sharing Space
With other lawyers?
Will they steal your clients?
Overflow work potential
With client?
Good work potential
Possible conflicts?
With former firm?
Convenient
Awkward?

Malpractice Considerations
Protect Client Confidentiality
Is there appearance of one uniform firm (as opposed to several subtenants?)

Bar Requirements
Do you need to be licensed where your office is located?
Do you need a physical office in the jurisdiction where you are barred?

Other Bar Admission
Do you need to take an exam?
How much does waive-in cost?
Will it generate new business?
Do you need it? (e.g., federal practice may not)
Do you know lawyers who can help pro hac vice?

Can you work virtually in one state, while physically residing elsewhere? Which bar must approve (state where you practice or state where you reside?)

Corporate Structure
Sole proprietor
Easy
Is it professional?
LLC
Easy
Same taxes as individ.
Added liability shield (except for professional malpractice)
Some states don't allow LLC for lawyers
Can look more professional

Partnership
Consider for more than one
How to structure
Corp./PC
Added liability shield
New node
More complex?
Req’d by bar?
New node

Malpractice Insurance
Is going bare an option?
Choices
amt. coverage
Amt. deductible
Defense Costs
Tail coverage
Where to find?
Other atty recommend
Broker
Internet searches
Does your practice area increase coverage costs?

Bank Accounts
Operating Account
IOLTA Account
Do you need it?
Will hold money in trust?
Only taking flat fees or post-work payment?
Does bar treat flat fees as fee earned or money to be held in client trust?

Credit Cards
Will bar allow credit cards?
Will bar allow PayPal?
Do you need merchant account?
How will you handle chargeback?
Does credit card payment go into trust acct. if for retainer?
What laws and/or bar rules govern security for holding client credit card numbers?

Accounting Support
What accounting software?
Online?
Desk based
Trust acct. balancing features?
Compatibility w/other practice management tools

Freelance bookkeeper
Where to find?
Other attnys
Assns. of legal virtual assistants
Craigs’ List

New node
Legal Research

Does bar offer free tools? Fastcase? Casemaker? Versuslaw? What are your needs? 1 state only? All fed/state library?

Options

Lexis/Westlaw First rate Pricey Negotiate/aggregate w/others for discount Is per diem service available? Free kiosks Inconvenient High quality for free

Alternatives

Examples

Fastcase Casemaker Versuslaw Loislaw

Pros/cons

Cheap quality varies coverage limited Flexible plans - no lock in New node

Ask for free trials to test

Practice Management Tools

Desktop Based

Pros

Tried & True One time payment Designed w/lawyers’ needs in mind

Cons

Becoming obsolete May need to pay $$s for experts to install Need to reinstall to upgrade - time consuming

Software as a Service

Wave of the future Monthly cost, can be more expensive Automatically upgrades w/out reinstall

Due Diligence

reputation of company security of data Fall back (what if company goes out of business?)

Legal v. Non-Legal

Non-legal apps cheap or free
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<th>Question</th>
<th>Answer</th>
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<tr>
<td>Does non-legal have adequate security?</td>
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<td>Does non-legal app have different terminology?</td>
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<td>Calendar</td>
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<td>Combo tool</td>
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<td>How important is expensive printer if you are paperless?</td>
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<td>Kinkos/outsource for large jobs</td>
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<td>Scan/copy?</td>
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<td>Necessary for paperless</td>
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<td>Can use as substitute for copier</td>
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<td>Dual computers</td>
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<td>External Harddrive</td>
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<td>VOIP</td>
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<td>Landline</td>
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<td>Cellphone</td>
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<td><strong>PDA/SmartPhone</strong></td>
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<td>Pros/Cons</td>
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<td>Convenient</td>
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<td>one place for multiple tools</td>
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<td><strong>iPhone</strong></td>
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<td><strong>WebHost/email</strong></td>
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<td>WordPerfect</td>
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<td>Open Office</td>
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<td>Google Docs</td>
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<td><strong>Adobe</strong></td>
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<td>Standard for efilig</td>
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<td>imperative for paperless office</td>
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useful for forms

Practice specific
  e.g., Casesoft (litigation)
  Doc/filing prep (estates, bankruptcy, etc...)

Computers

What can you repurpose?

Options
  Laptop
  Desktop
  PC
  Mac
  Subnotebook

What are your goals?
  Mobility
  System for large staff
Social Networking for Lawyers: How, What, Why and the Importance of NOW!

Carolyn Elefant, MyShingle.com; Solo by Choice
SOCIAL NETWORKING FOR LAWYERS: The What, Why and How and Importance of NOW.

OVERVIEW

A. Social Media and The Importance of Early Adoption

You’re a busy lawyer. You’ve read all about social networking websites and Web 2.0 but you simply don’t have the time to figure it all out. Besides, you’ve got a steady stream of clients, a bunch of solid referral sources and enough money to pay for fee-based directories or the Yellow Pages. Isn’t social networking just another fad or time-sink for other lawyers? You don’t need it.

If that’s your philosophy, you’d better reconsider…and fast! Social networking isn’t a passing fad and doesn’t have to be a time sink. Everyone, from Fortune 500 executives to blue-collar workers to teens are using some form of social networking. And if you aren’t using social media, you will miss out on huge opportunities, if you haven’t already.

B. Other Lawyers Are Already Using Social Networking

Even the legal profession, ordinarily late to the party, is rapidly adapting and integrating social networking functions into traditional business models. Consider the following trends:

* An ABA Survey of 2810 young lawyers, completed in April 2008, showed that 56 percent of respondents rated social networking as an important tool. [Source: ABA Section of Science and Technology, www.abanet.org/scitech/socialnetworkingsurveysummary.pdf].

* In January 2009, the ABA itself launched a new social networking site for lawyers, Legally Minded (www.legallymined.com).

* A July 2008 survey of 650 attorneys commissioned by LEXIS/Nexis reveals that almost 50 percent of attorneys are members of online social networks and over 40 percent of attorneys believe professional networking has the potential to change the business and practice of law over the next five years. [Source: Martindale Hubbell, http://tinyurl.com/58cmvs]

* In June 2008, venerable lawyers directory Martindale Hubbell struck a deal with LinkedIn whereby MH profiles will now include an icon linking directly to a lawyer’s LinkedIn Listing. [Source: Martindale Hubbell, http://tinyurl.com/5va94f] And Martindale Hubbell has since launched MH Counsel Connect, a free social networking site for lawyers.
*Increasingly, a new generation of in-house counsel and business people who have grown up using the Internet are turning to search engines like Google to locate lawyers online. More and more, corporate counsel and principals expect their attorneys to have a robust online presence.

C. The Purpose of This Ebook

In this e-book we’ll explore the WHAT, the WHY and the HOW of social networking, specifically for lawyers. There are plenty of resources on line that explain social media from a non-lawyers’ perspective, but those don’t necessarily help you because they won’t discuss important ethics issues. However, while many lawyers use ethics rules as an excuse to avoid social media, this book will show you how to use social media in an ethically-compliant manner.

In Part I, we’ll offer a quick summary of the history of social networking and Web 2.0, describe various categories of social networking tools. Part I will also include a checklist to help identify those that make the most sense for your law practice and to begin to create a plan for implementing a social media campaign.

In Part II, we’ll make the case for why today’s lawyers must make social networking tools an integral part of their business development portfolio.

In Part III, we’ll show how lawyers can create online profiles or share documents using social networking tools. We’ll also briefly cover best practices on writing an online profile, using tags and keywords to maximize SEO (search engine visibility) and discuss some of the ethical considerations that may apply to lawyers’ social networking activities.

In Part IV, we’ll offer some advice on how to guard your reputation online and ensure that information in your profiles remains up to date and accurate.

In Part V, we’ll show you how lawyers can convert online interactions into offline relationships, friendships and most of all, business opportunities. Among other things, we’ll explore the continuum of tools that bring relationships from online to offline.

The Appendix includes screen shots of various social networking sites as well as a list of powerful verbs and adjectives to use in creating your profile.

This e-book is intended to briefly introduce lawyers to certain social networking tools and set out the basics for creating profiles. If you are interested in the MyShingle special program, One Form, Four Profiles, please contact me at elefant@myshingle.com or 202-297-6100.
I. WHAT IS SOCIAL NETWORKING?

A. Definition and History of Social Networking

Once upon a time, the Internet was flat. The early versions of the law firm website (or indeed, any business website) functioned as little more than glorified, online version of a hard copy brochures, characterized by static content and few substantive resources. Adding web content through file transfer protocols was a cumbersome task, thus deterring frequent updates. And while site visitors could seek more information through email or include a link to a website at their page, otherwise, Web 1.0 offered few opportunities for interaction or information sharing.

Enter Web 2.0, a trend in technology and web design that “enhances creativity, information sharing and notably, collaboration among users.” Source: http://en.wikipedia.org/wiki/Web_2.0. Web 2.0 technology substantially facilitates the process for posting, customizing and updating online content, and offers various applications for users to comment on posts, interact with others and form online communities. The newer breed of Web 2.0 tools are characterized by (a) a high degree of user-friendliness and ease of use and (b) exceptionally professional looking product.

B. Familiar Examples of Social Networking Tools

Even before the full emergence of the modern generation of social networking tools such as LinkedIn or Facebook, lawyers had opportunities to connect and converse with each other through the Internet. Below, you’ll find a list of online tools that facilitate interaction and collaboration, and which many of you may already be using. We mention these tools here because they play an important role in business development; however, they are not the focus of this e-book.

--Listserve/email groups – an online group where communication takes place by email, dedicated to discussion of a particular topic. Many listerves are a great place to bounce ideas around, and meet potential contacts or colleagues to refer cases to, or collaborate with. You can also create your own listserve or email group using tools like GoogleGroups or YahooGroups.

-Message Boards – Instead of delivering communication to users via emails, discussion boards enable users to post comments at an online bulletin board. Some users like discussion boards because they allow for easy searches of past conversation threads; others do not like the added level of time involved in having to visit the board to post or view posts, instead of having messages come directly through email.
--*Wikis* – A wiki is a website where users can add information. Wikipedia is the best known example of a wiki; it’s an online encyclopedia where registered users can create pages and edit or supplement existing entries. Law firms might use wikis (public or private) to collaborate on documents within the firm or with other attorneys or to create a database of information on cases, as does the SCOTUS Blog Wiki (www.scotusblog.com)

--*Blogs* – Blogs are essentially a frequently updated website where the blog owner can easily generate and produce content. Readers can visit a blog site or subscribe to the “feed” from the blog by email, so that they are notified of postings in their email box. Blogs are interactive in that users can post comments and often generate discussion at the blog. (Popular blogs like Volokh Conspiracy, www.volokh.com or Above the Law, www.abovethelaw.com frequently attract vociferous discussion and debate). In fact, one reason that some of the best blogs help build relationships is that a blog post offers a way to start a conversation.

**C. New Generation of Web 2.0 Social Networking Tools**

1. **History of Social Networking Sites**

Web 2.0 social networking sites took root with venues like MySpace.com and Facebook.com which were popularized by high school and college students. As these students have grown up and moved into the work force, these sites have evolved from playing a purely social function to supporting professional needs.

At the same time, many older professionals are taking a cue from their younger employees or even their children – and are beginning to recognize the value that these social networking sites can offer. Also driving the social networking trend are factors such as the globalization of law practice, which necessitates communication online, the increased number of consumers who rely on the Internet to locate lawyers and the adaptation, albeit slow, of telecommuting that has helped lawyers recognize the business value of online applications.

2. **Types of Social Networking Sites**

From lawyers’ perspective, social networking sites can be divided into three categories: (1) those intended for purely professional use; (2) those that are more social in nature, but also offer ancillary business development functions and (3) those that foster and promote community. We discuss each below:
a. Professional Social Networking Sites

There are actually two types of professional social networking sites for lawyers: the first category focuses on profile creation while the second enables lawyers to share and upload work product:

i. Profiles

LinkedIn.com – Essentially, allows users to build a resume-cum-website online and invite others to “connect” to a network. LinkedIn users can also provide and solicit testimonials from colleagues. MartindaleHubell recently inked a deal with LinkedIn and will link to LinkedIn profiles as part of the MH listing.

Avvo.com – Sometimes maligned by lawyers because of its controversial ratings system, Avvo nonetheless is another site that allows users to list their experience, past cases, client and colleague endorsements. Avvo will generate a numerical ranking based on these factors, as well as bar disciplinary records.

Justia/Cornell LII Legal Directory (https://lawyers.justia.com/signup) Another directory for lawyers only. In contrast to Avvo, the Justia directory does not rate lawyers, but offers “karma points” that can generate more visibility when lawyers contribute to the Cornell LII wikis.

ii. Document Sharing

JD Supra.com Allows users to set up a profile and upload documents, client newsletters and other materials for sharing with other lawyers.

Docstoc.com, Scribd.com – Similar document uploading site, but for all professionals. Strategic tagging of documents can increase online search engine visibility.

b. “Social” Social Networking Sites

“Social” social networking sites are analogous to business development activities like golf, ballgames or a wine tasting: both are enjoyable, non-law related activities that enable lawyers to get to know each other on a personal level and in so doing, help to determine whether they can work well together.

Facebook.com Originally established as a way for college students nationwide to get to know each other, now Facebook helps lawyers learn more about the person behind the suit. Facebook lets lawyers post information about family and favorite movies, upcoming business development events – and also
includes applications to exchange online gifts and greetings or play games like Scrabble or Sudoku.

**MySpace.com** – Best known for its niche among younger folks and the entertainment world, users on MySpace can set up profiles that include links to their favorite music and video. Many lawyers who practice entertainment law or target younger clients find MySpace a productive social networking tool.

**Secondlife.com** – A three dimensional online world created by its Avatar residents. Second Life can be more complicated to navigate because users must create and learn to manipulate an online alter-ego known as an Avatar. However, a few lawyers have set up virtual law offices on Second Life, while others represent clients in the real-world disputes that can grow out of virtual transactions.

c. Community Sites

While all social networking tools build community to some degree, some sites focus on the community component more than others.

**Legalonramp.com** – An invitation only community for corporate counsel and lawyers to share information. Reminiscent of counsel connect, Legal Onramp may give access to corporate GCs.

**Ning.com** – Can use to set up a community of other lawyers, with built in discussion board, events calendar, email list. Extremely easy to set up. Many trade associations, including the one that I co-founded, are using Ning as part of public outreach. (See [www.oceanrenewables.ning.com](http://www.oceanrenewables.ning.com)).

**Legallyminded.com** – An online social media community for lawyers sponsored by the ABA.

**Martindale-Hubbell Connect** – ([http://www.martindale.com/connected](http://www.martindale.com/connected)) Online social media community for lawyers sponsored by Martindale-Hubbell. Also intended to provide links to other Martindale and LEXIS resources.

**Twitter.com** – A “microblog” which allows users to post 140 character messages in response to the question “what are you doing now?” Many users often post about recent blog posts or newstories, so Twitter offers a way to interact and get a sense of how others spend their day while also learning about new information. You can also use the “summize” tool in Twitter to search for quick updates on a particular topic (see Appendix example). Finally, Twitter can help amplify the reach of a blog post and can allow you to generate feedback on a post or a question you may have.
SOCIAL NETWORKING FOR LAWYERS: ONLINE TO OFFLINE CONTINUUM

Website - Static Blog - User control, no Interaction w/out comments

Listings: Avvo, Linked In
Uploads: JD Supra, Directories, YouTube

Community Sites: Ning, Facebook, MySpace

Twitter: Bridge from online to offline

Email Intros: "Warm Calls"

Personal Relationships: Doing Business Together, $$$s and Friendship

STATE

Online interaction
User control

Field Group Conversations, Low Barrier to Intros

Direct Contact
One to One v. Group

copyright: Carolyn Elefant
2009
As shown in the attached diagram, Twitter is perhaps one of the most important social networking tools because it helps bridge the gap between online and offline worlds. Even if the voyeuristic aspects of Twitter don’t appeal to you (which is true for me), you’ll want to use this tool because it’s the quickest way to keep a finger on the pulse of the web.

D. How to Choose the Right Combination of Social Networking Tools?

Social networking can be a time sink, so it’s important to choose the tools that match your goals. Do you want to engage in social networking to raise your online profile? To build a posse, i.e., a small community with whom you can share ideas or support each other? Or do you want to find clients and market your practice? Your interest will inform your choice of social networking tools.

Here are some questions to ask your self:

*Who are your target clients and where do they reside online?

*How will your target clients look for you online? Will they be using organic search? Online directories?

*Are there any ethics rules that might complicate your use of particular social networking too? For example, does your bar have rules governing attorney use of sites like Avvo?

*How important are referrals from other lawyers to your practice?

*Do you have high quality work product that you could share on a site like JD Supra which will show off your skills?

*Are you willing to spend time to gain a prominent presence on certain social networking sites like Avvo or Legal OnRamp? Or do you prefer a passive profile such as Cornell LII/Justia or Linked In?

*Are you willing to mix business with personal? If not, you may lack patience for media like Twitter or Facebook. Also, will you be comfortable with clients having the potential opportunity to view personal communications?

*Does the site offer a “value-add” – such as ability to create legal guides (Avvo), respond to questions (Linked-In, Avvo) or set up groups (Linked-In, Facebook) that can help you expand your online visibility or connect with others outside of your existing circle?

For additional analysis, consult the summary chart of social networking tools.
<table>
<thead>
<tr>
<th>Tool</th>
<th>Purpose</th>
<th>Pros</th>
<th>Cons</th>
<th>Target</th>
<th>Other Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Linked In</td>
<td>Online profile</td>
<td>Robust profile, ability to add testimonials</td>
<td>Works best w/robust profile</td>
<td>Professionals, corporate clients</td>
<td>Can create groups which can connect you with new contacts; Q&amp;A feature can increase exposure</td>
</tr>
<tr>
<td>Avvo</td>
<td>Legal directory, w/ratings</td>
<td>Free profile with good SEO</td>
<td>Rating system which some regard as random; lists discipline violations</td>
<td>Consumers; many lawyers report results</td>
<td>Can answer Qs &amp; write to enhance visibility. I claim unless you intend to maximize use</td>
</tr>
<tr>
<td>Justia</td>
<td>Legal directory, no ratings</td>
<td>Free profile, change to help LII</td>
<td>Not yet great SEO</td>
<td>Consumers, LII users</td>
<td>Can get karma points contributing to LII</td>
</tr>
<tr>
<td>JD Supra</td>
<td>Share docs and get profile</td>
<td>Good visibility for documents; widget to show docs at website</td>
<td>Many lawyers don’t participate; give always arguably anti-competitive</td>
<td>Other lawyers, clients interested in work product</td>
<td></td>
</tr>
<tr>
<td>DocStoc, Scrbd</td>
<td>Share docs &amp; profile</td>
<td>Great SEO with tags</td>
<td>Not just for lawyers</td>
<td>General public</td>
<td></td>
</tr>
<tr>
<td>Facebook</td>
<td>Connect with friends</td>
<td>More personal way to share</td>
<td>Some colleagues may view Facebook as unprofessional</td>
<td>Consumer clients; corporate clients w/ collegial relationship</td>
<td>Can create groups to expand circle of contacts.</td>
</tr>
<tr>
<td>MySpace</td>
<td>Connect w/friends</td>
<td>Even more personal than FB</td>
<td>Useful if target is entertainment/young industry</td>
<td>Very youth oriented</td>
<td></td>
</tr>
<tr>
<td>Legal OnRamp</td>
<td>Share info &amp; connect w/corp counsel</td>
<td>Good resource, interesting discussions</td>
<td>Invitation only</td>
<td>Corporate and inhouse counsel</td>
<td>Invitation only</td>
</tr>
<tr>
<td>Legally Minded</td>
<td>Social networking for lawyers</td>
<td>Some articles and materials from ABA</td>
<td>Too general, not enough activity</td>
<td>lawyers</td>
<td></td>
</tr>
<tr>
<td>MH Connect</td>
<td>Social networking for lawyers</td>
<td>No yet available</td>
<td>Not enough activity yet</td>
<td>lawyers</td>
<td></td>
</tr>
<tr>
<td>Ning</td>
<td>Build your own community</td>
<td>Can create robust site easily</td>
<td>Need to build community &amp; sustain it</td>
<td>All – you invite to join</td>
<td></td>
</tr>
<tr>
<td>Twitter</td>
<td>140 character microblog</td>
<td>Fluid, immediate</td>
<td>140 ch. Limiting; can be time sink</td>
<td>Entrepreneur types, bloggers (drives traffic)</td>
<td>Takes time to get used to using</td>
</tr>
</tbody>
</table>
II. WHY SOCIAL NETWORKING?

Below, we set out two categories of reasons -- the first reactive (everyone else is doing it), the second proactive (imagine the possibilities...) -- why lawyers should adopt social networking tools.

A. Reactive: Lawyers and Clients Are Using Social Networking Tools NOW!

As discussed in the executive summary, lawyers and potential clients are using social networking tools now. Martindale Hubbell has integrated LinkedIn with its lawyer directory service and lawyers – from consumers to corporate GCs are turning to the web to locate lawyers and check references. If you are not actively exploring the social networking opportunities, then you will fall behind the trend and potentially lose out on opportunities.

In addition, today’s clients want Internet savvy lawyers. They recognize that lawyers who harness technology are poised to deliver far better value than those who don’t. Social networking tools show that you know enough to stay on the cutting edge – and send a tacit message that you are also ahead of the curve when it comes to your legal skills.

Still, the fact that “everyone else is doing” it isn’t a good enough reason to adopt social networking in and of itself. As discussed in the next section, there are other proactive, powerful reasons for taking advantage of social networking tools and making them an integral component of your business development portfolio.

B. The 3 R’s of Building a Law Practice: Relationships, Referrals and Reputation (as well as a 4th R- Replacement)

Just as reading, writing and ‘rithmatic form the foundation of a sound childhood education, another type of “3 Rs” -- relationships, referrals and reputation – serve as the building blocks of a successful law practice. There’s no faster way to build relationships, referrals or reputation than through social networking tools. They help you share what you’ve done in the past as well as what you’re doing on an ongoing basis going forward.

Relationships: Social networking tools are interactive. They highlight commonality through information you post and invite conversation. (Hey, didn’t
know you worked at that firm; Wow, had no idea you played soccer, Gee, I did moot court back in law school too).

Sites like LinkedIn allow you to leverage existing relationships by connecting with people who know someone you know. Sites like LinkedIn and Avvo also foster relationships because they allow you to give testimonials to others. What better way to solidify a relationship than to reach out and compliment someone?

**Referrals:** Social networking sites yield direct and indirect referrals:

**Direct** – Social networking sites help attain incredible SEO (search engine visibility) for FREE! Clients can find you. Also, listing information and testimonials makes it much easier for colleagues to refer you cases.

**Indirect** Increased visibility will help reporters find you and get your name in print, which can lead to referrals. A recent e-marketing survey showed that 30 percent of reporters locate industry experts online through blogs and web searches. Sites like JDSupra and Docstoc let you post documents, so you may come to mind when someone is asked to recommend a lawyer for a project.

**Reputation** – Social networking sites let you establish a reputation as an expert and enhance your reputation with testimonials from others.

**Replacement** – Social networking tools can either replace, or at least supplement many of your existing online marketing tools.

**Replacement of traditional costly tools for online presence:** For example, if you can’t afford a website or aren’t yet ready to commit to setting up a blog, you can still use a LinkedIn or Avvo site to create and maintain an online presence and communicate much of the information that you would on a website, such as your bio, past accomplishments and office location. Likewise, sites like JD Supra or Docstoc let you upload documents – from past client newsletters to briefs – to show your workproduct to clients or make information readily accessible.

**Replacement (partial) of Awkward Approaches Like Mass Mailings o Cold Calls** - Social networking tools can also replace, or again, supplement some of your other marketing methods such as cold calling. LinkedIn helps you identify leads and find common ground, thus enabling you to convert a previous cold call into a “warm” call.

**Replacement of SEO** - Social networking tools also let you partly replace expensive SEO (search engine visibility) services. As discussed in the next section, by making strategic use of tags and keywords in your online profiles, you can elevate your visibility in search engines. Again, you may find that even
with this added boost that you still need professional SEO services, but if those services fall outside of your existing budget, social networking provide a good start for increasing your find-ability.

**Replacement of Costly Headhunter or Outplacement Services** – Whether you’re a new law student searching for a job, or a lawyer seeking reentry, social networking tools can help you connect with contacts and expand your contact base without paying for costly outplacement services. Many lawyers are so desperate to re-enter the profession after time away that they’ll pay thousands of dollars to participate in expensive programs that help make connections, when they could be making these connections themselves through social networking.
III. SOCIAL NETWORKING – HOW

So, let’s get started and learn a bit more about how to set up a social networking site. Obviously, a static e-book can’t walk you through the entire process, but it can effectively provide best practices for getting started. In the Appendix, you’ll find screen shots of various social networking sites, as well as a slightly more detailed “anatomy” of some of the features of a LinkedIn site.

A. Basic Basic’s

**Registration** - All of the social networking sites discussed require you to register and enter user information. You may want to come up with an easy to use username and secure password that you can use at all of these sites.

**Photo** – Most sites offer the option of including a photo. I strongly recommend including a photo for several reasons. First, a photo gives a site a more personal touch and shows that you took added care in developing a profile. A photo also serves a practical purpose; it lets people whom you’ve met offline identify you if you ever have the opportunity to meet in person.

In terms of selecting photos, use a professional photo for sites like LinkedIn or Avvo. Stores like Target and Sears offer low cost, digital photos suitable for business, and with the increased quality of today’s digital cameras, you may even be able to have a friend or spouse take a photo that will suffice for an online social networking profile.

For more social oriented sites, use a more casual photo that conveys the relaxed or friendly side of your personality. Obviously, even your casual photos should be in good taste; needless to say, avoid shots where you’re inebriated, scantily or provocatively dressed or posed in a compromising position.

**Complete the Basics** – Of course, the more information you include in your profile, the better. But if you can’t complete your profile all at once, be sure to include basics such as name, address, location, website or blog (if you have one), previous employment and your undergraduate and law schools.

**Social Etiquette** – The same social etiquette rules apply to social networking sites as to listserves, email and other online communication. In general:

Don’t ever link to people you don’t know;

Don’t link to people for the sake of gathering links – it’s annoying to them!

Don’t set up social networking groups and spam them;

Don’t spam your email box with invitations to join your group;
Don’t spam other users

Don’t give testimonials for the sole purpose of obtaining reciprocal testimonials or offer testimonials about aspects of the lawyer’s work that you’re not familiar with.

B. Best Practices

1. Use Tag Words/Keywords In Social Networking Sites

To greatly simplify, tag words or keywords are basically those words or phrases associated with your or the services that you provide and that users are most likely to employ to search for a similar service online. For example, a family law attorney in Texas might select “Texas family law attorney” or “family lawyer in Texas” as a descriptive keyword phrase to include in an online profile. Or a lawyer who uploads a sample non-disclosure document to JD Supra might tag the document with his name and descriptive terms like “California NDA.”

Tag word and keyword selection can be an involved process, but here are a couple of basic tips to get you started:


2. Run some searches yourself using certain terms and see where your existing website comes up in the rankings as compared to the competition. Review competitors’ sites to get an idea of the words and phrases that they use to generate their positioning.

3. Learn more about SEO (search engine visibility) at sites like – www.seobook.com. Even if you hire an SEO expert at some point, it doesn’t hurt to educate yourself on the process.

2. Use Powerful, Active Words and Phrases to Create Your Profile

Design a profile that captivates users by sharing your personal philosophy and telling them what you’ve accomplished. Use powerful, active
words and phrases. Review other profiles for ideas, and feel free to use the active words and phrases in the attached Appendix.

### 3. Use Your Profile Links

As more people link to your profiles, you will increase traffic. Make it easy for others to find profile links by using them in your email signature, at your website, etc...e.g. [http://www.linkedin.com/pub/1/144/324](http://www.linkedin.com/pub/1/144/324) (my linked in Public Profile) Caroyn Elefant - [http://twitter.com/carolynelefant](http://twitter.com/carolynelefant) regularly.

### 4. Investigate Site Features and Shortcuts

Investigate shortcuts to keep track of any changes to the site. Many social networking tools, such as Avvo, Facebook or Linked In will notify you of updates or additions to the site by email. When you register for the site, take advantage of the email notice option. Most power-Twitter users rely on an application called Tweetdeck ([www.tweetdeck.com](http://www.tweetdeck.com)) to sort and store tweets. But Tweetdeck also enables users to run searches and keep track of whether they’re mentioned in other tweets.

Some social networking sites offer “value-add” features that will enhance your visibility or give you additional tools to publicize events. For example, Linked-In has a “questions” option where you can respond to user questions and gain stature as an expert. On Avvo, you can prepare a “Legal Guide” that site visitors can access. Both Facebook and LinkedIn let you set up groups that all users can join, thus enabling you to expand your circle of contacts. Take some time to explore some of these additional features in evaluating the sites that will work best for your practice.

### 5. Proof and Spell Check

Carefully proof the grammar and spelling in your profile. The best feature of most social networking tools is that you can easily change any mistakes.

### C. Legal Ethics

#### 1. Overview

As a general matter, the effectiveness of social networking systems depends upon the integrity of the community members who support those sites. When users include false information in their profiles or upload documents that they haven’t written or spam other users, they erode the trust and community spirit at the heart of social networking systems.
As lawyers, we have an added responsibility in using social networking tools that goes beyond the community norms. We must also abide by rules of professional conduct and ethics in our interaction with other lawyers and members of the public.

To date, we have not identified any state boards of professional responsibility that have issued a formal ruling or guidance on the ethics of lawyer participation in, or use of social networks. In my view, the bars have taken the right approach by allowing social networking uses to evolve organically, rather than stepping in prematurely to regulate them. Nevertheless, to ensure that bars keep their hands off social networking tools, we lawyers should take proactive steps to police ourselves and use these tools in an ethical and professional manner. In this regard, here are some considerations:

--Treat social networking sites as part of a category of lawyer listings or information databases rather than a form of pure lawyer advertising – To date, bars have spared social networking sites from close scrutiny for two reasons. First, the bars have bigger fish to fry (Source: Law Technology News, http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1194257030032). Second, as yet, most bars do not consider social networking sites advertising (Law Technology News - http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1202421836389) either because the sites list purely biographic information or (in the case of JD Supra or document services) are more similar to published articles that are viewed as educational rather than promotional. If lawyers continue to use social networking sites as tools to connect with lawyers, build referrals and share information with the public rather than as blatant solicitations, not only will these sites serve a more meaningful function, but they will be insulated from invasive bar regulation.

I also believe that MartindaleHubbell’s recent incorporation of LinkedIn will go a long way towards protecting lawyer websites from bar scrutiny. MH is a respected bar publication and regulators have never challenged the ethics of MH listings. By bringing a site like LinkedIn within its purview, MH may have done lawyers the bigger favor of providing protection-by-association.

2. Ethics Issues

Most bar associations define advertising as those communications made with the intent of soliciting clients. Once a communication is deemed advertising, many of the bars’ onerous restrictions kick in. In my personal view, bar associations should not treat most social networking tools as advertising because they serve a variety of purposes, from educating potential consumers to serving as an informational directory to enabling colleagues to communicate. However, lawyers should be aware that some bars do regulate certain uses of social networking tools as advertising.
Still, it is important that lawyers not allow the prospect of bar regulation to intimidate them from using social media. As discussed below, there are many ways that lawyers can engage in social networking while remaining compliant with ethics rules.

In addition to ethics rules relating to advertising, lawyers must also take care to ensure that their use of social media does not compromise client confidentiality.

a. Advertising Restrictions

i. No Misleading Information

As a general matter, most bars prohibit lawyers from making false or misleading communication to the public. Thus, in creating profiles, lawyers should include accurate information about past employment and accomplishments. Lawyers should also refrain from giving testimonials or recommendations about others that, for example, suggest that the lawyer is personally familiar with a colleague’s work when he or she is not.

Thus, a lawyer who knows a colleague through a list serve only should not say “Joe Smith is an excellent corporate lawyer, whose negotiation skills are unmatched in the community.” Rather, a more appropriate testimonial might be “I know Joe Smith through an online list serve but I have never met him or worked with him personally. However, based on his postings and some of the advice that he’s offered online, in my view, he has a good understanding of the basics of corporate law.”

Many bars deem communications misleading where they create false expectations about results or contain non-verifiable information, e.g., “Joe Smith is the best lawyer in the state.” In some states, lawyers are prohibited from comparing the results that they provide with those of other lawyers.

ii. Testimonials - Though some bar associations do not permit testimonials in lawyer advertising, I believe that some differences apply here. First, clients and colleagues post testimonials at Linked In or Avvo profiles rather than the lawyers themselves. Some bar rules prohibiting testimonials bar a lawyer from posting a testimonial, while others prohibit a lawyer from participating in a communication that permits a testimonial. Some states also require disclaimers on testimonials.

Second, even though bar associations may prohibit testimonials from clients regarding results of a case, at the same time, they permit testimonials from colleagues, judges, friends and family members so long as the testimonials are not misleading.
Finally, clients and colleagues post testimonials, not lawyers. While bars may have the ability to regulate a lawyer’s speech when it comes to advertising, that authority may not extend to non-lawyers who seek to express opinions about a lawyers’ service.

iii. Linking to Ratings – Some jurisdictions prohibit lawyers from linking to their inclusion in publications like Super Lawyers – though many have changed their position. Likewise, the Florida Bar’s Standing Committee on Advertising addressed the issue of Avvo ratings, and voted to prohibit Florida lawyers from using their ratings in their advertising, but the committee reconsidered the matter and reversed itself in April. Source: Law Technology News, http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1202421836389 You may want to seek guidance on whether you can use your Avvo rating in advertising in your jurisdiction.

iv. Client Solicitation

Twitter seems like a harmless tool because communications are limited to 140 characters. Still, lawyers may run afoul of bar rules using Twitter by using it to directly solicit clients. Consider an example where an individual tweets that she was hit by a bus. If a lawyer tweets back and says “Call me for representation,” he would likely run afoul of solicitation rules.

Conclusion about advertising: We’re all on the same page here. Social networking tools depend upon the integrity and trust of the community. Social networking could not offer the value and power that it does if users did not employ these tools in an honest, dignified fashion. So long as we lawyers use social networking tools as a way to build relationships, referrals and reputation, by definition, our use will comport with our existing professional ethics obligations. And if you’re not sure if a practice is appropriate, review applicable bar regulations or consult bar counsel. The ABA maintains a comprehensive list of all state bar rules on advertising, organized by categories, at this link: http://www.abanet.org/cpr/professionalism/state-advertising.pdf

b. Other ethics considerations

As most lawyers realize, client confidentiality is paramount, and the duty to retain confidences outlives the termination of the lawyer –client relationship. Thus, lawyers should avoid discussing non-public aspects of a case on a social networking forum or even listing former clients without first obtaining their consent. Likewise, where a client provides a testimonial to your firm, seek the client’s consent to use that testimonial on a social networking site. Lawyers should also steer clear of uploading confidential client memoranda or documents to sites like JD Supra.
Lawyers must also exercise judgment when communicating through tools like Twitter. A lawyer might make an offhand tweet about meeting with a witness in a case that could tip off an opposing counsel. A lawyer could also wind up inadvertently communicating via Twitter with an already represented party which could lead to a sanction. As more and more lawyers begin to use Twitter, the prospects for abuses or mis-uses increase. Again, the possibility of misuse does not mean that lawyers should avoid social networking tools completely, but instead, should proceed with caution.
IV. GUARDING YOUR REPUTATION ONLINE

[excerpt from Solo by Choice, modified]

As the Internet and social media makes information more accessible, it is imperative you stay vigilant about guarding your reputation online. Because at the same time that your colleagues and prospective clients can see what is positive about you – your work, your writings, your pro bono awards – they can also find embarrassing photos, any disciplinary record, and any best-left-unseen comments posted on listservs and elsewhere.

Here are some suggestions to keeping your reputation intact in the Internet era:

Know what’s out there – Regularly run your name or your law firm name through search engines to determine whether any negative information is in circulation. Even more efficient, you can set up a Google feed to regularly search your name and use the Twitter search option (built into Tweetdeck, an app for reading Twitter) to keep tabs on tweets about your or your blog.

If you discover negative comments about your services, see if the site owners have a policy that allows for the removal of comments. In extreme cases, where information posted is easily discoverable (e.g., appears at the top of your search results) and damaging (e.g., prospective clients question you about those comments and then decline to hire you), you may need to consult an attorney who specializes in Internet defamation to evaluate your options.

Watch what you say…and where you say it – Bear in mind that a search engine like Google often indexes listservs or mailing groups that you may have believed were private. So if you post about a personal problem on a listserv, or lob posts riddled with profanity, those messages may pop up when someone searches your name. To avoid such embarrassment, keep your messages tame (something you should be doing anyway) and post sensitive questions anonymously.

Think twice about the advice you give at seminars - A Pittsburgh based immigration law firm learned a hard lesson when its lawyers advised seminar participants they could bypass federal immigration laws on hiring foreign workers by creating recruiting campaigns designed "not to find qualified US workers" (therefore opening the doors to hiring overseas). A video of the event made it into the hands of a computer programmer who inserted his own editorial subtitles about how the firm was advising companies to break the laws - and then uploaded the video to YouTube. More than 120,000 viewers downloaded the video, including two US Senators who sent a letter to the firm asking it to explain its advice. See http://legalblogwatch.typepad.com/legal_blog_watch/2007/06/watch-what-you-.html for full story

Take preemptive action... – Tell clients about readily discoverable, negative information that they may find themselves. For example, if you’ve got a grievance
on your record, disclose it and explain it to clients. Chances are they’ll appreciate your honesty and won’t hold the infraction against you. If, however, clients discover your grievance through an Internet search, they may suspect you of holding back information.

…but don’t be too heavy handed  When someone passed a copy of Nixon Peabody’s awful law firm theme song "Everyone’s a winner" on to David Lat for his legal gossip site, Above the Law, the firm demanded that Lat remove the song from the site, threatening a cease and desist action. See http://legalblogwatch.typepad.com/legal_blog_watch/2007/08/is-nixon-peabod.html. The firm’s heavy handed action only drew more attention to the song (eventually, YouTube removed it from the site) and generated lots of negative commentary about the firm’s lack of humor around the blogosphere. The lesson: if something embarrassing makes its way out on the Internet, try to diffuse the situation with humor or find a way to make the attention work to your benefit.

Optimize the visibility of your positive accomplishments – Add attorney and client testimonials to your Web site (if allowed in your jurisdiction), update your blog more regularly (which will move your blog posts to the top of search results), and invite bloggers to comment on your blog posts (many of them may have complimentary remarks which will also show up in search engines). As you generate new and positive information about yourself, the negative comments will sink to the bottom of search engine results where, hopefully, they’ll go unnoticed.
PART V: The Conversion: Bringing Online Relationships Offline

Let’s face it – while it’s important to have a robust internet presence and it’s fun to pal around with friends through applications like Facebook or Twitter, most likely, you’ve probably downloaded this book because you’re interested in figuring out how social networking tools can build your business. As I’ll discuss here, they certainly can, but first, you’ve got to take more static and impersonal online social networking tools and make them more personal.

In this section, we’ll explain ways to use social networking to identify potential contacts and then how to make meaningful connections with them.

A. Ways to Identify Contacts Through Social Networking

Earlier in the book, we discussed how others can find you with social networking tools. But how do you find potential contacts and connections through social networking tools? Here are some ideas:

1. Use search tools: Every social networking tool has a powerful search engine. On Linked In, for example, you can search for contacts by school that they attended, or by present or current employment. So if you’re trying to snag a bank or Internet company as a client, you might use Linked In to search for that company and see if you have any connections – either directly, or through your other Linked In contacts.

Twitter lets you search for other users, but you can also use www.summize.com to search by topic. If you find users discussing topics like family law or divorce, you could join the conversation – or introduce yourself with a direct message.

B. Taking Online Conversation Offline

The diagram at the beginning of this part shows the relationship of social networking tools and the continuum that leads from online interactions to in-person relationships and business dealings. Generally speaking, websites are static, as are blogs, unless your blog opens a conversation with readers by enabling comments.

Lawyer listing and document upload sites allow other lawyers to learn more about you, and for you to learn about them – but unless, you take steps to actively pursue a relationship, these tools can also turn static in nature. Community sites like Ning and Facebook – which allows users to send email back and forth and engage in games and social activities online – provide more chance for interaction, and therefore take users closer to an offline relationship.
I've become a fan of Twitter as I've grown to recognize its value in providing a bridge between online and offline relationships. Twitter, with its 140 character limit, offers an easy, low barrier way to get to know others whose blogs you read, or whose online profiles you've seen — and to test the waters by sending them a direct message, or responding to their Tweets.

Finally, sometimes, you need to move to the next level — and either send an email introducing yourself to someone you’ve met online or even giving them a call on the phone. Though you may not like cold calls, after interacting online, you’ve already built the basis for a relationship, so calls are less awkward. You can use a call or email to suggest a meeting (if the person is local) or just as an introduction.

Below is one example of how to make an introduction and start to take online relationships offline:

1. Email — Do's and Don’ts

Here are two sample (hypothetical) emails from an estate planning lawyer to a colleague, looking to get together for networking and to find further exposure for his blog.

--DON'T:

Email to: Jack Jones, Criminal Lawyer

Dear Jack,

My name is Bobby Brazen and I am an estate planning lawyer. I saw your profile on Linked In. I am sure that I can serve as a referral for your clients and I would like to get together to meet you. Also, please link to my blog The Trusted Trust Lawyer at your site and I will do the same.

Bobby Brazen

The problems: (1) The letter appears to be a form letter. There is nothing in the letter to indicate that Bobby Brazen has read Mr. Jones’ bio or website and indeed, if he had, he might have realized that there is no obvious relationship between estate planning and criminal law.

(2) The email is somewhat presumptuous in referring to the lawyer by his first name. This might be appropriate if Brazen and Jones knew each other through Twitter or a listserve, simply referring to Jones by his first name based on his Linked In profile could be offensive.

(3) The email does not give any additional information about Mr. Brazen — no links to his website or profile. Nor does he give any reason for why Jones should link to his site.
DO
Email to Jack Jones, Criminal Lawyer

Dear Mr. Jones,

My name is Bobby Brazen and I am an estate planning lawyer who just opened my practice in Newtown. I am originally from Orange City where your firm is located (in fact, I used to eat lunch at the McDonalds down the street from your office), so for that reason, your profile on Linked In stuck out. In addition, I noticed that you graduated from Westville Law School, Class of 1984, which my wife also attended, graduating in 1998.

Having just opened my practice, I am eager to get to know other lawyers in the community, to learn about their practice and explore whether there might be any mutually beneficial opportunities. I see that you practice criminal law, and back in my law school clinic, supervised by now Judge Kotler, we developed some draft power of attorney forms and simple wills that might possibly be useful to your clients. I’d be happy to share these forms and if you like, you may make them available as a resource on your blog, which I greatly enjoy reading.

Are there any dates the week of November 1 where I might be able to stop by your office to say hello and chat for a few minutes. I thought that this might be more convenient than having lunch since I realize that you are probably in court most days. Please let me know if you are available, or perhaps suggest alternative days. Feel free to respond by email or call me at XXX.

Best,

Bobby Brazen
BrazenLawFirm.com – 555-1212
www.linkedin.com/bobbybrazen

This letter is a bit chatty, but it clearly shows that Brazen took the time to get to know Jones. In addition, Brazen offers something of value to Jones (the probate forms), which may give Jones more incentive to pursue the relationship. Once Brazen meets Jones, he may discover that some of Jones’ clients have been inquiring about estate matters, or have had friends who recently died who are in need of probate assistance. These are the types of matters that Brazen can pursue more effectively through an in person relationship. Brazen also includes sufficient information about his firm and online profile so that Jones can learn more about him.

Contacts don’t always have to be so formal, however. For example, if there’s a blog that you enjoy, why not call the author and tell him or her in person. They’ll be surprised and glad to hear from you and the goodwill alone will spur a personal relationship. As much as we depend on the Internet for connections, don’t forget that often, the phone (or Skype) is just as valuable a tool.
IV. CONCLUSION

Social networking tools are here to stay and will become even more critical to energy regulatory lawyers and professionals with a tech savvy, cutting edge administration. If energy lawyers do not move quickly to explore and capitalize on the enormous potential that these tools offer us, we will lose our business to other lawyers who do.

In the next section, you’ll find two Appendices. The first contains powerful words for use in preparation of your online profile, while the second series contains screen shots of various social networking tools, with some specific guidance and detail on Linked In features.

APPENDIX

POWER WORDS TO USE IN CREATING PROFILES

Determined
Hard-working
Diligent
Trustworthy
Team-player
Motivated
Reliable
Self-starter
Loyal
Studious
Attentive
Conscientious
Industrious
Persistent
Dynamic
Energetic
Enterprising
Enthusiastic
Aggressive
Consistent
Organized
Professional
Methodical
Skillful
Passionate
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D

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decreased | determined |
delegated | developed |
delivered | devised |
diagnosed | distributed |
designed | drafted |
directed |         |

E

edited | enhanced | examined |
elicited | enlarged | exceeded |
eliminated | established | executed |
empowered | expanded | explained |
gineered | evaluated | envisioned |

F

formulated | founded |

G

gathered | generated | garnered |
H
headed hired

I
identified initiated interpreted
ignited innovated interviewed
implemented inspected invented
improved installed inventoried
increased instituted
influenced instructed

J
Justified

L
lectured lobbied logged
led learned listed

M
maintained mediated motivated
managed modified marshalled
monitored

N
Negotiated negated

O
obtained ordered overhauled
operated organized

P
patented prepared programmed
performed presented promoted
persuaded presided proposed
placed processed provided
planned produced purchased
posted proved proofed
pushed

Q
quantified qualified quieted

R
recognized reorganized researched
recommended repaired restored
reconciled replaced reviewed
reduced reported revised
referred represented rescued
regulated rescued

S
scheduled sold suggested
screened solved supervised
selected steered supplied
served streamlined systematized
simplified studied saved
spearheaded

T
taught tracked transcribed
tested trained translated
traced

U
updated utilized

W
won wrote
Click here to invite your contacts to connect with (or "link") to you.

Very important include tag words and keywords in this section of the bio since searches within and outside LinkedIn focus on these terms.

If you hold positions concurrently, you may need to fudge dates to have them appear in desired order in your public bio.

Include undergrad, graduate and law school since LinkedIn lets users search by school.
To get to this page, click on the "Add Connections" toolbar. You can invite friends to join by email, or click on "Import Contacts" to generate a list of existing contacts from your email accounts.
The Answers button is on the top menu of each LinkedIn page and will take you to this page.

This bar lets you choose from categories of questions to answer and to subscribe to the RSS of questions asked rather than having to constantly visit the site.

Use these features to ask questions or answer pre-selected questions based on your profile description.
Carolyn Elefant, Principal Attorney
Law Offices of Carolyn Elefant
1229 K Street N.W. Ste. 300
Washington, DC 20005, United States
- 202-297-6100
- 202-675-4075
- Email: currently unavailable
- Website: currently unavailable

AREAS OF PRACTICE
- Administrative Law
- Appellate Practice
- Civil Rights
- Energy & Utilities
- Litigation

Bar Admissions
New York, Maryland, Washington D.C.

Education
Brandeis University, BA 1985; Cornell Law School JD 1988

Professional Associations & Memberships
- Energy Bar Association, Ocean Renewable Energy Coalition,
Getting ready for my Social Networking for Lawyers workshop tomorrow. Will try to tweet from there.

about 1 hour ago from web
carolynelefant @nikiblack Ooh those are real puppy dog eyes! 06:24 PM July 21, 2008 from web in reply to nikiblack
carolynelefant @pauljacobson problem is how to find someone w/entrepreneurial attitude for employee position. It’s the money Q for solos. 09:35 PM July 13, 2008 from web in reply to pauljacobson
carolynelefant lisaalomon’s Persuasive Writing Teleseminar is great – really original material 01:36 PM July 10, 2008 from web
carolynelefant @grantgriffiths – congrats Grant! 03:08 PM July 9, 2008 from web in reply to GrantGriffiths
carolynelefant What is the best resource on creating joomla membership sites? My preference is book, rather than podcast, video or online tutorial 09:15 PM July 5, 2008 from web
Chapter 62
THE FEE AND REPRESENTATION LETTER (THE ENGAGEMENT LETTER)
It is critical that you have a separate fee and representation letter for every matter. A sample letter with 37 potential points is provided.

Chapter 64
ENGAGEMENT LETTERS, NONENGAGEMENT LETTERS, AND DI SENGAGEMENT LETTERS
It is critical to protect yourself and the client if you decide to drop a client or matter. Sample letters are provided.

Chapter M-7
TEN KINDS OF BAD NEWS CLIENTS TO BE AVOIDED
This classic list of 10 kinds of “Bad News” clients to be avoided has been published many times in journals. It is worth reading especially for newer lawyers. It should be considered in conjunction with cases that should be turned down.

Chapter M-8
CASES THAT SHOULD BE TURNED DOWN
Years of experience have taught me that certain types of cases can be just as problematic as certain types of clients. This list of 10 cases that should be turned down should be read in conjunction with the 10 kinds of clients that should be avoided.

Chapter M-16
INCREASING YOUR CASH FLOW AND REDUCING UNCOLLECTIBLES BY MATCHING YOUR BILLING TO YOUR CLIENT’S CASH FLOW
A little research on your part may demonstrate to the client that he or she can pay your fees by modifying the billing period and the source as payment. Examples are given.

Chapter M-19
BARTER - IS HALF A MOOSE A FAIR PRICE FOR A WILL?
Barter for legal services is often used in smaller communities. This chapter highlights what kinds of goods or service the lawyers receive for their professional legal services.
ABOUT JAY FOONBERG

Jay Foonberg is often introduced as the man who needs no introduction. The word “Foonberg” will produce more than 20,000 links on Google, or visit www.FoonbergLaw.com for more information.

A very successful lawyer and internationally known author of many books and articles on ethical lawyer marketing and practice management. He also speaks to bar associations throughout the world, having spoken in every one of the 50 states, all 6 US territories, every one of the 10 Canadian Provinces, and on every continent including Antarctica, as well as several foreign countries in the English, Spanish and Portuguese languages.

Mr. Foonberg is the only person to have been honored with lifetime achievement awards by 4 sections of the American Bar Association. He is the recipient of the Donald C. Rikli Lifetime Achievement Award of the ABA General Practice, Solo and Small Firm Section, as well as the recipient of the Lifetime Achievement Award of the ABA Law Student Division, as well as the Sam Smith Award of the ABA Law Practice Management Section for having demonstrated lifetime achievement in the field of law practice management.

He is also the recipient of the prestigious Harrison Tweed Award as the Most Outstanding CLE Educator in the United States.

Additionally, Mr. Foonberg is the recipient of the Louis Goldberg award as the Most Outstanding Attorney - Certified Public Accountant in the United States.

He has been decorated by the governments of Brazil and Argentina for his work in international trade.

Mr. Foonberg is, or has been an active member of the House of Delegates of the American Bar Association and of many State Bar of California and ABA committees, sections, divisions, etc. He is past Chair of the Senior Lawyers of the State Bar of California and a past Council Member of the American Bar Association's Senior Lawyers Division. He was a founder of both the California and American Bar's Law Practice Management Sections. He was also founder of the Beverly Hills Bar Association's Citizen's Law School in 1991.

Mr. Foonberg’s published books include: How to Start and Build a Law Practice (5th edition), How to Get and Keep Good Clients (3rd edition), Finding the Right Lawyer, The ABA Guide to Lawyer Trust Accounts, and How to Draft Bills Clients Rush to Pay (2nd edition). All are available from the American Bar Association. His books are the most stolen law books from law libraries in the United States. Many of his works are now published in book, CD, DVD, and PDF download formatsand are purchased by lawyers throughout the world as eBooks.

Mr. Foonberg received his law degree from UCLA Law and has studied at Harvard Law School, Cambridge University England and Duke University School of Law and the Institute Louis Pasteur in France.

He keeps physically active by running marathons, having run his first marathon at age 56, and has completed 35 marathons and 28 half marathons as of February 2009. He has completed at least one marathon or half marathon on every one of the 7 continents, including Singapore, Kenya, and Antarctica.

He welcomes your comments on the materials and your suggestions for improving them. He also responds to email requests for help.

Mr. Foonberg’s books, published articles, lectures and programs are now available as internet downloads, including individual chapters for as low as 99¢ each.

A complete biography, list of publications, and available works can be found on his website: www.FoonbergLaw.com
The importance of the fee-representation-engagement agreement cannot be overemphasized. It will help eliminate disputes between you and your client more effectively than any other procedure.

The fee letter can best be explained by using an all-inclusive example and then exploring the importance of the various parts:

John Jones
123 Main Street
Anytown, U.S.A.

[1] RE: Jones vs. Smith; breach of contract
Dear Mr. Jones:

[2] This letter will confirm our office discussion of Thursday, January 4.

[3] It was a pleasure meeting with you in our office. As I explained to you, it is my opinion that you definitely need the assistance of a lawyer, whether it be our firm or another lawyer. In my opinion, the matter is too complex for you to represent yourself.

[4] As I explained to you, if you wish us to represent you, our fee will be $2,250 to prepare the complaint, do written interrogatories, take the deposition of Mr. Smith if necessary, and appear for the first day in court. If any additional work is required for such things as motions, additional depositions, or additional days in court, you will be charged at our hourly rate of $150 per hour. If the case is settled short of trial, the fee will still be a minimum of $2,250.

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The above does not include any out-of-pocket costs that may be incurred, such as court filing fees, sheriff's fees, deposition costs, photocopying, etc. We estimate, but cannot guarantee, that these costs will run between $350 and $750, and, as explained, these costs are in addition to our fee and are not included in the $2,250 fee.

We shall have the right to engage other attorneys to assist us at our sole expense and at no additional cost to you.

You indicated that you wished to pay in installments of $750 fees and $250 costs to begin work, and $300 fees and $200 costs the first of each month until you are current, and then, additional fees and costs will be paid monthly, as billed.

This schedule is acceptable to us, so long as you understand that if you terminate payments, we may terminate our services and withdraw from the case.

You are also agreeing to cooperate and participate in the conduct of your case and to truthfully and immediately notify us as to anything that may occur that could affect the case. You understand we are relying on the facts as given to us by you.

As I indicated to you, based on the facts as you related them to me in the office, you should win, and you should be awarded a judgment of between $13,500 and $18,000, unless the case is settled at a different sum. Obviously, depending upon the facts as they are developed, our opinion could change and you could be awarded more or less, or even lose. You also understand that getting a judgment is not the same as getting cash and that you may have to expend additional costs and fees to collect the judgment.

Our State Bar Act requires that we advise you as to whether or not we maintain malpractice insurance for this type of matter. Please be advised that we are insured for this type of matter.

You asked me if spending money on legal fees in this case is throwing good money after bad, and I told you that at this point, I couldn’t give you an answer, and that you should understand that there are no guarantees of winning or collecting.

It is my opinion, however, that whether you use our firm or other lawyers, you should proceed with
your case. Please do not delay. If you delay the commencement of your suit, you may at some point be barred from bringing it.

[21] If the above properly sets forth our agreement, please sign and return the enclosed copy of this letter, along with a check in the amount of $1,000, payable to my trust account. I will draw $750 toward my fees, and leave $250 toward costs as outlined above. Trust account funds are deposited to our Trust Account in accordance with the rules governing lawyers in our state including IOLTA (Interest On Lawyer Trust Accounts) rules as well as our fiduciary duty to you as a client. If the funds are significant enough to earn net interest for the period of time held, we will consult with you for instructions. A self-addressed, postage-paid envelope is enclosed for your convenience.

[22] If we do not receive the signed copy of this letter, and your check, within 30 days, I shall assume that you have obtained other counsel, and shall mark my file “closed” and do nothing further. If any of the above is not clear, or if you have any questions, please do not hesitate to call. Very truly yours,

To be typed on the copy of the letter:

The above is understood and agreed to, and my check in the amount of $1,000, payable to Jane Attorney Client Trust Account is enclosed.

Dated: ____________
John Jones ______________________

Essential Points to the Fee and Representation Letter

Obviously, the fee-representation letter must be tailor-made to the particular facts of the matter and the fee. Whatever form you decide to use, your letter should include the following:

[1] The Matter Involved. Perhaps your client has several legal matters, and has not told you about any of them except the Smith matter. This should prevent a later claim that you were responsible for more than this matter.

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[2] **Your Interview Date.** This establishes when you had an interview to get the facts. This is for your protection in the event you are sued by your client or another party.

[3] **Whether or Not a Lawyer Is Required.** This avoids the interviewee claiming that you said no lawyer was necessary and that he or she should “forget about it.”

[4] **Suggesting Other Lawyers.** Suggest that the client may wish to see another lawyer. This relates to not representing the client until the agreement is returned. (See point 21 below.)

[5] **If You Wish Us to Represent You.** This reinforces that you are not yet the lawyer, and don’t yet have responsibility.

[6] **The Amount of the Fee.** This establishes what I call the “Basic Fee.”

[7] **Describing the Work the Fee Covers.** This discusses what you will do for the Basic Fee.

[8] **What the Basic Fee Does NOT Cover.** This describes what is not included in the Basic Fee.

[9] **Additional Work Fee Arrangement.** How you will charge for the work that is not included in this Basic Fee.

[10] **Minimum Fee.** What the minimum fee will be.

[11] **Out-of-Pocket Costs.** The client will not understand the difference between costs and fees, unless you explain it. This reinforces your explanation.

[12] **Addition to Fees.** Reinforce that out-of-pocket costs are in addition to fees.

[13] **Engaging Other Attorneys to Assist.** This allows you to get help at your expense if you are in over your head and need help.

[14] **Payment Schedule.** Set forth the cash flow that you have agreed upon, to avoid later misunderstandings.

[15] **Right to Terminate Services.** It is important that the client understands your right to terminate services for nonpayment. In some jurisdictions there may be ethical considerations in domestic relations and criminal matters. This portion should satisfy the requirements of DR 2-110(C)(1)(e) so that you can withdraw when the client stops paying.

[16] **Agreeing to Cooperate and Be Truthful.** This may be the basis of your motion to be relieved as counsel at a later time.

[17] **Your Opinion of the Merits of the Case.** Repeat in a letter what you told the client in the office, and that what you said was based upon the facts that were given you. (Obviously, you may use

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this part of your letter to state that you are not yet in a position to express an opinion as to the outcome, or that you won’t be able to express an opinion until research is done or until discovery is underway or completed.) In some types of work, you can quote dollar amounts. In some types, such as personal injury, you should not. Always repeat in writing what you did or did not say in the office to prevent later problems when the client claims you quoted a large recovery.

[18] Existence of Malpractice Insurance. Some states require that you disclose to the client whether you do or do not have malpractice insurance in certain types of matters.

[19] Explain Judgments. Be sure the client is aware that winning a case and getting a judgment for fees and costs is not the same as getting cash, and that many judgments are uncollectible.

[20] No Guarantees. The client should understand that you have not guaranteed the outcome, and that it is possible that the funds expended on legal fees won’t guarantee results.

[21] Tell Client Not to Delay. Warn the prospective client in lay language not to delay. Warn the prospective client that laches or a statute of limitations can prejudice the case if there are delays. Do not express an opinion on the statute date, unless you are engaged to do so. If you gave the client the wrong date, you could have malpractice liability.

[22] Signing and Returning Copy of Letter. Obviously, the signed copy in effect becomes a fee contract when returned to you.

[23] Trust Account Rules—Explain IOLTA. IOLTA rules may vary from state to state. You have to comply with your IOLTA rules and also comply with your fiduciary duties to your client. In some states IOLTA is mandatory. In some states it is optional or “opt out.” Be careful when the amount of net interest that could be earned on your client’s funds might exceed bank charges. Refer to your local IOLTA rules and The ABA Guide to Lawyer Trust Accounts, which I wrote.

[24] Repeat that both letter and check should be returned.

[25] Set Date for Return of Engagement Letter. Clearly indicate that you will assume the “client” has obtained other help to prevent the “client” coming in two years later claiming you undertook the case even though you never heard from the client again. Let there be no misunderstanding that you are doing nothing further until you receive the signed fee agreement and the check.

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[26] Clarify Any Loose Ends. Give the client an opportunity to ask if anything is not clear.

[27] Have the Client Sign the Fee Agreement, and Get Your Retainer for Fees and Costs. Upon execution and return of the fee agreement, you have a client, and the client has a lawyer.

Other items to consider in your fee agreement:

1. Existence or nonexistence of malpractice insurance. This disclosure may be required in some states.
2. Possibly include a schedule of anticipated fees and costs, including faxes, photo reproduction, possible experts, depositions, and charges for file retrieval and copying after the case is closed.
3. Special provisions for potential conflict waivers.
4. Special provisions for multiple client representation.
5. Late payment penalties.
6. Who does or does not get copies of correspondence.
7. Where and how communications can be sent.
8. Requirement that fee disputes be arbitrated if allowed or required by local rules.
9. Relationship to third parties who guarantee or pay fees.
Engagement Letters, Nonengagement Letters, and Disengagement Letters

In your first contact with a potential client, immediately get the client’s name, residence address (not just a P.O. Box), e-mail address, and fax. You will need that information to send one of these letters. Do not accept any client without this basic information.

In addition to the engagement letter, lawyers need nonengagement letters (not undertaking the case or client) and disengagement letters (closing the file).

When this book was published in its first edition in 1976, it was considered controversial and even unethical because I advocated discussing the terms of the engagement and the fees with the client and memorializing the agreement in writing at the beginning of the relationship. What I recommended in the 1976 first edition of this book is no longer controversial or unethical, and it is now considered unethical not to have your agreement in writing.

Unfortunately, consumer expectations generally, and malpractice claims and ethics complaints specifically, now require just about everything to be in writing. The need for writings is especially high to protect the lawyer from nonmeritorious claims and complaints. Accordingly, I now recommend three types of engagement letters. The terminology is mine but has been picked up by most writers so that my definitions reflect mainstream practice, but others may use the terms differently or use different terms.

These letters protect both the client and the lawyer. Sample form letters for use as modified by you are included. They are

1. *The engagement letter.* (See pages 255–260.) This is the letter that establishes an attorney-client relationship and defines the work to be done and the financial relationship.

2. *The nonengagement letter.* This is the letter that says you have not accepted the case, the client, or any professional responsibility. I
have included an optional “Come back later when you have another matter” clause, as well as a “Don’t call us, we’ll call you” clause. This is especially important where there has been an e-mail inquiry.

3. *The disengagement letter.* (See pages 477–481.) This is the letter that attempts to end the attorney-client relationship for a given matter. This letter is important to establish the statute of limitations for malpractice claims and ethics complaints (where statutes exist). The letter also covers file and document retention and destruction and solicits client comment and criticism for improving the relationship.

Each of the letters is written in simple English because the test is not what you thought you said, but rather what a reasonable person, under the circumstances, would understand to have been said.

Each of these letters is a generic letter to be modified to fit the facts.

**Nonengagement Letter**

New lawyers will usually talk to anyone who will talk to them. New lawyers are often eager to demonstrate their great expertise and knowledge. New lawyers are often accosted by friends and relatives at social and civic events and are often the victims of people who call claiming to have gotten the name and number from the Yellow Pages, their Web site or some person totally unfamiliar to the lawyer.

The purpose of a nonengagement letter is to protect both the lawyer and the nonclient. It is important for the nonclient to understand that you have not undertaken professional responsibility for the matter and the nonclient is still without counsel. It is important for the lawyer to be protected from the claim of someone who claims the lawyer undertook to represent the person.

You can still be held professionally responsible both with respect to malpractice and ethics in the following circumstances:

1. You never asked for or received any fee.
2. You only talked with the person by telephone one time and had no further contact until the malpractice claim.
3. The person is a friend or relative with whom you casually talked at a wedding or social event and never saw again.
4. You met with the person as a *pro bono* or public service gesture.
5. You met with or talked to the person as the result of a court or bar association project.
6. You responded to an e-mail inquiry without making it clear the response did not commit you to do anything.
Nonengagement Letter

[1] Mr. Arthur Smith  
1234 Main Street  
Anytown, USA 12345  
VIA US MAIL AND E-MAIL

Meeting at Jones Wedding on Jan. 3, 20xx  
Office Meeting of Jan. 3, 20xx

Dear Mr. Smith:

It was nice meeting you (talking to you) on Jan. 3, 20xx. I am sorry that we cannot be of help to you in your boundary line dispute with Mrs. Peters. (Or whatever) As I related to you in the office (on the telephone) on Jan. 3, I do not feel it would be appropriate for me to undertake your case.

[optional/see comments] As I explained to you, based on the facts given to me, I do not think your case is economically feasible to pursue. I would not be willing to prosecute the matter on a contingency basis and cannot in good conscience recommend that you spend your time and money on this case. If you do not care that the case is not economically meritorious, but wish vindication, I would consider representing you on a noncontingency basis with payment of the fee in advance. Again, I do not recommend this expenditure of money, even though you may be legally right.

[optional/see comments] This is not an area of law in which I feel competent enough to represent you.

[optional/see comments] I have expressed no professional opinion on the merits of your case.

I have given you no advice on any possible time limitations to your matter. There may or may not be a time limitation on your taking action.

I encourage you to immediately consult with as many other lawyers as you wish without delay. It is possible that another lawyer will disagree with me and will be willing to represent you on a fee basis agreeable to both of you.

If you cannot find another lawyer, I recommend that you immediately contact the Wilshire County Bar Association Lawyer Referral Service at 123-123-1234.

I have returned to you all of the documents that you showed me and have not kept any of your papers.

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[12] I am returning herewith all of the documents you left at my office. I have not kept any of the documents you showed me.

[13] I repeat again that we have not taken this case and we will not do any work on it and have not accepted any professional responsibility for the matter.

[14] I would hope that at another time you would again give us the opportunity to be of service to you. We certainly would welcome your return on a different matter should the need arise. I am enclosing some general information about the firm and I will place you on our firm mailing list so that you can receive the information that we send to our clients from time to time.

Very truly yours,

I.M. Sorry
Attorney-at-Law

[15] bcc: Prospective Clients

Comments

[1] Begin all initial contacts with asking the client for a card or for a name, address, and phone number. Be extremely careful when the prospective client doesn’t want to tell you. Ask why he or she won’t tell you. If you have any funny feelings hang up or walk away or ask the person to leave. Make a note of the event for your “Prospective Client” file. It is possible you are being set up for something. Don’t accept further information without this information. If a potential client balks at giving the information, tell the potential client that e-mail provides the fastest way to send written communication and you need a street address, not a P.O. Box, when documents have to be signed and returned immediately.

[2] Specify the contact(s) you had with this person. This person might at a later date confuse you with another lawyer and erroneously bring a complaint or claim against you.

[3] Say something nice in the body of the letter. Refer again to the contact(s).

[4] Try to refer to the nature of the matter in the letter to remind the person and yourself at a later time what the contact was all about.

[5] I like to give the person an honest reason why I don’t want to take the case. If the case is not meritorious for whatever reason I
like to tell the person why I feel that way. I want this person to come back in the future when he or she does have a meritorious case. Some malpractice insurance companies prefer that you give the person absolutely no opinion or assistance.

[6] Surprisingly, many potential clients will respect your honesty and will hire you because you told the truth. They can accept losing the fight, but they cannot accept not even trying to win. I have earned many good fees and even won some of these losers and gained clients for life by simply telling the truth. This is why I disagree with the insurance company recommendation to give no advice or opinions.

[7] I do not give any advice on the statute of limitations until I have a paying client. If you gave the wrong advice you can easily incur liability. You should not give any advice on the statute of limitations until the client signs the fee agreement and you have a paying client and you have made a thorough examination of the underlying facts.

[8] Encourage the client to seek help from other lawyers. It is possible that you were wrong in your assessment of the facts.

[9] Give the person the telephone number of the local Lawyer Referral Service. They will either try to find a lawyer to help or refer the person to the appropriate government social welfare office. This may protect you from the double claim of doing nothing and abandoning the client’s case after you have taken it.

[10] Keeping client papers may lead the client to think you have undertaken the case. Create a record that you kept nothing.

[11] If the client left any papers, send them back.

[12] Make it as clear as you can that you have not accepted the case and you are not going to be doing anything on it.

[13] There’s no harm in keeping the door open for business on another matter at another time or for a referral from the person. Additionally, getting his or her name into your database will make it easier for you to find the person at a future time and to do a conflicts search.

[14] Create a file called “Prospective clients” and put the copy of this letter and any handwritten notes you had and copies of any documents you copied into this file.

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Ten Kinds of Bad News Clients to be Avoided

This is a book on how to get and keep good clients. By definition, then, there are bad cases or clients which you don’t want.

Not all clients are sources of professional or financial satisfaction. Some clients are classic “no pays.” Some will cause you aggravation no matter how lucrative the case. Some will eventually get you in trouble with the State Bar or worse. Some will be the cause of your marital or family discord.

Some lawyers will accept these clients only at an “A” Rate, the “Aggravation Rate,” which is usually 1 to 2 times the normal rate. Every lawyer has his or her own list of “bad news” clients. In this chapter I will simply relate to you my own personal list of 10 “indicia” which to me warn, “Watch out, trouble ahead.” I’m sure you can add from your own experiences. Don’t take these clients unless you are well paid (at the Aggravation rate) in advance. Even then, think carefully about taking the cases.

1. CLIENTS WHO BAD MOUTH THEIR PREVIOUS ATTORNEY(S). It’s just a matter of time until you will be included in their list.

2. CLIENTS WHO WANT TO RECORD YOUR MEETING. Often these people are only trying to get a free lesson in the law of their case. They’ll ask you myriad questions about how and when you do everything on the case. You will rarely see these people a second time and it will be even rarer that they pay.

3. CLIENTS WHO TAKE EXTENSIVE, PAGE AFTER PAGE NOTES. Same as No. 2 above. Be doubly careful if they are using yellow legal pads.

4. CLIENTS WHO WANT TO USE YOUR OFFICE STAFF AS THEIR OWN. They want you to type letters for them on their stationery, make photocopies for them, etc. They want to use your phone and email system for incoming and outgoing messages. They may also want to use your mailing address. These people expect the whole world to be obsequious even though they rarely are willing to pay for any of this.

5. CLIENTS WHO WANT TO USE YOUR TRUST ACCOUNT AS A BANKING SERVICE. These clients may want to use the respectability of your office to “launder” money or obscure fraud.

6. CLIENTS WHOSE FIRST CONCERN IS THEIR PARKING VALIDATION. I don’t know why but these clients almost always turn out to be flakes. The good clients never ask you to validate their parking tickets. You have to ask them if they have a ticket to be validated. The bad clients will ask you for a validation before they even meet you. They don’t mind wasting your time, but wouldn’t waste their money for parking. Clients who are preoccupied with free parking are almost always problem clients. Be careful.

7. CLIENTS WHO ASK FOR A LOAN OF MONEY AGAINST THE CASE. When a client threatens to go to another lawyer unless you lend him or her some money, let the client go. Sometimes the client’s case is non-existent and the “client” is simply a “bunko” artist. These “clients” often describe a fantastically great contingency case which never really existed.
8. CLIENTS WHO SAY, “IT’S THE PRINCIPLE, NOT THE MONEY. YOU CAN HAVE ALL THE MONEY.” This type of client simply wants to use you for personal revenge. After the case is started, the client often loses interest in the case and becomes uncooperative. Don’t touch these cases unless you are well paid in advance for whatever you do.

9. RELIGIOUS FANATICS. When a client says, “God sent me to you and God will see to it that you make lots of money,” I cringe. These people are sincere in their belief. Unfortunately, something usually gets lost in the communication between them and God, and you get stuck on a bad case for a non-paying and often non-cooperative client who leaves the details of getting evidence to “you and God.” I recommend doing church service instead of doing work for these clients if God’s approval is what you want.

10. CLIENTS WHO REFUSE TO COME INTO THE OFFICE. These people want free legal advice by telephone. They don’t want to waste their time coming to your office because they don’t intend to pay you.

I’m sure you can easily expand this list with some of your own favorites.
Abraham Lincoln reputedly advised a new lawyer upon passing the Bar, “Young man, it’s more important to know what cases not to take than it is to know the law.” There are some types of cases that will turn out to be financial disasters no matter how skillful you are as a lawyer and no matter how aggrieved the client is. If you want to take these cases on and spend time and money that could have gone to your family, it’s certainly your privilege to do so. Don’t blame anyone but yourself when you’ve spent a lot of time and money, received a financially disastrous result for a client, and the client, in turn, thinks you’re a bad lawyer because you didn’t do better.

The following are examples of cases which should be turned down:

1. **Cases in which you are the second or third lawyer on the case.**
   It is theoretically possible that the client and the previous lawyer just didn’t get along, but this is not normally the case. Check with the previous lawyer to see if that lawyer claims some sort of lien on the case. Normally you will find that the problem is:
   a.) A non-meritorious case; b) An uncooperative client; c) A non-paying client.

2. **Hurt Feelings Cases.**
   In this type of case, there is often wrongful conduct on the part of the defendant, but no special damages or only nominal damages provable by your client. Recovery and your compensation will depend on punitive damages which often are non-obtainable or non-collectible. Examples of these cases are:
   a.) Libel and slander;
   b.) Bar room brawls;
   c.) Most assault & battery cases.

3. **Landlord-Tenant Cases.** (Unless you are paid in advance)
   These cases are often more bitter than divorce cases. It makes no difference whether you represent the landlord or the tenant, your client will hate you and resent paying your fees by the time the case is over. The landlord is infuriated at having to pay you money to evict a tenant who hasn’t paid the rent. It’s double loss for the landlord. The tenant is stalling for time, using court delay to get rent free occupancy until the landlord gets the uncollectible judgment and the Writ of Possession. Often the tenant can’t leave because he hasn’t got the first and last month’s rent for another place. He may want some money to move out. Landlord-tenant cases are often hate matches and both sides want to use the lawyer for free.

   Suggest legal aid to the tenant and suggest the Apartment Rental Association to the landlord. (These associations often have “house counsel” who do routine eviction cases on a mass production basis at a low price for landlords. Another suggestion is to tell the landlord you’ll charge your regular fees, but that you’ll teach him or her how to bring the process in propria persona without a lawyer. In this way, you may keep the client in the future.)
4. **Divorce (dissolution) cases in which people are heavily in debt (unless you are paid in advance).**  

Financial insecurity is often part of the background in a divorce. At the inception of the divorce, the parties still have liquid and non-liquid assets and credit cards. They may have a borrowable equity in real estate or other assets. They will soon dissipate their assets as they learn that it’s much more expensive to live apart than it was to live together.

In accepting a divorce case, you must be firm about being paid in advance since the initial retainer fee may be the only fee you’ll ever see. The whole world of divorce law is changing. As women gain increased earning capacity and increased property rights, there is an increasing ability of people to afford and pay for lawyers. This is a trend which should continue. The present reality, however, is that there is not enough money to compensate the attorneys adequately. Don’t blame anyone but yourself if you take cases that legal aid would have taken.

5. **Criminal cases in which you are not totally paid in advance.**  

You can’t collect a fee from a client in jail who earns only cigarette money. Once you are in the case, it is difficult, if not impossible, to get out. You are in a system where only the defense lawyer is expected to work for free. The judge won’t work for free when there is an indigent defendant. The prosecutor won’t work for free for the indigent defendant. The court reporter, bailiff, clerk, etc., all expect to get paid even though the accused is indigent. It is only the private practice defense lawyer who will be expected to work without compensation. Don’t take cases that should be handled by a paid public defender.

6. **Bankruptcy (unless you are paid in advance).**  

I was the laughing stock of the courtroom when my client pointed to me from the witness chair in bankruptcy court and amended his schedules of unpaid debts to include the fees due me.

7. **Cases in which the client is proceeding on the basis that the other side will settle right away because it can’t afford the publicity of litigation.**  

People who say this normally believe what they are saying. Unfortunately, the reality is that it never happens that way. The reality is that the other side will begin to talk settlement AFTER the United States Supreme Court denies certiorari. Before accepting this type of client, you must gently convince this client that you should be paid hourly in advance and not on a contingency basis since a contingency fee would be unfair to the client if the case settles as the client predicts it will.

8. **Cases totally without legal merit.**  

Don’t take cases totally without merit, hoping for a quick nuisance settlement or for experience. Not only can these cases cost you a tremendous amount of uncompensated time, they can also lead to sanctions against you and the client as well as disciplinary proceedings against you.

9. **Slip-falls (unless there are large damages).**  

Insurance companies will talk settlement right after the United States Supreme Court denies certiorari. Even the most meritorious cases are difficult to settle on a reasonable basis. Some lawyers claim to be experts on handling these cases. Refer the case to them.
10. *Vengeance cases totally without merit.*

Don’t accept vengeance cases that are totally without merit. Clients often want lawyers to prosecute or defend non-meritorious cases just to stall for time or to use the lawyer for personal vengeance. These cases not only lower your reputation with opposing counsel and the court, but often are not economical because the client can’t, or won’t, pay you. Let some other lawyer go broke on dubious cases.

11. *Cases that belong in small claims court.*

The economics of these cases rarely, if ever, justify using a lawyer. If the client is adamant, be sure you are paid in full in advance.
M-16
Increasing Your Cash Flow and Reducing Uncollectibles By Matching Your Billing to Your Client’s Cash Flow

You can increase your cash flow and reduce your uncollectibles by asking your client about his or her cash flow and then matching the client’s payments to you with the client’s cash income.

I can best explain the theory of this technique by demonstrating its use in other situations.

As a new lawyer, I had a client who acquired distressed apartments in low-income areas. A building where the rents were $600 per month would be 60 percent vacant. My client would buy the building and change the rent from $600 per month to $150 per week and the building was 100 percent full with a waiting list to get in, even though the rent had been raised from $600 per month to $650, per month. My client patiently explained to me:

“Jay, you don’t understand people. People don’t budget. $600 per month is just $600 per week once a month. They don’t put aside $138.46 every week to meet their $600 per month obligation. These people get paid weekly or get their welfare checks every two weeks. As a matter of fact, they pay me an extra week in advance when they have the cash from their checks. I simply make it easier for them by matching their cash income to my rents.”

Later in my practice, I began doing collection work for banks. I might ask working person debtors if they could afford to pay the bank $350 per month. Often they would say “No.” When I asked if they could pay $100 per week from their weekly check, they would say “Yes,” even though $100 per week is $433.33 per month. If they were paid semi-monthly, I asked for $200 each pay period, if they could manage it. With commercial borrowers, I would find out if they had a pending property sale or were expecting a tax refund or payment on a receivable and I would then match their payment to the bank with their cash flow income.

A major client was in the rubbish collection business. He got paid by the cities he serviced every other month. He told me, “Jay, I get paid every other month. I know how much will be available to pay for this case. I can pay you a fixed amount every other month until paid in full. It might take a year or two to pay in full, but you will get paid. Other lawyers wouldn’t do this. They wanted payment in full monthly, which I can’t do. Work with me and you’ll get paid in full.”

His business grew in a growing Southern California. My practice also grew. Over the years I received more than a million dollars in fees by getting paid every other month. His company went bankrupt after a 25 year plus relationship with me. I even got the last
cent as a claimant in the bankruptcy proceedings. I simply budgeted his cash flow to my cash flow.

These same principles apply in my law practice and will work in yours as well.

Payment of legal fees in the corporate world is nowhere near as traumatic as it is to small business and individuals. Legal fees, especially large legal fees, usually are not anticipated or budgeted for. Accordingly, you may have to work with your client to get your bill paid. You may have to get your legal fee in part from the client’s future cash flow. When your clients indicate that they “can’t afford” you because they don’t have the cash to pay, it’s time to find out where their cash flow comes from to see if part of it can be used for payment of your fees. Typical sources of cash flow could be:

1) Regular income such as wages, interest, bonuses, dividends, etc.
2) Sale of assets.
3) Borrowing against or refinancing assets.
4) Settlement of a lawsuit or legal claim.
5) Inheritance.
6) Borrowing(s) from relatives.

The important thing is to make payment to you an AUTOMATIC event. As soon as your client gets cash, you need to get cash immediately without even sending a bill. The client must agree to send you automatically the prearranged amount when the client receives the cash. For example, if a client agrees to pay you $200 from each paycheck, then the client could give you post-dated checks to be deposited when the pay date arrives. If the client is refinancing property, you can arrange with the lender to send you part of the proceeds automatically when the loan is funded and disbursed.

Don’t hesitate to discuss your client’s finances in order to match the client’s cash flow to his or her payments to you.

THE AUTOMATIC WEEKLY CHECK. Even in the corporate world, budgeting for legal fees can be a problem. Many corporate clients have the same problems as individual clients and you may have to help them, too, with their cash flow problems in order to get paid.

I have found the automatic weekly check to be a good solution. The client has the company accounting or payable clerk automatically send a check every week to apply to the bill. For example, if a client requires major litigation that will continue over a period of two years and you estimate the legal fees will amount to $100,000, you should have the client send $1,000 per week automatically without an invoice. When you do invoice, credit all payments received. You should try, if possible, to do legal work at about the same rate as the payments so that you are never far ahead of or behind the client. A missed check is a sign for you to make an inquiry as to what is happening and two or more missed payments can be a signal to slow down or to stop working on the case.

These scheduled weekly payments for the unusually large case must be in addition to, not instead of, the payments for other normal work.
When a client needs legal work and obviously is willing to pay for it, you may help make the deal by working out a program with your client where your payments coincide with the client’s cash flow.

THE AUTOMATIC CREDIT CARD OR BANK DRAFT. I have never used either of these methods, but pass them on to you. Instead of a periodic check the client authorizes you to submit credit card charges at regular intervals as though the client was making a new credit card payment at periodical intervals using “signature on file,” where the charge slip ordinarily would be signed. It is also possible to do this with automatic bank drafts.
M-19
Barter
Is Half a Moose a Fair Price for a Will?

A lawyer at a program in Burlington, Vermont once asked me, “Mr. Foonberg, is half a moose a fair price for a will?” I thought this was some sort of joke. I asked, “Which half?” Again thinking this was a joke. He answered, “Either half front or back.” I asked, “How do you cut a moose in half?” He answered, “With a chain saw.” I asked, “Isn’t that a bit messy?” He responded, “Not when you shoot the moose. You wait a few hours and he becomes like a block of ice and you saw the frozen moose in half.” The lawyer was serious. He wanted to know about barter.

Although I personally am opposed to barter, the practice appears to be widespread among other lawyers, particularly in smaller communities.

I have surveyed audiences of lawyers and found, much to my surprise, that the bartering of legal services for goods and services was not involuntary but rather was voluntary on the part of the lawyer. I found lawyers trading their legal services for the following, among others:

A. Pets and pet services
B. Artwork for the home
C. Personal jewelry
D. Hunting guns
E. Personal clothing
F. Food
G. New cars for family members
H. Medical and dental care

The reason these lawyers willingly traded became apparent to me on reflection. They were trading away fully taxable fee income for non-deductible personal items. The bartering, if not reported to the Internal Revenue Service, resulted in a great tax advantage to the attorney. If the bartering lawyer is in the 40 percent combined state and federal tax bracket (easy to be if you include Social Security taxes), then the lawyer would have to earn $164 to have $100 remaining for non-deductible purchases. If the lawyer is in the 50 percent bracket then obviously the lawyer must earn $200 of taxable fee income to purchase $100 of non-deductible items.

As a tax lawyer and a CPA, I am shocked when the bartering attorneys give me a big grin when I ask if they report the fee income. Most don’t! Those who do report the income, normally put a very low fair market value on what they receive on the basis (which is probably true) that the goods and services received do not have readily ascertainable fair market value. In addition, they claim (probably not true) that they really didn’t want the barter situation. Detailed records are kept to balance barter received.
among the partners of the firm, so no one gets left out of the “off-the-books” income.

Typically, the non-lawyer parties to the barter receive non-deductible (for income taxes) services; such as divorce, wills, criminal matters for self and family members, personal injury fees, etc. Accordingly, there is no tax deduction on the clients’ tax return and this reduces the likelihood of the clients’ taking a direct tax deduction on their books or tax return. However, the client, if in business, may in fact be taking a non-deductible deduction by not adjusting costs of goods or services sold for personal non-deductible items, or not showing as earned income the value of the legal services received.

If the attorney did not report the fee income, it goes without saying that the lawyer is exposed to the possibility of client blackmail at a later date.

Former IRS agents who audited tax returns in rural areas have told me that it was a standard practice when auditing professionals to ask about barter. I have heard of the IRS’s serving summonses on commercial barter services to get the names of the barter club members so the IRS could do audits of the members.

I personally am opposed to barter, as outlined above, but I feel duty-bound to report to you that, based on my working with good, reputable lawyers all over America, bartering for legal services appears to be rampant.
The “Of Counsel” Relationship

If a lawyer has any client base at all, new interpretations of the “Of Counsel” relationship may be the answer to the lawyer’s problems, especially if the lawyer is beginning to think about retirement or slowing down or transitioning out of or into full time practice, but still earning a good living.

Basically, the “Of Counsel” is a solo under the umbrella of a larger firm. It can be an excellent arrangement if one is in his or her 50s or 60s and thinking of transitioning out of full-time practice.

It can also be an excellent arrangement for a lawyer in his or her 30s or 40s building a practice but needing immediate income from the existing client base without having to go through all the efforts of opening a new office.

You bring your clients with you and keep them as your clients while using the facilities of the larger firm.

You share fees.

It is a win-win-win arrangement.

The solo gets the back up of the size and expertise of the larger firm and income from the client.

The larger firm gets work for its lawyers and expertise from the solo.

The client gets the resources of the larger firm and the continued close relationship with the lawyer.

For more information, the reader is referred to the American Bar Associations formal opinion 90-357. The reader is also urged to read carefully local opinions, as there may be significant variations in what is and is not permissible.

The reader may also go to my web site, http://www.foonberglaw.com/articles/articles.html and download an article I wrote for the American Bar Association's Experience Magazine.

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