

Attorneys MasterClass

MASTERING THE BUSINESS OF THE LAW.

Seven Reasons Small Firms Stay Small – And How to Escape the Traps

Over 63% of private-practice attorneys are in firms of three or fewer attorneys. And that number is growing. Median income for lawyers is between \$83,000 and \$113,000 – and decreasing. Where will you be tomorrow?

*By Dustin A. Cole
President, Attorneys Master Class*



The Canadian Bar Association Futures Report: What's Ahead for the Profession

Make no mistake, the revolution is coming, and the timid and the risk-averse will fall by

the wayside.

A few years ago, Britain started the revolution by allowing non-attorney investment in law firms. Australia also allows this.

Canada has now fired the next shot and it's a cannon. The Canadian Bar Association has released its [Futures Report](#) which, although not yet formal policy, promises to revolutionize the Canadian legal marketplace and remove the antiquated shackles that have held the profession back from change.

The first recommendation is titled "Flexibility in Business Structures" and posits both multidisciplinary practices and law firm ownership, management and investment by nonlawyers. Importantly, they make the recommendation with no qualifiers.

Heaven help the traditional legal thinker when non-lawyers take control of law firms.

I've often said that one of the problems that law firms face is that they are too profitable. In other words, their profit margins are, by any normal business standards, enormous. The average profitability of a small to midsize firm is 45 to 55%. The average profit margin for a grocery store in a good year is 2%. The unintended consequence of this profit margin is that lawyers seldom focus on efficiency or good business practices. In fact, they do the opposite: they struggle to keep staffing and overhead low, reducing leverage but increasing profitability, and making sure that they and everyone else in the firm works at 120%.

Parenthetically, this lack of business sense is exactly what causes the astronomical rate of alcoholism, drug abuse, divorce, and suicide in the legal profession: no personal boundaries – just work until the gets done – even if that means nights, Saturdays, Sundays, holidays and anniversaries.

And when nonlawyers manage law firms, the fur will begin to fly. All that I have taught and preached over the last 20 years will become gospel: systemization, streamlining, efficiency,

productivity, focus, selectivity, and most importantly, breakthrough thinking.

Add together non-lawyer investment or ownership in law firms and multidisciplinary practices, and the revolution truly begins. Where does "multidisciplinary" begin and end, imagine a personal injury firm with an auto body shop, a medical facility, or a financial planning department.

First to emerge from the flurry of fur will be distinctions that will create "brands," firms known for specific work: focus on specific industries, market sectors, and issues.

The second biggest recommendation of the report recommends that fee sharing and referral fees to non-lawyers be permitted.

These two recommendations go hand-in-hand, because a multidisciplinary practice would automatically assume some type of fee sharing and origination credit – that is, referral fees – to non-lawyers. Even in non-MDPs, under this provision, a lawyer would be able to be split or pay a referral fee to an outside non-lawyer such as a financial planner, CPA – or adoption agency.

The take away here is to stop thinking survival and start thinking revolution. Soon enough, the revolution will be upon us.

Those who are ahead of the curve, building practices with superb teams, broad client and referral networks, clear target markets and highly distinctive images will be best positioned to move into the new world of the legal profession.

1. Thinking from the Bottom

Attorney approach: how much money do I need to make to survive?

Attorneys come out of law school with large debt and move into their practice in survival mode. Unfortunately, most stay there. Even attorneys who have successful practices tend to make survival decisions rather than entrepreneurial decisions, meaning that they

choose the minimal risk path rather than the entrepreneurial path at every turn.

Dan Sullivan, founder of Strategic Coach, in his high-level entrepreneur coaching programs, pushes his clients to think in terms of expanding their business by a factor of 10 rather than the usual 15 or 20%. He says that incremental thinking results little change except for minor tweaks. Aiming for 10 times growth demands creative and breakthrough thinking.

"Breakthrough" is the operative word here. When I say "10 times current revenue" most people immediately go to "that's impossible" or "never happen" or "that's a stupid idea." All of that followed by a string of reasons why.

So, "breakthrough" means consciously moving past the immediate reaction and all of the reasons into the process of brainstorming the "what if" until new ideas emerge.

Once again, those new ideas must be treated with respect rather than the typical minimal risk approach. New directions, new ideas, new concepts will demand resources, risk, and refocus. All of that is antithetical to a profession whose entire basis is precedent.

Entrepreneur approach: how does this business need to operate to reach my goal of [\$500,000, \$750,000, \$1 million]

The missing pieces:

- Business planning
- Goal setting
- Strategic thinking
- Initial startup capital

2. The Better Mousetrap

Attorney approach: if I just do great work, the clients will come.

For a profession whose entire outlook is based on precedent – history – this is one of the biggest traps. Law school teaches attorneys about the practice of law but virtually never mentions the underpinnings: the business of law. So, most lawyers come out of law school,

open a practice, work to hone their skills and assume that the world will beat a path to their door.

Virtually every survey of legal services consumers shows that, for the average person who deals rarely with lawyers, virtually none base their decisions on research into the expertise of the lawyer. Instead, they base their decisions on essentially four elements. The first, increasingly, is advertising. The second, is what other people may say about the lawyer – in other words, referrals. The third is, frankly, rather frightening, and also perhaps the most neglected aspect: how they feel about the attorney. That's right, often the decision is based on "like them a lot. Felt good about them."

So the reality is that, for most consumers, the decision isn't about the attorneys expertise. Further, the reality is that 90% of what lawyers do for consumers isn't rocket science anyway.

The fourth factor, not surprisingly, is price. Even if they like the lawyer, a price above their threshold, or above their credibility – that is, what they think the service is worth to them – they will say no. Significant mitigating factors, however, relate to the strength of the referral and the ability of the attorney to convey a broader picture of value and also a strong picture of trust.

There is a bit of an exception here. If the consumer identifies what they consider to be a better mousetrap – that is, a cheaper mousetrap – often they will flock to that better mousetrap, flagrantly ignoring issues of expertise and skill. LegalZoom for instance. But even here, the only way the consumer learns about LegalZoom in the beginning at least, is through advertising.

The deeper conceptual trap with the "better mouse trap" theory is that attorneys believe clients want legal services. They don't. They want something beyond the legal service – a

result, a value or a benefit – and the legal service, and yes the lawyer, is what they must put up with to get to their goal. Lawyers who do not understand this simple truth often find themselves outside looking in.

The Black & Decker Story

There is a famous story about a Black & Decker sales meeting. The sales manager asked the team what the customer wanted to buy. The salesman diligently provided a string of answers such as "a sturdy tool at a good price," "a tool that is easy to use," and so on. "No," said the sales manager and held up a board with a conspicuous hole in it. "This," said the sales manager, "is what the consumer is buying. This is what we're selling – the ability of the consumer to make a hole when they need one."

Highly successful older lawyers would seem to confirm the "better mousetrap" theory, often because they do little or no advertising or self-promotion and yet have highly successful practices. Yes, they may indeed be a better mousetrap. However, the real reason they are successful as they have developed a reputation for their skill through many years of hard work. These lawyers prosper almost exclusively on referrals.

More sophisticated buyers of legal services do indeed look for high levels of skill. But again, there are often lawyers with equivalent levels of skill who struggle because they have not built the relationships, reputations, and referral base that has increased their visibility in the profession.

Entrepreneur approach: what am I selling and how to my prospects want to buy?

The missing pieces:

- Market research –competition, market demographics, visibility vehicles – and creative thinking.

- Identification and implementation of services, support, communications –

POSITION – that is distinct and attractive

A detailed, specific, consistent and budgeted marketing plan

3. Dogs from Every County

Attorney approach: what the heck, why not take it and make a couple of bucks.

Ask most attorneys who they are targeting as clients and they will say quite simply, "anyone who needs my services." This nebulous approach to attracting clients makes it difficult and often very expensive because it requires marketing to the world.

Early on in many attorneys' careers, survival means doing "threshold law," taking whatever comes through the door. But the goal should always be to move away from it as quickly as possible. Because, very simply, threshold law is a trap that can derail a potentially successful career.

There are two types of threshold law. The first is taking any type of matter that shows up. The second is taking matters of minimal value.

In the first instance, a diverse practice – a "general" practice – stretches the attorney's ability to keep up with the law and procedures in all of those areas. The result is inefficiency, stress, and higher risk of malpractice. Further, time and worry on an unfamiliar matter often takes time away from matters more familiar and more profitable.

In a larger sense, attorneys who are perceived as "general practitioners" are increasingly being viewed as a "Jack of all trades, master of none." Not a good place to be if you wish to build a highly successful practice. My advice has always been to focus the practice and to know more than three areas which are somewhat related, such as estate planning, business and real estate.

Small-town practitioners will usually vehemently disagree with this advice. "People expect me to do it all in a small

community," they will say. I disagree. The ideal position of the attorney and a small community is not necessarily the general practitioner, but instead, the "trusted advisor," the first person every member of that community seeks out when they have a legal problem. The position of the attorney, then, becomes that of counselor, guiding the client to the best path to solve their problem – and in the process, selecting out those matters which fit best for them. This puts the sole practitioner in a power position of referring out business to others, and building a strong network of those who refer his or her preferred type of work back.

Entrepreneur thinking:

What are my minimum standards for intake?

What can I attract that will be the highest profit margin?

What target market or markets can identify that will allow me to market more efficiently and cheaply?

4. Busy Versus Successful

Attorney approach: I'm very busy, so I must be successful.

Yes, but are you making the money you deserve?

A survival mentality creates a seine net approach to the practice law: take in everything you can get in your net. If we have lots of work we must be okay – even when much of the work is of low or sometimes even no value. We may lose a few dollars on every case, but will make it up in volume. This is one of the reasons many attorneys experience a high percentage of uncollectible revenue – even while working 60 to 70 or 80 hours a week.

"Busy versus successful" is another type of threshold law – taking in cases with no selectivity. The classic is the personal injury firm that takes in every case and attempts to find some value in them. These firms typically

become massively overloaded with too many cases, and attorneys and staff spend all of their time simply trying to make sure nothing falls through the cracks – being reactive rather than proactive. The result, inevitably, is that no case is pursued as aggressively as it could be, and time and energy is spread too thin, usually meaning that the best cases fall into the same hopper and get the same treatment.

Six years ago I began coaching a young attorney who had left a workers compensation firm to begin his own personal injury firm. We established a selectivity principle – a minimum potential value for the case – and created a basic set of criteria for intake. In the beginning, my client took in only those cases with clear value criteria, and potential to provide at least \$5000 in revenue to the firm. Even in those early days when the pickings were thin, he maintained the criteria. He maintained a small number of cases that had clear value, and accordingly, was able to be highly proactive and assertive in pushing them forward. This spring I received a celebratory call from him – he had just achieved the million-dollar revenue mark. And yet at that moment he had only 14 open files. His comment was, very simply, "and I expect to exceed that million dollars soon."

There is a principle that applies to nearly everything: the Pareto principle, better known as the "80 – 20 rule." It says that 80% of your results will come from 20% of your work. Attorneys who do not understand this will constantly be allowing the 80% of their work to dominate, while burying the most valuable – that other 20% – in the same ground. The smartest attorneys are highly selective in what they take in and where they focus their time. The result is greater return with significantly less effort.

For instance, the personal injury firm which sets higher standards for intake has a higher

average revenue per file, and needs less staff and overhead to create it.

The entrepreneur doesn't take dogs from every County, and they only market for purebreds. In other words, they seek to identify a definable target group – say, veterans, union workers, Native American groups, inventors, etc. This allows them the ability to get their arms around a definable group and identify the communications avenues, the demographics, the interests and organizations that will allow them to reach that defined group effectively and less expensively. Focusing on a target market is more akin to living in a small town in that it allows the entrepreneur to more rapidly develop a high profile and strong relationships.

Entrepreneur thinking:

What is my profitability?

What are my most and least profitable practice areas?

How can I increase my efficiency?

How can I identify a specific target group to market to, to increase marketing efficiency?

How can I decrease my office time and increase my personal time?

How can I make myself operationally dispensible?

5. Living in Hope

The attorney approach: I'm a good attorney, as long as I work hard and do good work, more work will show up. I'll think about marketing some other day.

"Living in Hope" is first cousin to "Busy Versus Successful" and "The Better Mousetrap." It's the "have faith" approach to the practice of law: I'll trust in the universe to send me business. It's also a plea: "please don't make me have to market."

Once again, this is a product of traditional law school training which says "you're a professional not a business person. Marketing

is unprofessional." Even though the culture has changed significantly, and most attorneys recognize that some kind of marketing is necessary, even struggling attorneys will place marketing last on their priority list because "I'm too busy."

When it comes to marketing, most attorneys will say "I just want to do the law." It's critical to remember that, even before "doing the law," making a living and feeding the family comes first. Similarly, making enough revenue to feed the practice comes first. In fact, the hierarchy of value of the attorney and the practice looks like this:

1. Business development
2. Client relationships
3. Strategy
4. Leading the team to get the result
5. High-level legal work

"Doing the law" is impossible if you have no law to do. Attorneys who get lost in "busy" often get lost in the profession.

Entrepreneur approach:

What are the most effective marketing approaches to attract the clients I want?

How do I need to organize the practice so that I can have sufficient time to market?

How am I measuring my various marketing avenues to determine efficiency?

How am I maximizing profit from matters by moving them as efficiently as possible?

How am I maximizing the likelihood that clients will return and refer others?

Do all elements of my marketing create maximum positive impression?

Website

Telephone answering and call handling

Appointment setting

Reception area and greeting

Conference room or office for meeting prospects

Information gathering and "sales" process

Follow-Up communications

Do all elements of my client service create maximum positive impression?

Client communications

Call handling and appointment setting

Client relationship with team

Billing and collections

Matter closing process

Do I have a planned, periodic and positive communications process with former clients?

6. The Lone Ranger Syndrome

The attorney approach: I don't need staff. I can do it all myself. Staff is too expensive and a nuisance.

Michael Gerber, in his book "The E Myth," puts it very succinctly. "If you are the only one working, you don't have a business. You have a job."

As the technology available to support attorneys has expanded, attorneys have increasingly opted for little or no staff. The problem is, however, even when the attorney has the best technology and is working at maximum efficiency, they still have a practical ceiling on their revenue and the growth of their practice.

Even the most industrious attorney has only so many hours and so much energy to work. And when the attorney is not working, there is no one other than the attorney to provide client service or information, or to accomplish work. So, the solo-solo attorney loses all personal boundaries. They are working and managing their e-mails on weekends and evenings, they are receiving calls from clients at all hours. Even when they don't answer an e-mail or the

phone, the issue is present in their minds. And finally, when they are the only ones doing the work, they invariably de-prioritize marketing in favor of all the work they have to do.

An old ABA study suggested that the average sole practitioner can spend up to 50% of their time" doing their own laundry," so to speak. That is, tending to the bills, the office supplies and equipment, tinkering with computers – all those things that do not make money. But even the most efficient have to spend some part of their time doing this, to the detriment of billable work.

When utilized well, team members, even those who are not directly billable, make the firm money by taking nonbillable work off the attorney's desk to do more billable work, market, or maintain good client communications. Good team members can also enhance client service, provide continuity for clients and prospects when the attorney is not present, and most importantly can often actually bill and at least cover their costs, and at best generate additional profit.

The most important payoffs, however are a practice that can grow, and a personal life with some sanity.

Underlying this Lone Ranger approach is a deeper issue, once again a legacy from law school. Few attorneys have skill in managing people or projects – and in fact even themselves. Many attorneys will cite bitter experiences with staff that solidified their decision to be solo-solo. Yet they fail to see that the entire experience was their responsibility. They wrote the ad or hired someone informally, provided (or didn't provide) a list of responsibilities and job duties, trained, supervised and managed the employee. A bad result is most often because of a bad process which either chose the wrong person or set the right person up for failure.

The bottom line is that a solo-solo practice has a practical ceiling on revenues. It is also a somewhat lonely place, one more likely to result in this affection or even burnout. It is not a business, but a job.

The entrepreneur approach:

What is the goal for my business?

What does my organization chart need to look like to achieve that goal?

What systems, procedures, job descriptions, management structures do I need?

What measurement tools do I need to manage finances and control profitability?

In short, the entrepreneur makes a detailed plan with goals, and assures that there are systems, procedures and measurements in place to mark the progress – or lack of progress – toward the goals.

7. Mirror Thy Neighbor

The attorney approach: I'll set up my office and do my work like attorneys and my colleagues have in the past.

When the profession was blessed with too little capacity and too much demand, this approach worked. No more. Today, it is necessary to create a clear difference and distinction; not just "I'm a better attorney" but an identity that suggests a significant difference in approach and value – one that has consumers choose one attorney over another. This "Mirror Thy Neighbor" view is a product of the "precedent-based" conceptual foundations of the legal profession, and also a result of the lack of any relevant business training in law school.

When all attorneys look the same, the only tool the consumer has to make their decision is price. When there are clear distinctions, the consumer is able to make a choice based more on needs and value and less on price.

The entrepreneur approach:

What are clients seeking in an attorney?

How can I distinguish myself from competitors in a way that attracts clients? Since clients rarely make a choice based on research, what are the elements of

attraction and decision which cause a consumer to choose one attorney over another? (See the entrepreneur section under "Living in Hope").

The revolution is coming. Maybe not tomorrow, or next week, but soon. The entrepreneurs will prosper and grow. The technicians will work for the entrepreneurs. And many good lawyers will leave the profession.

The choice is yours. Step back and take an entrepreneurial look at your practice. Or await the revolution.

About Master Practice Advisor Dustin Cole

Through his nationwide seminars and work with individual firms and attorneys, Dustin Cole has trained over 20,000 attorneys across the United States in how to build more successful practices and develop their dream retirements.

He brings more than 35 years of experience in every phase of marketing and management to his work with the legal profession, helping firms cope with market change, partner disputes, mergers and breakups, and advises attorneys in planning for retirement and succession. Over his more than twenty years of work with the legal profession he has supported firms ranging in size from sole practitioners to over 2000 attorneys.

Dustin can be reached at 407-830-9810, or by email at dustin@attorneysmasterclass.com

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