

# WORKING SMART, NOT HARD: CREATING A PRACTICE WHICH SERVES YOU AND THE BEST CLIENTS



Presented to  
The American Academy of Matrimonial Lawyers  
La Costa Resort, Carlsbad, California  
March 6-8, 2008

By Mark A. Chinn  
Chinn & Associates, PLLC  
P.O. Box 13483, Jackson, Mississippi 39236  
(601) 366-4410, Fax (601) 366-4010  
[mark@chinnandassociates.com](mailto:mark@chinnandassociates.com)

# PERSONAL AND LAW FIRM MISSION AND GOALS

BY: MARK A. CHINN OF CHINN & ASSOCIATES, PLLC, JACKSON, MISSISSIPPI.

MATERIALS TAKEN FROM BY MARK A. CHINN, PUBLISHED BY THE AMERICAN BAR ASSOCIATION FAMILY LAW SECTION.

The most important element of getting somewhere is knowing where you are going, when. It sounds trite, but it is the most important secret to success in any endeavor. In this chapter, we will explore mission statements and goal setting.

## WHAT IS SUCCESS?

You must define success in your life. How do you want to lead your life? If you are retired and looking back, what type of life would make you feel you had lived the way you should? What will that life have looked like? What will you have done professionally, financially, spiritually? What type of family life will you have had? What friends will you have had? What principles will you have followed? To define success, you must answer those questions. You must define success before you can evaluate whether you are on the road to success.

Defining success involves a constant searching for the direction of your life and a constant effort to follow the direction. Discovering your purpose and learning to pursue it fully is the true joy of life. One cannot experience that joy and meaning by creating a law practice which is not consistent with it. If the law practice does not serve the life you want to lead, it will not succeed. There will be dissonance in your life. There will be strife. There may be a financially lucrative practice, but there will be other failures, such as marriage or loss of time with children, or health problems, which will detract from the success. Trouble caused by dissonance will also diminish any potential of success in practice; it will not be what it could have been. All things are tied together. Therefore, one cannot commence to start any practice without a complete inventory of one's life and one's mission.

Steven Covey in his book, *The 7 Habits of Highly Effective People*<sup>1</sup>, instructs that “we must begin with the end in mind.” Think about it. What builder starts a building without first obtaining detailed architectural plans? He will have a color picture of the final product; he will have detailed blue prints of the frame, electrical and plumbing connections and lines, and foundation drawings. He will have target dates to commence and finish the product.

At Yale, a study was done of graduates over twenty years. At graduation, only 3% of the students had written life plans or goals. Twenty years later, it was found that the 3% that had written their goals had 97% of the wealth. Do you need any more evidence than that!

## IT MUST BE IN WRITING

It has been said that the most powerful force in the world is the written word. When words are in writing, they serve as a visual command.

In *The Game of Work*<sup>2</sup>, the authors stress the necessity for written goals:

Writing goals allows us to transfer our dreams into a specific plan that can be handed to others to work on. Written goals are not opinions or whims or wishes. Writing goals is the key that turns dreams into reality. It makes the difference between losing and winning. They are fixed and unchanged. They are not subject to differing recall.

A mission statement is a personal constitution. Think about the Constitution of the United States. What value would the Constitution have if it were not in writing? The answer, "It would have only the value that the most powerful man or force said it had, because they would be the ones saying what it was." It would, therefore, guarantee no rights to anyone.

## WRITING YOUR MISSION STATEMENT

There are no set rules for developing a mission statement. It can be a narrative description of your life. It can be a listing of values and goals and ways of living and being. It can be a series of "bullet points." If you don't have a particular way you want to write your statement, follow the following guide:

Pick the things that are important to you and then rank them in terms of importance. Use the following list and any thing else you deem appropriate. Place a number of priority by each thing, with "1" being the most important:

- financial security
- extreme wealth
- material possessions
- community
- family
- marriage
- children
- professional standing
- physical health
- control of environment
- creativity
- friends
- risk
- pursuit of talent
- peace
- spirituality
- balance
- imbalance
- danger
- power
- integrity
- reputation
- fun
- joy
- hobbies
- relationships
- seeing the world
- learning
- adventure
- fame
- politics
- religion
- advancement of a cause
- leading an authentic life
- living by chance
- taking life as it comes
- music
- art
- sports
- developing your mind

Pick what's important to you and then rank the importance. Here is my list to serve as an example:

1. Spirituality/GOD
2. Marriage
3. Children
4. Business
5. Health
6. Friends and Community/service

My mission statement is about one and a half pages of single spaced typing. I take a paragraph to describe how I will lead my life in each area.

Create your mission statement right here:

The most important part of my life is (my relationship with GOD, or my marriage, or pursuing my talents, or making money)

---

I will pursue this by

---

---

---

I will be a (loving spouse, or person of integrity or person in control of my destiny)

---

---

---

\_\_\_\_\_ (health, travel, learning, etc.) will be very important to me. I will pursue this by

---

---

---

\_\_\_\_\_ will be important to me and I will

---

---

---

\_\_\_\_\_ will be an integral part of my life and I will be involved in it by

---

---

---

---

---

---

## GOALS

It is absolutely essential to success to create definite goals. "Goal setting is the strongest force in the world for human motivation."<sup>5</sup> Success in life is equally enhanced by conceiving and writing goals.

## SET GOALS HIGH

When I started my practice, I set goals for how much I wanted to gross each month. To my shock and amazement, I attained the goal in my second year of practice on my own! The book, *The Achievement Zone*<sup>3</sup>, advises that you should "set goals that are just out of reach, but not out of sight."

## GOALS CREATE OPPORTUNITY

Written goals are magical. I often tell people that “if you write it (a goal) down, it will happen!” Writing our goals opens our awareness to the people and circumstances necessary to achieve our goals, thus making them more likely to happen. Awareness is everything. Have you ever decided you liked a new type of car and thought to yourself, “you know, this car is new and there aren’t very many on the road yet.” And then, just as soon as you decide you like this type of car, you see it everywhere. Let’s try this drill. Imagine that you are enamored with the new Volkswagens, in yellow. More than liberty, every other car you see for the next several days is a yellow VW! This is the same phenomena of awareness that works for us when we write goals.

Here, we will create some personal goals. This process can be as long or as short as one desires. For purposes of this book, we will walk you through creating three goals for each part of your life for the next 20 years.

First is an exercise I learned from motivational speaker Tony Robins. Let’s imagine its Christmas Day and you can have any material, spiritual, mental or personal thing, matter or attribute you want on the face of the earth. Anything you want! It’s important with this part of the exercise to not limit want you want by feasibility or practicality. If you want to have as much money as Bill Gates, write it down. If you want to go to the moon, write it down. If you want to learn a language or live in a foreign land for a year, write it down. If you want to learn karate or obtain a pilot’s license, write it down.

**Personal Wish List** (what you want to obtain with your spirituality, your skills, your fitness, your looks, your hobbies and abilities, your marriage, your children, your service to community and disadvantaged, travel, etc.)

---

---

---

---

---

---

---

**Financial Wish List** (how much money do you want in savings, stocks, pensions, etc, homes, vacation homes, yearly income, play things such as boats, yachts and jets):

---

---

---

---

---

---

---

**Professional Wish List** (what skills do you want to have, what honors, what positions, etc.)

---

---

---

---

---

---

---

Now, go back and put a number by each item representing the number of years that you think you should give yourself to achieve the goal (1, 5, 15, 20). Now take three goals from each category and plug them in to your personal goal list below:

**Personal Goals:**

One-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Five-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ten-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Financial Goals:**

One-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Five-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ten-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Professional Goals:

One-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Five-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ten-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

“He who cherishes a beautiful vision, a lofty ideal in his heart, will one day realize it.”

## CREATING A FIRM MISSION AND GOALS

Just as you must have a personal mission, you must have a firm mission. All of the same principles apply. A firm mission statement stands as a beacon for all of your efforts. A firm mission statement should convey who you are, what you are trying to accomplish and how.

## THE BUSINESS MISSION MUST BE CONSISTENT WITH THE PERSONAL MISSION

To be successful, we must design a business mission which is consistent with our personal mission. “If we set goals for ourselves that are not consistent with the purpose of our lives, then we’ll find ourselves constantly frustrated, running up against the proverbial brick wall. We’ll not succeed, or if we do, it will be a hollow victory.”

To design a firm mission statement, answer the following questions:

- What kind of business do I need to create to serve my personal mission and goals?
- What kind of work will the firm do?
- Who will the firm serve?
- What are the values of the firm?
- What level of technical skill will the firm strive for?
- What level of service will the firm deliver?
- What will make the firm unique or give it distinction?
- What geographic area will the firm serve?
- Does what I have created serve my life’s purpose and goals?

Enlist help. If you have a supportive and trusted staff, schedule a firm retreat. You might even want to hire a facilitator. Such facilitators can be found in private business and at local universities or community colleges. Get the whole staff away from the office and brainstorm about the firm mission and goals.

A firm mission statement should be short, such as a paragraph. And, it should be one that can be published to members of the firm, to clients and to the public. Here's a mission statement sample:

"Our firm guides people through divorce where there are complicated legal and financial issues. We provide a unique staff, including lawyers, support staff, an accountant and a licensed professional counselor, with the goal of providing unparalleled service to our clients."

Develop a firm mission which can be easily delivered to people when meeting them at social occasions. It should be statement which conveys the meaning of what you do, instead of telling people what you o. For example, you are at a party and you are introduced to someone and they say, "What do you do?" The common answer might be, "I am a divorce lawyer." The common reaction to that: "Oh." Instead, you might try, "I am a lawyer who guides people through family problems with a goal of securing the wealth they built during their marriage." See *Marketing Your Services*<sup>6</sup>, Chapter 3, for additional information.

## CHART THE FUTURE

Once you have developed a firm mission statement, take some time to envision the future. Write a description of you and your firm at key, future intervals, such as five years from now, ten years from now, etc. Try the following work below and answer the following questions for each year.

- Who will be in the firm?
- How many lawyers?
- What will be the expertise of the lawyers?
- Will the firm be diverse?
- Will the firm have different practice areas?
- Will the firm expand to different cities or areas?
- Will the firm build or buy a building?
- What income will the firm or its members have?
- What type of work environment will be created?
- What hours will you be working and what role will you perform?

## FIRM GOALS WORKSHEET

### My Firm Five Years From Now:

---

---

---

---

---

---

**My Firm Ten Years From Now:**

---

---

---

---

---

---

**My Firm Fifteen Years From Now:**

---

---

---

---

---

---

**My Firm Twenty Years From Now:**

---

---

---

---

---

---

Just as you did with your personal goals, create concrete goals for your firm for important intervals in the future. Use the worksheet below:

**Income or production goals:**

One-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Five-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ten-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Staffing Goals:**

One-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Five-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ten-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Technology Goals:**

One-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Five-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ten-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20-year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## END NOTES

1. Covey, Steven R., *The 7 Habits of Highly Effective People* (New York: Free Press, 1990).
2. Coonradt, Charles, A., *The Game of Work*, p.84, (Park City: The Game of Work, Inc., 1991).
3. Murphy, Shane, *The Achievement Zone*, p. 35, (New York: Berkley Books, 1996).
4. Allen, James, *As a Man Thinketh*, p. 42, (DeVorss & Company, 1979).
5. Hartman, Thom, *Focus Your Energy*, p. 68-69, (New York: Pocket Books, 1994).
6. Putman, Anthony O., *Marketing Your Services*, (New York: John Wiley & Sons, Inc., 1990).

# MARKETING FOR PEOPLE WHO HATE IT

BY MARK A. CHINN, CHINN AND ASSOCIATES, ATTORNEYS AT LAW, JACKSON, MISSISSIPPI

This article is written for all those professionals and other business people who think they hate marketing. It is written for those people who view marketing in the same way all people view having a root canal. In short, it is written for all those people who bristle at the thought of having to market their business. In this article we will attempt to show all of you who hate marketing how you can look at it from a different perspective and perhaps even enjoy it and not realize that you are actually, "marketing."

First, let's take a look at all of the traditional Marketing techniques which you non marketers absolutely abhor.

1. **Self Promotion.** People who like to market enjoy promoting themselves. Non-marketers view marketers as arrogant, narcissistic, and self-centered. You view marketers as the Liberaces of business. The last thing non-marketers want to do is draw attention to themselves and appear to be promoting themselves.
2. **Joining Things.** Non marketers hate to join things. They do not want to be a part of a group. They do not want to step out of themselves and join some group that requires them to attend some banquet or luncheon on a regular basis and follow some rules of social engagement. Non-marketers simply do not see the point of being forced to join a group and meet with people that they do not really know.
3. **Gregariousness.** While many non-marketers are friendly and enjoy people, they have absolutely no interest in spending lots of time talking with every single person they might see. They have no need to shake hands with every person that they might see at church or in the office or in the grocery store. Non-marketers simply have no need to act like they are running for Governor all the time.
4. **Speaking.** Non-marketers would rather have a leg amputated than make a speech to a group. First, non-marketers cannot imagine that they might have something important enough for a bunch of strangers to sit in one place for an hour and listen. Secondly, they have absolutely no need to be a hit for a bunch of strangers.
5. **Writing.** Non-marketers view writing an article in the same way they do public speaking. They don't see what they could contribute to society and they can't conceive of why anyone would be interested in reading something written by a complete stranger.
6. **Media.** Non marketers have absolutely no interest in promoting themselves through the media such as through television, radio, or newspaper. Such activities are for self-promoting, arrogant, narcissists.
7. **Mission statements and goal setting.** Marketers are mission oriented and activity driven. Marketers have set goals and desires to achieve certain results. Non-marketers view mission statements and goal setting as diminishing the significance of the variety of life. Non-marketers see such activities as unprofessional and mercenary. Non-marketers view themselves as on this earth to help people and are not on this earth to achieve results and make money.

We have just been through a basic list which would be followed by every good marketer. It is a list of all those things which any good marketer thinks has to be done in order to have a successful, professional business. The question then, is how can a person who does not want to do any of those basic things encourage and promote their own profession or business. Any marketer knows that trying to get a non-marketer to do any of the things on the list above is like trying to drive a square peg into a round hole. It just simply will not work. How then can a non-marketer approach pursuing his profession or business in a way which will lead to more customers and a lasting business?

Listed below are some simple steps which non-marketers can take to promote their profession or their business without feeling like they are marketing in the same way that marketers do.

1. **Change Your Perspective.** Instead of viewing marketing as an attempt at self-promotion which is designed to make more money, realize that “marketing” is really an effort to enrich the relationships in your life. Instead of viewing marketing as a glitzy campaign designed to bring in masses of business, realizing that all good business, no matter how big or small, depends upon quality relationships with people. Even non-marketers can enjoy the thought of conducting their activities in a way which will lead to more enriched relationships with the people with whom they come in contact.
2. **Think of Relationships and Not Gimmicks.** Successful business is about people being aware of you; people wanting to send business to you; and people wanting to hire you. In short, successful business comes from having good and trusting relationships with the right people. Instead of viewing, “the right people” as people who would bring you money and make you rich and successful, view, “the right people” as people with whom you would like to spend time with and with whom you would like to do business and have a relationship. Once you start to view the people that you would do business with in this way, you then become more interested in doing the things which are necessary to enrich those relationships.
3. **Everyone Has Them.** Realize that all marketers and non-marketers have the following characteristics in common:
  - a. **Friends.** Everyone has friends whether they are a marketer or a non-marketer.
  - b. **People Who Send Them Business.** Everyone, whether marketer or non-marketer has a certain group of people who will send them business.
  - c. **Clients.** All marketers and non-marketers enjoy a certain group of clients.
  - d. **Interests.** Marketers and non-marketers alike all have interests, hobbies, and things which they enjoy in life.

The key to enhancing life and increasing your business without “marketing” is to take advantage of the things that non-marketers have in common with marketers and capitalize on those things.

4. **Take Your Friends to Lunch.** Non-marketers bristle at the thought of calling someone up for a marketing venture such as a marketing lunch or a marketing breakfast. However, there is absolutely no reason in the world why non-marketers would not want to take a friend to lunch or to dinner. The lunch or dinner can then be made an enjoyable event where the non-marketer

simply takes the opportunity to ask the friend about their business and then share their own business with the friend. The same can be said for people who send the non-marketer business. The non-marketer should simply sit down and take about 30 minutes to write a list of the people who have sent them the best kind of business. Create a list of the best pieces of work that have been done in the last couple of years and then see if you can remember who sent those pieces of business to you. In addition, create a list of the clients that you have most enjoyed representing or working for and then create a list of where those clients came from. Once you have that list of 10 or 20 or 30 people, decide to improve your relationships with those people. Improving relationships can take place by inviting those persons to do the things that you enjoy or to go places such as restaurants, movies, or games.

5. **Do What You Enjoy.** Non-marketers should focus their attempts on improving relationships, not on the marketing activity or the thought of marketing. Focus on doing things which interest you or the people with whom you want to have a relationship. For example, you are a non-marketer who absolutely is repulsed by the thought of making a speech to a local group. However, you do enjoy wine and having meals with friends. Therefore, instead of focusing on your inadequacy in marketing yourself in traditional ways, focus on improving relationships with your friends and referral sources by taking them out to dinner and perhaps taking them to wine tasting parties where you can engage in doing the things that you like to do and begin enriching your relationship. Another example is a non-marketer who enjoys sailing. The non-marketer probably finds himself sailing with the same people all the time or simply with family members. Instead of keeping that part of life separate from business, the non-marketer can, instead, block out an afternoon away from work and invite a client or referral source to go sailing.

Let me give you another, personal example. I have always enjoyed golf but felt that golf and business were antithetical. However one day, at the encouraging of a business coach, I took the afternoon to go play golf. While I was preparing to go to play golf, I had a guilty conscience about all of the work I was not going to be doing that afternoon and worried about the negative impact on my business from not working. When I got to the golf course I ended up partnering up with three other businessmen who were also off for the afternoon. To my surprise, the parking lot at the golf course was not empty, but full. It seems that a lot of business people were not actually working during the week like I had always been taught to do. As it turned out I developed a very close relationship with a local banker who ended up providing me with the financing that I needed to build a new building that I had always dreamed of building. Simply put, this building may not have come to fruition had it not been for my willingness to merge my golf interest with my business interests.

6. **Enrich Relationships with Present and Former Clients.** I realize that non-marketers are probably not into list making as marketers are, but I am going to ask you non-marketers out there to sit down for a few minutes and make a list of the clients that you are working for and have worked for in the past and that you really have enjoyed. All professionals and business people have those certain people that they just really enjoy representing. Unfortunately, those relationships usually end when the business undertaking or professional undertaking is over. The non-marketers should simply take advantage of the relationship and not let it end when the business relationship ends. For example, you are a lawyer who has just represented someone in a difficult family situation. You found on the way back from court that you really enjoyed spending time with the client. Under normal circumstances you would let the relationship end when the representation ended. However, this is the loss of an opportunity to have a wonderful

and enriched relationship with another person. Instead of letting the relationship end, send that person that you enjoyed a card and then follow that up with a phone call to have lunch or dinner together. Reassure yourself that this as an opportunity to have a better relationship with someone that you enjoy, and that it is not, “marketing.” Develop a habit of taking the time to enrich those relationships which you already enjoy. This will ultimately lead to the same result as that which is achieved by the traditional marketers.

7. **Say Thank You.** I find in the business world that very few people say thank you. Failing to say thank you is losing a wonderful opportunity to effortlessly enrich a relationship. Not too long ago a friend of mine from Atlanta, Georgia referred a client to me for a domestic relations matter. I was thrilled that my friend from Atlanta had thought of me and I wanted to make sure that he knew how much I appreciated it. I went to the bookstore and bought a signed copy of a John Grisham novel and sent it to him along with a simple thank-you card. A few days later I received a call from my friend saying that he had never received a thank you like that from anyone before and he was so impressed with what I had done. A few days after that, I received a two-page letter from that friend telling me again how much he appreciated the book I had sent him and how he would make sure that he always thought of me in making referrals. You non-marketers might view the sending of the thank you and the book as mere manipulation designed to get more business. However, I would encourage you non-marketers to view it differently. It should be viewed as one friend saying thank you to another in a very special way, and thereby enhancing the friendship. It should also be viewed as doing the right thing, which is to say thank you to someone who helps you. Doing positive things for one another leads to better and more enriched relationships and a better life.

In conclusion, I would like for all of you non-marketers out there to come away from having read this article with the following simple concepts:

1. **Be Comfortable With Being a Non-Marketer.** Since you are not a marketer, do not try to be a marketer. It is like trying to drive a square peg into a round hole. Realize that all is not lost, and that there are many ways in which you can contribute to the enrichment of your business through your natural talents.
2. **View Marketing Differently.** Marketing is not about manipulating people to get more business or to show yourself off to the world. True marketing is about creating good and trusting relationships with the people who will enrich your lives.
3. **Use What You Have.** Everyone, whether they are a marketer or not, has the things which are needed to promote their business. Those are: friends, referral sources, clients, and hobbies and other interests. Capitalize on those existing friendships, referral sources and clients by merging your personal and business relationships with your personal interests and hobbies. This will lead to a better personal and business life and to enriched relationships with the people who matter to you.

# WORLD CLASS SERVICE

BY MARK A. CHINN, CHINN AND ASSOCIATES, ATTORNEYS AT LAW, JACKSON, MISSISSIPPI

No business can survive without a fixation on service. Businesses should refocus their attention on service. No matter how good your product or service, the satisfaction of the customer will be significantly diminished if the delivery of the service is poor.

## FOCUS ON CLIENT SATISFACTION

Businesses focus their attention on how to effectively create their product and how to make a profit. For example, a lawyer might focus his full attention on the legal aspects of a case. He will work hard to evaluate the case, obtain the research, investigate and present the case for court. He may present the best case possible. But, if his client does not feel good about the relationship, all of the excellent legal work goes down the drain. The client will later say, “Well, I guess he did a good job for me, but I wouldn’t go back to him because he was mean to me.”

When you discuss the delivery of your product, whether it be a legal product or accounting product, or any other product, learn to ask yourself and the staff, “Is the client (customer) happy?” For example, my associate is reporting to me on the results of a temporary hearing and saying how the result achieved was within the range of desired results. After examining the results and our firm’s actions, I might ask the question, “Is the client happy?” This is an important question, because both attorneys and reasonable clients know that a perfect result is rarely, if ever possible, so client satisfaction with the result is the final arbiter of a satisfactory result for the client. If the answer is that the client is not happy, then it is appropriate to immediately go into action to address the client’s concerns and educate the client about the reasonable results which could have been achieved. If the client remains unhappy, then that may be a signal that the relationship should be terminated. It is imperative in customer service to be constantly asking, “Is the client happy?” and immediately responding if the client is not happy.

## THE RECEPTIONIST

The heartbeat of customer service is the receptionist. Service starts and usually ends with the receptionist. Therefore, great care should be taken in hiring and training a receptionist. Your receptionist should appear, dress, sound, act and talk in a manner which is completely consistent with the image of your business. The same is probably true for all employees, but it is critical with the receptionist.

Coach your receptionist to look up and immediately smile and acknowledge anyone who enters the reception area. This is critical to ensuring a feeling of welcome. Think about it, if someone came to your home, you would not open the door and not look at them while you talked to someone else on the phone. Instead, you would tell the person on the phone to hold on, and then you would open the door, smile, say, “hello” and say something like, “I’m on the phone, just give me a minute to take care of this.” That is exactly how the receptionist should handle it.

## RECEPTION ROOM

Much thought and effort should be put into the waiting area because this is the client’s first impression of the office itself. Design the reception area in a manner which is consistent with the mission of your firm and the clients you serve.

The reception area should always be neat. There should be no clutter, no dirty cups or glasses, no papers or files lying about. Magazines should be maintained at all times in neat stacks. Here are some tips for things you can do to create a great reception area:

- Use fine furniture
- Artwork.
- Fountains
- Aquariums
- Fresh Flowers
- Candles
- Pot Pori
- Statues
- Historical or family photographs
- Mementoes
- Music

Any reception area should have a selection of magazines. The selection should be designed to interest the customers. The selection should be kept current.

### **GREETING THE CUSTOMER**

Be prompt. Excellent service requires that customers not wait. Make it a rule for yourself and everyone in your office that customers will not wait. If a customer arrives, and you are in the middle of crafting some brilliant language in a letter or brief; STOP, and work on it later. Resist the urge to finish your thought. If you are on a telephone call, tell the person you are talking to that you have to get off the phone because you have an appointment.

If it is inevitable that your customer has to wait for you, walk to reception area and explain to the client that you got caught in something and need just a minute before you can begin the appointment. If you cannot do this, have a staff member do it.

### **MEETING THE CUSTOMER**

There is no one, right way to greet a customer. Some believe the customer should be escorted to the professional's office or meeting room. This is probably okay. But I prefer to walk to the reception area myself to greet the customer. This conveys to the customer that they are important and that I want to go out of my way to welcome them and take care of them. One thing that should never happen is to simply direct or allow the customer to a location. I recently stayed at a fine hotel. I was walking around and must have appeared lost. A supervisor of room cleaning saw me, stopped what she was doing and asked if I needed assistance. I said I was going to the ABA Family Law Section reception, but could not find it. She, "Okay, follow me." I said, "Just tell me where it is." She smiled and said, "I would be happy to show you the way." And then she showed me the way. As you can see, this level of service was unforgettable for me.

When greeting customers, look directly into their eyes and smile and say, "Hello, I am (your name), I am glad to see you." Then extend your hand and smile again. A smile makes people feel comfortable. However, be careful not to smile too much or to make light of the client's circumstance. After all, someone entering a divorce office has a very serious problem on their hands.

It is very important to look a customer directly in the eyes, but not for too long, as a prolonged stare in the eyes can make a person uncomfortable. But a proper look in someone's eyes conveys many things. It conveys that you are confident in who you are. It conveys that you are comfortable and so should they be comfortable. Finally, it conveys that you care about who the client is. I like to look at someone's eyes long enough to see what color they are.

### **TREAT EMPLOYEES WITH COURTESY**

"People treat customers the same way they are treated." If you yell at your employees, it is not likely they are going to turn around and be sweet to your customers. Treat employees exactly the way you would a customer. Treat them as though you fully understand that they are really volunteering to work for you and do not have to there.

### **TREAT EVERYONE WITH COURTESY**

Train your staff to treat everyone with courtesy, whether they are friend or foe, customer or client or not. This should take place over the phone, in person, and in all other contacts. Non customers should be treated with the very same courtesy as customers. It is hard to be courteous to one person and not another.

### **CREATE AN EXPERIENCE**

In the book, *The Experience Economy*, the authors state that "experiences" are a fourth economic offering after commodities, goods and services. They trace the beginnings of a dedication to experience to Walt Disney. They write that "companies stage an experience whenever they engage customers, connecting with them in a personal, memorable way." Consumers are experiencing "experiences" just about every where they go today. Restaurants, movie theaters, theme parks, beauty salons and spas, and even car dealers are selling an experience. In today's economy, no one is interested in buying a commodity; they buy feelings.

Businesses and professionals must learn the fundamental rule of customer satisfaction: "The competition is anyone the customer compares you with." Therefore, you should do what you can to create an experience which is unsurpassed by any other competitor. Creating an "experience" is one way to do that.

How does one create an "experience?" First, take some time and think about the customers you intend to serve. What do they really need? What do they need that they don't even know they need?

Creating an experience in your firm is limited only by your dedication and passion to your clients and your imagination. Look for ways to create your own, unique, "experience."

For years I lived in fear. Many nights I would wake up in the middle of the night, worried that something terrible was about to happen the next day, some important deadline that I had forgotten. On a few occasions, I actually threw my blue jeans on and drove to the office at 3:00 in the morning. Of course, when I got there, I quickly realized there was no emergency. To prevent malpractice and waking up in the middle of the night, effective, reliable case management systems must be employed.

### **THE CALENDAR**

Many firms use a large calendar on which they manually record key trial dates and deadlines. Such a calendar is obsolete in the age of case management software, and should not be relied upon as a method

of case management. However, even if case management software is used, a large calendar can be useful as a visual aid to view key dates in the future.

## DOCKET SHEET

A “docket sheet” is a list of each case with a summary of key information. A docket sheet lists the case, the lawyer responsible, and a brief summary of the status of the case and any key dates in the future. The docket sheet assists each lawyer and staff member in keeping track of the status of cases. The docket sheet also serves as a reference for discussion during docket meetings.

## DOCKET MEETINGS

Most lawyers and firms are so busy tending to their business that they fail to stop and assess what they are working on and what needs to be done. Often, lawyers fall into the trap of working on what they want to work on, instead of what needs to be worked on, and cases get neglected. Regular docket meetings aid in making sure that cases do not fall through the cracks. The docket meeting is also a time when the entire staff can take a few minutes to think about the posture of a case and brain storm about what steps should be taken.

Our firm has a one hour docket meeting every Monday morning from 10:30 to 11:30. The entire staff participates, from receptionist, to bookkeeper, to attorneys. Usually, we stop and talk for at least a few seconds about each case. We try not to leave discussion of a case without creating a date for when something is going to happen or some action is going to be taken. Making sure that there is a date for action or for review, keeps the firm’s performance proactive instead of reactive. These dates are recorded by staff in the case management system.

Docket meetings are a time to talk about many things other than the management of the case. The bookkeeper is present to talk about the status of the account: Is there a retainer in trust? Is the account past due? Is the client cooperating in payment? If not, the firm must take steps to protect its financial integrity. This type of discussion keeps the firm from working and working and building up a huge (and probably uncollectible) past due account, without noticing it.

Firm problems can be discussed in docket meetings. Perhaps there is a problem with equipment that should be discussed. Perhaps there is a quirk in the filing system.

Docket meetings can be used for morale purposes. Inspirational writings can be read and discussed. Awards can be given. Docket meetings can be fun, too. As a matter of fact, docket meetings which are not fun, may be counterproductive.

The time for the docket meeting must be protected on everyone’s calendar. The purpose of the meeting can be defeated if everyone is not there. Our firm conducts the meetings on Monday mornings before we get going in the week. We seem to be able to prevent the scheduling of hearings, depositions, and appointments at that time.

Everyone must participate. A few years ago, I had an associate that would bring file materials to the meeting and read them during the meeting. Everyone in the meeting was cognizant of the fact that this person regarded the docket meeting as a waste of his time.

In addition to regular docket meetings, conduct meetings of key people to discuss files at critical intervals. For example, in the docket meeting it becomes evident that a case is stalled and nothing is happening. To resolve that problem in docket meeting would take too much of the entire staff's time and unnecessarily lengthen the docket meeting. This is a time to schedule a case management meeting of the key lawyers and staff people involved in the case. Perhaps an hour is blocked out on the calendar to conduct such a meeting. If your firm consists of just you and the secretary, get the secretary to meet with you. Whether your firm is composed of many lawyers or one, the meeting of people creates a time to focus on the case and put minds together. We all know that two minds are better than one.

## CASE MANAGEMENT SOFTWARE

If you are reading this and you do not have case management software, go get some case management software today. You should not operate another day without it. Among other things, case management software allows you to create reminders in the computerized calendar. Reminders can be created in many different ways. First, reminders can be manually created. You desire to check on a client in thirty days, so you go into the system and create a reminder in the client file for the desired date. Most systems allow you to create a reminder after taking notes on a phone call. You open a window for the phone call, type some notes and then click a button in the phone call window to create a reminder in the future. For example, you are talking to a lawyer about preparation of an order. The lawyer says she will prepare the order and get it to you in a few days. The case management system allows you to create a reminder to check on the matter in a few days, just to make sure the other lawyer does what they said. Finally, case management systems allow you to program the calendar so it will systematically and automatically remind you of dates. For example, you can create a simple program to give you reminders in advance of the scheduling of a matter for trial, such as 60 day, 30 day and 15 day reminders discussed elsewhere in this book. Case management software also allows you to perform the following functions:

- Maintain a list of contacts
- Target referral sources and create contact reminders
- Merge documents
- Create "Precedents."

# THE CONSTRUCTIVE DIVORCE

BY: MARK A. CHINN OF CHINN & ASSOCIATES, PLLC, JACKSON, MISSISSIPPI.

EXCERPTS FROM *HOW TO BUILD AND MANAGE A FAMILY LAW PRACTICE* PUBLISHED BY THE ABA FAMILY LAW AND LAW PRACTICE MANAGEMENT SECTION IN 2006 AND *THE CONSTRUCTIVE DIVORCE GUIDEBOOK* PUBLISHED IN 2007 BY THE ABA GP SOLO SECTION, BOTH AUTHORED BY MARK A. CHINN.

## CHANGING THE VIEWPOINT

Have you ever had a client ask you, “What’s your won-lost record against that attorney?” Or, “What is your one-loss record in custody trials?” Have you ever heard a lawyer talk about “winning” a divorce or custody case? Have you ever told someone you “won” a family law trial? The answer to all of these questions is probably, “yes.”

I know that many times I get the feeling that opposing counsel is handling a case with me with the mind set that there is some great scoreboard in the sky which is going to tally how they did against me, as though we are involved in some competition for “victories.” And this competition is a critical indicator of reputation and the getting of future business.

This use of game-like, competitive language for family law matters is unfortunate and leads to incivility in the resolution of matters. It also hinders constructive resolution of disputes. Here are some further reasons why a “win lose” mentality is counterproductive in family law matters.

## FAMILY COURTS ARE OBLIGATED TO DO EQUITY

Family lawyers practice in courts which view themselves as courts of “equity.” The family law judge does not consider himself to be bound by law or procedure, but by fairness. This means that the lawyer who is able to cease a procedural advantage over his opponent will be thwarted by a judge who is bound to ultimately “do right” by the parties and children involved. This means that no matter how strong a case an attorney might build for his client, he may still see the Judge refuse to accept the position if he concludes it will lead to result which is fundamentally unfair.

## TAKING THE “WIN/LOSE” OUT OF CUSTODY BATTLES

Divorce lawyers and clients are caught up with the notion that one person gets custody and the other person doesn’t. They talk in terms of “winning” a custody case. I have heard many people say, for example, that custody matters must be hard or even impossible to mediate because neither party will compromise on their desire to “win” custody. Custody cases are often described as custody “battles.” When talking about resolving a custody matter, clients often talk in terms of what the other person is “entitled” to or “not entitled” to.

Viewing custody matters in these ways and using the terminology described wreaks havoc on the resolution of family disputes and creates family conflict. Psychological literature and common sense dictate that children are best served by parenting from a father and a mother in a healthy, civil, friendly, cooperative environment. Both parents are critical to proper upbringing. Participating in “winning” custody “battles” takes the focus completely off of the children and places it squarely on the parents. Speaking and acting in terms of placing “custody” with one parent and not the other creates an uneven parenting balance and relegates the “losing” parent to second class parent or visitation parent. This reduces their importance in the minds of all concerned, particularly the children. Utilization of win/lose terminology such as “custody”, “battle”, “winning”, “visitation”, “primary”, creates controversy where, in fact, none may exist and prevents swift resolution of the real issues.

Many states are moving towards utilization of “battle free” terminology. Positive terms include, “parenting plans”, “access”, and “joint”. Positive terminology takes the emphasis off of battle and places it on problem solving. Another example of positive terminology is the elimination in statutes or cases of such terms as “visitation.” For example, the Mississippi statute does not use the term “visitation.” Instead, the term, “physical custody” is defined as, “where the children are.”

## EDUCATION ABOUT PARENTING IN DIVORCE

Lawyers should work with opposing counsel to select a qualified counselor to work with the parents both during and after the divorce. Divorce agreements should be written whenever possible to provide for regular parenting counseling after the divorce and for the mediation of family disputes through use of the counselor.

## CREATE A CONSTRUCTIVE FRAMEWORK

Lawyers and clients should work to create a constructive framework to either resolve, or, if necessary, litigate family law disputes. Creating a constructive framework serves many purposes. First, settlement is more likely if there is some element of trust between the parties and lawyers. Second, a constructive framework gives the family a better chance at a positive future. Finally, and equally important, a constructive framework makes the lawyer’s life more pleasant. There are many tools for creating a constructive framework.

Over the years, I have heard many complaints from lawyers about “what we do to each other.” Most lawyers complain that young lawyers are the problem, because they don’t know how “we do things.” I have heard this before and there probably is need for more law school and young lawyer indoctrination. But, to tell you the truth, most of my trouble is with older lawyers, and not necessarily lawyers you would expect. It’s with you and me, depending on the circumstances.

Here’s who we are. Which one are you?

- **Bam Bam.** This is the baby lawyer with his new big stick. The young lawyer aggressively trying to make his name for himself. He operates under the assumption that litigation is like a boxing match and your objective is to knock the other lawyer’s head off. He thinks its fun.
- **The Adolescent.** The lawyer with about ten years experience. This lawyer is just coming into his own and feeling his power. He wants people to know that he has arrived and is a force to be reckoned with. He knows what to do and he understands the force that he has at his disposal. The problem is that he is like a teenage boy; he has the strength and attributes of an adult, but not the experience.
- **The Advocate.** The lawyer who believes the client is boss. This lawyer operates under the philosophy that people are paying him to be an S.O.B. He believes the client is King and has the right to aggressive advocacy of his position, no matter what. This lawyer does not believe it is his place to try and counsel his client on the long term consequences of his action or on the “right thing to do.” This lawyer will assist a man in not paying child support.

- **Rambo.** The lawyer who has personal problems. This lawyer has anger in his heart from personal history. He does not know how to control his anger, so he uses it in the attempt to control results. Unfortunately, these lawyers are usually very smart and cunning.
- **Albert Einstein.** These are good--usually very intelligent--lawyers who have little patience for what they regard as the inadequacies of the rest of us. They are going to teach the other lawyer a lesson. If the other lawyer doesn't promptly return His Excellency's telephone call, he will strike to teach a lesson. If the other lawyer should dare to disagree with the Intellectual's decree as to the law in the case, the intellectual lawyer will penalize him.
- **Oscar.** This is the sloppy lawyer. He does not have the training, ability or interest in organization of his office. He has work--sometimes a lot of it-- and he believes that he is in the practice of law to help people, but he is not particularly intense about it. He doesn't charge a lot and he takes on little "causes." Unfortunately, he doesn't earn enough for his efforts to have the staff necessary to meet his volume of business. He finds himself in court all the time litigating. He usually believes the client is King, but not in the truly dangerous way of the Advocate. Because of his disorganization, he doesn't return phone calls, he misses depositions and he files things without thinking. He really doesn't intend to be uncivil but that's how it feels when you are on the other end of it.
- **The White Knight.** This lawyer takes his client's causes personally and is on a mission to rescue his client. He is generally a good lawyer who thinks he is civil, but sometimes his rescue mission obscures his objectivity. He has a tendency to attack with righteousness.
- **The Southern Gentleman.** This lawyer thinks that as long as he is a complete gentleman he can do just about what he wants. He is so darn nice that the judges love him. When you are on the other side from him, you find yourself "pulling punches" because you don't want to be uncivil to him, but when you do that, you are caught in his web. These lawyers will lead you to believe time after time that they are going to work with you, so you pull back, but the true cooperation you thought you were going to get never comes. The Southern Gentleman also has the capacity to court you like an old pal and then stick you right in the heart at the most unexpected time.
- **El Destructo.** The Bad Lawyer. This lawyer simply doesn't know what he is doing. Because he doesn't, he usually causes a lot of damage, even though he is not winning. He is like the Chicago Bears of the late 60's, he may not beat you, but when you are through with the game, half your team is injured. Unfortunately, El Destructo has a lot of the qualities of Rambo, but not the skill.

The important thing about recognizing these personalities is that you cannot change them. I know I labored for years over how to "teach them a lesson." I would get angry when they would pull their stunts and look for ways to retaliate. Then one day it dawned on me: all of these people are just being themselves. It is not personal. And, more importantly, they are going to do what they do no matter what I do. For sure, no judge is going to sanction them or talk to them and change them. Usually, when I try to get the judge to do something to them, I get in trouble.

Here are some simple tips for improving your own civility, no matter which of these personalities you are. Although for some of you, these tips will seem unpalatable:

- **Never Retaliate.** Whenever a lawyer does something mean, or sends a nasty letter, there is great temptation to retaliate. This should never be done. For example, where possible simply ignore nasty letters. If you must respond, which is rare, carefully craft the letter to make sure there is no hint of concern in the letter for the nasty words in the initiating letter.
- **Never, Never, send a Nasty Letter.** Before you send some nasty letter to another lawyer, think about whether you have ever been impressed when you have received one. The answer, “Never.” If you must send a nasty letter—which should be extremely rare—give the other attorney a warning call, something like this, “Well Jim, your client has not been able to leave my client alone, despite my requests, so I am afraid I am going to have to send you a nasty letter. I hate to do it, but I feel like I must in order to protect my client. Do you think you could speak to your client and put an end to this?” This type of call allows you to make your record and your point, without alienating the other counsel. It is also more likely to produce the desired conduct.
- **Civility Committee.** We have created the concept of the “civility committee.” The civility committee is designed to prevent retaliation which is not constructive. All lawyers in the firm should be advised that before they are about to engage in any conduct which is retaliatory, they must bring the matter before the civility committee. In a multi-lawyer firm, the civility committee can be composed of two other lawyers. If you are alone, call a wise lawyer that you trust and ask them to serve as your civility committee. Tell the committee you need a “civility check.”
- **Talk to Opposing Counsel.** We have a rule that when we find out another lawyer is involved in a case, or when we enter an appearance in a case, we call the opposing counsel. We also have a rule that we do not take any action or file any pleading without calling opposing counsel to tell them what we are about to do and why, and to perhaps work it out before we do. Of course, there are times when you cannot give opposing counsel warning, but those times are very rare. We have found that if the opposing counsel is verbally prepared for what we are about to do, they are less likely to react and desire to retaliate.
- **Cooperate with Opposing Counsel.** Our rule is to never schedule anything without courteous arrangements with opposing counsel, unless to do so would be stupid, (which is almost never.)
- **Never Argue.** Lawyers view themselves as invincible warriors. They are waiting for the opportunity to fight, even if they are wrong—which they will never admit. Therefore, the most counter productive thing you can do with a lawyer is to argue with him. For example, a lawyer calls you up and demands some unreasonable sum of alimony for his client. The normal reaction would be to say something like, “You’ve lost your mind if you think you can get that. There is no point in talking further settlement with you if you have that attitude.” But that reaction will only lead to warfare or an end to settlement talks, at least until the Judge forces them on the day of trial. A better response might be: “Do you have some case law to support that position? If you do, please send it to me so I might reevaluate my position, as I certainly don’t want to mislead my client as to what the law is.”
- **Be Courteous.** Always treat opposing counsel like a brother or sister in the practice of law. Treat them as though they may be a judge some day. Greet them with a friendly hello and a hand shake. Break the tension with them with small talk or light humor. Treat their clients and

witnesses with courtesy and without any personal affect at all. Be polite and non judgmental. Opposing counsel will appreciate and respect this and may reciprocate. One caveat: explain to your client before you go to court (or depositions or other hearings) that you will be courteous to opposing counsel and parties and witnesses.

- **Personal Visits.** If you want to create a special relationship with a lawyer at the beginning of a case, assemble as much information as you can, and make a personal visit to the opposing counsel at his office. Take some doughnuts with you. (It has often been said that food is a great mediator). Create rapport with friendly personal conversation. Ask them about their practice and family. Talk with them about their office or their hobbies. Make a soft sell presentation of your case which is designed to set the stage for resolution. In the first of such visits, your goal is to establish rapport and create a let's get this done together attitude. The personal conference should be used at all stages of the case.
- **Sanctions.** Never ask for "Rule 11 Sanctions." Lawyers have a habit of becoming outraged at the arguments or actions of their opponents and filing a motion for sanctions against the other side for a "frivolous argument." Have you ever seen such sanctions awarded? I have been practicing law for 27 years and I have seen attorney's fees granted only once, and that was only \$150 and was against a pro se litigant. The point is that you are never going to obtain an award of sanctions. The only thing the request will achieve is to agitate your opposing counsel and probably cause them to file a counter motion for sanctions.
- **Act Like a Human Being.** The advocate in all of us leads us to think we should take advantage of opposing counsel's mistakes. The decent thing to do is to point out the mistake to opposing counsel and not embarrass them with a motion pointing out their error. Of course, the caveat to this is that you have to carefully consider whether a legitimate advantage can be gained from the error. However, this is rare. Always remember, the next silly mistake may be yours.
- **Don't Criticize or Vilify Opposing Counsel or Parties.** It is easy in the heat of battle to demonize opposing counsel or parties. It is easy to sit with your client and talk about what a no good so and so that opposing counsel is. It is easy to tell your client that opposing counsel is unnecessarily provoking the litigation and prolonging the case.

## ELIMINATE DIRTY TRICKS

Dirty tricks may seem fun or smart at the time. They may give the party or lawyer a special sense of satisfaction that he is "getting" the other person or seizing some advantage. But the truth of the matter is that dirty tricks rarely lead to any advantage for the perpetrator and always lead to ill will. They also can provide inspiration to the other side, much the same way that the bombing of Pearl Harbor "awoke a sleeping giant." Some examples of dirty tricks may be helpful.

- **Leave Him With Nothing.** A female client is contemplating leaving the marital home. It seems clear that if she lets her husband know that she is leaving, he will prevent her. It must be done without his knowledge. She is mad at him and wants to really stick it to him, so when she leaves, she takes absolutely everything in the house. When he returns home, he doesn't have anything to sit on and nothing to cook with. She has really shown him. In one case, the lady made it a point of taking her husband's prize bow and arrows and breaking them in half and leaving them in the middle of the empty living room. I guess you can imagine that there was an

immediate hearing wherein the court was informed of what she had done. Suffice it to say, she was never able to recover a positive image with court and she faced hostile litigation with her husband and his lawyer.

- **Cut Off the Credit Cards.** I represented a mother of three whose doctor husband was fooling around with a nurse. Both had hired lawyers but my client wanted to wait before suing her husband for adultery, hoping things could be worked out amicably. My client was returning from a long trip with one of her daughters and was attempting to pay for gas for the return when her card was declined. Her husband, who makes about one million dollars a year, elected to cut off all of her credit cards without warning. Suffice it to say, the good doctor bought him an adultery complaint and a temporary hearing wherein the judge was informed of what he had done.
- **Get Him Fired.** I am always amazed at the desire of offended spouses to get their husband fired or in trouble with the IRS, or, in one case, the Securities and Exchange Commission.

What could they possibly be thinking when they are also trying to recover enough money from their spouse to support themselves? In one recent case, a mother of two who had not worked in 27 years, visited the boss of her banker husband and revealed her husband's affair with a co-worker. The result? The husband was fired, leaving the family without a wage earner. Another lady turned her stock broker in to the Securities and Exchange Commission, jeopardizing his securities license and his ability to help support their daughter.

- **Cutting Off the Utilities.** I have had more than one phone call from a female client reporting that the telephone, power or cable has been cut off at the house without warning. This is surely one of the dirtier tricks to pull. A move like this creates a downward spiral of attacks and counter attacks.
- **Tell the Paramour's Spouse.** One natural reaction to finding out about an affair is to run and call the spouse of the paramour. Of course, the natural product of this move is to provoke that spouse to file an alienation of affection suit which places the family assets in jeopardy. Obviously, a self destructive move. Of course, sometimes it is advantageous to share information

## PROCEDURAL DIRTY TRICKS

Some years ago, I called opposing counsel to find out when it would be convenient for him to appear for a deposition with his client. He said, "Thanks Mark for checking with me. That is very courteous. I believe we can do it next Wednesday." I confirmed the setting by sending a Notice of Deposition with Request for Documents. At the beginning of the deposition, I asked the opposing party if he had brought the documents requested. After about the fifth, "no, I have not brought that document," I looked at opposing counsel (a friend of mine) and said, "What's the deal?" He said, "You didn't have ten days notice on your request." I said, "But John, we scheduled this by agreement." He said, "A rule is a rule." Later, in private, he said, "I am sorry I had to do that to you Mark, my client made me do it." Suffice it to say, that case spiraled down hill and there was considerable unnecessary litigation, expense and delay.

## **DON'T PULL THE TRIGGER JUST BECAUSE YOU CAN**

There are many times in the life of a divorce lawyer when she has the opportunity to file something or take some legal action or move for some sanction, but the better choice is to delay or forego the action. For example, your client tells you that her husband is guilty of adultery. You have clear proof. The inexperienced lawyer will think she must file suit on adultery since the opportunity presents itself. The inexperienced lawyer may fear reprisal for failing to take action that can be taken. But the experienced lawyer knows to wait and assess the situation unless the facts absolutely call for immediate action.

## **HAVE THE COURAGE TO ADVISE THE CLIENT TO WALK AWAY**

There will be times when a client comes to the divorce lawyer and has a legitimate complaint. The truth of the matter is that they have been wronged. But, in the lawyer's wisdom, fighting the fight will not, in the final analysis, improve the client's life. Of course, what was done was wrong. Of course, people are telling your client not to put up with that. But, when you look at the situation in terms of the betterment of the client's life, no long term advantage can be gained from taking legal action. Advising the client to forego legitimate legal action takes courage, but that is what wise counsel does.

## **SOLVE THE OTHER SIDES PROBLEM**

One of the first things to do in a case is to call the other side up and ask what they want; what they are concerned about. If they know what they are doing, they will usually tell you what the claim and what they want.

Anyway, many times opposing counsel will tell you that they are concerned about something. The important thing here is that you may be able to give it to them. For example, opposing counsel says they are concerned your client has been using drugs. You hang up and ask your client if they have any objection to a drug test. If they say no, you call opposing counsel back and solve their problem. Of course, if your client refuses, you have flushed out a possible weakness in your case.

## **LIFE IS SHORT**

We lawyers are the architects of the lives we lead in dealing with each other. Why don't we all take up the torch for creating a more "lawyer friendly" environment for ourselves? The Justice system will be better off for it, too.

# VALUE PRICING

BY MARK A. CHINN, CHINN AND ASSOCIATES, ATTORNEYS AT LAW, JACKSON, MISSISSIPPI

**Chinn & Associates** has implemented unique, customer friendly pricing for our services. The basic feature of our pricing is that we work carefully with our clients to arrive at a customized prize for specific services. Before the representation begins, our clients know the amount they will owe and the maximum amount of resources they will have to dedicate to the matter. This method of pricing is relatively unique to divorce practice and is designed to foster extreme customer satisfaction.

## TRADITIONAL FEES

Most lawyers charge for their services by the hour. What this typically means is that the lawyers keep track of the time they spend on the case and then send the client a bill for the service, based upon the time spent. Lawyers keep track of their time in intervals, such as quarter hour or tenth of an hour. When they bill the client, they typically put the date the work was completed, a description of the work and a statement of the time. A bill might look like this:

6/9/06	Telephone conference with client	0.25	
6/10/06	Receive and review correspondence from opposing counsel and telephone call with client	0.50	
6/20/06	Receive and review interrogatories, correspondence to client; prepare Motion to compel	1.50	
	<b>Total Time</b>	<b>2.25</b>	<b>X \$300 per hour=\$675</b>

Often, attorneys request an initial “retainer” from the client. This “retainer” is placed in a client funds account and the attorneys charge for their time against the retainer until it is exhausted. Once the retainer is exhausted, clients might be asked to replenish the retainer or pay the remaining monthly bills from the attorney upon receipt. On occasion, clients misunderstand that the “retainer” is not the total cost of the case, but only an initial deposit.

While Chinn & Associates has employed this method in the past, we believe a better method of pricing exists in the form of what we call “Value Pricing.”

## THE CHANGE TO VALUE PRICING

Chinn & Associates made the decision to change because charging by the hour focuses the lawyers thoughts on time and procedure instead of **mission and results**. After nearly thirty years of experience with clients with legal problems, we believe that clients care about how they are served and about the results that are being achieved rather than what amount of time was spent. As a matter of fact, many people, both in and outside of the legal profession, believe that the billable hour method creates incentives for delay, unnecessary procedure, and increased expense. Chinn & Associates eschews such a method and believes the value pricing method is the method of the future from a client satisfaction standpoint.

The positive attributes of the value pricing method include:

1. **Customized Price.** Chinn & Associates works with each client to carefully determine the options available, and the costs and benefits of each course, and works with the client to develop a clear mission. Once the mission is developed, the price is developed in careful consultation with the client, to make sure the price fits the client's mission, the value to the client, and the resources necessary to complete the project successfully.
2. **Certainty.** Chinn & Associates will customize a price for specific work which specifically lists the price for the work.
3. **Clients are Not Mislead.** Our experience has proven that neither clients nor attorneys fully grasp what the final cost of a case might be when the hourly billing method is used. Thus, even though an attorney might warn a client that the cost is unpredictable, the client is misled into thinking the cost is manageable because the initial retainer is often low compared to the final cost of the case. For example, attorneys charging under the hourly billing method might ask for a retainer of \$3,500 but the total cost of the case when it is finished could be more than ten times that amount. Each hourly-based bill the client receives can become somewhat of a shock or a surprise.

With value pricing the charges to the client are clear. This gives clients the opportunity to better assess—at the outset—if the matter is worth the resources that will have to be applied.

4. **Goal Orientation.** Prices are customized with results in mind, not time and procedures. These prices, along with the “caps” create strong incentive to the Chinn & Associates team to act with a clear mission in mind and to get results expeditiously and efficiently.
5. **The Cap.** Chinn & Associates places a cap on the total amount of charges under the contract. The client will never receive a bill for services which is unexpected or beyond the amount set forth in the contract.

## THE AMERICAN BAR ASSOCIATION AND OTHER LEADERS SUPPORT “VALUE PRICING”

Work on this topic began with the ABA Law Practice Management Section Task Force on Alternative Billing Methods in 1989. This Task Force published *Beyond the Billable Hour: An Anthology of Alternative Billing Methods*. In 2002, the ABA Commission on Billable Hours published its report.

The report contained a Preface by ABA President Robert E. Hirshon which discussed the many reasons for abandoning the billable hour. In the first sentence of his Preface, he opines that “many of the legal professions contemporary woes intersect at the billable hour.” He writes that the billable hour is responsible for a lack of balance in lawyers’ lives, negative impacts on lawyers’ families, loss of professional mentoring, decrease in lawyer service, less collegiality and a loss of focus on efficiency.

No less an authority than The Honorable Stephen G. Breyer, Associate Justice, Supreme Court of the United States, weighed in on the side of dumping the billable hour, writing in the Foreword of the report, in part: "The villain of the piece is what some call the 'Treadmill'—continuous push to increase billable hours...The Committee's technical task, then, ...is difficult. Yet I believe it is a challenge that cannot be declined, lest we abandon the very values that led many of us to choose this honorable profession. "

There have been three important ABA publications on alternative billing: *Beyond the Billable Hour: An Anthology of Alternative Billing Methods*, *Winning Alternatives to the Billable Hour*, and *Billing Innovations: New Win-Win Ways to End Hourly Billing*.

In *Winning Alternatives to the Billable Hour*, ABA President Hirshon writes, “The billable hour, such as it is, encourages too many of the wrong principles and suppresses too many of the right ones.” Foreword, viii.

In *Billing Innovations*, author Richard Reed minces no words about the demise of the billable hour: “[I]t is probable that straight hourly billing (billing by hours spent without limit and without regard for the benefit conferred) will virtually disappear in the years ahead....The time has come to say goodbye to time as the sole criterion for measuring the value of legal services.”

Lately, a new force has entered the picture, CPA and author, Ron Baker who has authored several books on the subject, including, the following:

- Baker, Ronald J., *Pricing on Purpose: Creating and Capturing Value*. New Jersey: John Wiley & Sons, Inc., 2006.
- Baker, Ronald J., *Professional’s Guide to Value Pricing*. 5th ed. New York: Aspen Publishers, 2004.
- Baker, Ronald J. and Paul Dunn, *The Firm of the Future: A Guide for Accountants, Lawyers and Other Professional Services*. Wiley, 2006

In his first work, *Value Pricing*, Baker traces the history of hourly billing to the 1940's when large Wall Street firms adopted time sheets. Baker argues emphatically for the demise of the billable hour and presents a lengthy “how to guide” to practitioners on how to convert from hourly billing to what he calls “Value Pricing.” Baker argues that customers do not buy *efforts*; they buy *results*. *Value Pricing*, at 82.

## MARK A. CHINN

Chinn & Associates, PLLC  
P.O. Box 13483, Jackson, Mississippi

(601) 366-4410, Fax (601) 366-4010  
mark@chinnandassociates.com  
www.chinnandassoicates.com

Mark Chinn operates a firm in Jackson, Mississippi dedicated solely to Family Law and is author of *How to Build and Manage a Family Law Practice*, published by the American Bar Association in 2006, and *The Constructive Divorce*, published by the ABA in 2007. He is also a contributing author in *How to capture and Keep Clients*, published by the American Bar Association General Practice Solo Section in 2005 and *101 Practical Solutions for the Family Lawyer*, published by the ABA Family Law Section. All ABA books may be ordered at [www.ababooks.org](http://www.ababooks.org). Mark has authored numerous articles on family law and law practice management for National and Local publications.

Mark is a frequent speaker for the ABA Family Law Section and the Mississippi Bar and has also made recent presentations as follows:

- “Creating the Law Practice of Your Dreams” presented to the 2006 Annual meeting of the Iowa Bar in Des Moines, Iowa.
- “Dumping the Billable Hour” presented to the American Academy of Matrimonial Lawyers, Florida Chapter in 2006.
- “Marketing for Those Who Hate It” presented to the Fall Meeting of the Family Law Section of the ABA in Santa Fe, N.M. in fall, 2006.
- “World Class Service” presented to the Florida Academy of Matrimonial Lawyers Meeting, Grand Hyatt, Tampa, Florida, May 4, 2007.

Mark is one of 14 family lawyers selected from Arkansas, Tennessee and Mississippi for inclusion in the 2006 & 2007 issues of *Mid-South Super Lawyers* magazine, and has been recognized by many other publications for excellence in the field of family law including:

- *The Best Lawyers in America*
- *Martindale-Hubbell's Bar Register of Preeminent Lawyers*
- *Outstanding Lawyers of America.*

He has an AV rating and is certified in Civil Trial Advocacy by the National Board of Trial Advocacy. Mark served two terms as a member of the governing council of the Family Law Section of the American Bar Association and two terms as Chairman of the Family Law Section of the Mississippi Bar. The Mississippi Bar bestowed the Award of Merit on Mark in 1996 in recognition of distinguished service to the Bar and the Public and enrolled him in the Mississippi Bar Foundation.

Mark was Chairman of the Lamar Order of the University of Mississippi School of Law Alumni Association in 2002. He was President of the Hinds County Bar Association for 1998-99 and is a Master of the Bench in the Charles Clark American Inn of Court. He was elected Vice Chair of the Supreme Court's Gender Fairness Task Force and was appointed by the Governor of Mississippi to the Children's Justice Task Force.

Mark has been married to his wife Cathy for thirty years and they have four daughters.