



It's Your Business

The newsletter of the
Law Practice Management Committee

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Business Litigation Super Conference



May 8-10, 2019
Austin, TX

REGISTER **TODAY**

Leadership Note

From the Chair

By Stacy L. Moon



As I write the first notes “From the Chair” for 2019, I am excited for the year’s events for Law Practice Management. By the time this note is printed, we will have held our first committee fly-in of 2019 in conjunction with the Product Liability Conference in Austin, Texas.

We had a number of people stay on our steering committee, and as always, I thank them for being willing to put their time into this committee. We also have had a number of new people volunteer for the steering committee, and I look forward to working with them.

Our main goal for 2019 is a broad one—to make this committee *the* resource for lawyers interested in being, or who are, involved in management of law firms and in the business of law. Obviously, that goal is broken down into smaller components, the details of which I will not bore you with here. However, to reach that large goal, we need input from all of our committee members (which is why we have made our fly-ins committee-wide, rather than simply steering committee). If you have suggestions, please let us

know. If you do not know who to contact, go to www.dri.org, click through the committee page, find Law Practice Management, and check out the steering committee members. Or—just let me know. We cannot promise to implement all suggestions, and implementing some suggestions may take time, but we are here to listen.

With that said, please save some dates. We have scheduled the 2019 Managing Partner *and* Law Firm Leader Conference for September 5–6, 2019, in Denver. The Seminar will have sessions for both up and coming law firm leaders AND current managing partners. Please plan to send your future leaders to that seminar. Please also save October 16–19, 2019, for the 2019 DRI Annual Meeting. DRI is returning to New Orleans, and our committee dinner will be October 16. More about both the Managing Partner and Law Firm Leader Conference and the DRI Annual Meeting on the [eCommunity](#).

Finally, let me wish everyone a profitable and successful 2019!

Feature Articles

Small Law Firms

Striking a Balance Between Business and Personal Relationships Within the Office

By Mario Delano



Succession planning is one of the many hot topics in Law Practice Management. A critical part of succession planning is the ability for the leaders of the future to be able to move into management roles with as few bumps

(because it is almost never going to be seamless) as possible. This article focuses on a combination of changing a prior leadership policy which you did not like in conjunction with relationships you may have developed with coworkers as you climbed the ladder.

Recently, I had the misfortune of sitting home sick for a few days. I didn’t have the strength to do much more than sleep and watch television. I ended up watching (or sleeping through) several episodes of one of my favorite comedies from the 90s, “Coach.” One of the episodes got me thinking about how we in small law firms handle certain personnel situations. Now I’m sure many of you are sitting there saying to yourselves what could a comedy show that went off the air about 12 years ago have to do with managing a law firm? Well, those of you that know me will not be surprised that I could make that connection. In the

particular episode, the coach decides he has to cut a player from the team to make room for incoming recruits. After he has made his decision, but had not yet notified player, his wife became friendly that player's wife and invited the other couple to dinner. That reminded me of something I heard from the managing partner at a law firm many years ago. I'm paraphrasing, but it was something to the effect of his not wanting to become close to associates and staff members because someday he may have to fire one of them. Sometime after that I got into a conversation with an attorney who was formerly an associate with that firm and now a partner in a firm of her own. Both were small firms with less than 25 employees. It seems that this partner was going to make sure her new firm did not have the same division between partners and other personnel. During the summer months, they would close the office early every Friday and the entire staff would go out for happy hour. She raved about their office morale. As I approached partnership in my own firm, I thought long and hard about which was the more effective way to maintain productivity. One appeared to create better morale while the other appeared to keep a solid line between people giving the orders and the ones who were expected to follow them. It seemed pretty obvious that the answer was something in between. Obvious, but much more difficult to find the place that actually struck that balance.

The first question you need to ask yourself is whether you would hesitate to fire an employee who is not getting the job done and gives no indication that they are ever going to get the job done. Now, ask yourself the same question, but make that employee someone with whom you have exchanged family stories, whose spouse you have met and maybe you have attended a nonbusiness function he or she has hosted. At first blush, the second would appear to be a much more difficult decision. When you dig a little deeper, it's only difficult if you cannot decide between the personal choice and the business choice. The business choice should be fairly easy. An employee who is not successfully doing their job and who you do not expect will improve (even with more training) is a drain on your resources. They draw a salary that would be better used toward a more competent employee. If you have a candidate who you think will be better, then the business move is to make the change. The personal choice is a bit more difficult. You still have the same employee was not getting the job done, but you keep them because you don't want hurt feelings (and a dip in morale). Your situation is the same in that you are paying someone you know is not pulling their weight. On top of that, the financial situation is magnified every time that person comes up for a raise.

After all, no employee thinks they are doing less than a stellar job and if you keep them, you must agree. If you agree (or more specifically do not tell them you disagree), then there is no reason they shouldn't get a yearly salary increase. As an employer, you'll only be more aggravated because that person is still on your (growing) payroll, but the aggravation is with yourself and that could well be worse than being unhappy with your employee. So, you could keep them, continue to get an unacceptable performance and compound your unhappiness. Or, you can let them go.

Let's keep talking about the employee with whom you have developed a more personal connection. What are the consequences of letting that person go, or more specifically how will it affect your business? Well, if you've never had the "you're not doing a good job" discussion with that employee (and shame on you if you haven't) then there will certainly be a feeling of betrayal. Can you live with that? If you say you can, then you will probably make the same mistake with the next employee. If you say you can't then perhaps you learned something and this identical situation will not come up again. On the other hand, if you have properly counseled the employee and given them the opportunity to improve their performance, that person might still feel betrayed, but the feeling is much less warranted. Were they really betrayed, or did they just get caught giving a less than maximum effort because they felt the more personal connection with management would keep them from getting released? So as far as that individual goes perhaps the worst thing they will do is bad mouth you at their next job. I will skip the effect of the ever increasing number of websites where anonymous people can sign on and make comments about your business. Not that they don't matter, they do. The problem is you can make every allowance for an employee, treat them fabulously and terminate them for absolutely good cause and you still can't stop them from posting about you somewhere on the Internet. But let's get back to the former employee who bad mouths you at the next job. If a firm's reputation is solid, then it's unlikely anyone will pay much attention to someone speaking badly about it. If it isn't, most people won't be surprised and probably won't take the time to give it another thought. Face facts, you will likely get the same result from an employee who has left the firm voluntarily to move on to a "better opportunity." Speaking hypothetically, take a young associate who thought the bosses did not know that he was leaving out of the back door every night at 4:55 PM. He was with the firm for only a short time (let's say about six months) and when people expressed surprise that he would leave, the reason

he gave was that no one taught him anything. There was not even a ripple for the firm with a good reputation.

So, let us get to the heart of the matter and the main reason we are concerned with such personnel matters, morale and how it affects the performance of others. Many people have said there are no secrets in small towns and that is true in small law firms as well. Throughout your career you will likely spend more time with your staff than you do with your family. They get to know you and you get to know them. More importantly, they get to know one another. Although you will always have a situation in your office where an employee will misjudge (sometimes severely) the performance of a co-worker, for the most part they know. They often will not say it, but they know. If you have to let someone go for good cause, enough people will have expected it and you will likely not see any effect on office morale. On the other hand, if you let someone go to make a job for your cousin's daughter/son . . . Well, you go into that one eyes wide open.

What does this all mean? I truly believe the answer to this question has changed over the last several years. Most people today are looking for a personal connection in

their business lives. We, as employers should be open to such a relationship. The only caveat to this is as long as it does not affect management's objectivity when it comes to personnel decisions. If an employee is not doing well, then they must be told they are not doing well, irrespective of whether you attended their wedding or don't know anything about their personal life. (No need to worry about how to handle telling an employee they're doing well, that's pretty obvious, regardless of the relationship.) We are all running businesses. As managers, we are responsible for many people being able to keep food on their tables. Putting the health of the law firm first is of paramount importance.

Mario Delano has been the managing partner at Campbell, Foley, Delano and Adams, LLC for the past 11 years. He is a past President of the New Jersey Defense Association and past New Jersey State Representative to DRI. He is the current Publications Chairman for DRI's Law Practice Management Committee. Mario is a certified civil trial attorney who concentrates in Personal Injury and Worker's Compensation Defense Litigation. He can be reached at MDelano@campbellfoley.com.

"Management by Walking Around"

By Dan Lindstrom



In our techno-centric, high demand world of law practice, how does a busy lawyer make any progress toward managing the practice of law and improving upon it? Certainly not by staying cloistered in your office with the door closed, two computer screens before you, a phone in your ear and your cell phone in your lap. Let me share some low-tech and simple tips about a topic that I have always referred to as, "Management by Walking Around." Checking Google to see whether I have borrowed that term from somewhere, it appears that I have—maybe from something written by Jay Foonberg or some other ABA or DRI LPM guru. (Foonberg has written and spoken about law practice management for many years. See his sixth edition of *How to Start and Build a Law Practice* (2016) available as an e-book at <https://foonberglaw.com/tag/build-a-law-practice/> If you search this term, or the term "management by wandering around," you will see that business management authors have written a great deal on the topic of "MBWA"

since at least the early 1980s. See, e.g., "[Why Wandering Works Wonders for Managers](#)," strategy+business blog post August 2, 2018 (noting that Tom Peters and Robert Waterman popularized "MBWA" in their 1982 book "In Search of Excellence").

While it is easy to get into the ditch about the deep philosophical underpinnings of MBWA, the practical point here is to encourage you to change your focus from that of your desk or cubicle and instead to see your organization with the eyes of your employees or clients—for example seeing what your clients see when they enter the physical or virtual front door of your office.

When did you last do any of these pretending to be a client: Walk through the front door? Call your office on the main phone line to hear how the receptionist handles the call? Search for yourself and your firm online? Enter your firm's website while wearing your "client goggles?" What did you notice that you liked—or didn't like? Perhaps

you saw the dated décor, the trash in the parking lot or the weeds in the landscape. Maybe you discovered a rude or unresponsive receptionist, or worse yet, that you have no live person answering the phone and instead use a recorded voice and an unintelligible menu. Maybe your website is old and dated, unflattering, or simply pays homage to your greatness. Think about what message any of these might convey to clients and others about your or your firm.

Okay, that was a good start. Now let's think a bit bigger. At least two important categories of management are encompassed by the MBWA concept: Marketing (to clients, the public, your staff and people you want to recruit); and the state of the physical plant that is your office (fire/life safety attributes, the perception and satisfaction of those who work there, ethical obligations, security, etc.). Have you looked at the rest of the operation? Get up out of that chair again, take off your lawyer blinders and "walk around" the place: How are the conference rooms, break rooms and restrooms? Who has the technical competence to know if "stuff" (like toilets, lighting, environmental controls, fire extinguishers) is working properly? If you are not that person, then find out who has that set of skills and have them "walk around" with you. Determine whose job is it to take care of these things—sometimes it might be you, a committee or your landlord. Determine what needs to be fixed and how urgent that need might be. Then develop the plan to repair, renew, redevelop and remodel, and budget time and money accordingly.

A specific and important category of this is a virtual walk around (and through) your digital assets. This might take yet another level and kind of technical competence. If you

don't have it make sure to find someone who does. Is your firm's (and thereby your client's) data secure from hackers, phishers and other internet malcontents? Do lawyers and staff understand how to avoid these attacks and the rules about use of the firm's computer assets, as well as the rules about connecting their own personal devices to your network? What, you don't have any rules about that? Let's discuss that further on another day.... For now, make sure you have the best people on the job of maintaining this part of your practice.

It is important for everyone in the office to undertake the MBWA exercise, whether your management role consists of just building your own practice and hoping to be a partner or shareholder someday, or whether you are already there. People in your organization need to become adept at "walking around" so that they understand the issues and they are prepared to successfully take over the managing partner job someday. Besides, nobody in the organization is too good, too busy or too important pull a weed or to pick up trash!

Dan Lindstrom leads the law firm of Jacobsen Orr (jacobsenorr.com), a firm with a broad variety of practice areas centered in Greater Nebraska. Lindstrom's law practice includes business practice and litigation in insurance, personal injury, business, corporate, agriculture, natural resources, water, zoning, annexation and other disputes. Among his numerous professional and volunteer roles, Lindstrom is currently the immediate past president and a member of the board of directors of the Nebraska Defense Counsel Association. He also currently serves as the DRI Nebraska State Representative.

A Business Case for DRI

By Stacy L. Moon



It is a common situation. At the end of a quarter or year or even monthly, business partners review billable hours and non-billable hours. If an active DRI member works with non-DRI members or DRI members who are not active (but they should be), frequently, the business partners look askance at the number of non-billable hours included in the billing reports. Fortunately, most active DRI members are aware of the time they spend and are conscientious about ensuring that their billable hours, and their collectable

amounts, so that they defend the time and energy they put into DRI. Nevertheless, if you have not considered or made the business case for being involved in DRI recently, a review and refresher may assist as the quarterly reviews come up again.

Referrals

Most lawyers who understand the practice of law is a business focus on the amount of money that an activity can

profit the firm. After all, our incomes and—as importantly—the incomes of our staff and personnel.

By becoming a member of DRI, whenever another member needs assistance in a state in which they do not practice (assuming they do not go to a committee's ecommunity first—more on that below), DRI members search for lawyers on the DRI website by entering an area of practice and a state or city and state. For the cost of membership, and five minutes spent filling out a complete profile for a lawyer and a firm, that DRI member will appear in search results.

As a DRI member becomes more involved, and meets more members, the likelihood of a direct referral, rather than simply appearing in a random search, increases.

Additionally, each substantive law committee (SLC) has an [ecomunity](#) (formerly known as ListServe). Most DRI members who do not otherwise know someone use the ecommunity when looking for referrals to send to another jurisdiction or in another area of law. Joining an SLC is free with membership. Monitoring the SLC ecommunity involves minimal time expenditure. But the SLC ecommunities are an effective way to request or send referrals.

Why should a lawyer worry about how to request a referral? Lawyers are in the service business. Their job is to serve their clients' interests. Those interests frequently involve needing legal help in another area of law or in another area of the country or world. By having access to DRI membership around the world, a DRI member can serve those clients' needs efficiently.

Experience and Exposure Writing

The best way to improve writing skills, other than reading more, is writing more. DRI members have almost unlimited opportunities to write and be published. Deadlines are usually issued well in advance so the DRI member can work the time needed into slower periods of time. Without admitting to being the author who mentioned this, most publication deadlines for DRI may have some flexibility, as well.

Writing and publishing articles in a DRI SLC newsletter, in a weekly edition of *The Voice*, or in *For The Defense* also has the added benefit of spreading that DRI member's name, face, and experience to the broader DRI community which, in turn, increases the likelihood of referrals. The DRI member who publishes can also send copies of that article to clients with relevant interests.

Experience Speaking

With the dearth of trial opportunities, lawyers lose one of their most common opportunities to speak in public. Even judges are ordering oral argument for motions less frequently, so the opportunities to argue a motion are diminishing as well.

To keep speaking and presentation skills sharp, and to develop them further, lawyers need opportunities to speak. DRI members who are involved in their SLCs, who write, and who post on the ecommunities generally have opportunities to speak at seminars or get involved with on-line learning opportunities such as webinars.

Those speaking opportunities are additional ways to highlight a DRI member's experience and expertise, which, in turn, increases the likelihood of referrals and an opportunity to highlight that experience for clients. Additionally, by attending a seminar, and even speaking, DRI members make face-to-face connections which makes other DRI members more likely to refer business.

Attendance at seminars does cost a firm money—both in the price of the seminar, travel, meals, etc. The benefits, though, meet or outweigh the cost—both in experience, marketing the DRI member and firm, and in potential referrals. Attending a seminar, if not properly, is not a vacation, though, no matter where it is held. Most seminar activities begin at or before 8:00 o'clock in the morning; with substantive sessions held most of the day, ending late, followed almost immediately by multiple networking functions. Attendees at most seminars have twelve to fourteen hour days, answer client telephone calls and e-mails throughout the seminar, and then do substantive work at the end.

Access to Best Legal Minds in the Country

Another benefit to DRI membership (included in the base membership price) is access to the ecommunity and DRI's complete database of information, [LegalPoint](#).

LegalPoint is an online database of information published or released on any DRI platform (newsletter, *For The Defense*, blog, the Defense Library Series, and even seminar course materials). It provides a source for law on any number of topics, written by leaders in that area. If a DRI member needs to become familiar with a particular area, LegalPoint is a great way to start the research. Additionally, many authors of the articles on LegalPoint are willing to talk about the area and provide additional resources and information.

The ecommunity is another way to access leaders in practice areas. Most SLC ecommunities are wonderful resources if an issue arises and a DRI member needs fast assistance. Frequently, queries are posted in the middle of hearings or trials needing citations or advice, and ecommunity members respond. If a DRI member has a multi-state issue, posting on the ecommunity and asking practitioners with experience with those states for information or advice is an efficient and effective way to obtain that information. [And it is billable.]

Conclusion

For \$320 dollars a year, a DRI member has access to the resources and members of DRI. For the time spent, at whatever your billable rate, and the cost of a seminar, a DRI member brings experience and top notch education. By writing articles or speaking at seminars, participating in on-line education, or becoming involved, an active DRI member gains valuable experience and becomes known nationwide as an expert in a field or on a topic—which, in turn, leads to referrals and income for the firm as a whole.

So, why DRI? Because it is profitable in the long run for a firm.

Stacy Linn Moon is a shareholder in F&B Law Firm, P.C., in Huntsville, Alabama. Ms. Moon practices in the areas of employment law, construction contracts and law; commercial litigation; government liability, insurance defense, and civil litigation. She is an experienced litigator, having tried cases in diverse subject areas, including personal injury cases, section 1983 claims, and construction and other commercial litigation matters. She is AV-rated and admitted to practice law in Alabama state courts, all federal courts within the State of Alabama, and the 11th United States Circuit Court. She is active in DRI, and is currently chair of the Law Practice Management Committee. She is also active in the Employment and Labor Law, Governmental Liability, and Litigation Skills Committees. Ms. Moon is also a member of Alabama Defense Lawyers' Association and the Huntsville/Madison County Bar Association.