



FLEMING
STRATEGIC

BUILDING THE PRACTICE WITHIN THE FIRM

NINE COSTLY LEGAL MARKETING MISTAKES... AND HOW TO AVOID THEM





NINE COSTLY LEGAL MARKETING MISTAKES... AND HOW TO AVOID THEM

Unless you've been asleep under a rock, you realize that the practice of law has changed significantly over the last six years. Unless you've been paying unusually close attention, though, you may not realize that the practice has experienced a quiet revolution in the last fifty years. That earlier revolution in many ways prompted the later one, by creating dreams of "wealth by JD," an expectation of certain financial success simply by virtue of practicing the genteel profession of law.

Those expectations couldn't be realized in a vacuum, however, and new pressures came into play for lawyers: the inception of the billable hour, ever-rising hours requirements, a relentless focus on profits per partner in larger firms, and a certain arrogance with clients that was masked in the professional approach to dense problems that clients didn't, perhaps couldn't, understand. That attitude started to unravel with the advent of lawyer advertising, and the expectation of working hard for easy money started to crumble a bit over the subsequent years.



Like any balance beam, however, the weight has now shifted firmly to the client side. **It's a buyers' market, and buyers have more options than ever:** a glut of lawyers in most practice areas, legal start-ups that challenge the notion of business as usual, technology and offshore personnel who can handle what used to be matters for lawyers, DIY solutions that appear just as good as the ones that come with a hefty invoice, in-house lawyers who capably handle much of the work that used to be outsourced, and unbundled legal services. There is fierce competition for a shrinking pool of clients.

It isn't your imagination. Times really have changed that much.

And whether you've been practicing for five or fifty years, chances are good that your training has been pretty much the same: three years spent focusing on how to think like a lawyer and exposure to a variety of substantive areas of practice through a relentless



series of cases and professors' questions. If you were lucky (or paying unusual attention to the trends in practice), you might have had some exposure to the idea that practicing law requires more than being a good lawyer, **but you probably didn't get much (if any) education on how to run the business side of a law practice.** And unless you made a special effort to educate yourself once you entered practice, that probably didn't change much. Your first inclination will always be to focus on client service, not realizing that failing to work on building your practice could mean that you won't have enough clients to serve.

In a buyers' market, understanding the business of law is critical to building a successful law practice. If you don't get that, you're doomed to struggle. You have to keep your eye on the trends and shifting pressures so you can adapt to economic, social, and business changes. That's a tall order on top of other practice responsibilities.

There are nine costly mistakes lawyers make that cause a practice to stagnate or even shrink. The good news is, once you understand this, you can make changes (starting with your own vision and understanding, then expanding to the way you practice) that will let you build the practice you've always wanted.

MISTAKE NO. 1 NOT CREATING VALUE FOR CLIENTS

Let's assume that you do good work from a substantive perspective and that you deliver that work on time every time. That's a great start, but it isn't enough anymore.

Historically, clients have measured value received from an attorney based on the successful outcome of a matter. Did you win the case? Did you get most of what the client



wanted in the negotiation or contract? If you did, you delivered value, and clients would usually be satisfied.

Today, however, clients are more sophisticated than ever before. They're often able to evaluate the cost of the successful outcome in terms of dollars, time, missed opportunities, and resources consumed. Whether that evaluation is correct isn't the point. The point is that a good outcome is just the tip of the iceberg in value creation.



Part of value creation is about money. Ask yourself:

- Do you offer alternative fee arrangements that are a win for your clients and for yourself?
- Do you look for ways to save your client money even if it means losing some income you would have received otherwise?
- Are you implementing legal project management and other systems to streamline the business side of completing client work?

Money is an important part of value creation, but it's only one part. To get a full picture, ask these questions:

- Do you understand where the matter you're handling fits in the **context of your client's life or business**?
- How often do you bring proactive solutions to your clients? Not the kind of proactivity that's code for more work and more fees, but spotting issues and opportunities and trends, then delivering that "need to know" insight before your clients know they need to know.
- Do you make it easy for your clients to work with you?

And the key question: can you identify right this minute exactly how you're bringing value to your top clients? Doing the work well isn't a good enough answer in this economy. Extra credit for those interested in growing your practice: how do you bring value to your top prospective clients and your key referral sources?

Lawyers who aren't paying unwavering attention to creating value for their clients are making a costly legal business development mistakes, and they may be losing business as a result.

MISTAKE NO. 2 FAILING TO REALLY SEE CLIENTS

Sure, you see your clients. You have meetings with them; you talk with them by telephone or videoconference. **But do you really see your clients?** Too many firms and lawyers view their clients as one-dimensional objects of practice. Client numbers are assigned, and the client comes to assume that number as an identity.



You don't ever intend that to happen, but the press of business can make it hard for you to keep up with clients individually ... **And that's why you must have a system in place for making sure that you recognize what's happening with and for your clients.**

This is a problem that's endemic to rainmakers who are single-mindedly focused on growing a book of business. They court a potential client. They're interested, highly responsive; they make an effort to learn about their potential client's interests, to engage that person in business and personal conversation, to be their most appealing self. And then as soon as they get the matter, that deeply personalized attention drops off because they've shifted to service mode (which often equates to maintenance mode, or a handoff to another lawyer in the firm) while the rainmaker is off chasing another client.



I once spoke with a disillusioned spouse who complained about the shift in the relationship after marriage. No more cards, no more gifts just because, conversation dwindled to the day-to-day focus on the kids and getting the car serviced and making the mortgage payment. The relationship wasn't bad, but it certainly was dry. And then someone new came on the horizon, someone who did the things that the spouse used to do, who always brought on deep and interesting conversation, who seemed to promise a richer relationship. Suddenly, an alternative to the relationship with the present-but-not spouse appeared. This story has a happy ending because of the marriage vows both took, but no client will take a vow to stay with a lawyer for better or for worse.

That's how marriages end, and that's how clients get poached by other lawyers. Not necessarily because the courting stops (though, really, who doesn't like to feel important, especially when paying a hefty fee?) but because the attention makes a difference. Understanding what's happening with a client can significantly affect the way an attorney approaches the client or the representation itself.

Do you know what your clients are concerned about? Are you aware of their successes and failures, and do you respond appropriately? When's the last time you sent a baby gift, a card or flowers to acknowledge a death, a note signed by your staff to acknowledge a business success?



Create a system that ensures that you get information about your clients (like Google Alerts) and that you check in with your clients regularly, to:

- take their temperature on their experience with you
- discover any significant business or personal changes that may affect the matter you're handling
- discuss what's going on with them in the bigger picture

Don't bag a client and then move on: build the relationship as you deliver the service you promised. If you fail to do this, you're committing a costly legal marketing mistake, and they may lose business as a result.

MISTAKE NO. 3 BEING INDISTINGUISHABLE FROM OTHER LAWYERS

Very often, clients view one lawyer as essentially indistinguishable from another in the same area of practice. Especially for legally unsophisticated clients, a lawyer is a lawyer is a



lawyer, and as long as she can handle the matter for the client and she “looks” ok—decent website, decent biographical sketch, decent office and staff—the assumption is that the lawyer will be adequate to meet the need. Even for more sophisticated clients who regularly hire lawyers, it can be difficult to find meaningful distinctions between competitors.

You have a way of approaching your practice and your clients that is partly innate and partly developed over the course of your practice. I call this your Attorney Avatar. I've identified six Attorney Avatars that describe practitioners, and each carries unique attributes and strengths and defines certain areas that will require attention to build a strong practice.

When you understand who you are as a practitioner, you can develop your attributes and characteristics to create a specific and systemized experience that you create for clients and potential clients. Of course, you must marry your clients' needs with your own approach to practice, but when you keep both in mind you'll create an experience that is unique to you because it's driven by your attitudes and beliefs about what makes for a good practice and a good practitioner.



When you combine your Attorney Avatar with your Marketing Identity, which describes your natural skills and tendencies in the way you approach marketing, you design an initial experience that carries from the first moment a potential client encounters you (whether that's via an article you've written, a presentation you've delivered, a visit to your website, or a personal meeting) throughout the course of the relationship. That initial experience is shaped through your marketing and through experiencing your approach to practice, and it will be unique for each lawyer.

The client experience can include everything from relations to education to recognition. Ask yourself, what impression would you like a client to have on first encountering you and your practice? How would you communicate that? What do you need to communicate to your client to orient him into your practice? What does your client need to know about the process of his matter and how to work with you? Everything you do, intentional or otherwise, creates a client experience.

When you know your Attorney Avatar (are you, for example, a Partner who focuses on client collaboration or a Gun who tends to have a high volume practice marked by specific processes and procedures to keep matters moving?), you have information that allows you to design a client experience in so doing to distinguish yourself from other practitioners. Ask yourself these questions to help you get a handle on this:

- How do you approach your clients and your practice?
- Do you have particular skills or experience that's valuable to clients?
- Do you offer extra resources that help your clients?
- Do you have an unusual and effective approach to your practice?
- What non-legal steps do you take to orient your clients into your practice?
- How do you (or how should you) help clients understand how their matters will proceed?

When you know your clients and you know yourself, you can see not just *what* to bring forward to get and keep the business, but also *how* to do it. If you have useful experience, for example, the way you present it can significantly affect how a potential client will perceive that experience.

Knowing your Attorney Avatar and using it to create a unique client experience will help you to distinguish yourself from other lawyers. Lawyers who fail to stand out from their competitors are committing a costly legal marketing mistake, and they may lose business as a result.



MISTAKE NO. 4 NOT INVESTING IN THE PRACTICE

When I was growing up, I loved a Kingston Trio song called *Desert Pete*, which taught me the concept of **priming a water pump**, or using a precious resource (water in this case) to produce more of it. The song's narrator describes his reluctance to pour water into the pump when he's so thirsty, but taking that leap of faith pays off.

Unsuccessful lawyers resist investing time and money into business development, but successful lawyers understand that it takes money to make money and that a practice can never grow without a significant investment of both time and money. Lawyers who don't get this lesson—those who are tight-fisted with time and money even when using it well would lead to more and better business—commit a costly legal marketing mistake that may cause them to lose business.

It costs thousands (and thousands and thousands) of dollars and huge amounts of time to become a lawyer. That education is an investment that can pay off handsomely, though law school is no longer viewed as an easy decision or a certain career path thanks to recession-era changes in the job market and in the perceived value of a law degree.

However, your investment doesn't end on receipt of your law degree. You know about ordinary business expenses and CLE credits, but how do you look at investments required for client service and business development purposes? In fact, do you see investments, or do you only see expenses?

You'll need to make investments of both time and money in several categories to grow a thriving practice:

- *Business development activity*: Whether it's purchasing holiday cards and writing a short note in each, paying for membership in an organization and attending meetings, or hiring someone to do SEO on your website, you'll need to invest to grow your practice.
- *Business and business development education*: Law schools should offer foundational classes in business management and business development, because every lawyer





needs to understand those two topics. However, such classes are still infrequent, and in the not-too-distant past, they were entirely nonexistent. Accordingly, you'll need to invest time and money in learning what you should have been taught in law school. Even when you get past the foundational level, continued growth requires deeper education.

- *Technology and infrastructure for client acquisition and service:* Technology of all kinds, from an iPad to a client relationship management system, can be useful as you seek ways to expand your practice and to better serve your clients. And thanks to the pandemic, facility with software for videoconferencing and collaborating with distant parties is a necessity that won't abate even when the risks of being together face-to-face have dropped.

To make smart spending decisions, use this process.

1. **Determine an annual budget for your spending.** Depending on your practice setting, this budget might be set by the firm that employs you, or you might have to decide how much of your own income you're willing to invest. Lawyers who skip this step either overspend or underspend, and each will negatively impact the business that is your practice. If your firm provides a budget for you, be sure it's sufficient to meet your needs and don't hesitate to seek more if you have data evidencing the payoff from previous investments to back up your request.
2. **Evaluate your potential expenditure to determine whether it's a cost or investment.** No matter how promising or enjoyable, an expenditure that doesn't produce results is a cost, not an investment.
3. **Be sure that you include a line item for education in your budget.** Business development education can include attending workshops and conferences, hiring a consultant, purchasing books, and more. Especially when you can get individual feedback and assistance, you'll find that investing in education will help you to grow much faster than you would if you work alone. And continued investments will help you increase the level of sophistication in your business development work.
4. **Be sure to track your activity and results and review your process on a regular basis.** When you do so, you're able to make evidence-based decisions to stop



activities that aren't working and to continue or even expand the activities that are working.

5. **Know the average lifetime value of a client so you can make smart decisions.** Should you spend \$25,000 for consulting or SEO management if you can expect (conservatively) to gain one new client as a result? If your average client value is \$5000, absolutely not; if your average client value is \$75,000, you should probably make that investment; if your average client value is \$750,000, you should invest in a heartbeat.

While each of these questions pertains to money, you should make the same evaluation to determine where to spend your time and energy.

How do *you* make decisions on your business development budget? If you don't have one yet, start today. When you make smart spending decisions, you increase your chances of rapidly growing your practice.

MISTAKE NO. 5 NOT KNOWING HOW TO SAY NO

Lawyers who don't have firm guidelines to help determine which opportunities to accept and which to decline often lose business as a result. That's true on two levels.

1. Saying yes to one opportunity always means, as a matter of inarguable fact, saying no to something else. Accepting Client A means that you may not have bandwidth available when Client D comes along or that, if you accept Client D, that time pressures may reduce the quality of your work product or client service. Taking on a leadership role with one organization means that, at least for the time being, you won't be able to seek a leadership position with another. And choosing to write three articles that will appear before your ideal clients may mean that you'll have to give up a few hours of sleep.



2. Choosing to grab one opportunity and let another go for now may be a wise



decision or a foolish one. Only by being clear on your objectives can you know which is which. For instance, if you're accepting a leadership position in a group that's populated by your ideal clients or referral sources, even giving up a similar opportunity may make sense—unless activity with the second group would deliver an equivalent result with less of a time commitment.

That's why it's so important to create a business development plan and to track your activity against it on a regular basis. Your plan will let you weigh an opportunity against your objectives as well as against other opportunities, known and unknown. You run a high risk of getting sidetracked if you accept an opportunity without due consideration or just because it seems like a good idea and you don't have anything else planned.

- 3. Accepting a troublesome client or an issue that is not a good fit for your practice will get you business in the short term, but it likely will cost you business in the longer term.** Agreeing to work with a client means that you're accepting that client's matter, that client's foibles and habits, and all of the problems that accompany the client and the matter. When the fit is good between you and a client, that's fine.

However, when the client is overly demanding or unresponsive or belligerent, or when the matter is itself problematic, the result is frequently a time-consuming and frustrating bog. Many matters will include bumps and moments of frustration along the way. When you get wrapped up in a matter with more than its share of problems, your attention will be diverted from other matters and other clients.

Before you ask for the business, you must always consider whether you want the business. If you don't want the business, you must be able to say no.

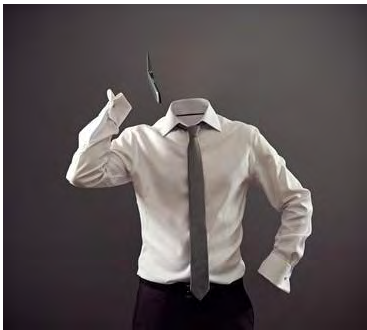
As difficult as it may be to take on an opportunity or client that isn't a good fit for you, the real loss is in the work that you could have done instead. Let your business development plan be your guide.



MISTAKE NO. 6 BEING INVISIBLE IN THE MARKETPLACE

How do people find you? Are you visible on your website, in publications (offline and online), as a speaker named in conference materials, at networking meetings, in organizations relevant to your practice, in community organizations, and/or on social media?

In today's economy, a lawyer who is not credibly visible in multiple channels is losing business. Invisible lawyers (I call them the anguished invisible) don't get as many clients as those who are credibly visible. Lawyers who are invisible find it difficult or impossible to



advance in their firms and their communities. They don't advance in the profession, and they tend to bemoan their bad fortune in marketing and in practice. What they don't realize is that the root of their trouble lies in their status as a best-kept secret. That's no way to live, and it's certainly no way to build a viable practice.

To be *credibly visible* means that you appear in a variety of channels in a way that's relevant to your practice. In other words, you can be found:

- **Speaking** about your practice area or related topics at conferences;
- **Teaching** about your practice area or related topics;
- **Publishing** articles, blog posts, books, book chapters, etc. about your practice area or related topics;
- **Engaging** on social media and sharing references or resources (your own or others') relevant to your practice area;
- **Curating** content about your practice area or related topics;
- **Working within an organization** that has some nexus with your practice area or the kinds of clients you represent; or
- **Serving in a leadership role** in an organization that has some nexus with your practice area or the kinds of clients you represent.



Must you be active in *all* of these channels? No. You have to select the channels that fit your marketing identity and are reasonably calculated to reach your ideal clients and referral sources.

Are there other channels in which you might be active? You bet. You could serve on a board of advisors that's somehow related to your practice. You could testify before Congress on a topic that's relevant to your practice. You could sponsor an event that has some connection with your practice. The channels in which you might become visible and the ways in which you might appear in those channels are potentially limitless, and they'll shift over time, especially as technology changes.

If you're an *anguished invisible*, here are a few steps you can take today to turn it around:

- **Join a substantive committee of a local bar association (if you receive referrals from lawyers) or an industry group.** Work toward attaining a leadership position, as well as speaking or publishing.
- **Use LinkedIn groups to ask and answer questions relevant to your practice.** Depending on how you phrase your question, even asking can position you as an expert, and answering allows you to showcase your knowledge and experience. Other forums exist for similar activity, including Quora, which is focused entirely on Q&A, and forums specifically designed for legal Q&A.
- **Develop a list of topics on which you could write or speak and send inquiries to organizations that could offer you a forum.** Make sure that the organization is geared to your ideal clients or referral sources to gain real benefit.
- **Research local radio or television shows or podcasts that speak to your audience and pitch an idea for a segment or a show.** Don't expect to start on the hottest show, but if you establish your usefulness as a resource and make a good showing, you'll likely be able to leverage one appearance to future benefit.
- **Use the power of video.** You can create your own video series (effectively an Internet-based television channel) to give you a forum for discussing whatever is new and important in your field of practice. If you create a descriptive name for your channel, you can create a go-to resource for a small group of people who will be passionately interested in what you're sharing. And by sharing these videos on



your website and on LinkedIn and other social media, you create an opportunity for new contacts to “meet” you without ever encountering one another directly.

Ask yourself: how visible are you today? Are you visible to the right audiences? (If you suddenly win the lottery, you’ll be visible, but you won’t be credibly visible because you won’t appear in a practice-related capacity to those who might hire you or send you referrals.) If you’re unhappy with your answer, start creating your plan now to raise your profile in the marketplace.



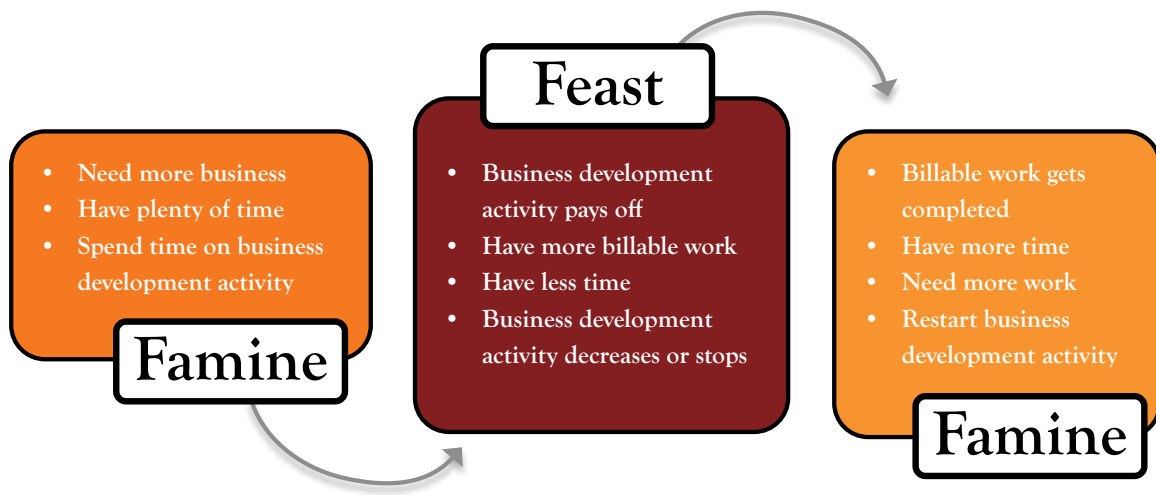
MISTAKE NO. 7 BELIEVING THERE ISN'T ENOUGH TIME

Time. That great limiter for every practice. No one has enough time for everything. We know this. And yet, some days, doesn't it feel like you could summarize your task list by writing simply, "EVERYTHING"? You have billable work, admin work, plus a personal life, and you want to add more on top of that?

Those who don't make time to complete business development activities and to create value for their clients are making a costly mistake.

The "more" you have to add to your task list includes activity designed to raise your profile in the marketplace, client acquisition, and creating value for your clients above and beyond the billable work you do for them. You might group all of this as business development activity, since it's designed to bring in and satisfy your clientele. That seems like a tall order, and in some ways it is, but two operating principles can simplify it a bit.

First, every lawyer must find a way to marry business development work with billable work. When the two are divorced, as they generally are, you'll have the sense that you can do only one of those activities, and the billable work will win. That's how the feast/famine cycle gets started.





When your business development work comes from and through your billable work, you'll exit the feast/famine cycle. For example, instead of wracking your brain for a fresh practice insight to cover, you may find ideas for writing or speaking based on the questions your clients raise. You might even be able to develop a client memorandum into an article by replacing the elements specific to the client with a fictionalized or generalized description and making some general suggestions based on your discussion and analysis of the issue. You might ask your clients for referrals and introductions. And inviting current and former clients for a presentation or program that interests them may turn into quite an effective business development activity.

You will need to supplement your business development efforts with activity that is truly separate from your billable work, of course, but when there's significant overlap between the two aspects of practice maintenance and growth, you'll make better use of your time. The separate work might include activities such as networking, working within an industry organization, or serving on a board of directors. You will find some nexus between those activities and your practice (otherwise, the activities would not be well-suited to help build your practice), but there's an unavoidable separation between those activities and your billable work.

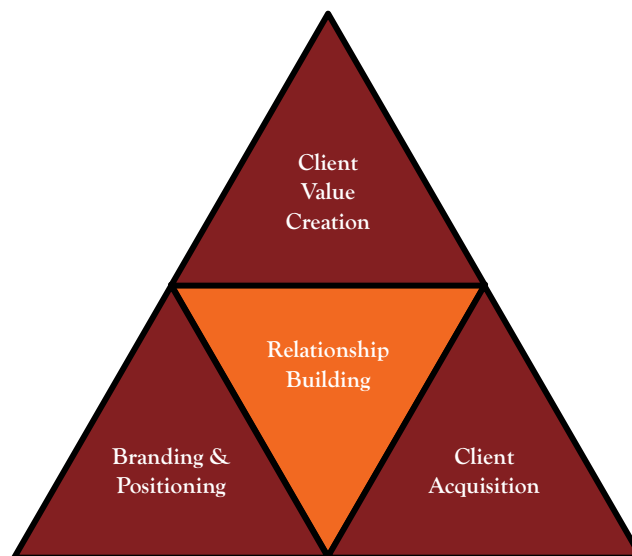
The second approach, which must work in tandem with the first, requires you to prioritize everything that you do. Is business development a priority for you? Here, it's important that you have a business development plan that's broken down into projects (raising your profile, meeting new referral sources) and tasks (writing an article or a blog post, identifying an organization populated by those who do business with or otherwise influence your clients) so that you have specific action items to prioritize. Trying to prioritize categories of tasks like *billable work* and *business development* will be ineffective because you'll never be able to check either off your task list. But you can check off "Draft Smith MSJ brief" or "Attend IEEE meeting," and you can prioritize each action based on its urgency and its importance.

Brian Andreas, the artist who creates StoryPeople, sums it up this way: **"Everything changed the day I figured out there was exactly enough time for the important things in my life."** When you recognize the essential truth there, you'll see that the key is to decide what's important. In other words, is it important for you to meet contacts who might refer new business to you? If so, how can you fit that into your schedule? Unlike "should" items that will clutter a task list and yet never quite make it onto a calendar, committing to important tasks and scheduling them ensures that you get those tasks done.



Don't misunderstand this approach as an airy-fairy nice but meaningless idea. **While you will have days in which you actually can't squeeze everything that's important to you, if you think about what is important—meeting deadlines, returning client calls, eating, sleeping—you'll find that you generally fit at least some of each important activity into your days over the course of a week.** Just like you may have to skimp by on five hours of sleep instead of seven some nights, you may have time to attend only half of an organization's meeting, so you might prioritize the networking portion of that meeting and skip out on the speaker—or vice versa if the speaker is an important client. It's all about accomplishing as much as possible of each important task.

Which activities are important will vary from day to day, but when it comes to business development activity, you'll want to be sure that you are active in each of these areas each week or month:



Take a few minutes to examine your task list. (Don't have one? Create it right now.) Strike anything on your list that is not important. Next, look for ways to incorporate business development activity into your billable work. Add to your list any business development tasks that are important for you and not otherwise included. Each evening, block time for the next day's tasks, leaving a few blocks of time open for unexpected tasks that need urgent attention. Finally, look at your task list and your calendar, and be sure that you're incorporating each aspect of business development activity over the course of a month.

Lawyers who don't make the time for client value creation and business development activity on a regular and consistent basis risk losing business.



MISTAKE NO. 8 MARKETING A PRACTICE USING SOMEONE ELSE'S PLAN

Law schools rarely teach students how to market (or manage) a law practice. So most lawyers learn by reading articles, attending training, and—most commonly—following the example set by a successful mentor. However, every person brings different skills, assets, and attitudes to both marketing and practice.

Lawyers sometimes use a plan created by someone whose practice or personality is significantly different from their own; unfortunately, they most often find that business development plans that have been highly successful for others won't be successful for them. Every person brings a unique set of skills and assets to be used in marketing as well as preferences that must be accommodated, at least to some extent. In addition, every ideal client profile will be slightly different. No two plans will be identical, and even remarkably similar plans will probably be executed in distinct ways by different attorneys.



I once worked with Sarah, a lawyer who had built a thriving practice, and I thought I'd follow her lead so I could get the same results. Unlike me, Sarah was a social butterfly. She entertained frequently and met contacts for a meal or coffee most every day. She seemed to know everyone: when we went out to lunch, I felt as if we were having lunch with the whole restaurant because it seemed that she spoke to almost everyone there. Sarah was well known in the community, she met many potential clients who subsequently hired her, and she had a steady flow of referrals.

I tried to model Sarah's networking activity. I laid great plans, but I dreaded executing them. Unlike Sarah, I'm an introvert, and the thought of that much socializing was simply exhausting. I made an effort, but it was too easy to get sidetracked with work (pressing or otherwise) because I didn't enjoy that volume of activity. Due to that lack of consistency (and my lackluster enthusiasm), I didn't get anything remotely close to Sarah's results.

Sarah's plan worked for her, but it wasn't a fit for me, and it wasn't as effective as the plan I created to incorporate my own personality, preferences, and skills.

The "copycat plan" is destined for failure, as is any plan that doesn't start with an analysis of the building blocks at your disposal and the objectives you want to reach.



Instead of borrowing someone else's plan or using a generic plan prescribed by a marketing expert, create your own plan based on the responses to questions such as:

- **Who are you as a practitioner?** How do you approach your practice and your clients?
- **What is your marketing identity?** What marketing avenues are most effective for that identity?
- **What are the attributes and characteristics of your target clients, and how can you reach them?**
- **What are your branding assets?**
- **Which relationships should you focus on building?**
- **What are your objectives?** (For example, do you need to bring in business immediately, do you need to raise your profile in the marketplace, or do you need to position yourself to support a new or expanded practice area?)

Use the answers to these questions to design a plan that's well suited to your specific objectives, that uses your unique skills, and that's calculated to reach your ideal clients and your network of allies. When your plan is tailored for you, you'll find it more effective and you'll be more willing to implement it on a consistent basis.

Lawyers who take a one-size-fits-all approach to business development are certainly making costly legal marketing mistakes.

MISTAKE NO. 9 RENTING A PRACTICE, NOT OWNING IT

Are you renting your practice? I'm not asking whether you're renting office space. And I'm not asking whether you're an associate or junior in practice. This question is about your *attitude* and your *approach* to your practice. Are you building your practice based on what you want your practice to be, or are you "paying your dues"? Compromising? Accepting what isn't ideal but might be good enough for now? Waiting until *something*



changes—something external to you, like the economy or the law or your seniority?

An attorney who isn't actively and strategically growing her practice on a consistent basis is merely renting a practice. Even for sole practitioners, renting a practice

means having a job, not a career. As we learned during the recession of 2008-2010, lawyers can lose their jobs when firms fail or as a stopgap measure designed to avoid failure—or even to increase profit. A lawyer who owns her practice is building something of her own that she can take wherever she goes, but one who is renting her practice is merely serving someone else's asset.

“Career” non-equity partners (meaning those who cannot or will not advance to the point of attaining equity partnership, as distinguished from “transitional” non-equity partners who are working to become equity partners) are at special risk. These lawyers typically have strong skills but relatively high salaries and relatively small books of business, meaning that they represent a drag on the firm if work dries up and they can't bring in enough new work to support or significantly defray their expense.

Attorneys who rent a practice have few transferable assets other than skill and experience, which isn't enough to distinguish one lawyer in a sea of talent. As a result, those lawyers have fewer professional options and may find it difficult or even impossible to find a new job.

“Owning” your practice means taking responsibility for your own success and not depending on others to provide work or opportunities to you. It means looking at the assets and liabilities in your practice (financial and otherwise) and determining how to harness the assets so that you can grow your practice. It's putting in consistent and strategic activity to grow your practice. It's looking at engagements as relationships, not transactions, understanding that even one-off engagements can yield referrals with the appropriate effort.

Renting or owning a practice isn't purely a financial question: depending on the circumstances, a lawyer with no clients at all may own her practice, while a lawyer with a \$250,000 book of business may only be renting. While results certainly do matter, what distinguishes two similarly situated lawyers is action and attitude. [A 2009 New York Times Op-Ed piece](#) summarized it this way:



A Washington lawyer friend recently told me about layoffs at his firm. I asked him who was getting axed. He said it was interesting: **lawyers who were used to just showing up and having work handed to them were the first to go** because with the bursting of the credit bubble, that flow of work just isn't there. **But those who have the ability to imagine new services, new opportunities and new ways to recruit work were being retained. They are the new untouchables. . .** Those who are waiting for this recession to end so someone can again hand them work could have a long wait. Those with the imagination to make themselves untouchables – to invent smarter ways to do old jobs, energy-saving ways to provide new services, new ways to attract old customers or new ways to combine existing technologies – will thrive. (Emphasis added.)

The legal market has shifted since 2009, of course, and it will continue to do so. And yet, these insights continue to hold true. Clients have more options and are making new demands in terms of the cost, efficiency, and structure of engagements, and there's no hint of abatement. Instead, we can expect to see more changes and more significant changes in the way that lawyers and clients work together.

Today's economy calls on you to become an entrepreneur at law. Don't follow the tired old model of getting the work, then doing the work, rinse and repeat with an ever-growing focus on bringing in more and more work. That model, when successful, leads straight into the feast/famine cycle. Instead, determine your brand as a practitioner and how you can express that brand in your practice, then find how your brand and the skills encompassed in that brand can intersect with what reaches and influences your ideal clients. Build relationships based on trust, and look for ways to create value for your clients. Re-imagine how you can work with your clients, letting your clients' needs and wants guide your innovation.

Doing the same old, same old in the new economy often means losing business. Take ownership of your practice, to explore new ways to find, engage, and serve your clients, and to seek continuous improvement in what you do as a practitioner and how you do it.

Step up, or you may be pushed out.

LET'S SUMMARIZE.

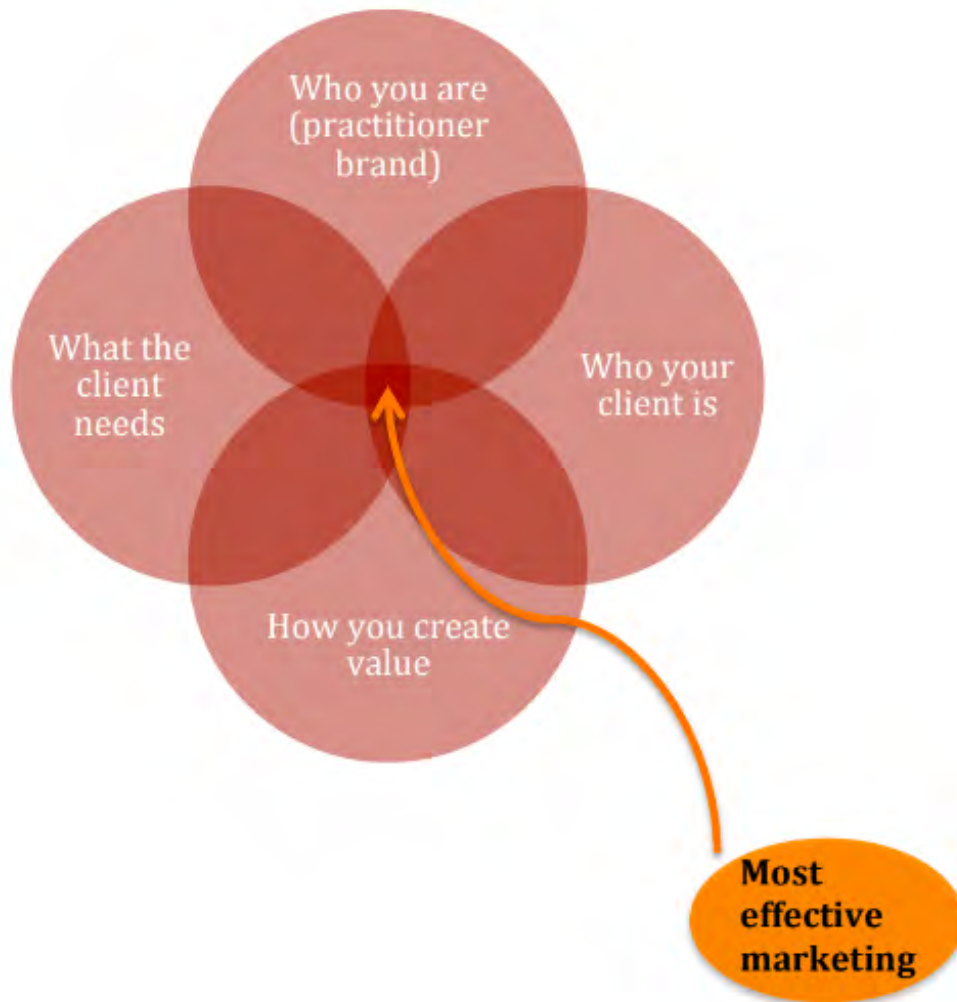


The nine costly marketing mistakes that cost lawyers business are:

1. Not creating value for clients
2. Failing to really see clients
3. Being indistinguishable from other lawyers
4. Not investing in your practice
5. Not knowing how to say no
6. Being invisible in the marketplace
7. Believing there isn't enough time
8. Marketing a practice using someone else's plan
9. Renting a practice, not owning it

Effective business development lives at the intersection of four factors:

- Your practitioner brand (who you are, as demonstrated in the way you approach your practice and your clients, and who you are in terms of marketing)
- Who your client is (in terms of demographics, psychographics, and more)
- What your client needs (substantively and from the relationship with you)
- How you create value for your client.



Here's the question for you: how frequently are you operating in that sweet spot?

It isn't easy to learn this. Law school doesn't teach how to hit this sweet spot, and very few business development training opportunities address this level of strategy. Knowing how to find it is critical, however. The alternative—best described as strategic scattershot marketing—leads to frustration and success that's limited at best.

If you're ready to shift the way you're approaching business development, [visit this page](#) for information about how you can make a change or [contact Fleming Strategic](#).