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How to Market a Commercial Litigation Practice: Experts Opine

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Of the Legal Staff

Commercial litigators have long bemoaned the episodic nature of their practice—and used it, dare I say, as a crutch or rationale for not engaging in active business development. While they may not know when or where their next case is coming from, there are definite steps they can take to ensure the case does come their way.

I reached out to some of my colleagues who are among the best in the business and they concurred with my premise. And, happily for you, my loyal readers, they were more than happy to provide some of their “best tips” on how litigators can grow their book of business on a regular basis. So, to no more excuses and without further adieu:

Know How to Sell the Firm’s Capabilities

Jim Staples, chief marketing officer of Miles & Stockbridge: “To bring in new business, the seasoned litigator needs to learn how to sell



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the firm’s capabilities. Buddy up with a partner from corporate and start to call on prospects. When you learn what issues the prospect is facing, be the voice of the firm on what the firm can do to help with the challenges the prospect faces. One of our best business developers at Miles & Stockbridge is a litigator who majors in the expression, ‘I’m not your guy, but I know your guy.’ (‘Guy’ meaning the best lawyer in the firm, male or female, who can do the work.) That lawyer’s originations are through the roof (many millions this past year).”

Work Your Network

James Pagliaro, litigation partner at Morgan, Lewis & Bockius: “Most seasoned folks, even if they have been fed by established

rainmakers, have untapped business development contacts among former colleagues and the people they interact with socially and in their communities daily. Having the discipline to work those contacts, follow up and keep at it is often the only thing that separates the successful business developers from the not so successful.”

Talk to Your Clients

Marcie Borgal Shunk of LawVision Group: “The general tenor of the conversation in today’s C-suite and legal departments has changed dramatically. Now, it’s about getting ahead of the litigation and cutting it off at the pass—or better yet, making business decisions to avoid litigation altogether. (Samsung and Google’s new patent-sharing arrangement is a great example.) Commercial litigators should regularly engage clients in a dialogue about their business and litigation objectives—especially when they are not working on active matters with them. Help them think through issues, strategize solutions and overcome obstacles. Not only will you be top-of-mind as a valued asset and partner when the big case

comes up, you're also likely to have fun while you're doing it."

Provide Preventative Counseling

Sally Schmidt of Schmidt Marketing Inc.: "Perhaps the best marketing tool litigators have is the last case they worked on. There are inevitably nuggets of information that can be used to reach out to prospective clients with ways to avoid litigation. Resolve a dispute about contract language a company was using with its distributors? Put together an in-house CLE you can give to the legal departments of manufacturing organizations on effective/ineffective contracts. Handle a case where the underlying issue involved a trademark? Prepare an 'advisory' for companies' IP counsel or patent coordinators on improving their marks in the future. Maybe it sounds counterintuitive, but providing preventive advice can be a very effective way to get the attention of prospective clients; it adds value while demonstrating your experience."

Find a Niche

Richard C. Unger Jr., special counsel business development at Duane Morris: "Identifying oneself as a 'commercial litigator' in today's world is almost meaningless to sophisticated purchasers of legal services. Find a niche, even if you're at a big firm. Become an expert in construction industry disputes, for example, or better yet, an expert in a certain kind of construction disputes, such as those between road contractors and the public agencies that hire them. This will allow you to target individuals and companies

within that field to let them know how your specific expertise and experience can help them."

No, Really, find a Niche

Larry Bodine, publications director of The National Trial Lawyers: "The first step for commercial litigators is to brand themselves as a lawyer who can solve the problems of a particular industry or type of business. The next step can be shifting one's law practice to areas that are in demand. In 2014, this will be IP litigation, products liability, class actions and employment litigation. If you've gotten results in these areas, it's time to start blogging about them. After that, it's time to get active in business organizations where clients congregate. A good starting point is to ask your best clients which meetings they attend, and then suggest that you attend together."

Stay Visible

Jamie Mulholland of Mulholland Marketing: "Commercial litigators are usually great panel members. So think—what professional associations can use a speaker? Commercial litigators have great battle stories. Can you tell your story in an article for a local trade publication? Better yet, why not watch local business reporters' pieces to see where you can provide input on a current issue. Does your firm have a newsletter/alert? Include your work or successes in that piece to get the word out. While it is difficult to apply some traditional ROI marketing steps to these efforts, staying visible will

go a long way toward keeping the pipeline of new business flowing."

Understand the Role of Litigation for Your Client

Susan Duncan of Rainmaking Oasis: "Don't view litigation as a means to an end. For most clients, it is an unappealing and expensive cost of doing business. Look at the client's overall business objectives when discussing a litigation strategy and be sure that your approach is consistent with the client's expectations for scope, budget and how success will be measured. Be sure you have researched a company's business (annual reports, website, press releases, industry specs, etc.) to better advise them on how to manage risk and how to address disputes with the business goals in mind. Be well-versed and comfortable exploring alternative pricing as many clients want their lawyers to have some skin in the game to share in the risks, not just the rewards."

Armed with the above advice, every commercial litigator reading this article is now empowered to build a strong book of business. I could not have said it any better. Now, folks, on to the implementation. As always, I am rooting for you.