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The Bottom Line

The newsletter of the Illinois State Bar Association's Section on Law Office Management & Economics

To invest or not to invest in online marketing

BY DION U. DAVI

Sometimes I wonder why I get myself into these positions where I am giving away the special sauce recipe to my most successful dish. If I was really the great businessperson I think I am (in my own mind), I would start a consulting company like some others who allege they left a seven figure practice to share (for a cost) their secrets to success.

I must preface everything I have written below with a disclaimer that I am in no way an expert in online marketing. I am simply a fellow attorney that has seemingly used online marketing fairly effectively to grow my practice over the last several years. The following article will give you an overview of the information that I have learned (at least that which I can remember) and implemented by speaking with those that actually know a lot about online marketing and learning from

Continued on next page

Case management systems

BY GINA ARQUILLA DEBONI,

No managing attorney or law office leader looks forward to the day when it is time to upgrade or implement their case management system. At Romanucci & Blandin LLC, we had a case management system in place – one that was leaps and bounds ahead of its time when first implemented – but like anything else, throughout the years, the wear and tear and cracks of its limitations began to seep through. Technology took a giant leap forward leaving our case management system and the operational aspect of running a growing law firm as we knew it out to pasture.

Our firm was growing both in attorneys and in practice areas, and time and efficiency were becoming an ever-increasing precious commodity. From a management perspective, our need to analyze where our cases were coming from, where to market efficiently, the need to separate intake cases that were under consideration from active matters, automate common tasks and daily dates, run comprehensive daily reports and statutes of limitations reports were

Continued on page 4

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To invest or not to invest in online marketing

CONTINUED FROM PAGE 1

those that have failed. The secret sauce is much more involved than I have provided below but you will definitely get a flavor of whether to invest in online marketing and a number of the options that are available.

So, let us dive into the discussion of whether to invest in online marketing and the types of online marketing that is readily implemented by the legal profession. This question has been brought to me on several occasions since I opened my firm in 2012. It has been rather flattering that my colleagues have looked to me for such information. I am not sure whether it is because those inquiring think I am of the younger, digital generation or because they have noticed my firm's growth over the last several years. Either reason is gratifying and allegedly gives me enough insight to present this topic.

The conversation usually starts out with a discussion about Web sites, their usefulness, and how to use them as a marketing tool. Web sites are a must have for any practicing attorney and must look presentable. These premises apply to any attorneys or law firm no matter what the desired outcome. My first questions to someone thinking about a Web site and online marketing are how is business currently coming in and what do you hope to accomplish. Even if a law practice is satisfied with the volume of business coming in by referrals, a Web site is a necessary tool in order for a potential client to validate the attorney. If you do not think referrals are still searching the Internet to confirm your worthiness before retention, you are kidding yourself. As such, a Web site is a must and has to look presentable. At a minimum, the Web site should be easy to navigate and provide information about the attorney and the legal services provided. The cost to implement and maintain such a basic Web site is minimal and there are dozens of online and local services to assist an attorney with designing and hosting such a Web site.

However, if you are looking to acquire more business, the Web site must go further than just providing basic information about the attorney(s) and the area(s) of practice. The Web site must be "optimized" to market your practice on the vast imaginary place called the Internet and encourage potential clients to call YOU instead of the other thousands of attorneys in your area. Search Engine Optimization ("SEO") of a Web site, as I believe it to be, is something like the proverbial wizard behind the curtain. It is the underpinning process performed on a Web site that assists and encourages the search engines (Google, Yahoo, etc.) to find your Web site, rank it "organically," and list it accordingly; preferably on the first page. The term "organically" essentially means that you have put in a lot of effort, time and, most likely, money to cultivate your Web site so potential clients can find you. The process of optimization is far more complicated than this article will cover; however, I can tell you that it is a very important process to the long-term cost effective acquisition of new clientele. That said, I will say that SEO involves key search words that are purposely imbedded within the text of your Web site, as well as the content of your Web site, and uniformity amongst online profiles, which will be briefly discussed.

Web site content not only attracts a search engine (remember this means Google, Yahoo, and the like) to your Web site but also is another key to attracting new clients. As I alluded to at the beginning of the article, we, as attorneys, hate to give away information for free. After all, Abraham Lincoln himself told us "A lawyer's time and advice are his stock and trade." That said, sharing some basic knowledge and information on your Web site about the area(s) of law that you practice goes a long way when talking about online marketing. Search engines have been programed to seek out Web sites that are going to best serve the person seeking information. So, one of the main items a search engine is going to use to

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determine the ranking and order that Web sites are listed for a particular search is the amount of content each Web site offers about the information being searched out. The more content a Web site has regarding the search, the more relevant the Web site is to the person searching the information, thus the higher the search engine ranks the Web site… at least theoretically that is the basic process.

Not only do the search engines notice content, but also so do potential clients. Again, I know we do not want to give away the information that we are seeking to provide for a cost in order to support our families; however, the psychological and practical component to doing so is twofold. First, if someone is looking to just take that information for their own use, that person was never going to really hire an attorney anyways and you did not lose the potential client to a competitor. Further, you probably did not want that client as he or she most likely thinks they know the law better than you…because they read a few online articles. Second and more importantly, providing information about the law of the area(s) you practice gives credibility. Kind of like I just stated a sentence ago, if it was posted online, it must be true and the person stating it must know what he or she talking about.

That said, content can come in many forms and those forms have relevance to both the search engines and potential clients. A Web site can provide content in written, verbal and visual formats. Written can be information provided on the actual Web site's page(s) or links to your blog(s), which is by my account a modern fancy name for a short informational essay about whatever topic is on your mind. Content can also be conveyed verbally and visually through a video format. The search engines really like video content so these are widely used by most all of the higher-ranking Web sites.

Now, as I said previously, Search Engine Optimization is a cultivation process, which requires time to take effect and push your Web site ranking to the first page of a potential client's Internet search, even if you invest a lot of money right from the beginning to do everything possible to optimize your Web site. SEO can have significant upfront costs to put all the strategies into effect; however, there is another route in the form of Pay Per Click ("PPC") to expedite the process of being seen on the first page when a potential client searches for legal services. PPC is non-organic so it can create immediate results if crafted appropriately. It is essentially an advertisement that appears at the top, bottom or side of a web search amongst the organically promoted links to other Web sites that appear in the middle of the page. And, as we all know, you pay for advertising; however, this format is a little different than regular print advertisements in that the cost for the ad comes when a potential client "clicks" on the link to your Web site. PPC can be a more instantaneous, more direct, and more cost effective method of online marketing for these reasons and is being used very effectively by practicing attorneys seeking new clientele.

One very cost effective and essential way to perform online marketing is through third-party online profile Web sites such as Avvo, FindLaw, HG.org, Lawyers.com, Lawyer.com, Justia, LawyerCentral and many, many more. Profile Web sites like these actually put you on their sites whether you ask to be or not. Essentially, they acquire very basic information about those admitted to practice law through the Attorney Registration and Disciplinary Committee and create a profile for every registered attorney. The problem is that the information these sites acquire is not always accurate and complete, which can hurt your ranking in a search results. (I am told that it is an algorithm thing with the search engines. Something that those who actually paid attention in trig class understand.) These profile sites can provide free contact information and a link to your Web site; however, your profile is just one amongst the 91,000 attorneys registered in Illinois, let alone all those in the nation. As such, most profile Web sites offer "premium" profiles, which push you further up the ranks and potentially offer ad space similar to PPC. The one notable difference between this form of online marketing and what I previously discusses is that these sites are what I would call two-tier Web sites. In other words, a potential client performs a search for legal representation and the search engine pulls up a list of the Web site links that it has determined are the most relevant (remember this is the wizard behind he curtain) along with the PPC advertisement links. Amongst the organic search listings that link directly to an attorney's or law firm's Web site are the profile Web site links. A potential client will see a mixture of links listing both the actual attorney/law firm's name and the online profile company's name. The reason I call profile companies "two-tier" Web sites is because a potential client has to click on the profile company's Web site link first and then a list of attorneys/law firms will come up on their Web site, which requires a potential client to then click on those links. So, the potential client has to click through two layers to get to your information. Now, this is not particularly a bad thing for many reasons. First, the top profile Web sites companies have invested significant time and money into ensuring that their Web site link appears on the first page of a search (rarely does anyone searching online go beyond the first page of an internet search). Second, many potential clients believe that there is credibility to those that are listed on the online profile Web sites (they do not know that we are listed even if we did not ask to be). Third, it is far better to be listed on a Web site that ranks on the first page of an Internet search than to be on page two of the same search. I have no empirical data to support the last two points; however, my own experience, psychology background, and common sense lead me to believe this to be true.

The final and a more recently evolving form of online marketing that I will discuss is that of social media. The most popular formats are Facebook, Twitter, LinkedIn, YouTube, Google+, and Instagram in no particular order. There are others out there such as Pinterest but I question the applicability to our profession. Social media forms of online marketing have been evolving over the last several years and have actually become a formidable platform for online marketing. The number of potential clients using social media is staggering and the marketing services that the top

six I mentioned above have available have increased significantly. Such services offered to market you, or your law firm, range from completely free, do-it-yourself, to paid advertisements with full production setups similar to a Web site. The marketing platforms that can be implemented through social media can encompass personal/firm based profiles, informational blogs, chats, and videos, and the ability to access an audience through friends of friends of friends of friends and so on. The word amongst the online marketing gurus is that if you are not utilizing social media to round out your online marketing, you are missing the boat and falling far behind even within our own profession.

Unfortunately, the legal profession has historically been missing the boat and falling far behind when compared to other professions in the areas of marketing as well as the implementation of technology, which go hand-in-hand when talking about online marketing. I suppose it comes from the staunch ideals that lawyers should focus on serving the public and not the business; to do otherwise would demean our professionalism. I disagree with the thought that advertising in our profession is inappropriate and, in fact, I believe that we have a professional duty to let the public know the types of legal services that are available. That said, we have a professional duty to ensure that the means and content of conveying the types of legal services that are available are moral, appropriate, and dignify our profession. Whatever the reason is, we, as professionals and business owners, cannot allow ourselves to miss the boat or fall behind any longer. I am grateful to be a member of the Illinois State Bar Association, which offers the resources for practicing attorneys to keep up and even forge the way, especially through the guidance of the section councils and committees like Law Office Management & Economics.

So, we return to the fabled question: To invest or not to invest in online marketing. That is the question. The answer is…it depends…to a point. The point being, no matter what, you have to invest a certain amount of time and money to be relevant in the legal profession. The question becomes how much and to arrive at the answer you have to determine what is your goal. Do you just want to provide a place on the Internet for a referred client to confirm you exist or do you want to grow your clientele beyond referrals? Unfortunately, the possibilities are endless unlike the investment capital necessary to make it happen. ■

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Case management systems

CONTINUED FROM PAGE 1

becoming increasingly more critical.

From a litigation perspective, there was a paramount need to interface with Microsoft Office, have quick remote access while at court, customizable litigation tools such as specials analysis, discovery tracking, trial documents, searchability and the ability to generate case lists and deadline reports.

And so with this growth and need, our search began. We reviewed several case management programs including Needles, Time Matters, and Clio. Many checked off one or more of our wish list items, but we struggled with finding one system that addressed both operational/management and litigation attorneys' needs.

Ultimately, we chose Trial Works – It was the clear winner for our firm. The system excelled in meeting our key needs and offered both cloud based and an on-premise server option. Perhaps, my favorite feature of Trial Works is the customizable fast-tracks, allowing us to automate intake protocols, pleadings protocols, discovery protocols etc. In the background an access database is always running. All fields within the database, such as liability type, handling attorney, contact type etc, resides in the Access database and can be manipulated in any number of reports (dashboards) to meet internal firm needs. Another added bonus is the backing we receive by the tech support team, which is constantly upgrading and improving the system and is open to incorporating client suggestions and customization of screens. Trial Works was so willing to work with our firm and customize its program - which is a huge value add for us.

While many would argue that the selection process of identifying and ultimately choosing the right system for a firm is the hardest part, I believe the actual implementation process is a close second. When implementing, the following should be kept in mind:

* Having the right team members in place from the outset
* How initial training will be structured
* How to nurture growth and provide continued training

It is only natural to be excited about having something new, but rushing the on-boarding of the program can make the entire process a nightmare. The creation of an implementation team comprised of a lawyer and administrative individual from each practice area is a must. Every person and every team uses the system a little differently and having input on the front end will make eventual training significantly easier.

On-site training is often an afterthought – but there is no substitute for having employees use the system in their own environment. Most jump the gun and do training all on the front end. Choosing a

system that will allow you to break up the allocated training makes the transition much easier. Remember, this is a new platform and a new way of doing things for everyone in the office. People are resistant to change. Doing an introductory three-day training, followed by a two-day intensive training a few months later is preferred and allows for team members to get their hands wet and then come back with meaningful questions that come from experience in using the system. In the first few days of training, employees are doing the "how to's" and don't even know what questions to ask or what the system is truly capable of doing. By breaking up the training, part two allows employees to take their questions to the next level and really increase their efficiency in performing their daily tasks.

A case management system is not a one and done investment. Investing in web-based quarterly training (often five hours are included) allows attorneys and employees to utilize the system at its fullest potential, ultimately making the firm more productive – Productivity means dollars. We still have not used Trial Works to its fullest potential but have every intention of doing so and look forward to expanding how we use the program.

Almost a year in following implementation, there are no regrets. In hindsight, it was not a process to be dreaded, but rather embraced. Our firm has most certainly reaped the benefits of having a new system in place. Never before did we have the analytical tools at our fingertips literally to forecast business needs. Our attorneys and support staff are able to be more productive and allocate precious time to litigating instead of finding work arounds in an outdated system. No longer are we left in the wake of yesteryear's case management software, but we are ahead of the pack. ■

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Billing options

BY AMBER MIKULA

When attorneys start to grow their own small firms or solo practices, they may need to adjust their billing practices, in order to accommodate more clients. More and more clients are trying to represent themselves or try to negotiate legal fees, in order to save money and to control the amount of the legal fees. As clients seek more opportunities to save money, attorneys must become more flexible with billing options, in order to meet the needs of the clients. Some types of billing options to consider are legal services plans, discounts, flat rates, and limited scope representations.

Legal services plans are benefits that some companies offer to their employees. The employee pays monthly fees, from his or her paycheck, just like health insurance. If the employee needs legal services, he or she receive a list of approved plan attorneys and obtains a case number. After reviewing the list of attorneys, the employee contacts an attorney and verifies that the attorney can represent him or her in the specific case and can retain the attorney.

As a member of the plan, an attorney chooses which areas of law he or she is available to represent clients. When a client contacts the attorney, for representation, the attorney obtains the case number and can verify the coverage. Each plan provides different coverage, depending on the type of case, as well as the benefit available to the employee. Some plans only cover consultations, while other plans cover a specific number of hours of attorney time or require the attorney to provide a discount to the employee. The attorney needs to carefully review the type of coverage that the client/employee has with the plan. Typically, the attorney provides a bill to the plan, when the case is finished. However, if the case is extensive, the plan may allow the attorney to send bills, at certain time intervals, to make payments to the attorney.

If the potential client has a legal plan, he or she is, still, obligated to pay any costs in the case, including filing fees, service fees, copy fees, etc. Even if the plan pays the full attorney fees, it is important to verify the amount of the fees that will be paid. Some of the plans have limits on fees, so, if the case is complicated or you expect the case to be contested, it may not be worthwhile for you to accept the case. It is, also, important to send out regular billing statements, to the client, so he or she can, still, review the work done on the his or her behalf, even though the plan will not pay the bills until the case is finished.

A second type of billing option to consider is discounts. If the client pays an initial retainer fee, then he or she will receive regular billing statements to review the work done on the case, as well as the balance of the retainer. Once the retainer fee is exhausted, the client needs to make payments on the balance or pay an additional retainer fee. In order to encourage the payment of the bill, you can offer the client a discount, if he or she pays the remaining balance, in full. It is better to receive the full payment, as soon as possible.

Clients may make monthly payments on the bill, if they do not have the ability to pay the balance, in full. As time goes by, the client may become less and less likely to make the payments. The attorney has

to continue to send out regular statements and monitor the account activity, in order to ensure that the client continues to make payments. All of these activities take additional time away from actually working on client files. By offering a discount, the client receives the benefit of a price adjustment, while the attorney receives the benefit of closing out the file and not having to chase the client down for monthly payments. It is a good way to get a client to pay the bill, if you know when he or she is receiving a tax refund, bonus, commission check, or another large payment.

The next type of billing option to consider is a flat rate. Depending on the type of case, the flat rate is attractive to the client because he or she knows the exact amount of the attorneys' fees and costs. This type of option can work well for transactional matters, like real estate or wills. For other types of cases, such as family law, it can be risky. Too often a simple, uncontested case evolves into a highly contested matter. In those types of cases, it is important to specify, in your retainer agreement, that the flat rate applies only to the uncontested case. If the case becomes contested, then the attorney should provide, in the retainer agreement, that he or she is allowed to withdraw from the representation or that the client will agree to pay the hourly rate. Otherwise, you can end up spending a lot of time, on the case, and essentially not get paid for your work.

Lastly, the limited scope representation is a billing option. Pursuant to Illinois Supreme Court Rule 13(c)(6) and Rule of Professional Conduct 1.2(c), an attorney may file a limited scope appearance in the representation of a client. This representation is a way for the client to limit his or her legal fees and for the attorney to provided limited court appearances. The appearance form requires that the attorney delineate the areas of the representation, including appearance at a specific hearing, trial, deposition, or the scope and limits of representation for a family law matter.

The limited scope representation, also, allows the attorney to review documents, such as settlement agreements, assist with the preparation of pleadings, review financial records, etc. without the obligation to represent the client for the entire case. This option may be useful for a client who is looking for legal review of documents, but who is capable of representing himself or herself in court. It, also, is helpful for a client, who is involved in an uncontested case, but would like an attorney to review and/or explain the documents to him or her.

When the attorney completes the agreed upon representation, under the limited scope appearance, he or she files a motion to withdraw. Alternatively, if the client would like to extend the representation, the attorney files a new notice of limited scope of appearance, stating the scope of the new or extended representation of the client.

As a solo practice or small law firm grows, billing options may be useful to meet the demands of the clients. The billing options provide flexibility in terms of representation and billing, which will increase the firm's revenues, while providing the clients more certainty over their bills. Regardless of the billing option utilized, it is important to completely disclose and communicate the fees, with the client, in the retainer agreement, in order to ensure that the client and the attorney have the same understanding as to the attorney's representation of the client. ■

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How to ethically and profitably refer personal injury clients

BY DAN BREEN

You return from domestic relations court mid-morning to your busy practice and a handful of voicemails. Among those voicemails from potential clients, and current clients who check in all to often, is a message from an old client whose case you handled a few years back. The long and short of his message is that he was in a seemingly minor car crash a few days ago, but he is continuing to suffer back pain. He is wondering if he should talk to a lawyer even though the police report says that the person who hit him does not have car insurance.

You know just enough about personal injury litigation to know that you learned early on that you do not enjoy personal injury litigation and have never practiced in this area. However, you also know that the referral of a personal injury matter, handled the right way, can be a source of income from time to time. Nice as such a fee may be though, a number of questions immediately pop into your head:

- If this was a 'minor' crash and the other side does not have insurance, do I really want to bother someone with it?
- If I refer it to someone and something goes wrong, would I have any malpractice exposure? Are there ethical rules that I need to be mindful of?
- If I do refer this case out and something

comes of it, how do I know that my interest will be accounted for and protected if and when the case is resolved profitably?

These concerns are all valid and many of cases that look like this do not turn into much. It is not uncommon that a client in such a situation would have injuries that progress to the point of surgery and that client has his or her own uninsured motorist coverage, rendering the at fault party's lack of liability coverage a bit of a moot point. The manifestation of a significant injury plus a viable insurance policy means that a referral to a trusted personal injury attorney could result in a handsome little referral fee once the case is resolved.

A good relationship with a referring attorney is important. There is no one-size fits all approach. To a firm like ours, our referral sources are our bread and butter, so we take great care to ensure they are kept in the loop and contacted about cases and brought into client communication when appropriate. Our office happily assumes that we will be paying 1/3 of our fee on any personal injury case that comes in from another lawyer.

Some lucrative cases are obvious, but as discussed above, many are not, but damages can materialize. Insurance money can be found. When in doubt, its usually better to refer it to someone rather than not. You never know when you will find the proverbial diamond in the rough. And as the grateful recipient of some of those referrals, I would happily sift through 10 weak cases for every one good one.

So you have a good relationship with a plaintiff's lawyer who you trust. What do you need to know to make sure you are protected when the case comes in, keeping in mind that protection means a few different things. First, how do you protect your portion of the fee? While it should go without saying that you probably won't be sending business to someone if there are any doubts as to that person's aptitude to live up to any less than a handshake agreement about referral fees, its good to know the legal requirements. Rule 1.5(e) of the Illinois Rules of Professional Conduct sets the requirements forth pretty clearly (emphasis mine):

> A division of a fee between lawyers who are not in the same firm may be made only if:
>
> (1) The division is in proportion to the services performed by each lawyer, **or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer jointly assumes joint financial responsibility for the representation**;
>
> (2) The **client agrees to the arrangement**, including the share each lawyer will receive, **and the agreement is confirmed in writing;** and
>
> (3) The total fee is reasonable

The commentary to this rule goes on to clarify that "joint financial responsibility for the representation entails financial responsibility for the representation as if the lawyers were associated in a general partnership." *In re Storment*, 203 Ill.2d 378 (2002). See also rule 1.5 (c) as to other requirements of contingent fee agreements and 1.5 itself generally as to fees.

Of course, with any benefit comes some form of risk. With a referral fee, one of the most important risks to keep in mind is that if you are entitled to a portion of the contingent fee in a case, you are also on the hook in the event that anything should go sideways. If you send a case to a lawyer who misses the statute of limitations, fails to make a timely disclosure, misses a discovery deadline, or does anything else that could get a lawyer sued – you will be on the hook for those damages as well. Of course, such situations are never supposed to happen, but as lawyers, we know that we need to protect ourselves for the worst-case scenario.

Another area of concern is that of a potential conflict of interest. This one comes up most often with large firm transactional or civil defense lawyers who have business to refer to their plaintiff litigation peers. The rule mentioned above requires both lawyers to assume joint financial responsibility tantamount to that of a general partnership. If a large firm lawyer takes on such an interest with an individual personal injury plaintiff, he/she needs to investigate whether he/she risks creating a conflict, should one of the firm's national corporate client's need to be named as a defendant. Even if the large-firm lawyer does not have a current conflict of interest, the risk of a potential future conflict which could jeopardize a shot at a lifetime of fees might not be worth the benefit of modest referral fee on a personal injury case.

In closing, here are a few best practices to ensure that you are protected and stand to make money on your personal injury referrals:

- As with most things in life, strong relationships go a long way. Develop referral relationships with people you trust;
- Calendar the statute of limitations independently of the referring attorney. If nothing else, it will help you sleep better at night;
- Because of joint financial interest on cases, be sure to make any necessary disclosures to your malpractice carrier;
- If you are part of a firm, decide up front how referral fees are to be handled (to the lawyer or to the firm) up front, so that there are no surprises or arguments when money comes in;
- And of course, if there is any doubt about the viability or value of the claim, err on the side of calling your friends in the personal injury business.

Dan Breen is a founding partner at the plaintiff litigation firm Breen Goril Law and author of the book Opening a Profitable Law Office in the New Economy. If you are curious for more on the subject of referral fees, Dan will be presenting a CLE titled "How to Ethically and Profitably Refer Personal Injury Clients" during the ISBA Annual Meeting in Lake Geneva on the morning of June 16, 2017. You are welcome to follow Dan on twitter at @danimalbreen.

Law Firm Succession/Exit Strategies: Small Firm Merger

A Case Study of a Solo Attorney that After Two Unsuccessful Attempts Took a Phased Approach to a Merger with a Small Sole Owner Practice

BY JOHN W. OLMSTEAD, MBA, PH.D, CMC

Law Office of Mary Allison (Fictitious Names Used)

Upon graduation from law school Mary Allison, like many young lawyers, landed a job in a small law firm owned by Michael Brown. Michael's practice was limited to estate planning, estate administration, and real estate. Michael was in his early fifties and it was his hope that Mary might be his eventual succession strategy. Mary was Michael's first associate. Mary worked hard for the next five years working on Michael's matters as well as her own. After seven years with the firm Mary was, bringing in enough business that she only had time available to work on her own matters. She was generating fifty percent more fee revenue than Michael and bringing in more business. On several occasions, Mary brought up the subject of partnership but Michael advised her that he was not interested in having a partner. Mary felt that she was not being adequately compensated, had no voice in the firm, and little control over her future. After ten years, Mary left the firm and started her own firm concentrating on estate planning, estate administration, and real estate. She took her clients and her paralegal that had worked for her at Michael's firm for the past ten years with her.

Mary was a natural and her firm was successful from startup. She was a good attorney and had an excellent bedside manner. She truly cared for her clients and it was evident from the repeat business and referrals from her clients. Mary built up a strong referral source base of banks, financial planners, accountants, attorneys, insurance agents, church members, and community leaders. Mary enjoyed being a "solo" and had no desire to grow any larger than herself, her paralegal, and her staff assistant. She never had the need to hire another attorney, as she was able to handle the business by herself and her paralegal.

Fast-forward the calendar 35 years to 2013. Mary is now 70. Mary is having some health problems but is still in relatively good health. She loves her clients, enjoys her work, and wants to continue working as long as she can. However, Mary realizes that she will not be able to continue working forever and needs to begin planning for the eventual succession and transition of her practice.

Mary retained our firm to assist her with succession planning and advised me that her long-range goals, in order of priority, were:

1. To take care of her clients
2. To provide continued employment for her paralegal
3. To receive fair compensation for her practice

We discussed various options including:

- Hiring and mentoring a young associate that could eventually buy into the practice
- Selling the practice
- Merging with another firm
- Forming an Of Counsel relationship with another lawyer or law firm

Mary quickly ruled out hiring an associate and mentoring. She believed that she did not either have the time or a sufficient volume of business to support an associate's salary. Since Mary wanted to continue to practice as long as possible, she did not want to sell her practice prematurely due to the ethical requirements and restrictions that would have to be satisfied with a practice sale. She was open to an Of Counsel relationship or merger with another law firm.

Mary had been talking with another attorney, Sally, who recently left her in-house position with a bank trust department about a possible future relationship regarding providing backup coverage for Mary's practice and eventually buy Mary's practice at such time that should would decide to retire. I interviewed Sally and I had concerns. I did not believe that Sally had the desire or entrepreneurial ability to own and manage a law practice. However, Mary liked Sally and wanted to work out an arrangement. I suggested a "pilot test" and we structured an affiliate "Of Counsel" type relationship designed to explore whether the relationship could work. In essence, the "Affiliation Agreement" (Of Counsel) provided:

- Sally would work at Mary's office one day a week and she would work on Mary's matters;
- Over time Sally would be introduced to Mary's clients and referral sources;
- For services provided for Mary's clients, Sally would be paid an hourly rate; and
- For business that Mary referred to Sally that Mary did not handle or business that Sally referred to Mary Sally would be paid a referral fee of 20 percent.

Mary and Sally signed the agreement. Two weeks later Mary called me and advised that the arrangement did not work out and they had terminated the relationship. As I suspected Sally had no real interest in ever owning a law practice and this become obvious to Mary as they moved forward with the relationship. While Mary was disappointed, she was

also gratified that she started with an exploratory relationship rather than jumping "feet first" into a partnership or other relationship.

We then placed online ads and commenced a search for other candidates. We were looking for other solo attorneys with an established estate planning/administration practice. After meeting with three potential candidates, Mary focused on one candidate, Kathy that had an established practice in another city approximately 15 miles away. Kathy was in her early 40s and her practice, in addition to handling estate planning and estate administration, handled elder law as well. Both practices generated approximately $300,000 in annual revenues. They visited each other's offices, met each other's staff, and had lunch on three different occasions. Mary and Kathy really liked each other and believed that they could make it work. Kathy's practice was located in a less affluent community and her practice had reached a plateau. She believed that the acquisition of Mary's practice could really jump-start her practice in five years. Mary believed that Kathy would be a good fit for her clients and would provide solid employment for her paralegal.

Mary was cautious after her recent experience with Sally. Mary and Kathy executed the same "pilot test" Affiliation Agreement that Mary and Sally executed. The relationship proceeded well and they began working together. In addition, since Mary did not handle elder law matters she began referring those matters to Kathy and received a 20 percent referral fee for those referrals. After six months, we met to discuss the next step. Mary wanted to merge but Kathy was not ready for a merger. Mary was still unclear about her actual retirement timeline but suggested that she wanted to work another five years. Therefore, she was uncomfortable with actually selling the practice at this time. Kathy and Mary agreed that Kathy would become "Of Counsel" with Mary's firm and Mary would promote the relationship to her existing and prospective clients. Mary and Kathy also agreed to the terms for the purchase of Mary's practice when Mary decided to sell her practice in the future.

Mary retained a business attorney to draft a formal "Of Counsel" agreement. The "Of Counsel" agreement contained similar provisions as the Affiliation Agreement but with a lot more legalese. It also contained a right of first refusal for Kathy to purchase the practice when Mary decided to sell in accordance with terms outlined in an attached Practice Sale Agreement. The terms of the Practice Sale Agreement provided for a $50,000 payment at closing and 20 percent of practice revenue for five years with the $50,000 payment serving as a credit against future payments that would be due. Mary and Kathy signed the agreements.

The relationship continued to go well. Mary's client's liked Kathy and Mary's paralegal and Kathy worked well together. Mary now had backup and coverage and was able to take more time off. Kathy received additional revenues in the form of payments for her time spent on Mary's matters and elder law referrals. Mary received referral fees from the elder law matters referred to Kathy. However, after one year, the relationship fell apart and Mary and Kathy terminated their relationship. The problem resulted from Mary's unwillingness to commit to a retirement timeline and micromanaging Kathy and treating her as an associate rather than a peer business owner.

After the relationship fell apart Mary contacted me and advised me of what had happened. I scolded her and advised her that if she did not commit to some sort of a specific timeline and recognize that since her goal was "succession and transition" and she should not try to enforce her approach on another attorney, she might not find anyone interested in working with her. She began searching again and met with a few candidates with no success. Finally, I introduced her to Brian the owner of an estate planning/administration/elder law firm in a community approximately 20 miles away. Unlike the other candidates that Mary had formed relationships, Brian had a larger practice that included four other attorneys and five staff members. Brian's practice had hit a revenue plateau at $1,100,000 and he was looking to expand his practice into other communities.

After several meetings, Mary and Brian advised me that they wanted to merge their practices. Based upon Mary's past record of accomplishment I suggested a two-phased approach. A four-month "Of Counsel" relationship to explore feasibility and compatibility would constitute Phase I and a merger of the practices would constitute Phase II. The same "Of Counsel" agreement with the right of first refusal and related sale agreement that was used with Kathy was executed for the exploratory Phase I. A preliminary term sheet outlining the possible terms of the merger was prepared and discussed. Mary and Brian agreed that they would further develop the terms for the merger as they progressed through Phase I.

The relationship went well and after four months, Mary and Brian merged their practices. Since both firms were proprietorships, Brian formed a LLC, Mary merged her firm into the LLC, and they executed an Operating Agreement, which, among other things, established ownership interests, capital contributions, compensation, and for Mary's retirement payout after three years. Mary and Brian continued to operate and manage their respective offices until Mary retired at which time Brian took over and staffed Mary's office with an associate attorney. A few details of the merger included:

- Mary retained the cash in bank and collected and retained cash from her accounts receivable, and work in process;
- Mary's fixed assets were sold to the LLC at appraised value and credited to her capital account;
- Mary's was admitted with a forty percent membership interest;
- Compensation was based upon a "profit center" approach with each office being treated as a separate profit center;
- Mary agreed to retire within three years after the date of the merger and her payout would be based upon 20 percent of gross practice revenue from her practice location for five years; and
- Decision-making and voting was based upon ownership interest.

This time Mary got it right. The merger

was successful and Mary is now retired, in her third year of her five-year payout, and enjoying her retirement. ■

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This article is an excerpt from the book "The Lawyers Guide to Succession Planning: A Project Management Approach for Successful Law Firm Transitions and Exits written by John W. Olmstead and published by the ABA is available from the ABA Web site at http://tinyurl.com/zqgckkt.

Lawyers need to blog

BY ALAN PEARLMAN, "THE ELECTRONIC LAWYER" ™

In our day and age, if you are an attorney you need to be out in front of your profession in every possible way. No question about it you must make and keep a commitment to re-brand yourself every 24 hours now a day, with all that is out there bombarding potential clients.

That being said, by now the lawyers are shaking their heads saying I just don't have the time to try and make a Blog or post a Blog...I spend my time taking care of an office and clients. Well you can do that but soon there will be no clients to be taking care of. They will have read someone else's Blog and hired that firm!

OK, how can I do this and still not have to worry about how to try and make a Blog look good with the right feel to it and the right approach. Well, stop right there in your tracks. There is a fabulous company, LexBlog, Inc. located in Seattle, Washington, (800-913-0988 or LexBlog.com) that will take all of the guesswork out of preparing and creating your legal blog for the entire world to see and enjoy!

The company will help the attorney to develop a strong online presence that drives business development. They do blogs—really awesome, well-designed, responsive blogs that create wide-spread, business-generating reputation. And, they will coach you on how to get started, keep it up and not look stupid in the process!

As they say over and over again at LexBlog - "it can be intimidating or downright scary to start blogging and getting yourself out there. But you won't be alone. We'll make sure you don't do anything you'll regret later, in fact, we'll make sure you get the best start possible." This then is done with their expert coaching on how to develop the best blog for your legal practice.

Sometimes the attorney wants more - perhaps some that are reading this don't even have a Web site well the experienced team at LexBlog can help you create an online strategy including beautiful Web sites, internal sites and network sites. If it's extended training or coaching you need, LexBlog can help you out there as well. They do in-depth training on social media platforms like LinkedIn and how to use it for business development, Twitter and Google+. Just ask them to help you with whatever it is you want and need and they we'll work with you to create the right program for your team.

I myself have been with this fine company since almost its inception and they just keep getting better and better as the time goes on. LexBlog manages the world's largest curated collection of professional blogs that shines a light on lawyers doing great work. More than 8,000 lawyer-authors provide a regularly updated flow of legal opinion and analysis. By aggregating and curating this rich content, they create multiple points of exposure for their clients.

So now there you have it - no more excuses!

As my High School Band director always said - "Results - Not Excuses" and if you want the best results and IF you want to have a blog that outshines your competition call or email LexBlog and see what a difference your professional image will have!!! ■

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My head and my work are in the clouds—With ScanSnap Cloud

BY ALAN PEARLMAN, "THE ELECTRONIC LAWYER" ™

More often than I care to think about, I need to send documents from my computer to the cloud and to save many things, cards, exhibits, and other legal items for trial or conference. With the new ScanSnap Cloud I no longer need a computer!

I need only to have my small portable ScanSnap iX100, a Wi-Fi connection and an account with a cloud service, mine is Google Drive. The greatest thing is that I get to place documents, cards, exhibits, even my business receipts and just scan them, then voila, the magic happens, my cloud service has them almost instantaneously.

It gets even better – because with the new ScanSnap Cloud you get automatic color detection, auto skew correction, auto cropping, auto page size detection, auto quality and orientation, auto blank page removal and auto bleed removal. It so amazing that all you do is a scan – the work and the task become a automated work product.

This new Cloud is so revolutionary I don't see how anyone can practice law without having the service, and not to worry, it works with too many Cloud Service Accounts to even list here.

ScanSnap Cloud will free up your time and it will help you declutter your desk and your briefcase!

If you only had one item to get for a law practice, I can't see how you would pass up the ScanSnap Cloud. Put your head in the ScanSnap Cloud and your mind will be at ease!! ■

Editor's note: This article originally appeared on the Scan Snap Squad Web site.