



ARIZONA ATTORNEY Roundtable: Lawyers, Marketing and Advertising

TELLING THE WORLD what they do and how well they do it does not come naturally to attorneys. Whether because they are vigilant to ethical guidelines, hesitant to engage in self-promotion or unskilled in the business side of practice, lawyers can find themselves with ample skill and little client development. Faced with the chasm between wanting clients and having clients, lawyers must learn to exercise their promotional muscle. Few attorneys can—or arguably should—advertise. But most, sooner or later, must plunge into the marketing of their legal services.

As made clear in this roundtable and in accompanying stories, that plunge does not have to be a painful one.

Roundtable participants note that marketing includes spending an extra few minutes learning how a client came to you, sending handwritten thank-you notes after speaking with groups, and deciding not to eat lunch alone at your desk five days a week. As one speaker said, You eat lunch, don't you?

Arizona Attorney magazine continues to examine our pages to find ways to serve readers better. This roundtable is part of an analysis of elements of practice that may affect most lawyers. One of those elements is advertising and marketing of legal services. In January, the group gathered to talk about where this marketing path began and where it looks like we may be going.

Marketing at Square One:
The Case That Started It All

28

On Lawyer Advertising
by Hon. William C. Canby, Jr.

29

Five Things You Can Do To Market—Today

35

"Marketing" in the Initial Consultation
by Norm Hulcher

35

Review of Marketing and Legal Ethics
by David D. Dodge

38

participants



William C. Canby, Jr.
Judge, Ninth Circuit Court
of Appeals



Diane L. Drain
Law Office of D.L. Drain, P.A.,
Phoenix



Norm Hulcher
Nelson Lambson & Co., PLC,
Mesa



Stacey Pilcher
Stacey Pilcher et al., Phoenix



Martin J. Solomon
Solomon, Relihan & Blake,
Phoenix



Steve Weinberg
Weinberg Cummerford Legal
Group, Phoenix



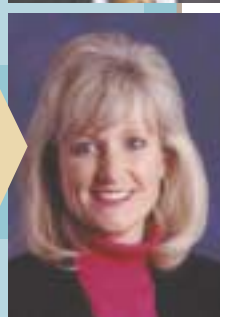
Paige De Palo
Arizona Attorney magazine
Director of Sales and Marketing



William Hornsby, Jr.
American Bar Association,
Chicago



Merton Marks
Lewis and Roca, Phoenix



Lynda Shely
State Bar of Arizona
Director of Lawyer Ethics



Richard Taylor
Taylor & Associates, Phoenix

MODERATOR: Tim Eigo, Editor,
Arizona Attorney



TIM EIGO: Remarkably, a conversation about *Bates & O'Steen v. State Bar of Arizona* (see p. 28) can still be instructive today. When we examine what the Court said, we may find that their concerns still lurk today in some attorneys' opinions, concerns that may be groundless. Chief Justice Burger said in his concurrence, "I fear that [changes in the practice of law as a result of the decision] will be injurious to those whom the ban on legal advertising was designed to protect—the members of the general public in need of legal services."

I would bet you there are still people who feel that way today. And so I begin with *Bates* and with the proposition, "Is there any serious opposition today to the argument that Justice Burger was wrong?" Has the public been injured? Has the public risen up in anger?

Lynda, has the State Bar heard from the public about advertising?

LYNDA SHELY: Usually the only time that the State Bar hears about a lawyer's



SOUNDOFF: Are you a marketing maven, or do you leave promotion to chance? Pitch us your opinions of lawyer marketing and advertising.

advertisement is, candidly, from other lawyers and not from members of the public. Members of the public will call occasionally to ask whether lawyers are allowed to send them solicitation letters. But normally we don't hear any complaints for the most part about billboards, television ads or sides of buses.

WILL HORNSBY: Justice Burger went to his grave condemning lawyer advertising. He was fond of saying in commencement exercises and other opportunities that an individual should never, ever, ever, ever go to a lawyer who finds it necessary to advertise—which might explain why he didn't have a will at the time of his death.

His concern was that if lawyers were allowed to advertise, the public would have less respect for lawyers and the system of justice, and it would therefore erode the confidence that the public has in the rule of law.

However, we've never been able to correlate lawyer advertising to the image of the public in the legal profession. It never has been demonstrated effectively to translate to the profession as a whole.

WILLIAM CANBY: In a Florida Bar case, when the Supreme Court said that Florida could prohibit targeted mailings to people within 30 days of an accident or disaster, the Florida Bar said that the interest that supported it were polls that show that members of the public view that kind of a mailing as intrusive and therefore they thought less of members of the bar. It puzzled me greatly that the question whether lawyers might be regarded somewhat less highly by the public, even if true, would outweigh a constitutional interest in expression of information to a public that needs it.

EIGO: The public doesn't seem confused by lawyer advertising. Are attorneys troubled by it?

MARTIN SOLOMON: I'm not troubled by it. We should look at the public's perception of the profession, aside from advertising, and what role the profession has played in assisting the public to understand the profession and to look at the profession more favorably. And what role has the Bar played in directing advertising, leading advertising and marketing to where it is a benefit to the Bar as opposed to an embarrassment to the Bar?

I think the organized Bar has aban-

doned any responsibility with respect to that. Looking back, I believe we would have been much better off as a profession had the Bar taken a more active role in fashioning where advertising would be going, based upon its role as an educator of the profession.

PAIGE DE PALO: How would they have done that?

SOLOMON: They could have professionalized marketing, they could have professionalized advertising, lawyer advertising. Instead what they did is they abandoned it to lawyers, and I think that was a tremen-

dous mistake, because I think lawyers, untrained in advertising, given the opportunity to communicate with the general public, have not always done the best job in that communication. And I think the Bar could have been a leader in that area. Unfortunately, I believe that there were interests—philosophical interests, financial interests—that kept the Bar from doing that early on. It still hasn't, I think, risen to the occasion, but I think it's perhaps more interested in rising to that occasion now.

EIGO: How are attorneys viewed? Are they getting their message across well? Are

Marketing at Square One

Bates & O'Steen v. State Bar of Arizona

In the 1970s John Bates and Van O'Steen provided low-cost legal services to people of moderate income who did not qualify for public legal aid. They accepted only routine legal matters and decided that they needed to advertise the firm's availability and low fees.

In *Bates et al. v. State Bar of Arizona*, the U.S. Supreme Court held that the Arizona rule restricting legal advertising violated the First and Fourteenth Amendments. The Court held that allowing attorneys to advertise would not harm the legal profession or the administration of justice. In fact, it would provide consumers valuable information about legal services.

Here, roundtable participants comment on that landmark case.

TIM EIGO: Looking back at the case, what has its legacy been?

WILLIAM CANBY: It was certainly an exciting case for all of us. John Bates and Van O'Steen had just graduated from the law school three years before. They tried to set up their legal clinic, and they felt they had to advertise. They came to me and said—first they wanted me to find someone to represent them, and then they said, "Will you represent us?" They did not say, "Should we advertise?" That ad had already been placed when they came to me, although it had not yet been published. They advertised and everything followed from that.

WILL HORNSBY: The *Bates* decision demonstrated in the 1970s that people did not have good access to lawyers. The American

Bar Association did seminal research that was quoted in the decision that said that people of color, women, people of less education and income all had a very difficult time finding lawyers at affordable fees for their representation. And we did that research in 1993, and we found that one out of five low-income person who hired a lawyer found that lawyer through some mechanism of advertising.


CANBY: What I argued and what the Court finally accepted was the idea that there were substantial blocks of consumers who needed to be informed about lawyers, their availability, what they did, and whether they might be of use to the person to whom advertising was directed. And a majority of the Court accepted

that. Looking at *Bates*, a lot of the argument was over price advertising, because Bates and O'Steen had advertised price.

ADVERTISMENT

DO YOU NEED
A LAWYER?

LEGAL SERVICES
AT VERY REASONABLE FEES



- * Divorce or legal separation—uncontested (Both spouses sign papers)
\$175.00 plus \$20.00 court filing fee
- * Preparation of all court papers and instructions on how to do your own simple uncontested divorce
\$100.00
- * Adoption—uncontested severance proceeding
\$225.00 plus approximately \$100.00 publication cost
- * Bankruptcy—non-business, no contested proceedings
Individual
\$250.00 plus \$55.00 court filing fee
Wife and Husband
\$300.00 plus \$120.00 court filing fee
- * Change of Name
\$95.00 plus \$20.00 court filing fee

Information regarding other types of cases furnished on request.

Legal Clinic of Bates & O'Steen

617 North 3rd Street
Phoenix, Arizona 85004
Telephone (602) 555-8888

The ad that started it all

they viewed as accessible?

STEVE WEINBERG: I think we're dealing with different publics and different parts of the Bar. In the world that I practice in, we deal with primarily very sophisticated businesspeople who are used to being educated about their service providers. We are viewed, these days, as one more good and efficient tool for business, as opposed to the loftiness in an ivory tower somewhere. And the only way we can really establish our own brand presence and to educate clients is through different forms of advertising.

NORM HULCHER: Even within the general public, of which I am a member, I think there are two kinds of people: those who make fun of lawyers and those who need a lawyer. My bellwether in all matters of this nature is my brother-in-law. He will spare no opportunity to make a lawyer joke or complain about lawyers, or make fun of lawyer advertising. But when his daughter was hurt in an auto accident, he called the Eagle [Goldberg & Osborne]. So it changes everything when you're thrust into the position of needing one.

EIGO: Well, what is the lawyer niche? Who are these people called lawyers and why do they occupy a niche? What is different about legal services and how they are marketed?

STACEY PILCHER: For any attorney or any group of attorneys or law firm, it really depends on what their market is. Whom do they speak to? It's how you speak to your constituents. It's about determining, What is my differentiation? How do I stand out among the crowd?

EIGO: But as a group, do attorneys resist

On Lawyer Advertising

by Hon. William C. Canby, Jr.

We were fortunate to have on our roundtable Judge Canby, one of the attorneys who argued Bates before the Supreme Court. Here, he explores the legacy of that case.

EIGO: Have advertising restrictions contributed to a veil of silence on price?

HORNBY: It's a great irony. What you were saying about the *Bates* case and it being a price issue caused the regulations in the states to focus on regulating price, and they have been so successful in that focus, you never see prices in any ads. The regulations have prevented the consumers from getting the information that was tantamount to the decision going the way that it went.

CANBY: There were states right after *Bates* that said, "All right, you can advertise wills, adoptions, uncontested bankruptcies, uncontested divorces and name changes. Period. That's the only thing you can do because that's what was okayed by the Supreme Court. And nothing else."

MERTON MARKS: I think public attitudes toward lawyer advertising have changed as advertising has evolved. I remember as a boy hearing my father, who was a corporate man, saying, "Never trust a lawyer who carries a card." Think about that for a moment. I remember 25 years later, after the *Bates* case, hearing Andy Rooney say in one of his commentaries, "If I ever needed a lawyer, I'd look in the phone book and see who advertises, and then I wouldn't go to one of them."

In opening the argument for *Bates and O'Steen* in the Supreme Court, I said that the case was about two lawyers who advertised, but that it was "also a case about the delivery of legal services in the United States." It is that *public* perspective from which lawyer advertising must be viewed, as a majority of the Supreme Court viewed it in *Bates v. State Bar of Arizona*. *Bates* has largely accomplished its purpose: A larger percentage of the population knows of the availability of legal services and uses legal services than did before *Bates*. The costs to the consumer of routine legal services have come down. And the case against prohibition of advertising remains sound: The public is entitled to more information, not less. As the Court said, "We view as dubious any justification that is based on the benefits of public ignorance." *Bates*, 433 U.S. at 375.

By and large, *Bates* has held up well in the Supreme Court, despite attempts by some state bars to narrow the ruling. The Court has protected advertising while permitting the states to limit in-person solicitation that might lead to overreaching. It also has protected "targeted" advertising, on the theory that there is no justification for preventing advertising directed to those most in need of the advertised services. *Shapero v. Kentucky Bar Ass'n*, 486 U.S. 466 (1988).

The only misstep by the Court occurred when a bare majority, over Justice Kennedy's sharp dissent, upheld a prohibition on mailings to victims of accidents or disasters within 30 days of the event. *Florida Bar v. Went For It, Inc.*, 515 U.S. 618 (1995). That prohibition was based not on fear of intimidation or overreaching but on informal polls or anecdotes showing that the public viewed such mailings as an intrusion upon privacy and therefore held the legal profession in less esteem. By concentrating on the reflected dignity of the profession rather than service to injured members of the public (who remained subject to importuning from defending insurance companies and their counsel), the Court's majority contravened many of the principles of *Bates* and its progeny.

Bates remains in force, however. One can hope that future cases will focus on the interest of the public in obtaining legal services, not on the interest of lawyers in squelching anecdotal threats to their popular esteem.

William C. Canby, Jr., is a Judge of the U.S. Court of Appeals for the Ninth Circuit. The opinions stated here and in the roundtable are those of the author personally, not of his court.

Read the case that made national history at 433 U.S. 350 (1977) or at <http://caselaw.lp.findlaw.com/> or read an abstract at <http://oyez.nwu.edu/cases/cases.cgi>.

the notion that there is such a thing as a target audience? When you meet with attorneys, is it a different kind of meeting than when you're meeting with a purveyor of another product?

PILCHER: Meeting with attorneys is slightly different because they're neophytes in the practice of marketing. So if you were to meet with accountants 10 years ago, it would be the same type of thing. If you met with Campbell's Soup 100 years ago, it would be the same type of thing. It's an education process for them.

EIGO: As a proposition, is it possible that the main difference when you meet with an attorney as a client is that they have the stricture of regulation hanging over them and they'd have to be crazy not to turn to professionals to tailor their message?

DE PALO: Nobody can state something in an ad that is incorrect and untrue. It's not just for lawyers. Any type of ad has to be real, true and correct. I think lawyers are a little bit more sensitive to that, being in the law. But everybody is subjected to laws. Campbell's Soup's director of sales and marketing, for example, is a person who understands exactly what they can and can't do.

HORNSBY: But the standard for what's impermissible under the false and misleading regulation for lawyers is unprecedented. No industry, business or profession has anything comparable to the limitations. They can't say they're global when they're really international. They can't say that they're top-flight. They can't say they have expertise. They can't say they're the best and the brightest.

The terms that marketers embrace are frequently those very terms that the legal profession has denied them from using. Those limitations can deny a level of creativity that we see in other professions.

RICHARD TAYLOR: I don't think it's effective, even if it's permissible, to say, "We are a top-flight law firm." What I've had to do over the last 30 years is figure out how my ads can convey that message without saying that.

HORNSBY: The legal profession is the only business, industry or profession that didn't grow up as advertising in the 20th century

grew up. We were dropped into it. And we didn't have any history of its use. We didn't have an understanding of its use. One day, it was unconstitutional and unethical, the next day it was constitutional and ethical.

There were some really stupid things done at the beginning. There was a law firm on Rodeo Drive that dressed a guy up like a big turtle called Tommy the Tortoise that handed out handbills. Not only would that probably be offensive to many lawyers, but just think of it as a marketing technique: People shopping on Rodeo Drive are probably the least likely in the world to respond to a flier from as giant turtle. On the other hand, there was a guy who used to drive around a hearse that had on the side of it "No-frills will—15 bucks." And he sponsored a car in the demolition derby advertising his personal injury practice. And I thought he was an exceptionally good person responding to his marketplace using techniques that made the organized bar and many lawyers just shudder.

WEINBERG: When I've litigated I know when I feel very strong on my position, and I know when there's sort of a fact lurking there that perhaps is not the way I wish it would be. But if I feel that queasiness in my stomach when creating an ad, I don't create that ad. In a way, that's almost a guiding rule. If there is that sort of strange tingling in the stomach that goes on, then perhaps we shouldn't make that statement.

EIGO: What if there's no tingling, but there is the restriction? For instance, in December, the Florida Supreme Court ruled that the state bar cannot enjoin trade names for law firms, such as AmeriLaw or the Ticket Clinic or other words that get the message out.

SHELY: Which we currently prohibit in Arizona.

WEINBERG: That recognizes that we run a business. Because we are competing in



Advertising and marketing by Lewis and Roca and Weinberg Cummerford Legal Group.

We are viewed as one more good and efficient tool for business, as opposed to the loftiness in an ivory tower somewhere.

a prohibition of trade names is not necessarily helpful to the consumer. Suppose in the auto industry, you couldn't use Ford or Chevrolet; you just used the names of the workers who assembled that particular automobile when you sold it. Would the consumer be better off?

MERTON MARKS: When we opened our Nevada office and we hung out our shingle as Lewis and Roca, the Nevada Bar said you can't do that because you [must] use the name of lawyers who are or were members of the Nevada bar. Of course, Orme Lewis and Paul Roca had both been dead for a number of years. We took the position that that was an infringement on our First Amendment rights as well as certain other constitutional issues. We sued them. In the first round, the court ruled we could use our name.

EIGO: That shows that firms recognize the value of a brand.

MARKS: Exactly.

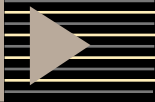
PILCHER: Brands take a number of years to build. In the dot-com arena, they felt, "Well, if we throw a lot of money at this, in a month or two months we will create a brand."

EIGO: If consumers and citizens don't mind advertising, how about law firms? A recent newspaper article about TV advertising spoke of the viewpoints of large firms: "TV appearances still draw a level of disdain from bigger Valley firms that don't use the medium to sell themselves." Mert, tell us it's not so; there's no disdain, is there?

MARKS: I don't sense that there is a feeling that it's inappropriate. I think that it has just not yet been used a great deal. There have been tasteful ads on National Public Radio. There's a very large firm in San Francisco, one of the major firms of the United States, that has embarked on a \$3.5 million advertising program on CNN. But I think that the large firms have engaged in a variety of marketing efforts, as we like to call it, rather than advertising, and I think it simply hasn't reached the television and radio in large quantity.

HULCHER: The big question is, Should we advertise? And that depends on what you do and who you're trying to reach and what your message is to them. But to do mass advertising only works if you are trying to make everybody your client.

TAYLOR: It's being able to afford



television advertising: \$3.5 million would be a little tough on my current budget for this year.

HORNSBY: It's not an expense. It's an investment.

WEINBERG: When one is recruiting into a generation of people, young lawyers, who believe that what's on television and on the monitor is the truth or is important, that kind of marketing is an effective recruiting tool: "Gee, isn't it cool, look who I work for."

EIGO: You don't hear any complaints from attorneys that they wish we did not have TV advertising by lawyers?

DIANE DRAIN: It's not just a big-firm issue. The majority of the lawyers I deal with don't believe that TV advertising is respectable or professional. It can be done very nicely, and Marty's got one of the nicer ones on television, and then we see the others that are the used car sales version.

But I think generically, if you were to do a survey of your community [of lawyers], you're going to see a pretty high percentage that feel that TV advertising is not the appropriate place to put legal services. You take that, though, and go to the Internet, and all of a sudden, it's a different game. Here, I think a law firm needs to have a good presence and all the information available. TV advertising is invading someone's privacy, whereas the Internet is there as a service for someone to find the information.

EIGO: When we hear people say that TV ads are not professional, what are they really saying about the delivery of legal services? Putting aside the production values, what is it about the information in TV ads that rankles?

HULCHER: The thing that I find offensive about attorney ads on TV is that they aren't very well done. The fact that they are on TV does not bother me as much as the fact that the ads are crummy, and it makes the profession look cheap—with a few notable exceptions.

DE PALO: You think it's crummy. The person that they're speaking to thinks, "Oh, that's just what I need."

SOLOMON: Some of the television adver-



Marketing by Jennings, Strauss & Salmon

tising is not well thought-out. Some of it is very well thought-out, and even if it's offensive to you, not only isn't it offensive to the target group, but it speaks to them in language you can't even hear. There are a lot of things that are on TV that are distasteful to me, but I'm not the target audience, I'm not the customer. If we learn one thing out of this, I think we have to understand who we're marketing to.

HULCHER: An advertising attorney is not competing against other attorneys, he's competing against other advertisers. And if your crummy ad is sandwiched between two pretty good ads, all that does is make you look bad.

SOLOMON: I don't believe that, and I've been doing it on television since 1979. So

I've learned a couple of things. It seems to me that those "tacky" ads, to a certain segment of our society, are user-friendly. They make lawyers user-friendly. It would be difficult for someone who doesn't speak English well, who doesn't have a good job or an income, to pick up the phone and call a firm that puts an ad in a [high-end] magazine, because that is in a different world, speaking a different language. But he might call Tommy the Tortoise, because that is user-friendly to

that segment of society, and I think that, in and of itself, speaking the language, making someone feel comfortable and approachable, is an important element to delivery of legal services.

TAYLOR: All of us also advertise and market on different levels within our own practice. I'm advertising and marketing by participating in this group, but my clients who are construction workers aren't going to be reading this magazine. But on a different level, the people that may refer clients to me who are attorneys do read the magazine. So I'm advertising on that level.

EIGO: What appeals to people about the specifics in TV or other advertising?

DE PALO: Getting the message like that [snaps finger]. Because you only have 60 seconds, 30 seconds, so it's got to be quick, it can be humorous, it's got to touch an emotion of some sort, it's got to be an emotional ploy, whether it's funny, whether it touches your heart. Like Marty said, are they comfortable with this person speaking, "They're talking to me, so, oh yes, they'll help me." It's an emotional thing.

DRAIN: My practice has probably doubled in the last six months as a direct result of some TV advertisements from other law firms expounding the fact that bankruptcy law is about to change. As a result, everybody's picking up the phone and calling. I'm getting direct benefit as a result of others. They won't call someone they see on the television, but they'll call others to find out who somebody used, etc.

SOLOMON: The most effective thing I have learned over the years in terms of generating clients is to understand: Speak my client's language face-to-face; make sure that my staff speaks my clients' language face-to-face. Understand what's happening on the front line.

I learn more about my business from my receptionist and all the legal assistants and the secretaries than I can ever learn from our comptroller or from the individuals who manage the business. We have gotten a substantial number of referrals from just the front-line communication strategies.

DRAIN: Every member of the firm should be marketing the firm. So they need to understand what it is their firm does, and some of the basic policies or ethics within

Television advertising may be offensive to you, but it speaks to the target group in language you can't even hear.

that firm environment, and when they go out into the community, their firm goes with them.

EIGO: What marketing tools are attorneys, especially smalls and solos, not using that they should be?

WEINBERG: Whenever we cannot help an individual, we send them a personalized handwritten note thanking them for calling us. It is amazing for such a small investment, what kind of return you get. We have gotten people who have come back to us because of those notes.

SHELY: I will stop in my tracks [when I call a firm] and the receptionist either does not know the lawyer works for the firm or answers the phone ... "WHAT?" It's as simple as making someone feel warm and fuzzy. You get lots of referrals from sources like that.

HORNBSBY: I think it's very important for small-firm lawyers to do something that they might not be very used to doing, and that's listen to their clients about why they retained them.

EIGO: Are smalls and solos asking those follow-up questions with clients?

DRAIN: The majority are not. My guess is that small firms and solos are just so busy that there's very little planning about a graceful entrance into next week and next month and next year.

DE PALO: Are attorneys open to hiring professionals, big marketing firms that can give them the advice they need?

DRAIN: The solos don't, and I'd love to see the State Bar become a place, a resource center for this kind of informa-



Listen In On the Roundtable

To hear portions of the roundtable discussion on lawyer marketing and advertising, go to www.azbar.org and click on Arizona Attorney.

tion. As Marty pointed out, it's a primary spot for guidelines, for templates, what's good advertising and what works.

SHELY: Let me mention the three most frequent ethical mistakes that lawyers make under the ethics rules in communicating about their legal services. You cannot give anyone anything of value for referring work to you.

You can never, ever cold-call a potential client, whether it's a corporate client with in-house counsel or whether it's Mrs. Smith who wants pro bono representation; you cannot cold-call somebody unless you have a prior professional or family relationship with them.

One other thing that's on the horizon for lawyers to keep their eyes open before

jumping into this great resource: prepaid legal plans.

HULCHER: Correct me if I'm wrong, but it's my understanding there's nothing in the ethical rules that preclude an attorney from making friends with somebody who's not a client.

SHELY: Hence the reason they all belong to rotary clubs, country clubs ...

HULCHER: That's exactly what I'm talking about. I was not suggesting they go out and beg people to be their client. There are attorneys in this town who should know better who think that you

cannot have meaningful contact with the president of a company whose business you covet. The fact of the matter is you can; you just can't tell him, "Hey, why don't you send me a file?" I hate it when ethics Nazis—none of whom are at this table—insist that you have to be basically a eunuch when it comes to social skills. That's just wrong, and it's not good for the profession.

EIGO: What has a Web site done for you?

DRAIN: It's leveraged my time. I have cut one third of the phone calls off because of our Web page. We get one call to two calls a month [where before we got 50 to 60 calls a month].

HORNBSBY: It's a requirement now. Lawyers are going to have to use the technology as a practice tool, not just client development, but as something that enables them to cost-effectively deliver their services.

EIGO: Are there any final suggestions for attorneys striving to put their best foot forward?

TAYLOR: Firms do not pay the person who answers the phone enough money. That's the lowest-paid position in any law firm, and it's the one that has the first contact with everybody who's a potential client, and they don't sell the firm.

DRAIN: Remember that you do a good job, that person will tell three people; you do a bad job, that person will tell 10 people.

WEINBERG: Be ready to have the infrastructure, the knowledge and the availability to really serve and meet the needs of your client and the expectations that you create.

PILCHER: I would suggest two things. One is that whether you're a large firm or small firm, you should read some books on marketing. And I would hope that the Bar and the universities would embrace marketing as part of the curriculum of what they teach, whether it's in continuing education or whether it's in a law school. Being an attorney is a business, and they need to learn how to run a business, and that includes marketing.

There are two kinds of people: those who make fun of lawyers and those who need a lawyer.

Marketing Guidance on the Web

<http://www.abanet.org/cpr/ethics2k.html> – Ethics 2000, American Bar Association Commission on the Evaluation of the Rules of Professional Conduct.

<http://www.azbar.org/FindingLawyer/rules.asp#Rule42> – Arizona Rules of Professional Conduct, the rules that guide all Arizona attorneys (scroll down to ER 7.1, "Communications and Advertising Concerning a Lawyer's Services")

<http://www.legalethics.com/> – A clearinghouse for ethics information.

<http://www.law.cornell.edu/ethics/> – Rules and commentary on legal ethics.

<http://www.lawmarketing.com/news/ethical.cfm> – Commercial site offering ethics advice.

<http://www.lawmarketing.com/> – Commercial site offering marketing advice; for advice from other small-firm practitioners, go to

<http://www.lawmarketing.com/best/soloandyoung.cfm>

5 Things You Can Do To Market—Today

by Tom Cadden

IT'S BEEN NEARLY 25 years since the U.S. Supreme Court held in *Bates v. State Bar of Arizona* that it was unconstitutional for states to ban lawyer advertising. Since then, bar associations and courts have grappled with finding the balance between protecting a lawyer's right to communicate about his or her services and regulating the content of such communications. One thing is certain: Lawyer marketing will continue to evolve as the legal profession and business world change.

So What's a Lawyer To Do?

Lawyers went to school to prepare for a career in law, not sales and marketing. But the nature of today's business environment requires them to be marketers. For some, this comes naturally. For others, it's outside their comfort zone or they don't know where to start. For the latter group, whether you're a sole practitioner or in a large firm, here are some minimal things you should be doing:

- **Plan.** This is the most important step. Take time to consider the kind of law you want to practice, the types of clients you want, what their needs are, where they are and how you best can reach them.
- **Maximize your service mindset.** By exhibiting superior customer service and by taking care of your clients, you will get more business and referrals.

Learn about their business and read trade journals to learn about their industry. Go the extra mile for them.

- **Meet people.** It's been said that marketing is a "contact sport." Find opportunities for face-to-face contact with clients and prospects. Get involved in the business community, join and become active with civic and industry groups, use your lunch hour for staying in touch with clients or meeting new people, and build your referral base and other networks.
- **Write and speak.** Get on the lecture circuit or write articles for trade organizations of prospective clients. Find out who the reporters and editors are for the local business and legal publications and offer yourself as a resource in your field of expertise.
- **Other "Stuff."** There are a number of excellent resources out there. Here are two that I recommend for learning more about legal services marketing and keeping pace with the field:
 - (1) Read *Marketing the Law Firm: Business Development Techniques* by Sally J. Schmidt. First published 10 years ago, this comprehensive legal marketing "encyclopedia" covers just about everything, from marketing analysis and planning to online marketing activities.
 - (2) Visit the LawMarketing Portal on the web (www.lawmarketing.com). This



is a phenomenal resource that includes all kinds of practical tips, articles and marketing news updates. There is also a law marketing discussion group with about 1,300 participants. And it's free!

Where's It All Going?

Law firms have seen more change in the past five years than in the previous five decades. Some of the major drivers of change will be technology (extranets and other Web-based tools) and eventual competition from multidisciplinary practices. The primary impetus for change will be client needs and expectations. Firms and lawyers who anticipate and act on those needs and expectations will be better prepared to thrive in the competitive environment of the future.

Tom Cadden is the Client Services Manager at Jennings, Strouss & Salmon, P.L.C., assisting the firm and its attorneys in business development and retention efforts.

"Marketing" in the Initial Consultation

by Norm Hulcher

WITH ALL DUE RESPECT to motivational speakers and authors of self-help books, nothing can lift many people to previously unreachable heights as quickly and decisively as fear.

Disagree? Consider this:

A member of your firm comes into your office and gives you a big pep talk about how much better your life would seem and how much healthier the firm's cash flow would be if you'd just return people's

phone calls, line up a few referrals and generate a little more work.

You may actually buy into that notion. But before you can act on it, a crisis erupts, and within an hour or two you've lapsed back into your customary inert

state. For all the good your colleague's pep talk did, he may as well have told you about his favorite uses for Cheez Whiz.

No Work

Look at the mountains of files, documents and phone messages on your desk. Then visualize them disappearing, one at a time, until there's nothing there. No files. No documents. No clients. No work. *Nada*.

Granted, at this moment that may be your idea of Utopia—but the paranoid side of you has already started imagining life without a heavy workload:

First, other attorneys begin avoiding eye contact with you as you pass in the hall. Invitations to "grab some lunch" dry up. Then, one night as you stroll through the lobby on your way to the garage, you see every member of the firm but you huddling in the big conference room. Your best friend comes to the window and watches you disappear as he closes the blinds.

Alters your outlook, *doesn't it?* Makes you want to drag your sorry self out of your chair and get out there and bring in a carload of new clients, *doesn't it?*

So you face a quandary: How can attorneys with a full plate do billable work and what's necessary to keep their pipeline from running dry? Answer: By making clever use of their initial consultations.

Necessary Evil?

If you're like most attorneys, you see the initial consultation as a necessary evil, a rite of passage to be endured before you can crank up the old meter. And, if you're like most attorneys, that first meeting with prospective clients goes something like this:

No sooner than you say "Okay, what's your problem?" than the wretches launch into their tales of woe, gesturing toward the heavens and rending their clothing, and as soon as you start making some sense of their ranting you counterattack with a barrage of the applicable legal theories, statutes, dicta and excerpts from Plato's *Republic* that will allow you to pluck them from deep water and deliver them safely into Abraham's bosom.

Then you thank them for coming in and

head for the coffee machine.

Now, there's not a thing wrong with that approach—if you're satisfied never to rise above the level of fixer, junior grade. But if you want to build your practice, to be a consistent source of work for yourself and for your firm, to be a star ... well, you should learn to use your initial consultation to milk your clients until they moo.



"Let's Get Better Acquainted"

There are four basic components of client development: prospecting, referral source cultivation, cross-selling and client relations.

The busy attorney can forget about prospecting, unless it's something that comes naturally. Prospecting is a labor-intensive, high-risk activity that few lawyers ever try, much less master, and it causes a lot of hand-wringing among State Bar ethics enforcers.

But the three other legs of the stool are essential, and you can often knock out 75 percent of what you need to do in those areas by simply making smarter use of your early face-to-face meetings with a client.

Step 1 in turning the initial consultation into a client development activity is to resist the urge to fixate on the client's problems and solutions at the exclusion of all else. After you've learned what you need to know to take care of your client's legal need, and after you've adequately explained what you plan to do about it, take a deep breath. Turn off your meter. Then tell them you'd like to take a few minutes to get better acquainted:

- *How did you choose me?*
- *What other lawyers, CPAs, professional advisers, etc., do you use?*
- *What's it going to take to make you happy?*
- *Tell me a little bit about your company.*
- *Let me tell you about our firm.*
- *Don't be shy about recommending me to others.*

"How Did You Choose Me?"

Even if your secretary or the client intake sheet has told you who sent this person to you, feign ignorance. Ask them who recommended you.

If you recognize the referral source's name, say nice things about them. If you don't know the referral source from Adam, don't let on. Replying with "Never heard of him" or "Who in the world is that?" will not make points with the client or encourage further referrals.

Instead, fake it. "Ah, yes" (accompanied with a nod and a knowing smile) or "She's a good friend of this firm" are perfectly acceptable dodges.

Either way, your conversation about the referral source should allow you to find out how to contact them. "Where is he working now?" or "Oh, is he out of treatment?" should finesse you into position to get their current address or phone number.

Then, as soon as the client is out the door, call the referral source or send them a note or gift to thank them for the referral, and get them entered into your database. (*Ethics alert:* Be sure the gift has no monetary value; we recommend Amazon.com stock, Cardinals tickets or a Yugo.)

"Who Else Advises You?"

If your new client is a business owner or a person of means, he or she probably has other professional advisers. Your mission is to find out who they are so you can kiss up to—that is, establish a professional relationship with—them. For example:

"Who's your CPA?" Accountants can be very good referral sources, and you want to know whom your clients use.

If they don't have a CPA or are not enthusiastic about the person they're using, that gives you an opening to recommend a CPA from whom you'd like to receive referrals. The beneficiary of your referral is then duty-bound to return the favor.

If they do have a CPA and don't plan to make a switch, jot down his name and, after the client's gone, call the CPA, introduce yourself, and let him know that you have a mutual client, that you'll probably be working together at some point, and that you should do lunch or something so that you can proselytize his other clients, too. (CPAs are just one example. You can run the same drill with their banker or anybody they use who can send you work.)

This is a really clever technique, and you will feel very full of yourself after you pull it off. More important, you may legitimately unearth important needs that you can help satisfy, and you will upgrade your role in the eyes of your client from that of temporary hired gun to long-term professional adviser.

"What's It Going To Take To Make You Happy?"

This is where the rubber meets the road, client relations-wise. Asking a few simple questions about the client's expectations can help you ward off problems that kill a potentially good client relationship.

- *What do you expect regarding the outcome?*
- *What have you liked and disliked about your former attorneys?*
- *What do you expect from me in the way of service?*

When the gods of the legal process frown on you, knowing and responding to what each client likes and dislikes may be the one thing that saves an otherwise doomed relationship.

"Tell Me a Little Bit About Your Company"

As clients describe their business, try to anticipate other legal services that they or their company may need at some point.

Pick the most obvious (or lucrative) other legal need and, as you walk them back to the lobby, swing by the office of the appropriate attorney for a how-do-you-do. Tell the client, "You know, some day you may need some help with (*fill in the blank*), and Margaret here is the best darned (*fill in the blank*) lawyer in the world." (*Ethics alert*: This comment could be considered overreaching.)

This is not selling, and your client should not interpret it as selling. Unless

you're an utter buffoon when it comes to things like this, you should rack up another opportunity to show your client you care. And, in the process, more work will come to you and the firm.

"Let Me Tell You About Our Firm"

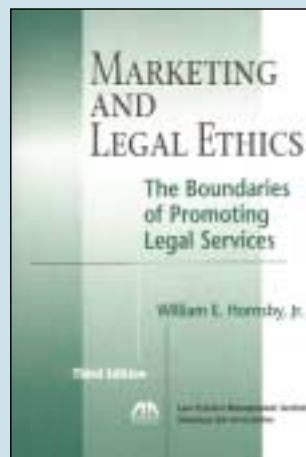
Most clients assume that every attorney in your firm practices exactly the same kind

of law that you do, unless you tell them differently.

You can ward off the problems associated with client ignorance by talking about your firm. You not only lessen the risk of having clients go elsewhere out of ignorance, but you also convey pride in your firm and a spirit of collegiality. Some clients like that.

THE PRACTITIONER'S TOOLBOX Review by David D. Dodge

Marketing Practices and Pitfalls



Marketing and Legal Ethics: The Boundaries of Promoting Legal Services (3rd ed.)

by William E. Hornsby, Jr.

American Bar Association, Law Practice Management Section, 2000

205 pages, \$89.95; \$74.95 for LPM Section members (ISBN 1-57073-810-6)

Available at: 1-800-285-2221 or

<https://www.abanet.org/lpm/catalog/511-0432toc.html>

IN THE INTRODUCTION to the third edition of *Marketing and Legal Ethics*, William Hornsby points out changes in the marketing of legal services over the past several centuries. He has us imagining former President Andrew Jackson, a 19th-century lawyer, returning to civilian life as the partner in a modern law firm. After Jackson gets his parking pass, his log-in name and a user ID, his new partners explain the dynamics of today's law practice. They explain to him the concept of "leverage" of the firm's

associates and how his income would have very little relation to the value of his services. They tell him that in order to pay for the enormous salaries of the lawyers in the firm, most of them were expected to bill more than 2,000 hours each year, which in turn would require the firm to be able to provide an increasing level of services as well as acquire new business.

President Jackson would be introduced to the firm's head of client services—its marketing specialist—who would explain the wide variety of methods the firm used to attract new clients. This would include an explanation of the firm's corporate identity efforts, the branding of its image, the distribution of its brochure, the hits resulting from its Web site and the importance of working a room.

Then would come an explanation of the ethical limitations in the marketing of the firm's services. This would be very important because, until 1908, when the American Bar Association adopted its first Canons of Professional Ethics, most lawyers engaged in the solicitation of clients, often shamelessly. Abraham Lincoln, for example, solicited cases "unabashedly" by offering his services to well-paying railroads and to their legal opponents. Prominent lawyers solicited clients in high-profile cases such as the Aaron Burr cases and the Dred Scott case.¹ It would be explained to the President that neither he nor the firm could create unjustified expectations about the legal services he and his firm can provide. Also, he would not be able to compare his services with those of any other lawyer unless that comparison could be substantiated. The firm could communicate the fact that Mr. Jackson is a former president of the United States, but it could

"How Can You Be a Referral Source?"

Clients are funny. If you don't ask them for referrals, they often figure you don't need any. Try this with them:

"About three fourths of my clients are referred to me by people I've already helped. I'm looking forward to working with you in this matter, and I'd be pleased to meet with anyone else you know who

should ever need an attorney."

People, Not Files

Making thorough use of the initial consultation helps you treat your clients as people, not as files. That's an important first step toward consistently generating more work for yourself and your firm, without burning up large chunks of

precious time and money to "market" your practice.

Norm Hulcher is a principal and director of strategic planning for the public accounting and business advisory firm Nelson Lambson & Co., PLC. He has more than 10 years of experience in helping attorneys attract and retain clients.

not suggest that his experience makes him a superior lawyer. It could not refer to him as a "specialist" unless he went through the process of certification.

The announcement that he has joined the firm might be disseminated without disclaimers, but most promotional material would have to be sent with an indication on the envelope that it is "advertising material." He wouldn't be able to solicit prospective clients in person except for former clients and friends, which in President Jackson's case probably passed away almost 200 years ago.

Mr. Hornsby next gives us an overview of the regulations governing legal services marketing, which he breaks down into the four categories of advertising, solicitation, public relations and promotions, and marketing through new technologies. We are given a tour through the ABA Model Rules governing legal services marketing, which the Arizona Supreme Court adopted in 1983, and an overview of the basic precepts proscribing false or misleading communications concerning legal services as set forth in Rule 7.1.² Mr. Hornsby then leads us to the heart of his book, describing the outer limits (or "boundaries") of the various means by which lawyers may legally and ethically promote themselves and their law firms.

What strikes the reader immediately is the variation in what is allowed between the states' ethical rules and the various opinions published by the ethics committees that have interpreted them. Mr. Hornsby's work will be essential reading for lawyers who market, practice or both in states other than Arizona. It contains a summary of state regulations governing the communication of legal services and sets forth the addresses of every state disciplinary agency

to which inquiries can be directed. One example would be the holding of an Iowa ethics opinion concluding that it is inappropriate for a lawyer to use vanity plates such as "CorpLaw," "BizLaw" or "TaxLaw" because such plates constitute a form of advertising and are not large enough for the lawyer to include required disclaimers. Arizona lawyers may want to be aware of this ruling should they ever want to drive through the state of Iowa.


Another thing that gets the reader's attention are the occasional references to some of the lengths to which lawyers have gone in soliciting business. The message is direct and concise and followed with a succinctly drawn "conclusion" setting forth what the reader should have learned from what he or she has just read.

This is a typical ABA publication: It is short and to the point and, if readers wish to make a career out of any one of the points made, each chapter is followed by an ample bibliography. Every form of communication is covered: Ethical considerations concerning letterhead, business cards, announcements, office signage, directories, law office promotion, client gifts, entertainment, solicitations to other lawyers and direct mail are analyzed in practical, easy-to-understand language.

The chapters on the boundaries of marketing through new technologies and the ethical boundaries of multistate practices are must reading for every lawyer or marketing administrator involved in this subject. States are just beginning to examine the application of the rules to Internet-based marketing. Several states have issued ethics opinions that have held consistently that lawyers must follow the applicable state ethics rules when advertising on the Internet. A few ethics opin-

ions have concluded that the use of "chat rooms" for business development is the same thing as in-person and live telephone solicitation and that they should be avoided. For lawyers and firms that have a multistate practice, new issues abound concerning compliance with the ethical obligations of the states in which they have a practice but no office or where they are soliciting new clientele on the Internet in the hopes of someday being able to establish a practice. As Mr. Hornsby points out, this is a developing area in the ethics field and one where lawyers not paying attention may end up getting burned.

The author ends with a discussion on the ethical considerations of multidisciplinary practices, including the unresolved dilemmas of confidentiality considerations, fee-splitting with nonlawyers and assisting lay persons in the practice of law. Any lawyer considering establishing a multidisciplinary practice needs to read this chapter.

Mr. Hornsby has written a book that covers a lot of ground in only 200 pages. It can be read in less than four hours and should serve as a valuable resource. The author answers many questions and poses quite a few for which there are presently no pat answers. If nothing more, he has taught us which questions to ask concerning marketing by lawyers. 

David D. Dodge is a partner in the Phoenix law firm Lieberman, Dodge, Gerding, Kothe & Anderson, Ltd. He is a former Chair of the Disciplinary Commission of the Arizona Supreme Court.

Endnotes

1. CHARLES WOLFRAM, MODERN LEGAL ETHICS 785-786 (West Publishing 1986).
2. ER 7.1, Rule 42, ARIZ.R.S.Ct.