TECHNOLOGY AS A BUSINESS DEVELOPMENT TOOL

By Ed Poll

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A major new force is reshaping legal marketing today and into the future. Technology enables lawyers to do more and better work in less time, but this defines a new service dynamic where clients increasingly see law as a commoditized service. The result will continue to put inexorable profit pressure on all law firms, creating enormous change for a profession where past practice and precedent have long ruled.

But where there is change, there is also opportunity for firms to take advantage of it. If the stock market hits a low, those who have cash and are ready to buy will make money in the long term when the market rises. In the law firm marketplace, as profit pressures increase, those firms that can take advantage of the time savings, efficiency, and commoditization of routine tasks and services afforded by computers and other electronic technology will profit. Such firms will use a marketing strategy emphasizing tools like CRM systems, knowledge management, and e-discovery software, which allow for greater efficiencies that can reduce clients' legal costs, while maintaining or increasing the law firm revenue through higher volumes of work. Being able to maintain and expand billings while becoming more efficient requires yet another marketing innovation—changing the billing system to embrace value-based, alternative fee arrangements. This is a new business development dynamic, one every firm should understand.

Technology Impact on Business Development

Legal technology expert Richard Susskind, best known for his provocative book titled *The End of Lawyers?*, has defined two trends reshaping law as a business. First, technology is making the practice of law more efficient, more like a commodity, with resulting downward pressure on both costs and fees. Second, technology has made information about the practice of law—court cases, professional journal articles—widely available on the Internet. Clients are thus becoming more sophisticated and demanding, and less accepting of lawyers who tell clients what they must do, rather than consult with clients on what they want to do.

This business development and marketing transformation is the latest iteration of a system that has been in existence for centuries. The industrial revolution, as it morphed into automation, demonstrated that the more a machine could produce, the less labor was required, and the lower the price could be charged. With a lower price, customers want more of the product or service. This, in turn, leads to an increase in volume and, if costs are held steady, profits can rise.

Electronic technology can create the same result for law firms. The key to higher volume is partnering with clients—understanding what they need, listening to what they want, and bridging the gap between the two by providing value. Value is defined as listening to clients to understand what they want and showing them how the firm can provide value by addressing that they want and delivering on it. Law firms that partner with their clients by showing them how they can reduce their legal costs (without reducing the lawyers' per unit fees) can expand their business development successes dramatically.

Technology-Focused Business Development Tools

The firm that adopts technology to reduce the costs of its operation, and then passes some of those savings onto the client, will be more successful. However, the right technology tools must be employed. Three tools in particular can be effectively leveraged for business development.

Client Relationship Management (CRM) Software. Shared CRM databases on computer desktops can make marketing information and service needs for any client or prospect available to all firm members. For the investment in CRM to be worthwhile, lawyers must give up the "my client" business development mentality in favor of an "our client" approach. And even if lawyers are willing to share information, no firm can create data fields haphazardly, see how the process works in practice, then try to reorganize the information after the fact. Effective business development requires every firm, large or small, to create a standard classification system for every item in a client or prospect record. Otherwise, CRM is a wasted investment with little useful return.

Knowledge Management (KM) Systems. Investing in KM poses a challenge similar to CRM. KM systems combine the work product of all lawyers into a single unified database that can be accessed to the benefit of all clients. The heart of the process is to identify precedent documents that can be used in future matters, and ensure that they are both identified and easily accessible. This is only feasible by using shared document management systems. If the technology is not integrated systematically from the start, the result will be haphazard, after-the-fact efforts that diminish business development effectiveness. Moreover, the KM process works only when the information is classified and categorized frequently in a consistent manner so all lawyers can access it.

E-Discovery Software. In litigation, e-discovery software can analyze documents required for litigation discovery in a fraction of the time, for a fraction of the cost, when compared to using lawyers for the task. Some programs have the power to search electronic files and find documents with relevant terms at high speed. They also extract relevant concepts and deduce patterns that would have eluded lawyers examining paper copies. Inescapably, many lawyers used to conducting document review will no longer be billable. Profitability for the firm will come from the ability to swiftly analyze the millions of equivalent paper pages that electronic documents represent.

Knowledge and Business Development

The firm that leverages its knowledge through CRM, KM, and e-discovery will be more efficient, reduce its costs, and provide excellent results for clients at a lower price. But this raises a question: Who owns the knowledge, the forms, and the precedent documents? Does the client who paid for it own it? Does the law firm own it? Or does the lawyer who created it own it?

Clients can stipulate as a condition of engagement that they own the intellectual property as a work for hire and that the law firm must share it with other law firms that handle the client's affairs (for example, product liability litigation). This is the fundamental principle of knowledge management. Clients do not want their lawyers to reinvent the wheel, and do not want to pay for others in the firm or another firm to re-create it. For the law firm, even if the work product was personally created by the lawyer, the copyright protection typically attaches to the documents and resides with the firm, especially in the case where employees (associates) are creating content as part of their job. A similar stipulation can be made for partners in their agreements.

Two issues must be addressed for this to work. First, lawyers cannot create work product haphazardly, wait until a matter is closed, then try to organize the information after the fact. Effective business development requires every firm, whether one lawyer or one thousand, to create a standard classification system for each lawyer's work. Second, lawyers cannot be holdouts. Some lawyers may think that work product classification is a threat that lets other firm

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members increase their compensation by using one's own hard work. Only a collective approach to business development and compensation can counteract this.

Billing for the New Technology Dynamic

All the business development innovation in the world means nothing until it is translated into revenue for the firm. Increased profit by increased efficiency is a definite contrast to the traditional law firm model, where profit is increased by raising the hourly billing rate. It seems inescapable that lawyers will have to alter their fee and cost structures in the new world created by changes in technology. This requires a transformation on both sides of the fee equation. Clients must accept the kind of billing arrangements that allow lawyers to make more money while being more efficient. This means rewarding lawyers with more work for eliminating inefficiencies, duplications, and unnecessary services. On the law firm side, maintaining billings while becoming more efficient requires changing the billing system to embrace alternative fee arrangements. Using contingent, fixed, capped, value fee approaches where time is not relevant to determine the fee is essential to make the most of the leverage from technology. The rules of professional conduct must also be altered to permit billings without reference to time, particularly in determining appropriateness of fees where there is a dispute.

A law firm's commitment to use alternative fees requires three basic requirements for success:

> *Communication is essential.* No firm should fall into the trap of simply changing or cutting its fee structure without a thorough explanation. An up-front general statement about fees and alternatives, estimates, and budgets is crucial to secure client acceptance.
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> *Clients must be educated.* Their understanding of what equitable arrangements may exist is typically not substantial. Law firms must work with clients to develop specific pricing alternatives based on realistic expectations, moving beyond the draconian RFP process.
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> *Alternatives must be flexible.* Client preferences and each firm's operations differ, and the factors of each project or case can accommodate various billing options.

In any alternative billing method, the skills of a lawyer and the way in which services are marketed and delivered to the client must coincide with what the client wants and needs to have.

The question becomes, then, are clients ready for the kind of billing arrangements that would allow the lawyer to make more money while being more efficient? The Association of Corporate Counsel's ACC Value Challenge, a concerted effort to better integrate law firm billings with corporate clients' perceptions of value, suggests that they are. A new fee dynamic focused on value can create an environment of sharing the efficiencies offered by technology. Both lawyer and client will benefit—and business development is transformed.

Ed Poll *is a speaker, author, and board-approved coach to the legal profession. LawBiz and Fujitsu are sponsoring Ed's cross-country tour to reach bar associations and law schools. If you want Ed to stop in your community, contact Ed directly. Readers with questions for Ed should email edpoll@lawbiz.com or call (800) 837-5880. You can also visit his interactive community for lawyers at www.LawBizForum.com.*