



Seven Ways Law Firms Lose Money

By Dustin Cole, President, Attorneys Master Class

My purpose today is to give you some different ways to look at your firm – ways that can not only save you some very significant dollars, but if you take them seriously, can help you make your firm even better at taking care of clients and delivering superb legal services.

Some of what I'm going to address shows up clearly on the profit & loss report:

- Attorneys with mediocre or poor revenues
- Too-high overhead
- Too much staff overtime
- Too-high write-offs and write-downs
- Poor profitability for some departments

And some are harder to track. Things like

- High associate turnover
- High staff turnover
- High stress and frustration levels
- Attorneys working too hard for the hours they bill.

I've worked "in the trenches" with firms and of attorneys across the country for more than fifteen years. And no, I'm not an attorney – thank heaven. If I were, I would probably see things from the same perspective as you do. And we'd both be scratching our heads.

But I spent twenty years in the world of business before I began to work with the legal profession in 1986. So, even though I've come to intimately understand and appreciate the special concerns and considerations of attorneys, I always look at a practice and a firm with the eye of a businessman. How can we deliver better services more efficiently and more profitably? How do we move it from a **place where people work hard** to a **business that works well for people** – both the people in the business and the clients it serves.

So let me start with the underlying premise of what I will discuss today.

You have worked hard to build a sophisticated, state-of-the-art, world-class firm. You're proud of it – and rightly so. But at the heart of your firm and virtually every other firm I've worked with is the

legacy of another time, another era, when law was an art, and not a science, and society was vastly different than today.

I call it the GUILD era, when every attorney had their own unique and secret ways of delivering the law to the people.

And it is that legacy that is costing you money today. Because in my experience, when you dig deeply enough into any firm, you'll find the tracks of a big group of sole practitioners working independently under the same roof. And this is the root of most of what I'm going to lay in front of you today.

"Hey, not in my firm," some of you might say. And I say "yes, in your firm too." And others of you are already saying "yeah, he's right."

Let me make this as personal as possible. Think back to that first day in law school – you and your new classmates were all assembled in that big lecture hall, and someone said to you "when you leave here, you will think differently. You will no longer think like an ordinary person. You will think like a lawyer."

The few, the proud, the brave. The elite. Morally superior. Looked up to. Loved and appreciated. And all you need to do to be successful is BE A GOOD LAWYER.

What they didn't teach you – in fact, what they didn't even HINT that you would need to know – is how to run the business that has to surround the practice. And they surely didn't teach you how to market your services. In fact, they led you to believe that not only wouldn't you have to, but that it was somehow unseemly. Beneath you.

I call this the GUILD mentality. They taught you to be a good CRAFTSMAN.

Each of you has developed a highly successful practice. Certainly it was founded on excellence in legal skills. But along the way to today, you had to develop other skills – in management, planning, marketing, in finances. You had round out your education and learn to run a successful business.

Now here's the sad part. All those other skills you needed –you had to MAKE UP FOR YOURSELF. No

one taught you. You just had to figure them out by trial and error.

Where would you be today if you had been afforded practical and in-depth training in all that? I assert that most of you would have been wealthy and retired – or “of counsel” and playing with interesting cases -- by now.

In the world of business, each of you are self-made men and women. Congratulations. But the cruel fact is, that’s not the most effective – or profitable – way to run your business. The title of this program is “*Seven Ways Law Firms Lose Money.*” But it could just as easily be “17 Ways” or “27 Ways.” Each of these, however, has an underlying commonality: they are the result of missing skills – in people management, in business management, in business development. All of them stem from the blind spot created for you in law school.

And fortunately, every one of this is correctable with the application of key skills, the development of effective systems, and the institution of businesslike operations.

Here, then, are some of the seven, or 17, or 27 ways law firms lose money.

1. Lack of an objective, standardized new client evaluation process

Every firm is aware that “D” clients are money-losers. However, few are fully aware that the cost of such clients goes far beyond the uncollected billings. These costs include:

- An “avoidance” tendency by the attorney in dealing with unpleasant or non-paying clients, which can lead directly to missed deadlines, client frustration, errors, malpractice claims and grievances.
- Disproportionate time demands by the “D” client, most of which becomes either unbillable or unpaid.
- Long hours, nights & weekends working on other matters because of the disproportionate time demands of the “D” clients
- Displacement of marketing and management by uncollectible work
- Potential for neglect of “A” and “B” clients
- Stress, frustration & overwhelm leading to errors

- Stressed & lost staff from dealing with too many unpleasant clients and an overworked attorney
- High potential for both grievances and malpractice claims

However, good attorneys still knowingly take bad clients for a variety of reasons that should be addressed by firms. These reasons include:

- Billable hour pressure
- Poor marketing skills – practicing “door” law
- Reluctance to offend referral sources
- Inability to turn down referrals from partners

Few attorneys have any system to help them objectively rate potential clients. Without an objective structure for the initial interview, they are likely to make decisions on “gut” reactions. As a result, they make take unsuitable clients because they become intrigued with the matter itself, personally like the client, or recognize a matter in which they have expertise. As a result, attorneys often realize they have taken a “D” client only belatedly, and once they develop receivables become reluctant to withdraw, hoping for payment and building up even more receivables.

To minimize the potential for attorneys to take unsuitable clients, each department and/or practice area should develop a “client screening checklist” to be used in every prospective client interview. This checklist consists of a series of questions devised by the team to help determine whether the potential client has any warning flags that point to a potential “D” relationship.

Such a checklist will assure that the attorney asks all relevant “flag” questions, obtains all important information, and therefore has an objective evaluation on which to make a decision.

Additionally, firms should require that, for all new matters above a certain estimated total fee, for instance, above \$10,000, both the checklist and file be reviewed by a new client panel or a second attorney prior to acceptance.

2. Holding on to “C” Clients

Often, a large proportion of an attorney’s billings will be for “C” level clients, those who pay reduced rates, pay slowly, and are generally less desirable clients.

Firms understandably view these clients as “bread and butter” clients who pay substantial overall revenues to the firm. However, such clients significantly reduce firm profitability, and firms should implement two strategies to deal with them.

Just as with “D” clients, there are hidden costs and dangers for a firm with too high a proportion of “C” clients. These include:

- Loss of additional billable hours that the client, by agreement, does not pay for, such as supervisory time.
- Overwork and frustration, leading to a “good enough” attitude, and increased risk of errors and malpractice claims.
- Operating on less than adequate support resources, due to the minimal profitability of the client or the department.
- The firm becomes a bank, continually loaning the client substantial funds (receivables) on a short-term basis

A stable of “C” clients is also often a “safe haven” for underachieving attorneys, or those who have inadequate client development skills. “Look!” I’m busy!” keeps them safely out of play, and the more the firm shrinks support resources, the more the attorney can complain of being overloaded.

“C” clients can also create either complacency or resignation in the attorney. Either they accept “good enough” or they become resigned and accepting that “this is as good as I can do.” And the terrible result of that can be either sloppy work and malpractice claims, or an attorney who “dies in place” and never grows their skills or their revenues. In either case, it produces frustrated attorneys who hate their work.

First, each attorney with “C” level clients should institute a focused marketing program to gain new clients at higher rates, with a long-term intention of moving away from the lower-rate work. The primary obstacle to this is usually lack of marketing skills. To increase profitability, firms must invest in focused training programs (vs. one-shot informational seminars, books, tapes, etc.) to provide missing skills.

Second, wherever possible, firms should institute across-the board modest rate hikes and/or re-negotiate agreements to:

- Increase attorney billing rates

- Get agreement for greater use of (and billings by) paralegals and legal secretaries, with supervisory hours permitted for the attorney.

3. Systems vs. Customs

One of the places where the “independent attorney” mentality is most evident is in the mechanics of how work gets accomplished. Most offices tend to run on “customs,” which means that attorneys operate as if every matter is unique, and “build” each matter from scratch. Procedures are accomplished by those who have appropriate skills; expertise is personal to each, and is not readily transferable. In short, everyone “knows what to do.”

The cost of “customs” can be high:

- There is no objective system to maintain quality. Quality depends entirely on individuals, and there are few safeguards to catch errors.
- When one of the team leaves, the firm loses important knowledge that must be replaced. Chaos usually results.
- New team members have a long learning curve and diminished productivity because they must develop the needed expertise from experience and training.
- While new team members are learning and less productive, there is greater workload and stress for others, which translates to greater likelihood of client frustration and errors leading to malpractice claims.

The bottom line for “customs” is that, in a large firm, there are literally hundreds of individual ways of accomplishing work, each varying in some ways from others. As a result, associates or staff working for more than one attorney must accomplish tasks in different ways for each, and the ability of “floaters” or temporary staff to adequately support attorneys is greatly diminished. Once again, this increases the chance of errors, missed deadlines, and frustrated clients.

In an office run by systems, it is recognized that every process has common elements, and that every procedure, or one similar to it, has been done before. Therefore, those processes and procedures are documented, flow-charted and checklisted so that they can be accomplished again consistently and efficiently. Proven templates and boilerplate language is catalogued and used.

Systems create higher profitability, quality and efficiency because:

- Team members are able to work to established and documented procedures and checklists to consistently produce high-quality work.
- Work can be delegated and supervised more easily using written procedures and checklists
- Because there is available documentation and written checklists, less interaction between team members is needed to accomplish tasks.
- Work is completed more quickly and accurately, with less time needed for review and editing.
- Quality control is accomplished quickly and accurately using the checklists developed for each procedure.
- Project follow-up and adherence to deadlines and schedules is facilitated
- When a team member is lost, the externalized knowledge brings new team members on line faster and easier.

Customs limit an attorney’s ability to expand his or her practice, and set the stage for errors and client frustration. Systems allow the attorney to expand while maintaining quality, consistency and control of all work.

To increase efficiency and profitability, firms must work to standardize and systemize each department, and begin training teams in using them effectively.

4. Lack of Control Over Time

One of the single most costly gaps in attorney expertise is the ability to control how their time is utilized. In a typical day, most attorneys experience literally hundreds of interruptions in the form of phone calls, e-mails, staff questions, walk-in clients and prospects, and drop-ins by other attorneys and staff. In fact, most attorneys believe that this is normal. However, the cost of such lack of time control is high:

- At least 10-15% of billable work is unrecorded because of a subsequent interruption.
- Tasks must be addressed dozens of times rather than two or three, making their accomplishment much slower and less efficient.

- Inability to focus on tasks for extended periods reduces focus and therefore quality
- Delegation of work becomes less efficient because work is delegated in haste, and teams come to rely on constant interaction rather than adequate initial delegation
- Attorneys and staff work longer hours than necessary to accomplish work
- The attorney experiences a sense of “out of control” and high stress
- Tasks, issues, return calls and other matters “fall through the cracks” resulting in client frustration, errors and potential malpractice claims
- Strategy and thoughtful consideration of matters falls victim to haste and lack of time.

Attorneys must realize that time is their most valuable asset, and take pro-active control of it. Proper and efficient use of time begins with creating a structure for how time is to be used. This means designating times on their daily weekly calendar for:

- Team meetings
- Strategy and planning
- Client meetings
- Returning phone calls
- Legal production work
- Marketing

This is a dramatic shift in thinking for most attorneys, and requires considerable re-structuring of the attorney’s work environment. However, its benefits are dramatic, and include:

- Increased team efficiency
- Recapture of billable hours normally lost in the attorney’s previously fragmented day
- Reduced stress levels and work hours without decrease of billable hours
- Greater client satisfaction due to predictability of when the attorney or a team member will return their call, and support by an entire team rather than only the attorney
- Greater focus on production, and therefore greater quality and reduced errors
- Long-term reduction of the “crisis” atmosphere and a more planned and procedural approach to work, resulting in less errors
- Reduced staff stress and turnover
- Increased marketing efforts and consistency
- Increased revenues
- Increased practice satisfaction

5. Inadequate and antiquated mentoring systems

While most firms point to extensive education, training and mentoring programs for new attorneys, most firms have done little beyond add some frosting around a core concept which is no longer adequate for the times.

For instance, in the majority of firms, the Mentor and the Supervisor are the same person. To be effective, the Mentor should NOT be the Mentee's work supervisor, but an advisor and counselor. The Associate's *Supervisor* should be the primary teacher and trainer. If Supervisor and Mentor are combined, a frustrated mentee often cannot or will not criticize his or her supervisor to his or her Mentor. They are effectively discouraged from asking for a new Mentor, discussing personal concerns, or requesting special help.

For the Associate, this lack of role separation can create a high level of frustration, dissatisfaction, and often a lessened ability to do quality work. For the firm the result can be high Associate turnover and high Associate development costs, partner stress, and in extreme situations, lost clients, grievances and errors that lead to malpractice suits.

Additionally, not all attorneys should be Mentors. Many lawyers have good skills to teach, but are unwilling to take sufficient time to do so. Others who truly want to mentor may not have good legal skills to share, good mentoring ability, or an effective personality type.

To be effective, firms must design a Mentoring SYSTEM that includes:

- An objective Mentor selection and qualification system based on:
 - Personality profile
 - Practice quality
 - Legal skills
 - Management skills
 - Revenues
 - Practice systems & procedures
 - Mentoring training & skills
 - Attitude
 - Time availability
- A Mentor Roles, Responsibilities and Requirements handbook
- Attorney compensation for Mentoring
- A Mentor training program

- A Mentor reporting, monitoring, supervision and quality control system
- A (safe) Mentee feedback and evaluation system
- A Mentor resource person or committee for Mentor support

Another inadequacy of most systems is that associates cease to have Mentors after two or three years, when they are deemed "trained." This often leaves them without ongoing, long-term guidance or support.

Without strong, continuing mentoring, good associates often get off track, or do not build allegiance to the firm and end up leaving, taking the firm's prodigious investment with them, and often leaving other matters in disarray. This creates a significant risk of error, client dissatisfaction, and malpractice claims.

Inadequate mentoring can result in:

- Potentially valuable associates being lost from the firm
- Associates and partners being trained and operating with inconsistent, inadequate or even erroneous information
- Attorneys operating their practices in radically different manners
- High firm cost for associate turnover
- No real ability to quality control work due to dozens or hundreds of different operating styles and procedures
- Higher malpractice risk

A second, and often more expensive gap in firm Mentoring is that those who produce the highest revenues for the firm often have even less STRUCTURED support than Associates, resulting in major financial and legal risks for the firm.

Lack of structured support can mean missed revenue opportunities from partners who may not be at risk, but who have lagging or minimally adequate revenues.

Another type of unsupported attorney is the high revenue producer. Most of these client development experts could be producing dramatically more, but they are already working at the top of their current practice management skill set.

Therefore, firms must establish outside support, training and skill development resources that are available to partners on a confidential basis, to help them retain their most valuable assets, reduce risk of malpractice, and dramatically expand revenues.

6. Insufficient leverage

A disturbing and financially limiting trend in law firms over the past few years has been limiting the amount of staff support available to attorneys, ostensibly for the purpose of reducing overhead. The result has been the reverse: limiting the revenues of a high percentage of attorneys and therefore firms.

The primary reason firms have moved in this direction is not the inefficiency of staff, but the lack of attorney training in using staff effectively. This trend has been more the result of firm failure to impart new management skills and innovate client management techniques than from any inherent weakness in the concept of staff support.

A key component of this problem is that firms have traditionally viewed staff as “overhead.” When viewed as potential profit centers, the equation rapidly shifts. For instance, a skilled paralegal should be able to bill three to four times their direct costs, producing a profit for the firm. Further, when work is effectively delegated to associates and paralegals, it reduces client costs. At the same time, since the attorney is a lower percentage of the client’s total bill, the attorney can increase his or her rates. The result is a team, all producing profit for the firm, and an attorney who is now freed up the attorney to work with a larger group of clients at a higher rate.

To be maximally efficient and profitable, attorneys must have an efficient team to support their work. They must be able to delegate down any work that does not require their expertise to the lowest level where it can be accomplished competently. The attorney can then concentrate on their highest-leveraged activities: client relations, case strategy and planning, team supervision and most importantly, marketing.

Inadequate leverage has several negative effects:

- It significantly reduces an attorney’s ability to increase their revenues because he or she must work extra hours doing associate-level, paralegal-level, or even secretary-level work.
- Work suited to a secretary or paralegal make take longer when done by the attorney
- Work that is not attorney-level is being inappropriately billed at attorney rates

- There is too often only one set of eyes doing and reviewing work, increasing the likelihood of errors.

The result of increased leverage is:

- Greater ability for the attorney to market and expand their practice
- A stronger team producing client work more efficiently, accurately and quickly
- Increased client communication and client satisfaction from working with a larger team
- Increased revenues at several levels, generated from a larger client base
- Decreased risk of grievances, errors and malpractice claims

7. Inadequate initial client education

In most cases, initial client education consists of a few minutes of casual conversation and the mailing of a retainer agreement with a note to “read and sign.” Such a procedure literally sets a client up for frustration and dissatisfaction. “A” clients become “D” clients over expectations that don’t match the lawyer’s performance, and too many potentially positive client relationships end up in attorney firings or even grievances and malpractice claims.

The reason is that many clients have had little or no previous experience in working with a lawyer, and have only the expectations generated by television or their friends. Others have had negative experiences. Add to this the fact that every attorney-client relationship begins with the client in some degree of fear or concern, and every mismatched expectation is a reason for the client to increase their level of fear, and decrease their level of trust in the attorney.

At the beginning of the relationship, there is seldom any attempt by the attorney to educate the client how the relationship will work, and to set clear expectations on both sides.

The way that can best be accomplished is through a planned and careful initial client education process. This is where the attorney “sets the stage” for the relationship, and therefore sets the client’s understanding and expectations concerning how the relationship

will work. It is also where the attorney builds a foundation for an “A” level relationship.

The Client Education process should accomplish the following:

- Introduce the team and the team concept
- Set clear, conservative expectations
- Define the client’s role in the case
- Clarify specifically how the relationship will work:
 - How calls will be handled
 - When the attorney normally returns calls
 - Standard for returning calls
- Lieutenant’s role
- Normal client meeting times
- An explanation of how the case/process will go, with flow charts, diagrams, timelines, etc.
- Determine what communication method is preferred – letter, e-mail, phone, etc.
- Review of the retainer agreement
- Financial specifics
 - Billing rates of various team members
 - How hours are billed for various types of work (meetings, phone calls, court appearances, e-mails, etc.)
 - What other items are billed, and how
 - When billings are sent
 - When payment is expected, when it is late
 - What happens if payment is not received

All materials are physically reviewed and discussed with the client to facilitate client understanding and retention, then placed in a folder for the client to take home.

The client education process not only creates clarity for the client, it also creates a new level of accountability on both sides. The client now knows the details of how the attorney will operate and how they are expected to respond, and if the client gets off track, they can be gently reminded of

the discussion and pointed to the materials provided.

Conversely, the attorney has now set standards for their own operation and performance, and the client can hold the attorney accountable for those standards as well.

Just as with delegation, the time spend setting the client’s expectations and getting on “common ground” with the client will save endless hours of explanation from you, major stress on the part of the client, and quite possibly will avoid a client fiasco.

Making the Transformation

How does an attorney, department or firm begin to address this list of inter-related and complex issues and start moving toward higher profit and greater satisfaction? One step at a time. The most effective first step is to address basic productivity, time management and delegation skills. (issues 3 and 4). Focusing here first creates time savings and increased billable hours.

A focus on the attorney’s busy week to make it better organized, more efficient and less stressful will produce a quantum leap in productivity, client service, and operational excellence.

However, attorneys left to their own devices will seldom implement more than a few of the pieces. The firm aiming for consistently higher productivity within a short period of time should seek the services of an experienced coach who can devise a results-oriented training program.

Once new levels of productivity are established, a high percentage of attorneys who are experiencing the benefits of new ways of operating their practices are now “on the bandwagon” for the next steps in the process. Firms can then move forward to address other issues.

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