



by Pete Roberts

“You cannot know too many lawyers!” Become known by becoming a “joiner” of bar sections, committees, and task forces. Be volunteer faculty for CLE programs. Your networking includes your volunteer time on nonprofit boards, committees, projects, and municipal or charitable activities. These groups appreciate having a lawyer as a member.

Among your colleagues, you want to cultivate referrals that fit into your practice goals. It is, of course, a two-way street. Be alert to refer out cases that may repay you with a fair return of new work. Your professional reputation defines how others will gauge any risk of referring matters to you in terms of probable return referrals, client comfort, and your getting the work done timely. Referrals arise because the lawyer has an unwaivable conflict, the work required is beyond the lawyer’s capabilities, or the lawyer’s schedule precludes additional work. Another reason is that the lawyer may not feel totally comfortable with the client’s personality or other circumstances of the matter.

Do not overlook any opportunities for leadership within the profession. The WSBA includes a variety of sections that offer the lawyer the opportunity to meet

other lawyers with similar practice interests. Consult your local or specialty bar for similar opportunities. Sections and specialty bar associations may have referral mechanisms such as list serves, discussion groups, and a case referral service for the public.

There are also boards and committees of the bar that provide opportunities to shape policy, as well as to meet other lawyers. The WSBA especially offers such opportunities to serve on committees, boards, and panels that may affect the practice of law statewide. Contact your representative on the Board of Governors or see the FYI section of *Bar News* for further information.

Volunteering as faculty for CLE events is a very good way to meet other lawyers who are co-presenters, as well as the attendees themselves. This activity

enables you to enhance your professional credentials in a very visible fashion.

Consider formally or informally mentoring or otherwise assisting other practitioners who may have a future need to refer matters to you.

Avoid accepting “any” matter that comes in the door. Retain control of your law practice by proactively assessing each potential client opportunity. Be prepared to turn some prospects down. Each new matter that you do accept is a major commitment of time, hard work, communication, and attention. The new matter should fit as easily as possible into your competence to practice (or to reasonably reach that level relatively quickly), your case calendar, your personal calendar, and your personality. You may say that you “are not accepting any new matters for the time being.”

You are “on display.” Even if you do no overt “marketing,” you remain on display because you are a lawyer. Business cards are essential. Always have them handy — including having them in your blue jeans pocket on weekends! Use high-quality card stock. Consider including information on the back of the card that describes your practice in layman’s terms. For a DUI practice, you

may include on the card certain tips for communicating appropriately with the police. Use a font size and design that are easy to read, particularly if you represent elderly clients.

Your reputation and conduct as a professional inexorably builds your image in the public and legal communities. Influence this process and prosper!

Every client involves many potentialities, both good and not so good. Experienced lawyers know that anything can happen. Remember that the client is under stress, so your communication (written and oral) must be careful and precise.

In Washington, the recognition of an attorney-client relationship is described. In *Bohn v. Cody*, 119 Wn.2d 357, P.2d 71, the court opined:

[3] The essence of the attorney/client relationship is whether the attorney’s advice or assistance is sought and received on legal matters. See 1 R. Mallen & J. Smith § 11.2 n.18; 7 Am. Jur. 2d Attorneys at Law § 118 (1980). The relationship need not be formalized in a written contract, but rather may be implied from the parties’ conduct. *In re McGlothlen*, 99 Wn.2d 515, 522, 663 P.2d 1330 (1983). Whether a fee is paid is not dispositive. *McGlothlen*, at 522. The existence of the relationship “turns largely on the client’s subjective belief that it exists.” *McGlothlen*, at 522. The client’s subjective belief, however, does not control the issue unless it is reasonably formed based on the attending circumstances, including the attorney’s words or actions. See 1 R. Mallen & J. Smith § 8.2 n.12; *Fox v. Pollack*, 181 Cal. App. 3d 954, 959, 226 Cal. Rptr. 532 (1986); *In re Petrie*, 154 Ariz. 295, 299-300, 742 P.2d 796 (1987).

The client relationship can arise whether or not you intend such a relationship to arise. Lawyers are careful to have several types of written communications to use in the varying circumstances. The varying circumstances might be:

- Non-engagement: You decided not to represent the party.
- No decision yet: You think it over and do the conflict check first.
- No decision yet: The party owes you several documents first.
- Accept the party as a client: Triggers a series of steps.

Document the understanding for each of these circumstances, so that there is reasonably no doubt in the client's mind. The party is likely experiencing stress about the legal issue and may not hear and/or understand your verbal communication.

Consider that each client may act or react as follows:

- Will he pay you?
- Will he tell you the truth?
- Will he call you too often?
- Will he show up for meetings?
- Will you meet his expectations?
- Will he dislike you?
- Will he produce promised documents?
- Will he send e-mail expecting immediate responses?

Experienced practitioners say that it is best to avoid a potentially troublesome client by watching for the "red flags." Go with your gut if in doubt about taking on a particular matter. Use a friendly worded engagement letter and/or fee agreement to lay out your scope of work and the client's obligations to you. Start work in earnest after the client has signed off and returned a copy of the letter to you.

Include a paragraph in your fee agreement or engagement letter about communication. You expect the client to be available and to respond to you. Your client expects you always to be available, particularly by e-mail. E-mail messages do not demand immediate responses. You can

visually scan your e-mail as it arrives, but you should shelter yourself from the expectation of an immediate response. Indicate in your engagement letter that you will respond to e-mail "usually within two business days." It is also a good idea to include a description of your file retention and destruction policy and who owns the file and pays for copies of the file, if ever necessary.

Communicate often and be sure to return telephone calls within four hours. You need not return the call yourself if you can ask an assistant to do so. Calling to say that there is nothing new on the matter actually says two things to the client:

1. Nothing is new.
2. I remembered you and you are important to me.

The major side benefit of returning telephone calls timely is the glowing recommendation of you to others. This point cannot be overemphasized. Never hesitate to ask your clients to recommend you to others.

Consider your several reputations:

- Your professional reputation establishes you among colleagues. Your practice area, integrity, honesty, level of service, knowledge of the law, and how easy you are to deal with all come into play.
- Your social reputation establishes you among colleagues, friends, family, and staff. Your social reputation includes how others perceive your table manners,

use of alcohol (if applicable), and general social bearing as you engage in professional activities, hobbies, sports activities, and cultural interests. Are you available at all or always "busy"?

- Your street reputation establishes how you are perceived by staff. Your street reputation describes your office and how you handle the management of your practice. Examples are your level of professionalism and respect when communicating with your staff, non-monetary fringe benefits such as staff scheduling flexibility, and, of course, your management of anger and how you communicate reprimands.

All of these networks can attract or repel new business. ◊

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