

# SOLO

Summer 2002

LAW OFFICE INFORMATION FOR SOLO & SMALL FIRM PRACTITIONERS

## From *Mongrels* to *Show Dogs*

By *Jennifer J. Rose*



There are clients and cases that a lawyer likes at the beginning and hates later on. Like cute little puppies and street dogs begging for attention, some cases and clients can turn overnight into flea-ridden mangy mutts and junkyard dogs. And there are those ugly ducklings who were disgusting, annoying, devoid of any redeeming

social value who turn out to be not-so-bad by the time it's all over.

Memorizing the "10 warning signs that a case is a dog" doesn't help when you feel like you're already sharing kennel space with a convict called "Cornfed" or his adoptive parents, America's least-popular lawyer duo. While their lawyers at least got their 15 minutes of fame, finding the right hook isn't always easy. All the advice in the world about firing clients doesn't mean a thing when doing so isn't the allowable, proper, ethical, or even the humane approach.

I've had my share of dogs. Some barked at the beginning, but I ignored the warning signals, really needed to make that mortgage payment, or was sufficiently delusional to think that my superior lawyering skills would actually make a difference. Some

were really good actors, selling me on the merits of their case as they handed over my retainer. There was the client who moved from his home 80 miles away to an apartment right across from my office so he could harass me daily, the client whose departure from the office always meant expending a full can of Lysol, the divorce client who kept prattling about the loss of JFK's autographed photograph after she burned down her own house, the one who insisted that any "good lawyer" would know how to bribe a judge, the clients who insisted that their canned peas,

(continued page 2)

### FEATURES

[Avoid the "Dog" Cases](#)

[Free Advice? Write Dear Abby](#)

[Send the "Dogs" to the Pound](#)

[From the Editor](#)

## editor/staff

SOLO is published quarterly by the Solo and Small Firm Practitioners Division of the General Practice, Solo and Small Firm Section of the American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611.

SOLO is distributed free to the members of the General Practice, Solo and Small Firm Section. Any member of the ABA may join the Section by paying its annual dues of \$35.

The opinions expressed in SOLO are those of the authors and do not necessarily reflect positions or policies of the ABA or the General Practice, Solo and Small Firm Section.

**Editor-in-Chief**  
Robin Page West

**Solo and Small Firm Division Director**  
Lee S. Kolczun

**Special Correspondent**  
jennifer j. rose

**Staff Editor**  
MaryAnn Dadisman

**Designer**  
Jill Tedhams

Produced by  
ABA Publishing

© 2002 American Bar Association.

(continued from cover)

Tupperware, and Pink Floyd albums were worth more than my legal fees, and the guy who shot his wife's dog during the divorce. Some were merely hopeless, dumb, chronically criminal, pathetic, crazy, absurd, and just plain nuts. And like my retainer, the reality check sometimes bounced.

These cases can hound a lawyer financially, emotionally, and professionally if they're not kept on a tight leash. Every lawyer's bound to have a dog case or client at one time or another, but there are steps that can be taken to keep Lassie from turning into

Stephen King's Cujo. Throw yourself a bone by looking for the right hook:

- The law. Fascinating legal issues to be explored, the opportunity to make new law, and interpret existing old law—after all, that's what lawyers do, isn't it?
- Fame and glory. Your dogged pursuit of the client's cause will mark you as a seeker of truth and justice and defender of the downtrodden.
- Opposing counsel. It's an opportunity to try a case against lawyers you admire, learn their tricks, and let them know that you're a formidable opponent.
- Experience. An opportu-

nity to gain experience trying cases, learning what not to do the next time, breaking into a new area.

- The money. It pays the bills.
- Something inherently likeable about the client. It could be the client's spunk, resilience, wit, or something as simple as hearing the client's compliment about your office décor. Try to find something positive and good about the client.
- Mensch points and deposits in the karma bank. More than mere empathy, you're doing good for no reason other than the client needs an advocate, and this time it's

your turn.

• Every dog has its day. Do you really think you'd have any clients in a perfect world? There's fodder for that best-selling screenplay you've always planned to write.

Most of the bad ones can be survived, but like dogs, lawyers deserve a treat now and then. Bribe yourself with something better than a smoked pig ear for your efforts. After each office visit, hearing, or some other action step with a dog case or dog client, promise yourself a treat—an extra round of golf, a walk in the park, a

movie, a jelly doughnut, something special from Williams-Sonoma, an hour on eBay—just for weathering the storm.

Few dogs become



Westminster's best of breed, but you can always repeat the old adage "There's no such thing as a bad dog."

**Jennifer J. Rose, editor-in-chief of GPSolo, practices under the supervision of two Dobermans in Morelia, Michoacán, Mexico. She can be reached at jennifer-rose@abanet.org.**

## Avoiding the "Dog" Cases from the Get-go

By Mary Ann Baker-Randall

There's nothing like the school of hard knocks to teach a lawyer how to avoid deadbeat and/or uncooperative clients. As a small firm, domestic relations attorney, I employ several practices to weed out potential problem clients at the get-go.

### Charge them a fee and they will come.

Because it's the norm in my location, I once offered potential clients a no-charge half-hour

consultation. When I realized I was handing out free advice to people who had neither the inclination nor the means to hire me, I tried charging a nominal fee of \$25. This eliminated some folks,

but not many. Finally, I decided to offer a full, hour-long consultation for half-price—\$100—

payable in advance by credit card. To my surprise, it has not cut down on the number of people walking in my door.

**Track referrals.** When my receptionist schedules new clients she asks how the person heard about the firm. This lets me know what my advertising dollars are doing and also clues me into how likely the person is to keep the appointment. For example, new clients coming from my *Yellow Pages* ad have decreased as my web presence has increased. And *Yellow Pages* referrals show up only half the time; of those, only half hire the firm. If the person was referred by a previous

client or another attorney, however, he or she almost always keeps the appointment and most likely hires me.

**Provide a sample representation agreement.** Before I meet with clients, I have them review a sample representation agreement, including the section that spells out the requirements for a monthly deposit to a trust account via credit card.

**Use client information sheets.** All potential clients fill out and sign an information sheet, which includes a statement that the client agrees to pay \$100 plus tax

for the initial hour-long consultation, and the regular hourly rate beyond that. The two most frequently used information sheets are posted on my firm's website (see [www.familylawnm.com](http://www.familylawnm.com)), so they can be downloaded, filled out, and faxed prior to the first appointment.

**Meet new clients face-to-face.** Unless the client lives out of state or out of country, I insist that the first meeting take place in my office rather than use phone screening. I want to be able to look the person in the eye and do a "gut check" on credibility.

**Show me the money!** This is a no-brainer that many lawyers ignore. I

(continued on page 5)

## Free Advice? Write Dear Abby

All they want is “a minute of your time.” Sure. What they really want is free advice. They are the tire-kickers, the information moochers—“potential” clients who pump you for counsel with no plans to hire you.

How do you gracefully exit such a phone call? Better yet, avoid them altogether? That’s what *SOLO* Editor-in-Chief Robin Page West asked members of the Section’s Solosez listserv. Here’s what they had to say.

### “Bad dog, bad dog!”

◆ “First I interrupt and ask politely if it’s alright to use the client’s first name,” says Terriy Whitehead. “That warms them up [as] they assume that they’re about to get free legal advice. Then I say ‘Client, I would love to meet with you. Your case is something we handle. We should make an appointment. But first I must explain my hourly fees . . . this fee must be paid *before* all legal consultation. And you must sign an attorney-client agreement.’” At this point, the client is desperately seeking to end the conversation so he/she can try another lawyer for free advice. “Works like a charm,” says Whitehead. “I’m able to end a conversation in 1.04 minutes!”

◆ David L. Masters uses much the same process. He tells the caller that legal matters are too complex to review by phone and the client should bring all pertinent documents to the office where he/she must sign a fee agreement and make a deposit in the amount of “x” dollars. “Of course the ‘x’ varies,” says Masters, depending on how “real” the client sounds or how interesting the case. “X”, he adds, “increases in direct proportion to the ‘dog factor’ of the case.”

◆ “When asked a substantive legal

question, an answer of ‘I don’t know’ works wonders,” says Ronald A. Jones. Examples: **Q:**

“I’ve got a contract with X, Y, and Z. Can X do this?” **A:** “I don’t know, I’d have to see the contract.” **Q:** “So and so did this to me. Can I sue?” **A:** “I don’t know. You’ll have to come in for an interview.” Lawyers have a tendency to want to definitively answer all questions, says Jones. But “‘I don’t know’ is a very good answer to many questions.”

◆ If you have support staff, have them screen calls and use intake forms, says Charles Abut. He also asks for a reference. “If referred by a judge, a lawyer, or another good referrer, I call back pronto.” If he’s not interested in the case, he has his staff call back with the number for the bar association referral service.

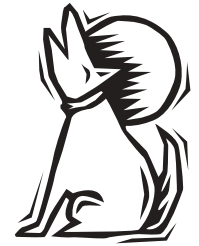
◆ “If it can’t be handled in five minutes, it requires an office visit,” says Becki Fahle. And she always asks for their names and numbers to call them back. “Hey, that’s the ‘price’ of a discussion on the phone.” (Exceptions are family law cases in which a call from a lawyer may put a client at risk.) She urges lawyers to take charge during the initial phone call. “Make it *your* agenda, not theirs.” Control the conversation. Have a checklist; ask specific questions. Force both lawyer and client to quickly come to the conclusion: “Do we make an appointment or screen each other out?” Remember, she says, the true potential client is also screening the lawyer.

◆ “I never give advice of any kind over the phone to first-time callers,” says John D. Kitch, “because of malpractice considerations. . . . The first thing I do with a first-time caller is get a name and address, so if they don’t come in I can send a

(continued on page 5)

## Sending the “Dogs” to the Pound

By William G. Schwab



Mr. S. was such a sweet old gentleman—how could three lawyers not take his case? He had a nice home, and there was that new Jaguar in the parking lot. I thought he’d be the perfect client. Now he calls every day, complains about everything, won’t pay his bills, and wants free advice on non-related issues. He also left out important facts that had I known I never would have taken the case.

Sound familiar? Unfortunately it’s happened to most of us. Easy to say that the best way to control problem cases/clients is never take them in the first place, but somehow they slip past our defenses.

Early in my career, after getting a call at home at 6 on a Sunday morning to help settle a bar bet, I devised a personal method for handling problem cases and clients.

First, my office doesn’t take cases in which other lawyers have been involved. (That other lawyer knows *something* we don’t.) We also want our clients to have a stake in their cases. For this reason, unlike most other firms in our area, we charge consultation fees. If they expect too much, let them know immediately!

All new clients must sign a retention agreement that lays out the terms and conditions of representation, including monthly payments. This is the tool we use to extricate ourselves from bad cases, since it also specifies how and when we will withdraw.

Problem cases? We bring clients in and have a heart-to-heart talk. Be blunt! Explain why it has become a dog case. Explain why it’s in their best interest to cut *their* losses and drop the case. Use all your lawyering skills.

Problem clients? They’re the ones that let you know you’re *their* lawyer. They know better than you. They complain about everything, including the bill and the unprofessionalism of your staff. They call at all hours demanding service without pay. Worst of all, they take you away from doing work for paying clients.

Here are some tips for handling them:

- Take no calls at home. If they catch me when I’m out, I refuse to give advice. The supermarket, I tell them, is not a confidential place to discuss legal matters. (But I still bill for these contacts.)

- If clients dispute the first bill, we suggest they get other counsel. We’ve found that a client who asks up front for a discount will find something to complain about every month.

- As soon as I see a problem developing, I set up an appointment where I reiterate how my office operates. Then I sit back and monitor the situation closely with my staff. Sometimes it works, sometimes it doesn’t. If they argue with you during that appointment, the representation is most likely doomed. I suggest that they may be better served by other counsel.

- Sooner rather than later, I try to cut my losses and evoke the terms for withdrawing set forth in our retention agreement. Under the rules of my jurisdiction, I don’t hesitate to file a petition to withdraw. But remember many judges would rather have an unpaid lawyer than deal with a pro se litigant.

William G. Schwab recently celebrated his 25th year at the bar. He practices in a small town, general practice firm in Lehighton, Pennsylvania, with three other lawyers and is a frequent contributor to ABA, state, and local bar association periodicals.

# From the Editor-in-Chief: Reflection

By Robin Page West

I'm leaning back in my desk chair. The piles of paper occupying every last inch of horizontal surface space and the stacks of message slips teetering on the edge of a nearby credenza form a miniature cityscape that reminds me of the historic townhouses undergoing revitalization in Baltimore's newly-hot waterfront neighborhood, Canton. These papers are ready to be put away because the case is over. I need to decide which to save for the form files and what to store, how or whether to index it, where to keep it, and for how long. Should I scan everything before closing the file, or worry about doing that on the next case?

Meanwhile, my adversary, who works at a large firm overlooking the inner har-

bor, has already had a team of paralegals ferret out the materials in her file that might be useful again and upload it to the firm's form file, maintained on an extranet. Then they boxed everything up, indexed it, diared it for destruction or return to the client, and shipped it off to storage. While I sit surveying the landscape of the settled litigation strewn across my office, my large firm counterpart is already knee deep in another case.

Some might say that since her billable clock started running again sooner than mine, she is more successful. And before September 11, 2001, I might have gone along with that. But today, I realize that at the end of the day, we are both lawyers

running on the hamster wheel—one's going a little faster, one a little slower, but we are both running our little butts off going exactly nowhere. Despite my most Herculean efforts, life is and always will be uncertain. What if her hamster wheel's bolt falls off and mine doesn't? Who will be more successful then? And what difference will it make?

Terrorist acts make me focus almost against my will on how uncertain life is—a concept that runs totally counter to the “take charge” approach that led me to solo/small firm practice in the first place. Here, I would control my own destiny. And now this—the revelation that after all is said and done, there is no control, no

autonomy, only uncertainty.

This scary notion was depressing until I lived with it for a while and realized that it can also be liberating and positive if I accept it as an invitation to enjoy fully what I already have, and to stay focused on the things I can control. Sure, as solo and small firm lawyers, we're still looking to market our practices, win our clients' cases, meet the payroll, pay the rent and tuition, and fund the retirement plan. But starting with this issue, *SOLO* will be running, in addition to the usual fare, some new kinds of articles that will point the way toward the purposeful and studied enjoyment, every day, of the

(continued on page 5)

## Meeting Tragedy with Success

Even privilege can't shield against tragedy. Nigella Lawson, the British media phenomenon—with three best-selling cookbooks, a hit television series, and newspaper and magazine columns—was born to luxury. The daughter of Margaret Thatcher's Chancellor of the Exchequer, family connections helped Lawson get a foot in the door with her first food column in the *Spectator* in 1985. She later met and

married a *Sunday Times* columnist. But then cancer took her mother, who was only in her 40s, and her sister, who was only in her 30s. In 1997 Lawson's husband was also diagnosed with cancer and died, leaving her with two young children.

She was quoted by Chris Jones of the BBC: “I suppose I do think that awful things can happen at any moment, so while they are not

happening you may as well be pleased.”

Lawson's cookbooks are available online or at your local bookstore. They are:

- *How to Eat: The Pleasures and Principles of Good Food* (John Wiley & Sons, 2000; 496 pp.)
- *How to Be a Domestic Goddess: Baking and the Art of Comfort Cooking* (Hyperion, 2001; 374 pp.)
- *Nigella Bites: From Family Meals to Elegant Dinners—Easy Delectable Recipes for Any Occasion* (Hyperion, 2002; 242 pp.)

In addition, she hosts the highly successful cooking show—*Nigella Bites*—that premiered on cable in the United States on both the E! channel and STYLE. Check local listings for reruns. She is currently taping a new series that has already been purchased for American cable TV.



## AVOID THE DOG CASES (continued from page 2)

absolutely refuse to represent a client until after I receive the signed and notarized representation agreement and the full retainer. When a client rushes to hire me, but can't fulfill these two requirements, I heed the warning bell. On rare occasions I accept retainer payments in installments, but no work begins until I have the full amount.

**Use guarantor agreements.** In family law cases, a client often has limited financial resources and a family member offers to pay the fees. If so, I require a signed guarantor agreement, and I enforce the agreement if my fees are not paid on time.

**Goodbye!** Just because you agreed to represent a client doesn't mean you're required to counsel them forever. Fire a client who is not cooperating and/or honoring the fee agreement.

**Require monthly deposits to trust.** I require a monthly deposit of 10 percent of the retainer to a trust account. Clients who

don't pay get three warnings—two by mail and a phone call—within the month. If they ignore the final deadline, the case is put “on hold” until payments are caught up.

Despite my best efforts, the system is not foolproof. If a client runs up a large bill (usually because the judge won't let me withdraw), I aggressively pursue collections. I file motions to enforce the charging lien. I contact the guarantor. I file suit for debt and money due. I follow up a judgment by seeking a writ of garnishment or writ of attachment. I hire outside counsel to handle these matters and add his fees to the overall judgment per the fee agreement. This is, after all, my livelihood and I'm not about to let it go to the dogs.

**Mary Ann Baker-Randall is a board-recognized specialist in family law in New Mexico and an active member of the ABA General Practice, Solo, and Small Firm Section. She can be reached at [maryann@familylawnm.com](mailto:maryann@familylawnm.com).**

## REFLECTION (continued from page 4)

small but immensely rewarding events within our own sphere of influence that we so easily take for granted.

Like eating. Probably the most important activity we engage in, it determines in large measure whether we are healthy or sick, and is a focal point for our relationships with family and friends. But just as we rush through our lives, feet pattering away at the hamster wheel, oblivious to the rich array of sensual, emotional, and intellectual treats and challenges surrounding us, so do we rush through the conception, preparation, and consumption of the meals we make for ourselves and our loved ones.

Popular British columnist and cooking show host Nigella Lawson's first cookbook, *How to Eat*, promises to rectify this sorry state. She brings a greedy passion for

eating to elegant recipes designed for modern people living hectic lives. Yes, these are recipes even a frazzled lawyer can make after a day at the office, or on the weekend, to reward ourselves, or to remind friends and family how much we love them.

Filled with witty commentary interspersed among 350 recipes, the book takes us through “the basics”—cooking ahead of time, fast food, cooking for one or two, cooking low fat, cooking vegetarian, and cooking for children (including birthday parties), all the way to multi-course meals and a full-fledged “Traditional British Sunday Lunch” of roast beef, Yorkshire pudding, potatoes, and gravy (complete with preparation instructions timed with “military campaign” precision so everything gets done at the same time). Not simply a cookbook, though, this substantial

## FREE ADVICE (continued from page 3)

nonengagement letter.”

◆ “I always tell them I have to see them in the office,” says Jes Beard. “Why? Among other reasons, because I've never gotten paid over the phone.”

### “Good dog, good dog”

Not everyone agrees that cold calls are time-wasters. Here's the other side of the story:

◆ “I take a different view,” says Bruce L. Dorer. “Every phone call is a marketing opportunity. I don't provide substantive advice on the phone, but I tell them they have a unique problem and that we need to sit down and talk. If they balk, I tell them to think it over and get back to me. I've had several people come to my office because I treated a friend of theirs well when he/she called with a question in a time of crisis. It may not work in a large market, but it works for me in my community-based practice.”

◆ “Clients want to get quality legal work from their attorney,” says Ted A. Waggoner. “Handle the phone calls as a quality opportunity.”

◆ “Don't rush your potential clients

volume also gives us food for thought:

My mother used to make mayonnaise weekly, twice weekly; we children would help. I had no idea it was meant to be difficult, or that it was thought to be such a nerve-racking ordeal. Then someone asked how I managed to be so breezy about it, how I stopped it from curdling. From then on, I scarcely made a mayonnaise that didn't break. It's not surprising; when confidence is undermined or ruptured, it can be difficult to do the simplest things, or to take any enjoyment even in trying.

And that is the challenge we face, as lawyers in the courtroom, as Americans whose confidence as been undermined, as

with the ‘Bring me the money’ speech,” says Jay S. Fleischman. “It turns them off right away. Factor the value of five minutes of your time into your fee and give them the five minutes. It's not much time for you, but it's definitely enough time to put someone at ease with the quality of your services.”

◆ “I don't mind tire-kickers,” says Carolyn J. Stevens. “I was a tire-kicker myself. I tell people who apologize for shopping that (1) you are the consumer, (2) you have a right to find the attorney who best suits you, and (3) dissolution and family law issues are emotional as well as legal. Besides, I've talked with some very interesting and intelligent people who don't need legal services or can't afford them. I can offer the one aha! tip that makes it fall together and they hang up happy. I don't do that very often, but sometimes my gut tells me it's the right time to do it.”

◆ “By listening and asking clarifying questions, the duration of the conversation is more controllable,” says Darrell G. Stewart. But sometimes he's had to be very direct and ask the potential client to sign an agreement and put down a deposit. “On occasion, someone I've been very direct with will comply and turn out to be a good client.”

parents whose patience is constantly tested—to remember to take enjoyment in attempting, and in doing, the simplest things.

**Robin Page West is a principal at Cohan & West, P. C., a four-lawyer firm in Baltimore, Maryland, where her practice focuses on litigation, corporate, and qui tam whistleblower representation. She can be reached at [rwest01@erols.com](mailto:rwest01@erols.com).**

