

LAW OFFICE ADMINISTRATION & MANAGEMENT

PROTECT FINANCES: PRACTICE WHAT YOU PREACH

Firms must take aggressive steps to prevent employee theft

By **STEPHEN A. PEDNEAULT**

As professionals, we are accustomed to delivering advice and recommendations to our clients on how things should be done. Attorneys advise clients on how transactions and activity should be documented and complied to minimize the risk of exposure and litigation. Physicians recommend both proactive and reactive medical advice on how to maintain health and fitness. Accountants suggest internal controls, financial policies and bookkeeping procedures to ensure transactions are properly authorized and documented to minimize the risk of theft and embezzlement. Engineers recommend how space should be designed and utilized to maximize usage and efficiency while minimizing energy and waste.

The irony is that when you look to the firms that provide well-advised recommendations, often they don't follow those same recommendations.

I can attest from my own experiences that we often get too busy focusing on the needs of our clients that we never spend the time ensuring we implemented the same recommendations we deliver to our clients.

Here's a typical example of just how dangerous that can be based on my experience: John

has a small, well-established practice with a hectic day-to-day pace. To deal with the administrative tasks, he has relied for years on Sarah, a professional who runs most aspects of his office.

To John, Sarah was his savior; someone who just "took care of things." He thought of her as family and was grateful she took the day-to-day details off his hands. As all too often happens, he delegated more and more to her over time, relying on his "trust" factor, until the dreaded day he learned Sarah had been stealing from the firm. Worse, he discovered she had also been stealing from the client funds that his firm managed on behalf of clients.

John had spent his career advising clients not to delegate too much responsibility to their employees, to check and oversee transactions and activity on a regular basis, and to review the documentation to ensure nothing ever happened. And yet a significant six-figure theft occurred right within his own firm.

A Tempting Source

Today's challenging economy has contributed to the rise in employee thefts. Many individuals are under significant stress to solve personal financial issues, and too many of them look towards opportunities for access to funds available to them through their employment. Their goal (or rationalization) is to "borrow" the funds to solve their issues.

Law practices of any size are equally prone to employee theft and embezzlement as any other employer, but they have an added burden of managing client funds of various types. This creates another risk for a potential loss of other people's funds.

Client funds are a particularly tempting source of funds for unscrupulous employees. These funds are comprised of closing funds, settlement funds, insurance and settlement proceeds, trust funds, estate funds and assets, and other money held in escrow on behalf of a client or matter. Statutes and standards require that all client funds be segregated from a firm's operating funds, be tracked by individual client, be regularly reconciled, and be reported in a timely manner to clients.

Unfortunately, these statutes and standards haven't prevented abuse. I know of several law

firms throughout our state that have experienced first-hand what happens when a trusted employee looks towards these accounts to solve their personal financial issues. Several cases in recent history even made their way into the press. Others were quietly resolved, but at significant cost to the firm's checkbook and reputation. These thefts have enormous impact.

Firms involved must make financial restitution (often significant) to make the client funds whole. They also incur professional fees to obtain representation in dealing with the state-wide grievance committee. And then there's the emotional toll of having to overcome the fact that a trusted employee stole coupled with the real possibility of disbarment.

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Zero Tolerance

What can your firm do to prevent this? It all starts with the overall tone established by the partners. That should be one of control and zero tolerance. Strategies should prevent potential issues from occurring as well as detecting potential problems as early as possible. That tone should be communicated to all employees throughout the firm, and should be incorporated into the orientation of new members upon hiring.

Firms must create and follow stringent internal accounting controls to safeguard operating funds, and also the funds entrusted to them. Then they must remain vigilant. The standard should not be established to trust no one, but rather "trust with verification."

Each financial process within the firm should be designed so that the same individual cannot initiate, authorize, transact, approve, record and report the transactions



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and activity. Too much control vested within one individual not only creates opportunity, but also could lead to an unforeseen financial disaster.

Your firm's policies and procedures must be anchored by participation from the partners and owners of the firm. They must be personally involved in overseeing, approving and reviewing transactions and activity. These include reviewing bank statements, investment statements and payroll registers. These actions can create a deterrent effect, as well as provide for early detection of an issue.

In addition, partners and owners must be involved in reviewing reports covering the firm's accounts receivables, collections, disbursements, and potentially most important of all, the firm's client funds activity. These measures alone may not be sufficient to prevent all fraud and embezzlement from occurring, but they certainly go a long way towards helping a firm detect many of the fairly straight-forward schemes commonly perpetrated and minimally concealed day in and out.

Another important reason to implement these measures has to do with insurance claims. If a firm is the victim of embezzlement, the insurance company is going to want to see what controls were present to prevent it before paying the claim. Payment of a claim is not automatic. Recently insurance companies have begun to push back responsibility for the fraud to the victim. In recent cases, insurance companies have requested the perpetrator's personnel files. They were looking for any information to see whether the firm knew, or should have known, that the individual was dishonest.

They are also asking for information on internal controls, policies and procedures. They want to determine if the victimized firm could have minimized their loss through their own efforts. The end result may be what has been referred to as "shared responsibility". In this case the insurance claim representative seeks to settle the claim for less than the amount reported as being lost. In one recent case, a firm had to go into litigation to get the full amount of the claim paid.

In summary, a firm's approach to employee fraud and embezzlement should incorporate three important measures. First, establish policies and procedures to minimize opportunities and prevent fraud from occurring. Second, design procedures to review transactions, reports and statements, to detect any possible schemes the preventive measures didn't prevent. Lastly, ensure the firm has adequate employee crime or employee dishonesty coverage to ensure some level of recovery in the event both preventive and detection measures failed. And, most importantly, remain vigilant. ■

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LAW OFFICE ADMINISTRATION & MANAGEMENT

IF YOU HATE NETWORKING, YOU'RE NOT ALONE

Secret to making good contacts is knowing how to work the room

By **ANDREA OBSTON**

If you're like most people, the thought of jumping into a room full of strangers at a networking event fills you with fear. Whether it's a meeting of the local bar or Chamber of Commerce networking, large group meetings summon up grade school fears of rejection and panic.

When I work with attorneys, they'll tell me that such types of meetings make them uncomfortable; that they didn't go to law school to "sell" themselves. But the truth about today's environment is that these kinds of events are necessary. They help attorneys get in touch with potential clients or referrals sources and so are critical parts of practice development.

This article is designed to give you a jump start on that process.

Before You Enter

Experienced networkers know that the key to a make the most of these events starts before you even enter the room. Here are a few tips:

- Come armed with several questions you want discuss with others at the event. Current hot cases, controversial decisions or new issues in the law are particularly good ice breakers if you're going to a bar event.
- Seek out the committee members who planned the event. They are often notable because of different color badge. They want the event to be successful so they'd be happy to give you a lead on who best to talk to
- Get a copy of the list of attendees before the event. If it's booked online through something like Evite, that's easy to find. If not, ask the event organizers. Then pick three people you want to meet. Perhaps these are people who work with clients similar to yours or you could become an agent for that company
- Get to the event on time, so you can talk to the people you want to meet before they get involved in other conversations.
- Do not text or talk on your cell at the event or nearby. If you must take an urgent call, move somewhere private.

At The Event

You go to these events to meet new people, so resist the urge to spend your time with those you already know. It's tempting to do this when faced with a room full of strangers, but resist. Here are few more tips:

- Keep the purpose of the meeting in mind – to make new connections – so spend more time with the people than the food and drink. Do not walk around with both a drink and food in hand. You can't shake hands like that.
- Hold your drink (preferably non-alcoholic) in your left hand. That keeps your right hand dry and free to shake hands.
- Approach someone you want to meet by telling them exactly that. Most people like the idea that you want to meet them. There's nothing wrong with approaching someone

with, "I'm glad you're here. I've been wanting to meet you because..."

- Listen more than you talk. People will think you're brilliant and interested if you listen and respond to what they are saying. Instead of worrying about what you're going to say to impress them, listen and comment on the subjects they talk about.
- Open the door to any conversation with a smile. To be liked, you need to be likeable.
- Hold off on talking about yourself until you get to know someone a bit. Limit talking about yourself except in brief introductory generalities unless asked or unless it would really add to the current conversation.
- Ask the other person all of the questions you wish they would ask you. Don't try to "top" what they say.
- Learn your lines. If you are not a people person, and find it hard to introduce yourself, do what professional actors do – rehearse and learn by heart. Take the highlights of your practice, career and even off-work interests and shape them into three or four short sentences you can say naturally, short and to the point. This is your Elevator Speech. It should be short enough, and meaty enough that the person knows exactly who you are in the time it would take for an elevator to go two floors.
- Avoid becoming one of these people:
 - **The Wallflower** – This person hugs the wall, the bar or a spot in front of the food. They are there to watch and not participate. If you're going to do that, stay home. It will be more comfortable and cost less.
 - **The Ankle Hugger** – This person thinks that the first person they meet is their BBF. They never leave the first person they meet. The best way to move on from such a person (and you want to) is to say, "It's been great meeting you. I see someone over there I need to talk to. Enjoy your evening."
 - **The Celebrity Hound** – This person wants to leave the evening telling himself he met someone important. He'll spend the whole night waiting for a chance to say hello to the "celebrity" along with 50 other people waiting to do the same. Meeting is not the point, making meaningful contact is. If the "celebrity" could be an important contact, find a way to quickly meet them and then find a reason to follow-up at another time when you two can meet one-on-one.
 - **The Card Dispenser/Amasser** – This person judges the success of the night by how many "contacts" he's made. A large stack of cards from people who won't remember you and an empty card case does not pave the way for productive business relationships.

Time To Move On

- Avoid spending the whole night with one person. After you've made a connection

and talked for around 10 minutes, remember your list and move to the next person on it.

- Make a graceful exit by citing someone you want to meet or saying you want to freshen your drink. Or you might say, "I know there are probably other people you want to meet. I don't want to take up all your time. Let's touch base to continue this conversation later in the meeting."
- Offer to continue the conversation if you've connected with someone with whom you want to develop a more in-depth business relationship. Conclude the conversation with an invitation to continue what you discussed or remind them of something you said you'd deliver. To keep the door open for another meeting, mention something they said or a shared interest. For example, "You seem to know a lot about restaurants. I'd like to continue talking to you. We should get together sometime. I'll send you an email!"
- Look for reasons to follow-up with inter-



Andrea Obston

esting contacts. Write a note to yourself on the back of the person's business card so you'll remember if you've offered to get them something after the event. That follow-up can be anything that reminds them of the conversation, such as the name of a good restaurant, a great summer camp for their kid or an article that covers a point you discussed. Follow-up regularly if the contact is well-received. That can build into a valuable referral source, business contact or client.

And that's what helps build a network that will strengthen your firm's future.

- Follow up on a good conversation with a handwritten personal note. People will remember that.

And Finally....

If networking events intimidate you, join the club. All the people who seem to effortlessly move from one group to another didn't start out being that comfortable. It takes practice. The more you do it, the easier it will become. ■



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LAW OFFICE ADMINISTRATION & MANAGEMENT

REINVENTING RELATIONSHIPS WITH CLIENTS

To avoid downward spiral, firms must define value they provide

BY KENT A. GARDINER

“We’re a profession, not a vendor.”
“We offer a sophisticated professional service, not a commodity product.”

These complaints are voiced increasingly by lawyers as they bemoan the economic recession and clients’ intense focus on cutting legal costs. Law firms believe there is something special, something distinguished, about our profession that should make it immune from economic downturn.

Yet all our clients seem to want to talk about are bulk discounts, online auctions for legal services, loss leaders and outsourcing. The chief financial officers of some clients are becoming as important as general counsel in making hiring decisions. Clients increasingly view legal services as just another commodity, and are pressing their firms to provide those services cheaply and efficiently.

Our clients are right to challenge us in this way. Having generally suffered far worse than their law firms in terms of budget cuts, layoffs and reduced earnings, clients have made clear that ever rising billing rates, inefficiencies in the delivery of legal services and other misalignment of interests between law firm and client will no longer be tolerated. They are shifting business as never before in search of greater value. Even long-term relationships are under siege.

Many firms already have begun to accept the reality that they must offer meaningful alternatives to billable-hour-based pricing, and both firms and clients are becoming more accustomed to working in alternative fee arrangement relationships. Firms likewise have begun sticking their toe in the water of “project management,” learning new tools and processes for the more efficient delivery of their services.

But these are simply the foothills in the challenge that lies ahead of us as law firms. The real challenge — the mountain rising before us — is to entirely reinvent our relationship with clients. That reinvention needs to forge a true partnership, in which firms offer their clients extraordinary value that cannot be replicated by data-management software or contract lawyers in India, and cannot be purchased “off the shelf.”

Redefining the true value we provide our clients is the only way we can avert the downward spiral of commoditization of our services and escape the current trend toward being viewed as “just another vendor.”

Competitive Advantage

Commoditization need not be our fate. Some firms will see competitive advantage in this assault on law firm economics, and use these market pressures as a catalyst for creating a new model of law firm service that better

aligns incentives and meets clients’ business needs. To “win” in this environment, however, everything — from service to pricing to how we develop talent — must be on the table. This article explores the core attributes of this new partnership. It discusses why law firms must redefine their core offering around clients’ business needs, as opposed to areas of legal expertise. This involves a fundamental shift in thinking by firms toward substantial up-front investment in learning their clients’ businesses, and designing value-based solutions tailored to particular business challenges. Firms must also move far beyond the current approach to alternative fee arrangements, which remain closely tied to billing rates and billable hours. In a true value alignment with clients, firms will derive most of their compensation from achieving their clients’ definition of success.

Piecemeal Work

For far too long, law firms have had the luxury of reactivity. Problems arise in our clients’ businesses. The clients identify those problems. They call us, we respond, try to solve the problem and send a bill.

No more. This model has led, not surprisingly, to clients viewing even complex projects as “piecemeal” amenable to requests for proposals

sent to many firms all too eager to bid ever lower to capture a one-off litigation or transaction engagement. The auctioning of piecemeal legal work disserves the clients, who, besieged with shrinking budgets, are left to manage a revolving door of firms that understand neither their business nor their legal services history. Law firms instead must forge the kind of relationship with clients that creates an embedded and well-earned competitive advantage. To do that, firms need to become much more proactive in identifying client-specific risks and opportunities, including those the client has not yet anticipated. This requires a substantial investment — without charge — by firms in understanding their clients’ businesses, the industries in which those companies operate and the legal and regulatory environments they must navigate to be successful.

At our firm, this sort of deep knowledge of our clients’ businesses and industries has been aided by an array of regulatory practices, which augment the firm’s litigation and corporate practices. Regulatory expertise means industry expertise, and industry expertise means we often can anticipate the risks and opportunities that lie ahead for our clients.

But that is not enough to achieve enduring

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partnerships and effectively start new ones. Even long-standing institutional knowledge of our clients' past legal needs is by definition obsolete in relation to whatever is top-of-mind for our clients at the moment. Volatile economic and political conditions, on an increasingly global scale, mean our clients' most important legal problems are happening to them in real time. We cannot be effective partners with them, in providing sound judgment, counseling and advocacy, if we do not keep pace with their evolving reality.

It thus has become virtually a requirement at our firm that, when meeting with both existing and potential new clients, our lawyers invest advance time and effort researching the client's current business challenges. This has required us to make substantial investments in

That reinvention needs to forge a true partnership, in which firms offer their clients extraordinary value that cannot be replicated by data-management software or contract lawyers in India.

building a non-lawyer professional staff with sophisticated financial and corporate expertise. This internal partnership of practicing lawyers and business professionals helps us better understand and forecast clients' business demands.

In short, the legal services offering of a law firm that is a true partner to a client is one that comes with a deep and current understanding of clients' cutting-edge business needs. Law firms must bring that to the table at the outset, rather than asking clients to educate them on the clients' nickel.

In the traditional legal pricing model, firms are paid the same amount by a client, win or lose. This built-in insurance policy by definition broadens the competitive field for clients' work. Great firms, good firms and even average firms compete for the same business, because remuneration is not staked to excellent results. So clients, not surprisingly, have made price the differentiating factor in choosing firms in an increasing range of engagements.

Success-Based Pricing

In our view, the way to escape this particular commoditization trap is to bet more heavily on ourselves and our ability to win. We thus believe it is not the case that some client engagements are suitable for success-based pricing. All are. The norm — the routine, standard offering of a truly excellent law firm — must be a tailored value proposition, built not around the commitment to try to solve a problem, but rather around the client's definition of success. At Crowell, we call them "Value Based" billing arrangements, because we believe they are no longer "alternative."

As often as possible, such a value proposition should mean that our lawyers do not get paid unless they help the client achieve success. That

has led us to offer our clients a whole array of success-based fee arrangements, from reduced flat fees with performance bonuses, to full or partial contingent fee arrangements, to "hold-backs" in which the client gets to decide — entirely in its discretion — whether we have enhanced value. We believe this affords us a substantial competitive advantage, because it gives our clients a truly aligned value proposition.

This sort of pricing relationship between lawyer and client requires an extraordinary

level of trust. It tends to work best when there is a long track record of the successful delivery of high-quality services, rather than episodic "piecemeal" for clients that otherwise are strangers to the firm. That is why our most innovative pricing offerings have been made to our longest-standing clients. It is with those clients that the partnership bonds are the deepest, and the knowledge base the greatest, thus making it easier to find common, aligned ground on definitions of suc-

cess, valuations of that success and thus appropriate risk sharing.

Client demands for more solution-oriented value — and for more aligned, success-based pricing — hardly seem like "opportunities" for law firms. But they are. In an environment in which general counsel have declared that "all the business is on the table," firms that invest heavily in reinventing their client service will forge new relationships, get the best work and be paid well for delivering extraordinary value. ■

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