



BE THE GATEKEEPER

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Solo and small firm attorneys come in two flavors — often determined more by geographic location than choice — generalists, and those who concentrate in a limited number of practice areas. For the most part, those in or near urban areas tend to focus their practices in anywhere from one to three practice areas. For those in the more rural areas, the tendency is to be a jack-of-all-trades generalist.

Referring work elsewhere is an every day occurrence for those who have focused practices. If you're one of them, then in all likelihood there are a few practitioners already on your "short list," to whom work is referred first and foremost. And hopefully they return the kindness.

Even generalists occasionally need to refer work elsewhere. Some matters require highly advanced knowledge and skills in a particular area to do it justice; the generalist may not have the depth of knowledge necessary. Sometimes the generalist does not have sufficient resources to handle a matter, whether that be financial, or the ability to commit the necessary hours under time demands.

For both the generalist and attorney with focused practice, whichever you are, it sometimes happens that a prospective client may present him or herself, and you simply do not want to work for the prospect, because of positional or personality issues. Or perhaps you are conflicted from handling the matter.

There are some best practices I'd like to suggest you consider when it comes to referring work outside your firm. First, I cannot say it goes without saying that you don't ever turn away a client or prospect with just the explanation, "We don't do that work." I am still surprised to find out how often this happens. So let me say it loud and clear. Never *ever* send them away to use their own devices to find someone who can solve their problem. When you do that, you probably will never hear from them again.

Ok, so you're already thinking, "I wouldn't wish that prospect on any friend of mine. I can tell it will be a nightmare matter. I wouldn't *want* them to call on me again." Wrong. First, that's precisely the potential client you refer to a competitor who is very low on your list of people you've enjoyed dealing with in the profession. Come on, be honest, you know there are at least a few out there who deserve that prospect as a client. What the prospect will remember is how courteous and helpful you were, even though you couldn't be of service. He or she will probably mention your name if a chance to recommend an attorney comes up. And likely the prospect may return in the future, maybe even with a matter which you will want to handle, despite the personality issues.

Ok, maybe it isn't that the prospect or matter is unsavory. Maybe it's just that you don't handle that type of law. No doubt many of you are thinking that you just don't have time to spend with clients or prospects in areas of law you don't handle. And I know that time constraints are a real issue for each of you. But when you send a client or prospect away to find their own solutions, in all likelihood they no longer see you as a resource of the same high value. And the next time they have a need for legal services, you will probably *not* be the first person they contact. Because someone else will be more than happy to step up to the plate and assume the gatekeeper role.

Why do you care? Well, when you are the gatekeeper, you will always be the first person they contact for their varied legal needs. That means that you get to pick and choose what work you will handle for them. It gives you a possibility to earn referral fees on certain types of work you refer elsewhere. Most importantly it also means that when they are asked by friends, colleagues and family for a referral, your name will be the one they provide. Don't leave it to the client or prospect to try to figure out whether their needs are of the type you can service. Instead, be the gatekeeper they can turn to in confidence for everything, knowing you'll see to it their needs are met one way or another.

If you want to shorten the process, and you are consistently referring certain types of work outside your firm, have a short list ready for each area of practice you regularly turn away. You may want to prepare a blanket letter of introduction which you can hand to a client—one for each attorney to whom you will refer them—so that they have the information on each attorney to take with, and also can just hand it to the attorney they ultimately meet, assuring that your name is used as the referral.



When you refer a prospect, you want the ultimate selection of counsel to rest with the prospect. For that reason, it is best to provide a referral to at least two or three other attorneys. In that way you will shield yourself from possible liability for “selecting” an attorney, if the attorney commits malpractice.

I used to also recommend that you obtain a certificate of insurance from every firm to whom you refer, in order to make sure you are not the only “deep pocket” in the event of a malpractice claim. With the requirement of mandatory disclosure of no insurance, or low limits of insurance, taking effect as of July 1, 2006, that is not as critical. But as a practical matter, you probably would not want to refer a prospect or client to an attorney lacking in adequate insurance, and so you should still be aware of the insurance limits in place *before* you refer. Therefore, obtaining a certificate of insurance still isn't a bad idea.

Pittsburgh solo attorney Virginia Cook recently shared with me her “best practice” for handling referrals. Virginia wants to be sure that all clients return to her for assistance, no matter what their need might be, even though she concentrates in only a few areas of law. She wants to make sure that all the prospects they refer by word of mouth do the same. So Virginia tells all her clients that she will make sure they are properly taken care of, no matter what their needs might be. If Virginia cannot handle the matter, she will assist the client/prospect in locating the proper attorney/firm, and then personally accompany them to the first meeting, all at no charge.

While Virginia may incur some risk in terms of being the one to select alternate counsel on behalf of the client, her delivery of client service is of such high caliber it greatly offsets the risk in terms of benefits to her practice. Now this is superb service from a *client's* point of view — the only view that counts.

At a recent meeting with a client, I shared this best practice. She responded that she went one better; she offered to be copied on and monitor the progress of the matter and alert the client of any problems she found, all at no charge. While I appreciate the additional effort being expended to provide superior client service, I was not really enamored of this strategy for a few reasons. First, many attorneys would be insulted or at least annoyed by another attorney monitoring their work and serving as “Monday night quarterback.” Second, if the matter is referred elsewhere because expertise is lacking, I don't understand how she can adequately determine if something is



not being handled properly. Third, if there is a disagreement brought up as to how something is handled, it will undermine the existing attorney/client relationship. This will make the client insecure about the representation, and reflect poorly on the referral process as well. And it might then ultimately draw the monitoring attorney into a malpractice action should one arise.

To keep clients and prospects returning time after time, be the gatekeeper. Make sure you communicate that you will fill this role gladly and adeptly. Be prepared to do so. Ultimately you will be more successful for doing so.

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