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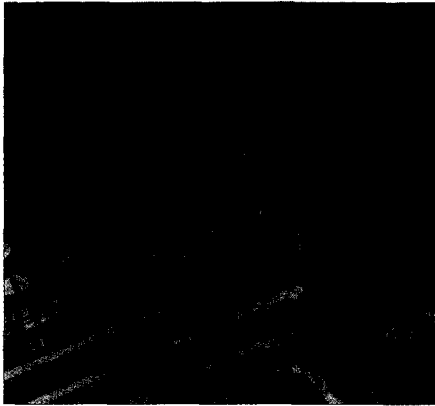
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LAW PRACTICE MANAGEMENT

BY GARY A. MUNNEKE



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Why Practice Management?

Lawyers think of themselves as living in a world apart. The legal profession, with its Socratic method of education, arcane mores, and perquisites of self-regulation, views itself as unique. It is our strength and weakness. Not even doctors have the gall to refer to all those in the population who have not attended medical school as non-doctors. Lawyers perceive themselves as independent professionals, exempt from the laws of commerce and business, impervious to the depredations of economic cycles, and above the rules of the free market where providers of goods and services compete for patrons.

There may have been a time when the practice of law did not require lawyers to understand principles of business management. Private practice was conducted individually and inexpensively. Competition among lawyers and with other professions was limited. It was not difficult for lawyers to earn a comfortable income, attain respect in the community and maintain control of their personal destiny.

Today, however, lawyers must regard the practice of law as a business, inasmuch as they earn their livelihood from the practice of law. The marketplace for legal services is a competitive one; not only has the size of the profession more than quadrupled in the past 50 years, but other professions and businesses have also begun to perform services traditionally restricted to lawyers. For example, accounting firms have encroached on

tax litigation, banks in the trusts and estates area, and financial planners in estate planning. In a series of cases, the United States Supreme Court has made it clear that lawyers cannot prevent the development of this competition from both within and without the legal profession.

Furthermore, the technological advances of recent decades have forever changed the way lawyers deliver legal services to clients. If you were to look into a law office circa 1965, and compare it to a law office in 2007, the transformation would be mind-boggling. Hardly any aspect of the office would not have undergone major transformation (from telephones, to computers, to knowledge management systems). Lawyers who fail to understand this evolution cannot hope to succeed in the emerging practice of the future.

My first appreciation of the fact that the practice of law was undergoing a fundamental sea change occurred in 1974 when, scarcely six months out of law school, I attended a conference called "Salvation for the Solo Practitioner." The speakers at that program talked about the delivery of legal services as a cottage industry, where most work was performed piecemeal by individuals, who operated much like tailors, cutting each suit individually. There was consensus among the speakers that lawyers needed to develop systems – routine ways to complete regularly recurring transactions – in order to practice efficiently and profitably. Their message suggested that in

order to survive in the future, lawyers needed to change the way they conduct business.

Survive! No one ever told me in law school that the issue was survival – economic survival. No one ever said that anyone who knew how to "think like a lawyer" might fail at the practice of law, or explained the economic realities of practicing law that I would need to know in order to make it in my chosen profession. Students today may have more of a sense that they are entering a competitive environment, but with notable exceptions no one is talking about what they need to do to survive (and even thrive) as practitioners.

Even in 2007, many practitioners seem to approach the future with their heels firmly planted in the past. They either ignore the changes that are transforming the practice of law or they react slowly and resentfully to the evolving professional landscape. In truth, lawyers of all ages and experience levels deal with changes in the legal profession and society every day. Some just try to survive, while others try to excel by staying ahead of the curve.

The practice of law in the United States is a multibillion-dollar industry, indispensable to the functioning of modern society. The delivery of legal services by lawyers to the people they represent is fundamental to the process of dispute resolution, and ultimately to the legitimacy of the justice system in this country. Although the law itself

is constantly changing, a truth that all lawyers and law students implicitly understand, the fact that the practice of law is constantly evolving may be under-appreciated by those in the business of delivering legal services. Certainly, longtime practitioners will readily admit that practice has changed over the course of their careers, but most have not stopped practicing long enough to examine the implications of change on their day-to-day work. If anything, most practicing lawyers are reactive rather than proactive.

Actually, most lawyers are ill-equipped to run a business organization efficiently and profitably. Some of this is due to self-selection. If most of us had wanted to go into business, we would have gone to business school. Instead, we made a conscious decision to practice law, only to find out when we graduate that we have to run a business in order to pursue our chosen career.

Some critics charge that lawyers are greedy, and that money clouds lawyers' professional judgment. In reality, most lawyers work hard and expect a fair return on their investment, but very few get rich practicing law and fewer still are outright crooks. If a law firm can provide legal services more efficiently, both clients and lawyers will benefit through lower costs for the services and a better return to the providers.

Disciplinary authorities confirm that lawyers who get into trouble over financial matters often are experiencing economic difficulties that tempt them to cut corners or take other inappropriate actions. Thus, it should not be too much of a stretch to say that a well-run legal business is also likely to be a professional practice.

One of the reasons that lawyers are not prepared for the business aspects of practicing law is that their legal education does not adequately prepare them for the business of practicing law. The law school curriculum is heavily weighted in favor of teaching a vast amount of substantive information and developing a narrow range of legal skills through a traditional peda-

gogical framework based upon the so-called Socratic method, euphemistically referred to as "learning to think like a lawyer." This approach would have been unrecognizable to Socrates, but more important, it has very little in common with the actual work of lawyers. It is sometimes said that recent bar examinees know more law and less about what to do with it than anyone in the profession.

Many legal educators are re-examining the structural, traditional notions and approaches to the legal education and preparation of lawyers. The traditional framework of legal education remained relatively unchanged for generations, but the changing realities of law practice and society have forced legal educators to re-think some of their basic assumptions. Law schools today universally offer clinical and lawyering skills courses, and individual professors are experimenting with

different teaching methods in traditional courses.

In 1991, the *Report of the American Bar Association Task Force on Legal Education and the Profession: Narrowing the Gap* (also known as the MacCrate Report) described a set of fundamental lawyering skills and values necessary to professional success. These skills and values are acquired over a continuum of experience beginning long before law school and continuing throughout one's professional career. Although reasonable minds might differ over what skills should be included in this list, or the relative importance of certain skills compared to others, the basic idea that practicing law requires the application of some set of professional skills is hard to escape. Included in this list of fundamental lawyering skills was a skill identified as "organization and management of legal work." More recently, the ABA

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amended its *Standards for the Approval of Law Schools* to incorporate a requirement that all law schools "shall require that each student receive substantial instruction" in management and organization of legal work.

The proposed New York Rules of Professional Conduct define "competence" in Rule 1.1 as "legal knowledge, skill, thoroughness and preparation reasonably necessary for the represen-

service and the professional standard of care.

For the past 20 years, I have taught a course at Pace Law School called Law Practice Management, which aims to integrate the skills associated with managing a practice professionally into the education of students before they enter – ill-equipped – the practice of law. It is time for other law schools to recognize that they have a responsibility to teach

and other academic journals, are replete with case studies of professional service firms in general and law firms in particular.

We can learn from our colleagues in the business world. Despite the myriad changes facing the legal profession, the basic principles of effective law practice and office management, strategic planning, and organizational systems are not novel. Dwight McCarthy in

The literature, both academic and popular, surrounding the science of management is both extensive and sophisticated, yet ignored by most lawyers.

tation." This Rule demonstrates that professional competence requires more than knowledge of the law. Knowledge, without the skill to apply it, is a hollow quality. In more practical terms, if practicing lawyers cannot skillfully use their knowledge for the benefit of clients, they bring little value to society and will not succeed financially.

The MacCrate Report, the ABA *Standards for Approval of Law Schools*, and the proposed ethics rules all recognize that competence as a lawyer goes far beyond the ability to "think like a lawyer." Although competence is a complex concept, "organization and management of legal work" is one of the core skills of lawyering. Legal educators and practitioners sometimes point fingers at each other for not doing enough to prepare lawyers for the practice of law. In truth, the responsibility for teaching new lawyers the basic skills and knowledge necessary to practice competently is a shared obligation.

Professional skills are critical to successful lawyering, and practice management is one of the critical skills. As lawyers, we must recognize that we are not prepared for the business side of law practice by education, experience or inclination. At the same time, in order to succeed in our chosen profession, we need to possess the business acumen to deliver the legal work product to our clients consistent with their expectations for quality

all their students the fundamental skill of law practice management. And it is time for the organized bar to insist that all lawyers know how to manage a law practice, because more professional error is caused by management error than any other reason.

Management principles have been addressed in the literature of many fields, outside of law, in business and industry, where thinking about how to improve efficiency and productivity is a central concern. Managers and executives in most large companies and many small ones study business in college, and those who did not receive business degrees during their undergraduate education often return to graduate business programs for MBAs or other advanced degrees. Over the years, academics in business schools have provided an intellectual framework for management by conducting research and writing on how organizations work.

Business schools have explored the management of professional services firms for generations. The literature, both academic and popular, surrounding the science of management is both extensive and sophisticated, yet ignored by most lawyers. Publications such as the *Harvard Business Review*,

1927, Reginald Heber Smith in 1942, and a number of other legal writers since have articulated a variety of themes that recur in present day law practice. Despite rapid changes in technology and other aspects of practice, many of the basic principles of sound management have not changed over the years.

As the French say, *Toujours le change; toujours le même*. Lawyers have always had a need to know how to manage the business side of the practice, and probably have always been as uncomfortable with the demands of that side of their work as they are today. Why practice management? The simple answer is because we must, in order to survive in a competitive marketplace, to thrive economically and to sustain professional standards in the practice of law. ■



"Point taken. There's no need to get all constitutional on me."