

LJNLAW JOURNAL
NEWSLETTERS

Marketing

The Law Firm®

An **ALM** Publication

Volume 26, Number 11 • March 2011

MEDIA & COMMUNICATIONS CORNER

Despite Decline of Traditional Media, Opportunities Abound

By **Nicholas Gaffney**

It seems apparent that fewer people care about staying on top of the news these days, opting instead to spend their time furiously texting friends, Facebook-status updating and Tweeting the most mundane details of their lives. After all, it's been well documented that magazine and newspaper readership is in the basement and that the media industry is in more turmoil than any time in history. So, naturally, the public is less informed — and much less interested in being informed. Right? Au contraire!

ALL MEDIA, ALL THE TIME

A recent study by the Pew Research Center for People and the Press found that Americans are actually spending more time accessing news than they did a decade ago. As was the case back then, people newly surveyed reported spending an average of 57 minutes each day getting the news from TV, radio or newspapers. But add to that an additional 13 minutes per day, on average, they currently spend soaking up news online,

continued on page 6

'Tell Me More'

*Answering and Profiting from the Most Important Question in Business*By **Steve Hughes**

Do you remember the antacid commercial that claimed to “stop heartburn before it starts?” Unfortunately, many attorneys today adopt the same approach when it comes to business development: they stop it before it starts. Nowhere is this more apparent than when lawyers meet people in their everyday life — business functions, cocktail parties, Little League games, and volunteer activities.

What is the problem exactly? Despite how many “friends” we may have on Facebook or the number of followers we boast on Twitter, most people are connected to about 250 people. These 250 connections are people we've met in person who know us, like us, and trust us, *i.e.*, when our name appears on caller ID, it elicits a smile as opposed to a sigh.

'WHAT DO YOU DO FOR A LIVING?'

To be sure, most of the people you encounter may never need the legal services you provide, but they probably know someone in their own network of 250 who might. So, when you meet people, invariably they ask you this question early in the discussion: “What do you do for a living?” If you answer with a conversation-killing noun as opposed to a brief, leading, and engaging phrase, the opportunity for rainmaking is thwarted before it ever has a chance to begin. But it doesn't have to be this way.

Think about it. When you are asked what you do and you answer with, “I'm an attorney,” what happens next? Does the other person shout, “Hey, everybody! We've got ourselves a lawyer in the house! Pull up a chair and she'll regale us with tales of contracts and motions and mergers, oh my.” If that does happen, time to switch the coffee pots to decaf.

More than likely, the questioner might respond with a polite, but disinterested follow-up question like, “Oh, what do you practice?” Or, “What firm?” Either

continued on page 2

In This Issue

'Tell Me More' 1

Media & Communications
Corner: Media
Opportunities Abound .1Successful BD
Coaching 3Professional Development:
Marketing and Young
Partners..... 5Florida's Over-Regulation
Of Attorney Speech ... 7PRESORTED
STANDARD
U.S. POSTAGE
PAID
LANGHORNE, PA
PERMIT 114

'Tell Me More'

continued from page 1

way, the conversation usually goes nowhere. There's no real connection between what you do and the person you're talking to (a key ingredient in any marketing endeavor, wouldn't you say?). And the solution to the noun problem is certainly not a traditional elevator pitch.

ELEVATOR PITCH, R.I.P.

It might be tempting to eschew the noun and overreach by resorting to an elevator pitch. For those of you who happen to reside under a rock or if you're new to marketing, an elevator pitch is a short, compelling explanation of your product or service that can be told during a typical elevator ride (usually 30 seconds to two minutes).

First of all, don't talk to people on elevators. It's creepy. Second, do you realize how long 30 seconds is? If you've ever had to listen to someone drone on about his business for half a minute, it feels like geologic time is passing. Glaciers can melt and refreeze by the time the average elevator pitch is completed. An elevator pitch is a great way to lull people to sleep and end a conversation quickly.

The solution is a "Tell Me More" statement that encourages additional questions and keeps the conversation going.

THE 'TELL ME MORE' STATEMENT: THE DOOR TO BD SUCCESS

Quite simply, a "Tell Me More" (TMM) statement is a short, intriguing, benefits-laden phrase that creatively describes what you do for a living. Think of it as a movie trailer — you don't give away the entire plot, but you provide enough information to make the audience want to know more. A well-played TMM statement sparks a natural exchange of information and the best part is

Steve Hughes is an author and consultant. He works with Am Law 100 firms, state bar associations, and Fortune 500 companies. To access his articles, white papers, and videos, visit www.HitYourStride.com.

that everything you say about your practice or clients is delivered at the behest of the listener. You're fully in command of the conversation, but the other person is the one asking all the questions, continually asking for permission.

Why do TMM statements work? Unlike a textbook-sounding elevator pitch, a good TMM causes people to be curious about your firm — and curiosity is a magical thing. From a biological perspective, curiosity stimulates two key areas of the brain — the part that anticipates information and the part that comprehends it, making the information richer. In addition, curiosity has been linked to elevated activity in the brain's memory centers so your TMM will more likely stick with your listener after your meeting.

SOME GOOD 'TELL ME MORE' STATEMENTS

Here are some TMM statements that lawyers are using successfully to engage prospects and keep the possibility of new business on the table.

- "I work with dead people." (estate-planning attorney)
- "I work with dysfunctional families." (estate-planning attorney)
- "I make ideas burglar-proof." (IP attorney)
- "Fraud is my BFF." (a younger civil-fraud attorney)
- "I'm help CEOs sleep at night." (compliance attorney)
- "I'm Uncle Sam's biggest nightmare." (tax attorney — technically, this TMM uses a noun, but the descriptor dares people to want to know more)
- "I'm in the relationship business — hooking up people and land." (real estate attorney)

Of course, the TMM is just the beginning of the process. What you do next is critical because you need to carefully divulge what you do so that you give your prospect just enough information to keep him interested, but not so much that you come across as a self-focused bore.

continued on page 4

Marketing The Law Firm®

EDITOR-IN-CHIEF Kimberly Alford Rice
EDITORIAL DIRECTOR Wendy Kaplan Stavino
MARKETING MANAGER Jeannine Kennedy
GRAPHIC DESIGNER Louis F. Bartella

BOARD OF EDITORS

SHARON MEIT
ABRAHAMS Foley & Lardner LLP
Miami
DONALD E. ARONSON D.E. Aronson Associates LLC
New York
MARK BEESE Leadership for Lawyers
Evergreen, CO
LARRY BODINE LawMarketing Portal
Glen Ellyn, IL
JOHN BUCHANAN Howard Rice Nemerovski
Canady Falk & Rabkin
San Francisco
MURRAY M. COFFEY Jenner & Block
Chicago
ALLAN COLMAN The Closers Group
Torrance, CA
TIMOTHY B. CORCORAN Hubbard One
Newtown Square, PA
SILVIA L. COULTER Hildebrandt Baker Robbins
Boston
BILL CROOKS Priority Search International
Lake Mary, FL
BETH MARIE CUZZONE Goulston & Storrs PC
Boston
MICHAEL DeCOSTA Korn/Ferry International
Stamford, CT
GWEN NUGENT
FLANAGAN RR Donnelley
Arlington, VA
JOSHUA FRUCHTER eLawMarketing
New York
NICHOLAS GAFFNEY Infinite PR
San Francisco
JOHN HELLERMAN Hellerman Baretz
Communications
Washington, DC
ARI KAPLAN Ari Kaplan Advisors LLC
New York
NANCY ROBERTS LINDER Nancy Roberts Linder Consulting
Chicago
LINDA SEDLOFF ORTON Intelligent Video Solutions
Rye, NY
CLAIRE PAPANASTASIOU Bingham McCutchen
Boston
EDWARD POLL LawBiz Management
Venice, CA

Marketing The Law Firm® (ISSN 0893-7788) is published by Law Journal Newsletters, a division of ALM. © 2011 ALM Media, LLC. All rights reserved. No reproduction of any portion of this issue is allowed without written permission from the publisher. Telephone: (877) 256-2472; Editorial e-mail: wampolsk@alm.com Circulation e-mail: customer@alm.com Reprints: www.almreprints.com

POSTMASTER: Send address changes to:
ALM
120 Broadway, New York, NY 10271

Published Monthly by:
Law Journal Newsletters
1617 JFK Boulevard, Suite 1750, Philadelphia, PA 19103
www.ljonline.com



The Anatomy of a Successful Business Development Coaching Program

Part Two of a Two-Part Article

By Peter A. Johnson

Editor's Note: Many firms are investing in business development training and coaching programs for their attorneys. The following is Part Two of a two-part article describing considerations firms should make in designing a successful program. Part One, which appeared in the February issue of MLF, introduced the coaching concept and rationale and outlined recommendations for the design of a coaching program. Part Two herein reviews the implementation of the training, from determining the appropriate coaching assignments to measuring success of the program.

GETTING STARTED

Coaching Assignments

One of the most important considerations in designing a training program is the matching of the coach to the attorney. An effective program requires coaches and attorneys to be matched based on criteria such as style, personality, area of practice and goals. In determining the assignment, we rely heavily on the adviser/mentor input, as well as the responses to the questionnaire. We have found that having multiple coaches increases the likelihood of a compatible “fit,” which is imperative to a successful program. Clearly, coaching experience and personality are important considerations, and most firms report a greater acceptance among the participants of a coach who has practiced law. Conduct your due diligence to make sure the coach understands the firm’s business develop-

ment culture, as well as each participant’s business development strengths and weaknesses in relation to the expectations of the firm.

The Kick-off

A kick-off reception the night before the workshop sets the tone of the program and creates the opportunity for firms with attendees from multiple offices to gather and get reacquainted with one another. Integrating the marketing team and other advisers/management into the event shows a unified commitment to the program. If there have been previous coaching participants within the firm, be sure to include the “graduates” as well, so that they may serve as role models and sounding boards for the new class. Coaching clients have found the kick-off a great way to initiate internal marketing and cross selling.

The Workshop

When it comes to group trainings and workshops, “less is more.” The pre-workshop research reveals what is most meaningful and important to the group, and the agenda is determined, in part, by survey results. The workshop addresses issues including motivation, time management and any perceived firm-related obstacles such as culture, compensation, teamwork and resources. Although the primary benefit of a coaching program is the “one-on-one” sessions and ongoing individual coaching phone calls, a half-day workshop nicely introduces the group to necessary business development concepts that serve as a foundation for the individual sessions.

One-on-One Meetings

Following the workshop, the coach should meet with each participant for about 90 minutes. The meeting provides the opportunity for the coach and attorney to get to know each other personally and professionally, and to start to develop the trust and rapport, which is integral to the coaching relationship. During this meeting, the coach and lawyer review the responses to the questionnaire and together, they start to craft the attorney’s business development plan. At this meeting, the coach and attorney discuss the

coaching “contract,” which requires accountability and commitment. The coach should make it clear that the attorney’s success is directly proportionate to their commitment.

The Business Development Plan

After one-on-one meetings, each attorney is required to submit a three- to six-month business development action plan to the coach. These plans typically include long- and short-term objectives and specific activities designed to achieve those goals. Although each attorney identifies different activities, many of the goals and objectives are similar. For example, “getting known” may be an objective for several of the participants, but the activities to gain recognition are uniquely tailored to the individual. Over the course of coaching, activities are tracked and monitored and the plan reviewed and revised when appropriate.

The Coaching Calls

Most people develop skills principally by doing — performing the necessary tasks with supervision and feedback from a skilled coach. Just as lawyering skills are developed under the supervision of a seasoned lawyer, business development and selling skills are best developed in “real time” by working on real opportunities with the assistance of a coach during scheduled, individual telephone conferences which should take place at least every two weeks. The coaching sessions focus on developing specific strategies, step-by-step relationship building, and problem solving activities for each attorney. The lawyers are also encouraged to initiate unscheduled calls “as needed” when time-sensitive business development opportunities emerge and immediate action is required.

Tracking Activities

Participants should keep a detailed log of all business-development activities and share the log with

continued on page 4

Peter A. Johnson M. Ed, JD, is an attorney and the founder of Law Practice Consultants, LLC in Newton, MA. He can be reached at 617-308-6297 or pjohnson@lawpracticeconsultants.com.

The publisher of this newsletter is not engaged in rendering legal, accounting, financial, investment advisory or other professional services, and this publication is not meant to constitute legal, accounting, financial, investment advisory or other professional advice. If legal, financial, investment advisory or other professional assistance is required, the services of a competent professional person should be sought.

Coaching Program

continued from page 3

their coach prior to each scheduled call. Use tracking forms to monitor activities and advances. The forms become a “follow-up” tool used to develop next steps with a particular contact.

MOVING FORWARD

The Transition

After three to four months of coaching, begin to transition participants from their outside coach to their advisers/mentors. The adviser now begins to take the place of the coach; he or she monitors the participant’s activities, assumes responsibility for plan implementation, follows up regularly, and offers support. Over the next few months, the coach checks in periodically with the participant (and adviser) to

ensure adherence to the plan and to provide assistance if necessary.

The Results/ROI

Measuring coaching success is sometimes difficult, as business development personas take time to mature. Obvious successes, such as a new client or matter, are easy to determine. A successful result, however, may also be the development of new attitudes about “sales,” a different frame of reference and a willingness to develop meaningful relationships with clients and referral sources. (An example of a “non monetary” success is a recent e-mail from a coaching client who told me that she finally had overcome her resistance to asking for business!) To help achieve these successes, participants need to track and review strategies on a regular basis. In determining effectiveness of a pro-

gram, use the “but for ... ” measurement — after a number of coaching sessions, ask participants to prepare a list of activities, ideas, initiatives they would not have undertaken ... “but for” the coaching.

CONCLUSION

It is clear that developing, supporting and maintaining successful business development training and coaching program for attorneys is a worthwhile venture. The programs, however, are as varied as there are law firms, and the components of a program are influenced by many factors. Firms must assess their goals and culture and work with a consultant to design the most effective program for the firm. Providing attorneys the much needed, and desired, training will lead to a thriving practice for years to come.



‘Tell Me More’

continued from page 2

A LITTLE BIT AT A TIME:

PROGRESSIVE DISCLOSURE

You know you have a first-rate TMM statement when the other person asks you a follow-up question like, “So how do you do that?” Or, “What do you mean by that?” Again, you’re not trying to be coy; you’re simply describing what you do in a winsome way to keep the dialogue going. After they ask you a follow-up question, you have two options. One is to reveal a little bit more about your practice from a benefits perspective, *i.e.*, how you make the world a better place for your clients. Here you can say things about how you help clients save/make more money, avoid disasters, build/protect reputations, solve problems, etc. The possibilities are endless.

The other option is to turn the conversation back to the other person and her business. Just try to find connections to what she cares about in her business and see how you can link back to it. For instance, if she’s in venture capital and you’re in IP, then you can ask about how she protects ideas and her investors. Key in on what’s important to the other

person and you’ll stand a much better chance of success.

CRAFTING YOUR ‘TELL ME MORE’ STATEMENT

To create a clever TMM, start by envisioning the most amazing day at work where you’re flying high: you assisted a client in a breakthrough, you oversaw a landmark deal, you settled a case and saved millions, you made someone else’s life demonstrably better, etc. Now, take a sheet of paper and start writing down all the ways in which the world is better off for your clients or partners. Don’t worry about the words, just get them down on paper. Let the words sit for a while and come back to them later.

When you return, look for the juiciest, most descriptive, and enticing words that describe how you and your firm improve the lives and businesses of others. Then explore different ways of putting the words and phrases together.

Important caveat: Don’t expect to get it right the first time. A good TMM is refined out in the field when you’re meeting and conversing with others. Since you’re not printing 10,000 brochures or having your TMM chiseled in granite (not advisable at this stage), your TMM is designed to be fluid.

Most TMMs take some time to perfect by you watching people’s reactions and paying attention to where the conversation goes based on what you say. (In case you’re wondering if I practice what I preach, my TMM is: “I help people look and sound smart when they talk.”)

Here are some good questions to ask yourself after you’ve crafted your TMM:

- Is it intriguing?
- How can you take something people have heard a million times and give it a new spin?
- Shorter is better, how can you economize your words?
- Is there a misconception about your firm/practice/etc. that you can address with your TMM? (One client tells prospects, “I’m a lawyer ... but the good kind.” It always leads to follow-up questions.)
- Are you words too rich? (Five-cent words trump 10-dollar

continued on page 8

ALM REPRINTS

Turn your good press into great marketing!

Contact us at: 877-257-3382, reprints@alm.com
or visit www.almreprints.com

Reprints are available in paper and PDF format.

PROFESSIONAL DEVELOPMENT

Marketing from a Young Partner's Perspective

By Kendyl Hanks and
Craig Unterberg

Kudos! As a new partner, you have survived the law firm gauntlet and have been elevated to the partner ranks. By building a reputation within your firm as a reliable and talented attorney, you have succeeded in the first critical step in marketing: developing a valuable product (yourself). When your firm named you as a partner, it expressed confidence in your ability to promote your firm's business and contribute to the bottom line.

In summary, you have already proven that you are highly capable of being a significant business developer through your success in building your internal business. But, now it is time to focus your energies on external business development. Adopting a deliberate strategy for marketing yourself and your firm to potential and existing clients is one of the best ways to realize this objective. From a new partner's perspective, the strategies discussed here may not make you a top rainmaker overnight, but they will set the foundation for successful business development over the length of your legal career.

ADOPT A MARKETING PLAN

The ideal marketing strategy for a particular attorney is usually a personal blend of activities that are tailored to the lawyer's skills, experience, culture, hobbies, community, practice area, and your firm's stra-

Kendyl Hanks practices with the Haynes and Boone LLP's Appellate Practice Group in New York. She may be reached at 212-659-4972. **Craig Unterberg** is the head of the firm's Prime Brokerage and Equity Lending Practice Group. He may be reached at 212-884-8206.

tegic plan. For most new partners, marketing requires a commitment to effectuate a deliberate plan over multiple years. Draft a marketing plan and revise it at least once a year as your practice and business develops. Seek out advice from mentors and other partners. Many firms have marketing professionals who are great resources in assisting partners in their marketing efforts. There are also consulting firms and online resources you can access in developing your plan.

DEVELOP A NICHE

Build on your skills and prior experiences and develop a niche — something unique to offer clients and referral sources. This may be a special type of litigation, a specific regulation, a special segment of the legal profession, or advising clients in a particular corner of an industry. Take advantage of opportunities in your area of specific focus. For example, the adoption of a new regulation can create opportunities for junior partners to become experts in areas that have been traditionally dominated by more senior attorney. Leverage your non-billable time to study and write about your deep knowledge to gain more external exposure.

IDENTIFY RELEVANT AND PRODUCTIVE MARKETS

Identify bar organizations, practice-oriented groups, industry and trade organizations, charities, and social networks that are relevant to your chosen practice area, or that are potential sources of clients and referrals. Consider that if you spend all of your time with groups that do the same thing you do, it will be more difficult to distinguish yourself. For example, if you are a partner in a firm that has a large presence in your city, consider seeking opportunities to market yourself in other states where you can develop fresh relationships. Look for opportunities to assume leadership roles in civic and professional organizations. These leadership positions

will provide you with consistent opportunities to demonstrate many of your skills and talents to potential clients.

INVEST IN YOUR MARKETING STRATEGY

Successful marketing often requires a significant investment of time, effort and money over a number of years. Be prepared to make those sacrifices. Set aside time for non-billable activities, and track it like you would billable hours. Consistency is key. If you commit to a group, leadership position or project, follow through just like you would with a case or deal. This type of commitment will help you create a reputation of being a "go to" person in your legal and civic community groups. Expect to invest some of your own funds in your marketing activities — business expenses are, after all, deductible for partners.

STAY CONNECTED

Remember that work does not originate just from "clients," it comes from people. Over the course of your career, business will be referred to you not only from colleagues and clients, but from family, friends, old roommates, former employers, new neighbors, golfing buddies, classmates, and new acquaintances. In the legions of studies about how to effectively market, a consistent theme is repeated connections. Take interest in your clients' professional and personal interests. Stay connected with your classmates and your former colleagues. Keep track of what is happening in their lives and their careers. Send thank-you notes and holiday cards. Let them know about the experiences and successes in your career. People who like and respect each other are naturally inclined to send business to one another. Friends become clients, and clients become friends.

CO-MARKETING AND CROSS-SELLING

Your marketing strategy should dovetail with your firm's business

continued on page 6

Prof. Development

continued from page 5

plan. As a partner, you are responsible not just for marketing your own practice, but for marketing the firm. Keep your options for developing business as broad as possible and target clients that can utilize any aspect of your firm and not just your specific expertise. Learn as much

as you can about your firm's main clients — their businesses and the legal services they use at your firm. Read up on the latest developments in your clients' industries — no one wants to hire a lawyer who does not understand its business. Send updates to clients if you hear about a legal development that might interest them, whether or not you are currently working on a matter for them.

(Google alerts are brilliant for this purpose). There may be opportunities to market your skills to an existing client and obtain new business from them. Similarly, get to know your partners and their practices — sending business to your colleagues is a sure way to earn referrals in return.



Media & Comm. Corner

continued from page 1

and the facts are clear: People now devote 23% more time consuming news now than they did in 2000.

As methodologies for the delivery of news multiply — encompassing mainstream news Web sites, hyper local outlets like AOL's fledgling Patch network, high-profile blogs and social networking channels like LinkedIn, Twitter and Facebook — it has simply become harder to track readership. There's simply no easy way to get a grip what kind of "circulation" we're talking about when it comes to the Alice in Wonderland-like online media world that has suddenly emerged. But it is easier than ever for the public — ahem, potential clients and customers — to stay on top of the kind of news they care about. Which is where you come in.

HOW TO TAILOR YOUR MESSAGE

Tools both simple and sophisticated are now readily available to tailor how and what type of news people receive, including personalized Web "newspapers," subscriptions, alerts and RSS feeds, to name a few. And when the average Joe and Jane aren't chained to their computers, chances are they can whip out smart phones. In short, instead of replacing traditional news platforms, Americans are increasingly

Nicholas Gaffney, a member of this newsletter's Board of Editors, is a lawyer and former journalist. He manages Infinite Public Relations' San Francisco office and can be reached at ngaffney@infinitepr.com or 415-732-7801.

integrating new technologies into their news consumption habits.

What does this mean for companies and organizations looking for exposure to help boost business, build their brands and become thought leaders? That more opportunities exist than ever before to provide expert opinion, insight and value to clients, prospects and the public at large. Getting quoted or profiled has never been easier — and yet that doesn't mean you still won't have to work hard to do it.

While the media outlets and the forms they take may be evolving, the rules are the same. To be considered experts and win the chance to influence others, businesses need to know what the conversation is and where it's taking place so that they can proactively join it. Better yet, they should start and lead the conversation. Once they are positioned as a quotable expert source, they are in a position of influence and able to capitalize on their expertise. So, while a quote in the print edition of *The Wall Street Journal* may be considered the Holy Grail, consider the alternatives because they are many and they are worthy.

STAGGERING STATISTICS

Consider some numbers: YouTube hosts 100 million videos. Tens of millions of people worldwide use Twitter. LinkedIn boasts 55 million members and more than 90,000 specialized groups. More than half a billion people on this planet have a Facebook profile. And though all of this stuff may just sound like a heap of virtual compost, it's not.

These communities are vibrant, dynamic and influential. Consider this stat: There are more than 200

million blogs on the Internet. According to Technorati's State of the Blogosphere 2009, 77% of active online users have read a blog, and 45% have started one of their own. Of these, 58% say that blogging has helped position their company as a thought leader within their industry. Think about this: More than half of the people who have started a blog believe it has made them better known in their industry. No small result!

Not only are these myriad new media players gaining leverage and expanding through strategic alliances — AOL just bought *The Huffington Post* in a whopper of a deal, for instance — they're constantly being updated and are always in search of fresh content that provides its readership value. And, as the population ages, this demand is going nowhere but up. Among The Pew Research Center's key findings is the news that while 26% of all Americans indicated having read a print newspaper the day before, that figure falls to just 8% among adults younger than 30.

So where do you begin in your attempt to jump on the bandwagon and ride it into the sunset? The key is to get prepared before making the leap. Some places to start:

- Identify your goals. Is your aim to generate word of mouth about a new product? Are you hoping to acquire new clients? Do you need to build positive sentiment about your firm? Just as you'd build a business plan for any corporate venture, write down your intentions and goals.

continued on page 8

Florida's Over-Regulation of Attorney Speech

A Growing Bubble

By Joshua King

Editor's Note: In the summer of 2009, a group of Florida consumers, outraged over rampant false and deceptive online advertising by attorneys, filed suit to bring an end to these abuses. Responding quickly, the Florida Supreme Court imposed tough new rules on attorneys to curb these misleading forms of advertising ... or at least that's how it would have played out in any sane industry responding to proven consumer deception. Except that in Florida there wasn't any finding of consumer deception. There weren't even any consumer complaints. There wasn't any "problem" to be solved. But the Florida Supreme Court solved it anyway, enacting new rules governing attorney Web sites that are marked by two notable features: A staggering level of clumsiness and an utter disregard for the First Amendment.

REGULATION BY JUDICIAL FIAT

It started with what probably sounded like a good idea at the time: a 2008 effort by the Florida Bar to amend the state's baroque detailed attorney advertising rules to account for the ways in which attorneys use Web sites. The Bar — an aggressive regulator of attorney advertising — proposed rules that specified that material contained in the inside pages of an attorney or law firm's Web site would be considered "information provided at the request of a client," and hence not subject to most of the Bar's advertising rules. Sure, Web site information would have to be truthful and non-misleading, but under the Bar's proposed rules, it could in-

Joshua King is general counsel and vice president of business development for Avvo Inc. on First Amendment and professional ethics issues in the practice of law. He may be reached at 206-734-4113 or via e-mail at josh@avvo.com.

clude testimonials, discussions of past results and other information prohibited or otherwise sharply limited in advertising messages.

The Florida Supreme Court would have none of it. It flatly rejected the Bar's proposed rules, and came up with its own set of rules. Under the court's new rules, Web sites get no special dispensation. To the extent a site owner wants to talk about representative matters, it must do so on special pages, accessible only by users who affirmatively accept disclaimers before being granted access.

This requirement offers a profoundly unsatisfactory experience to consumers looking for legal information. And what of those consumers? Surely there must be some real, pernicious consumer harm out there, emanating from all of this undisclaimed attorney Web site content, to justify the tremendous expense in time, money and attention necessary to implement these rules?

If there is, the Florida Supreme Court hasn't bothered to point it out. Satisfied with its own knowledge of what's right and wrong, deceptive and non-deceptive, it passed these wheezingly overbroad rules without even mentioning whether consumers are actually being harmed by the current state of attorney Web sites in Florida, or whether the Court's rules are the best way to meet consumer needs.

LAWYERS HAVE RIGHTS, TOO

In response, on Aug. 14, 2010, eight of Florida's largest law firms petitioned the Florida Supreme Court to review its decision, pointing out both the enormous cost to lawyers and law firms and the lack of any documented rationale for imposing the rules. That lack of a coherent rationale for an oppressive new set of rules is important, and not just because it drives legal costs higher.

Advertising is protected by the First Amendment, and efforts to regulate advertising must meet a specific set of tests laid out 30 years ago by the U.S. Supreme Court in *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980). Under the *Central Hudson* test, the government has

the burden of showing that its regulation of "commercial speech" addresses an important state interest, is reasonably calculated to address a documented harm and regulates in the minimal fashion necessary to address the harm.

The commercial speech doctrine is surprisingly limited. It applies only to a category of speech described by the U.S. Supreme Court as "that which does no more than propose a commercial transaction" (see *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66 (1983)). All other speech — even that which may have a business development angle to it, such as lawyer blogs, newsletters or articles written in professional magazines — is entitled to full First Amendment protection. Much of the content of law firm Web sites is entitled to similar protection.

NO FINDING OF CONSUMER HARM

But let's play along and assume the commercial speech doctrine applies, and that the Florida Supreme Court's rules for attorney Web sites will be viewed via the *Central Hudson* standard. What becomes evident is that the Florida Supreme Court has not remotely considered the extent to which the First Amendment restricts its ability to regulate attorney advertising. Commercial speech regulation requires that the state document the harm with some sort of empirical data — "mere speculation or conjecture" is not sufficient; the state must show that "the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield v. Fane*, 507 U.S. 761, 770-771 (1993). Such regulation must be further supported by a showing that the regulation directly addresses the harm, and that it does so in as narrow a fashion as possible. Here, the Florida Supreme Court has not bothered to provide empirical data showing that any regulation is necessary, much less that this particular regulation is appropriate.

And therein may lie a silver lining. The great experiment in lawyer self-regulation of advertising has been, in many states, a steadily growing bubble. Attorney regulators have

continued on page 8

Attorney Speech

continued from page 7

larded on increasingly detailed restrictions, even as public attitudes and the law have moved in the direction of greater freedom to advertise. It may be that the Florida Supreme Court has now inflated the bubble so quickly that it is at risk of popping, bringing down much of the Sunshine State's attorney regulatory apparatus with it. At the end of the day, outside

'Tell Me More'

continued from page 4

words. Acronyms are your enemy, too.)

- Is it benefit-laden?
- Does it have an aspirational quality to it?
- Is it too vague? (Beguiling is okay, annoyingly deceptive is not.)

Media & Comm. Corner

continued from page 1

- Identify where the important conversations are taking place. Is it in the Twittersphere, blogosphere or, perhaps, an industry-specific networking site, such as ActiveRain for the real estate network? Need help with this? The tools for monitoring the social Web are numerous. Start by checking out these Top 30 available for free. Once you know where and what the conversation is, join it. Engage with others. Don't try to sell. Provide information people will find useful and valuable.
- Identify the influencers in your arena. Get to know them. And, have them get to know you by posting insightful commentary on their blogs, comment on the online articles in which they are quoted, or shoot them a direct e-mail

of certain, narrowly drawn types of attorney solicitation, there is nothing unique about legal services that requires special regulation.

There's no reason to believe that lawyer advertising necessitates the type of pre-clearance Florida requires, or that the state's pages of picayune regulation and restrictive stance on comparative and testimonial advertising benefits consumers or stands up to constitutional scrutiny. It's unlikely that the petition of

- Would this TMM make you want to know more if you heard it?
- Try it out on a trusted friend or colleague. What was their reaction?

GOING FORWARD

Bottom line: "Tell Me More" statements work. They help you stand out. They make it easy for prospects and potential referral sources to un-

derstand your practice and envision ways they (or someone in their network) can benefit from what you do. Think of it as viral marketing without the technology. If you will forget the noun and try a TMM statement, you'll have a much better chance of empowering business development as it starts.

in which you reference a specific article or blog post and introduce yourself.

- If you lack a public relations professional on your team, consider subscribing to "Help a Reporter Out," a free Web-based service that aims to connect reporters on deadline with experts in a wide array of subjects. You'll receive daily lists of reporters seeking sources via e-mail, and responding when a relevant topic pops up is a great way to introduce yourself to reporters covering your industry. (And to the world at large as an authority when they quote you, of course.)

- Find out who the reporters are in the city and towns in which you work and live. As Mashable reported in its article, "Newspapers Are Still Dying, But the News Is Not Going Anywhere," journalists displaced from newspapers

Florida's eight largest law firms will cause the state's Supreme Court to rethink the new Web site rules — half a year after the firms' petition was filed, the silence is deafening. But one can hope that it represents an increased willingness among Florida attorneys to pursue the sort of federal court action that one day will lead to these rules being repudiated once and for all.

—❖—

derstand your practice and envision ways they (or someone in their network) can benefit from what you do. Think of it as viral marketing without the technology. If you will forget the noun and try a TMM statement, you'll have a much better chance of empowering business development as it starts.

—❖—

often start their own blogs to cover news in their community through reporting and aggregation, while an increasing number of bloggers at news startups are starting to integrate professional reporting standards into their work.

- Repurpose it. Once you are quoted in an article, or publish a bylined piece, use all the tools at your disposal to promote your expertise and build on it.

CONCLUSION

While it's true you may be less likely to get your fingers inky while reading an article in which you're quoted, your chances of reaching target audiences are, in reality, better than ever. With a combination of diligent research, appropriately targeted messages and skillful use of the new tools available in cyberspace, you too can rise above the noise and be heard loud and clear.

—❖—

To order this newsletter, call:
1-877-256-2472

On the Web at:
www.ljnonline.com