



LAWYER TO LAWYER MENTORING PROGRAM

WORKSHEET CC

CLIENT DEVELOPMENT

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

WHAT WENT WELL?

Start by sharing with each other a brief story of something that went well in your practice this week:

Share your reflection by on one of these questions: What caused the good event? What does it mean? How did you contribute? Others? How can you have more such events in the future?

ACTIVITIES FOR TODAY

- Share with the new lawyer methods of client development that have been successful for you. Share methods which have been unsuccessful and discuss the reasons you believe said methods failed.
- Discuss the importance of professionalism in client development.
- Discuss how Signature Strengths can assist in client development. Keep in mind that one of the characteristics of these strengths is that most people are attracted when they see behavior stemming from a strength.
- Discuss whether clients want a lawyer who thinks optimistically or pessimistically. See Worksheet PP.
- Discuss how attorneys can provide superior service and achieve better recommendations by focusing on providing hope to clients even in difficult circumstances. See the attached excerpt on "Hope at the End of Life" for inspiration for this discussion based on an understanding of hope as requiring, goals, pathways to those goals, and a sense that one can navigate the pathways.
- Discuss the client-development tips suggested in the attached outline. Ann-Marie Ahern, *A Young Lawyer's Guide to Client Development: Building a Law Practice in a Small Firm*.
- Discuss how client satisfaction adds to the successfulness of your overall practice.



Share specific tips for creating client satisfaction. Read and discuss the attached article by Debra Cassens Weiss, *Associate Advice: Start Early on Client Development, Stay Late at the Office*, ABA Journal (Jun 10, 2008).

- Discuss the role your billing statements play in marketing your services. Read the attached article. Bob Weiss, *Your Most Important Marketing Copy – What Your Bill Says*, LAW PRACTICE TODAY, Sept. 2005. Share tips for creating professional and descriptive bills.
- Discuss ethical constraints on advertising and marketing your law firm if the new lawyer takes part in these aspects of firm promotion. See Tennessee Rules of Professional Conduct 7.1 – 7.4.

ACTION STEPS

End the session by discussing what action steps you can take to either improve or set yourself up for future success based on today's discussion. Discuss how one or more of your Signature Strengths can help you achieve success in these steps.

RESOURCES

TENNESSEE RULES OF PROFESSIONAL CONDUCT

VII. INFORMATION ABOUT LEGAL SERVICES

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by RPC 7.2 and solicitations directed to specific recipients permitted by RPC 7.3. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific



conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

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

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

[5] A lawyer may advertise the fact that a subjective characterization or description has been conferred upon him or her by an organization as long as the organization has made inquiry into the lawyer's fitness and does not issue or confer such designations indiscriminately or for a price.

RULE 7.2: ADVERTISING

(a) Subject to the requirements of paragraphs (b) through (d) below and RPCs 7.1, 7.3, 7.4, and 7.5, a lawyer may advertise services through written, recorded, or electronic communication, including public media.

(b) A copy or recording of each advertisement shall be retained by the lawyer for two years after its last dissemination along with a record of when and where the advertisement appeared.

(c) A lawyer shall not give anything of value to a person for recommending or publicizing the lawyer's services except that a lawyer may pay for the following:

- (1) the reasonable costs of advertisements permitted by this Rule;
- (2) the usual charges of a registered intermediary organization as permitted by RPC 7.6;
- (3) a sponsorship fee or a contribution to a charitable or other non-profit organization in return for which the lawyer will be given publicity as a lawyer; or
- (4) a law practice in accordance with RPC 1.17.

(d) Except for communications by registered intermediary organizations, any advertisement shall include the name and office address of at least one lawyer or law firm assuming responsibility for the communication.

RULE 7.3: SOLICITATION OF POTENTIAL CLIENTS

(a) A lawyer shall not by in-person, live telephone, or real-time electronic contact solicit professional employment from a potential client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:



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

(b) A lawyer shall not solicit professional employment from a potential client by written, recorded, or electronic communication or by in-person, live telephone, or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the potential client has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress, fraud, harassment, intimidation, overreaching, or undue influence; or
- (3) a significant motive for the solicitation is the lawyer's pecuniary gain and the communication concerns an action for personal injury, worker's compensation, wrongful death, or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a member of that person's family, unless the accident or disaster occurred more than thirty (30) days prior to the mailing or transmission of the communication or the lawyer has a family, close personal, or prior professional relationship with the person solicited.

(c) If a significant motive for the solicitation is the lawyer's pecuniary gain, a lawyer shall not send a written, recorded, or electronic communication soliciting professional employment from a specifically identified recipient who is not a person specified in paragraphs (a)(1) or (a)(2) or (a)(3), unless the communication complies with the following requirements:

- (1) The words "Advertising Material" appear on the outside of the envelope, if any, in which a communication is sent and at the beginning and ending of any written, recorded or electronic communication.
- (2) A lawyer shall not state or imply that a communication otherwise permitted by these rules has been approved by the Tennessee Supreme Court or the Board of Professional Responsibility.
- (3) If a contract for representation is mailed with the communication, the top of each page of the contract shall be marked "SAMPLE" and the words "DO NOT SIGN" shall appear on the client signature line.
- (4) Written communications shall not be in the form of or include legal pleadings or other formal legal documents.
- (5) Communications delivered to potential clients shall be sent only by regular U.S. mail and not by registered, certified, or other forms of restricted delivery, or by express delivery or courier.
- (6) Any communication seeking employment by a specific potential client in a specific matter shall comply with the following additional requirements:
 - (i) The communication shall disclose how the lawyer obtained the information prompting the communication;
 - (ii) The subject matter of the proposed representation shall not be disclosed on the outside of the envelope (or self-mailing brochure) in which the communication is delivered; and



(iii)The first sentence of the communication shall state, "IF YOU HAVE ALREADY HIRED OR RETAINED A LAWYER IN THIS MATTER, PLEASE DISREGARD THIS MESSAGE."

(7) A copy of each written, audio, video, or electronically transmitted communication sent to a specific recipient under this Rule shall be retained by the lawyer for two years after its last dissemination along with a record of when, and to whom, it was sent.

(d) Unless the contents thereof include a solicitation of employment, a lawyer need not comply with the requirements of paragraph (c) above when sending announcements of an association or affiliation with another lawyer that complies with the requirements of RPC 7.5, newsletters, brochures, and other similar communications.

RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

Subject to the requirements of RPCs 7.1, 7.2, and 7.3,

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) Except as permitted by paragraphs (c) and (d), a lawyer shall not state that the lawyer is a specialist, specializes, or is certified or recognized as a specialist in a particular field of law.

(c) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(d) A lawyer who has been certified as a specialist in a field of law by the Tennessee Commission on Continuing Legal Education and Specialization may state that the lawyer "is certified as a specialist in [field of law] by the Tennessee Commission on C.L.E. and Specialization." A lawyer so certified may also state that the lawyer is certified as a specialist in that field of law by an organization recognized or accredited by the Tennessee Commission on Continuing Legal Education and Specialization as complying with its requirements, provided the statement is made in the following format: "[Lawyer] is certified as a specialist in [field of law] by [organization]."

View complete rules and comments at: <http://www.tsc.state.tn.us/rules/supreme-court/8>

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

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I. Overview

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

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

A. Interacting with Potential New Clients

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

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

B. Reasonable Accessibility to Clients

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

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

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

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

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

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

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

IV. Networking in the Legal Community

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

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

This material is excerpted from “Hope and the Prospects of Healing at the End of Life” by Chris Feudtner, M.D., Ph.D., M.P.H. and available at <http://www.samueliinstitute.org/news/265-SIIB/version/default/part/AttachmentData/data/s-23-s-30%20Feudtner.pdf>

Three (3) PM Thursday. In a private conference room adjacent to the pediatric hospital ward, we are assembling. Everyone seems separate from everyone else, with only furtive glances and terse phrases exchanged as we sit down around a table. Across from me sit the parents of a 4-month-old infant, who after 2 months in the hospital with worsening failure to thrive, was finally diagnosed just a week ago with a rare lethal metabolic disorder. Around the parents are gathered the grandparents and other family members, the primary nurse, and the primary attending and resident physicians. As the palliative care consultant physician, I am to lead the meeting along with the palliative care nurse who accompanies me. The mood in the room is gloomy, irritable, depressed. The primary medical team had requested our palliative care service’s help because they felt “stuck”; none of their efforts to improve the child’s state of health were working; all forward progress had stalled. Likewise, the parents had no idea of what to do next; the terrible news of the diagnosis had destroyed the future.

After soliciting introductions from all the participants, I briefly review my understanding of the sad predicament and confirm it with those gathered: that their beautiful baby has a medical condition that will cause him to die in the coming weeks, that no therapy exists that would slow down his inexorable deterioration, and that despite the grief in our hearts we had to figure out what to do next, seeking what was best for him. Looking around, everyone concurs. Then, addressing the parents, I ask: *In order to figure out how to help you to help your son, I need to know—given the bad news of his diagnosis—what are you hoping for now?*

Softly came the first reply from the mother: *We hope for a miracle, of course.* Then a long pause, the atmosphere of the room full with desire and suppressed tears, as other hopes condense and start to precipitate. *But we are realistic, the mom continues, and it doesn’t look like any miracle is going to happen. So we want to go home. We want our son to not suffer through any more medical tests. We want him to be as comfortable as possible. That’s what we’re hoping for.*

The father nods in agreement, as do others. The medical team says, essentially, we can help some of these things happen. A plan is devised to leave the hospital the next day. The meeting ends. Although one would never describe the mood as cheerful, an energy and purposefulness has emerged as everyone moves in an upbeat manner toward the attainment of these newly articulated hopes.