

## Practice v. Market

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What do you all make of this advice from Stephen Fairley (as highlighted by Larry Bodine) (from 5 ways to get more clients in 2013 <http://blog.larrybodine.com/2013/01/articles/marketing/5-ways-to-get-more-clients-in-2013/#.UPMB-QU29oM.twitter>): "1. Make marketing your priority. The primary objective of your business is the marketing of your professional services; your secondary objective is then the delivery of those services. Most attorneys have it backwards. Simply because you may deliver excellent service and provide enormous value, clients do not automatically knock your doors down. The key to building a long term, solid practice is the quality and consistency of your marketing much more than the actual delivery of your services. Working on your business is much more important than working in your business." (highlighting is from me). I realize I should be marketing more - I don't disagree with that - but I do think that my job as an attorney is different - I don't believe that the delivery of the services as an attorney should be my secondary objective. Maybe I take being a lawyer too seriously but I can't help but feel that to put marketing first is not living up to my professional responsibilities. Any thoughts?

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My job, first and foremost, every morning when my feet hit the floor is to make sure that I do everything I am supposed to in every case, so that I can continue to do what I do. THE problem was that it left no time for practice development. So here was my solution. Every Friday at noon, I stop seeing clients, reading email, etc and that is exclusively my practice development time. I write blog posts, tweak my website, research something technology-related, etc. Unless I need to be in court, I guard that time selfishly.

Michelle Kainen, Vermont

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This is an old debate, and Fairley isn't the only guy saying that marketing should come first. I first heard this argument from Mark Merenda nearly a decade ago. And, I'm sure it's been around longer than that, too.

And, I'm sure that the controversy has been around just as long. Putting marketing first is a provocative notion, and it rubs attorneys the wrong way. I think that's because attorneys think that focusing on marketing somehow diminishes the quality of the work they perform.

It doesn't.

Nobody is arguing that you should secretly daydream about marketing strategies while sitting in a deposition. Nobody is suggesting that you half-ass a motion so you can spend more time blogging. That's not the point.

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The problem isn't that Fairley is wrong. It's that he was incomplete. The CORRECT statement is that bad work product can kill your business faster than bad marketing, but good marketing will BUILD your business faster than good work product. If you are trying to build a law firm, you should focus on marketing, and you should spend as much effort on your marketing as possible - without reducing the quality of your work.

Look, most of us have experienced the feast-to-famine swings that occur in a small practice. We get busy working, neglect marketing, and then find ourselves without enough work to pay the bills. So, we go out and market until we bring in more work. Many attorneys repeat this cycle endlessly over the entire course of their careers.

When you get on a plane with a small child, the flight attendant tells you to put YOUR air mask on first, then your child's. There's a reason. If you put your mask on and the child passes out, you can always revive the child. But, if you put the mask on the child first, you may pass out and have nobody able to save you.

The same goes for your practice. If you run out of new clients, you're out of business. It doesn't matter that you did a bang up job along the way. On the other hand, if you market, you grow. If you grow, you have the resources to do even better work.

Last point. I call this the "ethical marketing imperative." If you do truly great work for people, then don't you have an ethical imperative to make sure that you can do that work for as many people as possible? My personal belief is that there are a awful lot of bad lawyers out there. The good ones have a duty to capture the largest market share possible.

Cheers,

David Allen Hiersekorn, California

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I don't believe that's what he is saying at all. I think, the comment is intended to force a lawyer to think more about marketing, and as correctly pointed out, lawyers tend to think more as lawyers representing individuals as oppose to businessmen or women running a business. It is a mindset that I think is pretty beneficial to have. I now think of myself as a businessman who is using the law to make money, just as a mechanic uses his profession to make money. so, I think it's about the mindset, not necessarily about focusing on marketing at the expense of professional responsibilities.

Rod Alcidonis, Pennsylvania

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Thank you so much for taking the time to share your wisdom on marketing. As a brand new solo, I am struggling with the notion of marketing and how to approach it. It seems so foreign to me at this point. I thought your last point about capable lawyers being sure they educate the market place presented a great way to look at the concept of marketing that I had never thought about.

Margaret Cassidy

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You lost me at Fairley and Bodine

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Joseph D. Dang, California

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One major problem with listening to Fairley is that he is ONLY a marketer, and the ONLY business he's ever truly grown is a marketing business. So he's marketing for his marketing business. Kinda meta, dontcha think?

Don't get me wrong - he's a smart guy. But just like every runner will tell you that the road to health consists of more running, he will tell you the most important thing in the world is marketing. And attending one of his Rainmaker Retreats.

Jay S. Fleischman, California

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Look, first, I am not suggesting that lawyers put marketing 'above' provision of quality legal services.

Nonetheless, after 15 years in solo practice, and having seen other lawyers come, in some cases go, in some cases stay, I do think that some lawyers have very poor marketing; you can be a great lawyer but not have very many clients; and in some cases I've seen some, what I call mediocre lawyers, do very well. Why? Because they focus on marketing.

If you're solo/small firm, you HAVE to get the clients in the door. If you don't get the clients in the door, you aren't going to be in business; and by clients I mean people who are willing to pay you a reasonable rate for your services; not pro bono, or low bono. If you can't do that, you're out of business.

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And, lawyers tend to be inconsistent about marketing; lawyers all say they want referrals; they want people, other lawyers, and non lawyers, to send them clients; that's great. But then they go and shoot themselves in the foot (arguably) by engaging in behavior that discourages referrals. You don't think so? Well, we've been having this debate since I joined this list in August of 1996; but for a business that supposedly wants referrals, i.e, people sending potential clients to you, an awful lot of people have a strict "no free consult" rule. Sure, I understand, free consults, in and of themselves, generate no income; all other things being equal I'd rather be paid for a consult than not. But free consults do two things for marketing; first, they directly bring you potential clients; someone calls up, recognizes they have a legal problem, and want to talk to a lawyer about it; this is where 'screening' comes in; in deciding whether or not to see the client, the lawyer needs to determine whether he's interested in the case; is this an area that they practice in? is this likely to generate payment? Some types of are simply unlikely to generate money; tenant being evicted for non payment of rent probably doesn't have much money and is unlikely to pay you; the guy who wanted to sue the judge for foreclosing on his house after the guy had engaged in some REALLY stupid behavior; the guy who starts off the conversation with "I'm looking for pro bono lawyer cause I don't have any money but I want a lawyer who fights for justice". I'm not making fun of them, but this is essential part of the screening.

BUT: the second way free consults bring you clients is through REFERRALS; even if the person didn't hire you, they will remember you; and if someone they know needs a lawyer, they are VERY likely to say, 'oh, go see Mr. Jones, when my husband died he told me exactly what I had to do'.

Nonetheless, a lot of lawyers don't like doing free consults; they'll give reasons like A) they are a waste of time; well, sometimes they are, but a lot of that can be alleviated by proper screening and proper control of the interview; once it becomes apparent it isn't a paying case, \*end the interview\*, don't spend another 45 minutes on it for the sake of politeness B) they'll mouth the platitude that "a lawyers stock in trade is his time" which is true, but they don't recognize that time unsold expires; if you're that not busy, I'd rather give a bit of time away in the hope of making a sale than see it expire unused and unsold and C) the biggest problem is, lawyers have an inflated sense of their worth; they spent three years in law school, spent six figures on their education, and they 'feel' that they should be paid for their expertise; the problem is, so did every other lawyer in the market (spend time and money in law school); without recognizing that, frankly, the client doesn't care about that.

And that's the problem; a lot of lawyers put their self image over marketing; they won't stoop to selling themselves. Look, in a very real sense, running a law practice is no different than running a used car lot;

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if you don't sell what you got in inventory (cars for a car dealer; time for a lawyer) you aren't going to be in business very dang long. Now, don't take this out of context, sure, lawyers are professionals and have other considerations than a used car dealer; but from a business perspective, the considerations are pretty close; you need to get potential clients or customers on the lot or in the office; you need to make a sales pitch; why you want this car or why you want to hire me to do this; you need to show the client or customer WHY they need this; listen this care gets 30 MPG, has ice cold A/C, and good tires; you don't want to handle this divorce on your own, it's complicated, I can do X, Y, Z; and you need to close the sale; I'm going to let you talk to our F and I guy, he'll work out financing and payment plan; I need you to pay me \$XXXX as a retainer and I can get right on the case.

Too many lawyers act as though the value of their services should be, or is, self evident; that the client should be so taken with the lawyer that they're willing to pay the money without closing the sale; or even worse, that the client should be so taken with the self evidence of the value of the lawyers services that they're willing to pay money simply to meet with the lawyer. You got to make the sales pitch; you got to close the sale. And that's where a lot of lawyers fall down; selling themselves. But that's called "marketing".

Ronald Jones, Florida

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Thanks for your response, as well as everyone else's. I really appreciate the various opinions and am now mulling over what to take from each comment. Thanks again,

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Nicely stated Ronald.

Chris Barber, Texas

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My problem with Fairley (and most of the other legal marketing "gurus") is that they make this distinction between "marketing" and "practicing" in the first place. Saying that you should prioritize marketing over practicing is missing the point entirely - marketing should just be a natural, organic part of your practice.

If you read the rest of his tips, they all center around getting away from the typical advertising hustle, and focusing on providing content that makes you a recognizable figure in your field. So your "marketing" involves analyzing the law, breaking it down for laypeople to understand, writing, etc. Kind of sounds like your "practice", no? Even Fairley's second tip -

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right after telling you to focus on marketing - is to "build[] up your reputation so that prospects come to you." That's impossible without focusing on your work.

The only differences between practicing and marketing are (1) you get to pick the subjects you discuss when you're marketing; and (2) for the most part, you give the information away for free. Otherwise, it takes the same skills and determination as your paid work. The more I started to think of it as two faces of the same coin, the better my marketing has been. Writing a blog post or a white paper or an e-book because you really want it to generate "leads" gets depressing really fast - the short term ROI isn't great. But if you write those things because you actually want to be an expert in your field, and you put it out there because you think it could actually be beneficial information for your clients and potential clients, the whole tenor of the the product changes. And the marketing starts to take care of itself.

Jay's point is right on - Fairley bugs me because everything he writes sounds like "marketing". The genuineness level is low. Contrast that with the library at Hinge's site (<http://www.hingemarketing.com/library>) and you see the difference between "marketing" and providing useful info to your target audience. It's the genuineness that makes the reader feel like "these guys are on my side; they get my issues."

So, I say just practice. We all know you're not going to miss a deadline for a client because it's "marketing time". So my rule is, when I'm not working for a current client, I'll just work for the clients I haven't signed yet. Put up a blog post, or work on an email blast or something. I know it ends up as "marketing", but I don't think that when I'm doing it. I do it to stay sharp on areas I'm not dealing with right now, etc.

You don't want to "make it look like" you're an expert. You want to *\*be\** the expert. It makes a huge difference, imho.

Timothy R. Eavenson, Illinois

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You raise valid points. I agree that Fairley is making a distinction where there does not need to be one.

But, I think there is a mindset component that needs to be dealt with. The best example I can give involves politics. I don't need to be partisan. I believe this example applies, at least to some degree, to every politician in the democratic world....

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Suppose you have an issue. Your job is to do something about the issue. You have a political philosophy. You have constituents. You have plenty of guidance on what the "right" thing is for you and your voters. You COULD just go to work today and use your political power to make "good" happen. You could do that, but you'd be an idiot. That's not how politics works.

Good politicians START with the press release and then work backwards to the action steps. They know how they're going to promote the thing before they do it, and they play to the press release in everything they do.

In my practice, for example, we've just had a major change to the tax code. As an estate planner, those tax law changes will fundamentally affect the services that I offer clients. I will plan differently now that we have some permanence in the estate tax code. I will also plan differently now that effective capital gains tax rates have essentially TRIPLED for most of my clients - from 15% to 44.6%. I will see a decrease in the estate tax-motivated techniques and a substantial increase in the income tax-motivated ones. Charitable planning just became unbelievably more important.

So, the question is - do I bone up on the income tax planning techniques so I'm ready for the clients who come my way, or do I climb to the nearest rooftop and shout about the need for income tax planning? A technician updates his techniques. A marketer gets the word out about those techniques. Even how I allocate my research time is governed by marketing decisions. If I have three hours to read about income tax planning, the MARKETER in me says that I'd better spend that time reading about techniques I can SELL. Knowing how to take advantage of salmon farm credits in sale between a citizen and non-citizen (assuming there is such a thing) is an interesting intellectual exercise that a legal technician might enjoy. It's also a complete waste of time for a lawyer in Orange County, California.

If I could rewrite Fairley's statement a bit, "Think like a marketer and work like a lawyer. Your work product is marketing. This is not a conflict."

Cheers,

David Allen Hiersekorn

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Well, neither marketing nor delivery of services actually pays the bills. Collection of fees does. That is something that I'm making more of a priority this year.

Cynthia V. Hall, Florida

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I think we are probably delivering the same gospel to different tribes. The bottom line is the same - success comes from communicating your actual worth to your potential clients. It has to be substantive & relevant, and it has to be communicated.

I am just not good at being a lawyer to my clients and a PR guy with my broader network. I know tons of other attorneys that have recommended it to me, and for whom it's worked out great, but it never clicked for me that way. When marketing is over here, and practicing is over there - when I have to either have a "marketer's mind" or a "technician's mind". But when it's all just part of the job, you get to be free to land anywhere on that spectrum that you naturally land, and still see the results. Some folks love the marketing, and their going to think about what sells. Others aren't. But even pure technicians can put their knowledge out for people to read and see bottom-line results.

My point is, even lawyers that don't naturally think about what sells are probably not going to waste too much free time on salmon farm credits. The natural instinct is going to be to prepare yourself for your current/potential clients. It's a marketer's mentality, sure, but since many of us are so reluctant to "market", it's nice to know that this is also just what comes naturally, when you're not thinking about "big-M" Marketing. That makes the blogging or the email blasts or whatever just a natural extension of what we're already doing, which seems more palatable to me for some reason. (And, when an interesting but narrow issue does come up, it can be great marketing material. A few obscure topics among a bunch of broadly-relevant blog posts might just be what separates you from the other guy.)

Most of my blog posts either come from new employment-related decisions that I'd be reviewing anyway, or from generalizing a question I just answered for an existing client. The work and the marketing completely overlap. I tried a long time to try and carve out "Marketing" time, and it just didn't work. When it became a puzzle piece in the rest of my practice, it clicked.

Again, I think we're in the same place, just getting there from different ends of the spectrum.

Tim

Timothy R. Eavenson

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I knew an exPerienced lawyer that suggested becoming a good lawyer then marketing yourself. Of course as a solo, you need to always be doing both.

Gilberto Valdes Alba. Florida

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