

**Hot Tips in Law Practice Management
for the
Small or Boutique Firm**

*American Bar Association, 2005 Fall CLE Conference
San Diego, California*

EDWARD L. KAINEN

Ecker & Kainen, Chartered
300 South Fourth Street, Suite 901
Las Vegas, Nevada 89101
(702) 384-1700
www.EckerKainen.com

Hot Tips in Law Practice Management
For the
Small or Boutique Firm

by: Edward L Kainen

A small or boutique firm must maintain a delicate balance to be able to effectively deliver quality legal services and remain profitable. The ability to specialize comes with expectations from clients, but the expenses cannot be made at the same level as the larger firms.

Broken down to its most basic principals, *Law Practice Management for the Small or Boutique Firm* comes down to the merging of three (3) diverse topics; people, technology and processes.

There are a myriad of sub-topics within those three (3) categories. The reality is that books can be, and have been, written on minuscule parts of each of these topics. They are all valuable. Many of them are available through the ABA. Even if you do not subscribe to all the ideas in any of these books, like any good CLE presentation, there are always a few good ideas that can be taken away from the buffet. So, given the limits of this presentation, this outline serves as a brief synopsis of some good ideas and concepts which have helped my practice.

A. PEOPLE

Employees: The bottom line reality is that the ongoing fruitfulness of any successful practice is attributable to those people who work in the practice. The smartest and most talented attorney in the world will not thrive unless surrounded with good people. The key to the successfulness of any law practice, lies within its *employees*.

Many things can be said about the *hiring process*. However, when reviewing the characteristics of potential employees, no attribute is more closely linked to the longevity of the employee/employer relationship, and to the productivity of that individual employee than the concept of "*work ethic*." The unfortunate reality is that a good work ethic is not something that can be taught, nor can it easily be learned – remember, "it's hard to teach an old dog new tricks." Either individuals have a good work ethic or they do not. An employee with a poor work ethic will not be an integral part of a successful team. The common characteristic that makes my office work well, is that each member of my team feels as if they have a personal stake in everything from the successful completion of individual products to the outcome of the case.

Talent and ability are also desirous characteristics of a potential employee. However, those items can be learned. There is no question that my firm employees the two most talented family law paralegals in Las Vegas. They come from two entirely different backgrounds. One of them went through traditional education and training to earn her paralegal certificate and then honed her craft through nearly two decades working in the field. The other started as a receptionist, watched every aspect of the practice and came up through the ranks. Despite these two diverse backgrounds, the one common thread is an unbelievably ingrained work ethic.

When speaking of investors, it is often said that the hardest thing for an investor to do is to sell a stock that is underperforming. The primary reason for the difficulty in selling that stock, is that it necessarily comes with an admission that a mistake was made in the purchase of the stock. As employers, we should do everything we can to encourage a talented and able employee who has a good work ethic. However, when those characteristics are not present, we should not be hesitant to fire the employee unwilling or unable to develop, and we should be eager to fire the poisonous employee. The poisonous employee is infectious and, individually, can take out an entire work force. The office can, and should be, a place at which the successful team enjoys spending time. Your staff should certainly look forward to being home with their respective families. However, the office, with the right framework, can serve as another family. When your staff cares about one another and works well together, the comradery pays great dividends in terms of productivity. Do not hesitate to fire the poisonous employee.

Outsourcing or Contract Employees: The term “outsourcing” has significantly negative connotations in today’s political climate. However, in a medium sized or boutique firm, it is a necessity. If one practices in a very large firm, the large firm can have individuals solely dedicated to information technology, document handling and a number of other tasks. However, the small or medium sized firms cannot afford such luxuries. Consequently, the hiring of “*contractors*” is a necessity. The following are a list of contract employees worth considering:

Information Technology: Having a firm on contract that can handle computer breakdowns on short (anywhere from one hour to same day) notice is essential. Oftentimes there is a monthly minimum charge. A good information technology contractor will also have a plan for preventive maintenance and testing. Most importantly, use this contractor to check your full system back-up on a regular basis.

Answering Service: Our firm uses an answering service to have a live person answer our phones during time when our office is not open. This includes evenings, nights, weekends, holidays, and even during power failures. Our phones automatically rollover to the answering service after six rings. A good answering service will have a protocol to distinguish how and when messages are taken, and under what circumstances the situation warrants contacting the attorney during the after-hours periods. The cost is *de minimus* and the level of comfort it offers clients and counsel cannot be underestimated. We spend less than \$100 per month for this service and still cannot figure out why every law office does not do it.

- Document Storage: This is an expense that the smart practitioner gets away from. However, until the paperless office becomes a reality, it is a necessary evil. The key to keeping this cost down is a good process for closing files, notification to clients of document destruction policies, consideration of scanning protocol, and alternative electric storage devices.
- Copier Maintenance: Most medium sized firms find it more effective to lease copying equipment. Like your information technology person, copying may be at the core of your businesses ability to meet deadlines. Your contract with your copier maintenance company should have provisions for short notice and emergency calls and even for a back-up copier if necessary. Long term leases can be dangerous as technology is ever developing and frequent breakdowns in older machines can be debilitating.
- Accountants: Just like we recognize that the lawyer who represents himself has a fool for a client, we should also recognize that there are certain things which are beyond our best abilities. Tax decisions and bookkeeping (back-up, and/or spot checking and reconciliation of deposits, payments and especially reviewing the trust account) can be done through an outsourced accounting firm without hiring full-time employees.

Clients: A multitude of books have been written on this topic alone. Two points are worth mentioning on this topic.

1. Have a retainer agreement with your client that has an “evergreen” provision. That means that a portion of your retainer is set aside for the final billing. For example, if you have a \$5,000 retainer, perhaps \$1,500 is set aside and remains in trust for the final billing. When the client’s bill has exceeded \$3,500, they are expected to pay the outstanding balance, despite the fact that \$1,500 still remains in trust. Under this scenario, if the client fails to honor the financial obligation pursuant to the terms of the written retainer agreement, you have a little warning before you are “truly” financially behind with the client.
2. Communicate. Communicate. Communicate. Calls should be returned within a reasonable time (even if the return call is by another staff member), and clients should receive copies of everything that happens in the case so that they are informed. These are the single most significant ways to avoid unhappy clients, bar complaints, and malpractice claims.

B. TECHNOLOGY

Technology varies from person to person in every firm. My firm is a great example of the differences between use of technology. Although I am not at the pinnacle of technology, I am fairly technologically proficient. I have a desktop computer at my home and my office, and I have a laptop computer for travel. I have a Treo 650 cellular telephone, which is set up to keep my calendar, send and receive my office email on request, and surf the web as necessary (as well as a lot of other neat things). On the other hand, my law partner knows how to use his calculator and can dial his cellular phone – although, he still relies on me to program the saved phone numbers into it. He has no desire to, personally, step any further into the 21st century. It works for him.

Things may have come along way since carbon paper, but moving forward with technology is a matter of personal comfort. Consider the following:

Telephones: This is another area where a consultant can be invaluable. Telephone systems are a complex area which have their own limitations. Someone who is not well versed in that system specific technology will be hard-pressed to be able to discern the subtle differences. Consequently, a telephone consultant should definitely be involved in your choice of an office telephone system. The key issue is usually the ability to expand; both the number of phone lines and the number of extensions (actual phone devices). Our firm learned the hard way that our first phone system could not expand beyond six (6) lines. When we were just two (2) lawyers with an office staff of perhaps four (4) people, that system worked fine. Now, with four (4) lawyers, resulting in a total of nearly 15 employees, that system no longer fit the bill. Purchasing a phone system is a significant investment. Consideration should include warranty, continued service, as well as the bells and whistles (various features that come with individual phone systems). Incidentally, the cost of the consultant in this area is usually *de minimus*, particularly given the potential investment in a telephone system and the hazards of a misstep.

Voice Mail: Voice mail is another option that either works or does not for individuals in an office. Although our telephone system has voice mail service, we have made a conscious decision not to use it, preferring instead to the live person taking individual messages. For our purposes and our clientele, we preferred the personal touch.

Note: Even the best phone system in the world will not return your phone calls for you.

Cellular Phones: Our office has a number of cellular phones. For a number of years, we paid individual bills on each of those cellular phones. For example, there is one cellular phone for each of the partners and a separate cellular phone for the runner (which is critical for last minutes changes in plans, when the runner is lost, or for an emergency trip for ice cream).

Group plans or “family plans” may be an appropriate method to save money. They normally include a large quantity of minutes (the more minutes the less expensive they become), provisions that call from one phone on the plan to another are usually free, and some plans let the unused minutes rollover. It is worth checking into and can result in a significant monthly savings.

Computers themselves are a necessity and this too broad a topic to cover everything in such a short period. Accordingly, there are a few “Hot Tips” that may be helpful.

Conflicts Checks: Perhaps if you are a solo practitioner in a small town you know everyone and are aware of all the potential conflicts. Beyond that scenario, an organized conflicts checking system is essential. For most family law practices this does not require any fancy software or an elaborate system. Our conflicts checks system is simply a WordPerfect file that lists alphabetically the person who we have represented or with whom we have consulted, as well as the name of the adverse party. For example, if we have consulted with Jane Smith about her marriage to Robert Jones, then we have a listing of “Smith, Jane v. Jones, Robert” and “Jones, Robert adv. Smith, Jane.” We also include information regarding the date of the contact, as well as the identifying the person(s) within our office with whom there was contact. This is enough to direct us to the notes or time-slips associated with any interviews or meetings, or the basis for the names being placed on the conflict list. It is also important in setting up your conflicts list to consider former names of the parties – for example, following the restoration of the maiden name of the wife in a divorce.

Internet: Be mindful of the ability to link your home and office computers. The Windows XP Professional Operating System includes the ability to have secure high speed linking between your home and office desktops, assuming only that both computers have access to high speed internet access and that the computer to which you are attempting to link has a static address (something technical that enables that particular computer to be identified). As I sit at home dictating this particular document, I have been able to securely “log on” to my office desktop through the “back door” of my office system and I have the ability to view items on my office computer’s hard drive. We are miles beyond the use of programs

like PC Anywhere. Also consider such services as www.gotomypc.com.

The open ability to surf the web is standard on most desktops, but can be disabled with relative ease. Consider the actual need for each employee to have access to the internet. There should be a strong written office policy regarding the use of the internet, with particular consideration towards loss of productivity and related issues. I know an attorney who found himself dealing with a situation where an employee had downloaded child pornography. Employers have two tools at their disposal; there should be the clear and concise policy (in writing) defining the terms, and there is the simple ability to turn it off (or never turn it on in the first place).

Office Email: Consider setting up office email accounts for those people on your staff who need it – not necessarily everyone. It is probably essential for the attorneys and paralegals who deal directly with clients. However, there is no need to have office email accounts for those persons who do not need to have direct client contact. Be conscious of issues such as personal use (which can open you up to a myriad of claims), as well as abuse of the office systems, junk mail, and spam, etc. It is imperative to have written email policy regarding both the use of the office email, as well as the use of the internet.

Website: Many firms have established a web presence. Oftentimes, it is established simply because it seems like the thing to do or everyone else is doing it. In setting up a website, consider the purpose of the site. Is the purpose of the site to actually recruit new clients who might not otherwise find you unless they came across your website? Or, alternatively, is the purpose of the website simply for the client to find information about you once they have already considered hiring you? These two different purposes make an enormous difference in what your website is should be designed to do, as well as whether or not you make efforts to have your website “pop up” on search engines when someone is looking for an attorney in your area of the law. As well, consider whether you wish to make your website an information resource beyond the personal information about the firm. For example, do you want your website to be an information resource for other attorneys and for potential clients to be able to learn about the applicable law? Again, these considerations go into the design and the type of website.

Our website is www.EckerKainen.com. In our experience, the clients who find us by simply doing a general search on the web for a divorce lawyer in Las Vegas are about similar to those who trip across us in the Yellow Pages. Generally speaking, that is not our usual clientele. Consequently, we designed our website to be accessed by those who have already tracked us down through a referral source such as a former client, Martindale-Hubbell, the AAML, or our general reputation in the community. Our website simply gives information about the firm and the lawyers when the potential client may be looking to either satisfy a curiosity or compare us to a competing law firm. Consequently, our website will probably not come up on a search engine for “divorce lawyers in Las Vegas,” nor is it designed to be a resource for everything you want to know about divorce law. It suits our purposes.

One note for consideration on your website is listing individual email addresses for various individuals at the firm. Such individual listing of email addresses makes it very easy for someone to contact individual at the firm directly with confidential information that may be tendered with an expectation of privacy. The receipt of this information could reasonably create an unintended conflict of interest. Consider listing only one email address in the firm and have that be a “general” email address linked to or next to a disclaimer, warning the sender not to send any email with confidential or individual case information that a potential client might expect to be kept private.

C. PROCESSES.

It has been said that you should find something you enjoy doing, do it well, and then repeat the process. It makes no sense to reinvent the wheel, case after case, day after day. Once you find a process that works, enable yourself and your staff to be able to repeat the process.

Perhaps the best way to illustrate this is through the topic of “obtaining information about the client.” This happens at separate stages and different information is required at each of those stages. In most cases, the first contact is a phone call to the law office. In my office, when we receive an “inquiry call,” instead of the message being taken on a little message slip, the same is on a full page document with three (3) individual parts, as follows:

The first part contains specific information to be taken from the potential client, the second part is an area to confirm that a conflicts check has been done, and the third area is a large area left blank for individual notes during the follow-up phone call once the conflicts check has been completed. The top of the sheet contains general information, such as who

took the message and the time and date of the call. The we include the basic information from the potential client such as the name of the potential client, the adverse party's name, the type of case and, most importantly, the referral source. Over time we have learned that, for example, the Governor or the owner of the largest casino in town, are often better referral sources than the "Yellow Pages."

The next area is for conflict check clearance. This area is simply the initials of the individual who has performed the conflicts check and the date the same was done. If there is a conflict, the word, "CONFLICT" is written in large red letters so that it cannot be missed. It is up to the attorney to direct how the same is handled.

The remaining space on the page is left blank for me to be able to take notes when I return the call. Repetition, again being the key, my notes are in the same place on each one of these sheets. Across the top of the area is the date, or length, of the marriage, the number of children and issues related thereto. Along the right side are the ages of each party, as well as employment issues, earnings, information regarding any businesses and the like. On the left hand side of the page are personal issues, the clients invariably thinks are important. Down the middle are the assets/liabilities. Note regarding highlighted legal issues may appear across the bottom. The key is making sure the information is obtained and making sure it can be located.

The next stage in "obtaining information about the client" may be the first office interview. I see a number of forms that lawyers use to gather information from the clients. Each one is useful if it is actually used. Because every jurisdiction values information differently, information relevant in the one jurisdiction may not be relevant in another (an affair is more critical information in Georgia where fault is a factor, where it has significantly less importance in Nevada's "no-fault" jurisdiction) . Accordingly, the most simple practice is to determine what among the information you need can be easily and succinctly written down by the client. Such essential information includes the address at which the client can be contacted (oftentimes mailing to the home is not appropriate), as well as contact numbers and circumstances regarding maintaining contact with the client. Anything else is going to be to suit the individual practitioner's needs. The key is to find a form that works for you, improve it as periodically or as necessary, but stick to it.

This concept of repetition of process works for virtually every part of the handling of a case. So form banks are invaluable. Certain acts should be second nature. As any correspondence comes in and goes out, it should immediately be copied to the client. This can be done by a letter to the client enclosing the individual document, or by simply rubber stamping the document "Client Copy No Reply Needed" and placing it in an envelope. The key is keeping your clients informed.

For an amazing myriad of form letters, see Larry Rice's book, *The Complete Guide to Divorce Practice, Forms and Procedures for the Lawyer*, (third edition, 2005), which is available through the ABA's General Practice, Solo and Small Firm Section. In the case of this book, it is worth noting that there is no need to reinvent the wheel on a daily basis. Larry Rice invented the wheel, all you have to do is roll it forward.