

How to Build and Manage a Family Law Practice



by Mark A. Chinn
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Mark Chinn operates a four lawyer 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. 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 issue 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.

BASIC MARKETING FOR THE SMALL FIRM

I. WHY MARKET?

“Law is an honorable profession, but it is also a business. The two concepts are the yin and yang for the delivery of quality services.” -Author Unknown

- A. You must be successful to be a good lawyer; to have the staff, equipment and facilities to deliver top rate service.
- B. Lawyers who are in trouble financially get into more ethics related trouble.
- C. Lawyers who are in trouble financially cannot provide essential family support.
- D. Even if you are already relatively successful, marketing is essential to maintain and growing. For example, note that the most successful of businesses have the most aggressive marketing. Competition is incredible.
- E. Happiness. Lawyers who plan and market are happy lawyers.
- F. Marketing can increase both the volume and the quality of business.

II. The three competencies of successful practice.

- A. Every business depends on three things:
 - 1. Getting business
 - 2. Doing quality work
 - 3. Getting paid
- B. To get business you must market

III. Warning signs. Oftentimes a firm is in trouble long before it knows it. Some warning signs are:

- A. Deteriorating firm performance
- B. Lower draws
- C. Poor cash flow
- D. Clients reluctant to pay
- E. Fewer good clients
- F. More noticeable competition for new clients
- G. Working more hours but feeling as though you’re falling behind
- H. Shrinking practice areas
- I. Increases in client complaints

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- J. Lack of trust among partners
 - K. Compensation, management structures that change often
 - L. Poor morale
 - M. High turnover among lawyers
- IV. Planning is essential. “He who fails to plan, plans to fail.” “If you don’t know where you’re going, you might wind up somewhere else.” Yogi Berra
- A. First, find out who you are and where you are. Do a “swot analysis.”
 - 1. Strengths
 - 2. Weaknesses
 - 3. Opportunities
 - 4. Threats (What is a threat to your practice)
 - B. Who do you represent? What kind of law are you practicing? What are your sources of business?
 - C. Who would you like to be? What type of law would you like to practice? Who would you like to represent? How much would you like to make?
 - D. (Much of the previous two sections taken from The Business of Law, by Edward Poll as published in the American Bar Association Materials, ABA Annual Meeting, Chicago, 1995)
- V. Develop a marketing attitude. Marketing must become a way of life, not a one time project.
- A. Greeting people. Treat people with respect, friendliness and dignity. This includes your clients, your staff, opposing lawyers and their staff.
 - 1. I have had clients come to me from other lawyers and as a part of their complaints, complain about the way the former lawyer treated not only them but also their staff.
 - 2. A lot of business comes from former adversaries who feel that they were beaten but treated with respect. This includes parties.
 - B. Read think and talk about marketing. Eat, drink and sleep it.
 - C. Your card
 - D. Your stationary.
 - E. Your name tag.
 - F. Office layout. Music, colors, magazines, candy, drinks, potpourri.

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- VI. Market existing business first.
 - A. Develop a service oriented attitude.
 - B. Develop systems in your office that are attuned to your clients.
 - C. Show clients you care.
 - D. Develop good interview techniques.
 - E. Work with your staff to develop good phone and interpersonal qualities.
 - F. Conclude your business with an exit interview. Give the client closing explanation of what you have done for them, thank them, and tell them what services you offer and that you hope they will call you for additional problems in the future.
 - G. Follow up with past clients. Check on them periodically. Send them relevant decisions or recent developments.
 - H. Always write or call people who refer you business and thank them.

- VII. Market new business.
 - A. Write articles.
 - B. Speak.
 - C. Join trade organizations
 - D. Conduct seminars
 - E. Participate in community activities
 - F. Join local groups such as Rotary, Kiwanis, church, etc.
 - G. Become active in local, county, state and national bar activities
 - H. Join affiliated national organizations
 - I. Obtain certifications and specializations such as American Board of Civil Trial Advocacy, American Academy of Matrimonial Lawyers, Who's Who...
 - J. Publicize yourself through "People in the News" sections of the papers.
 - K. Advertise firm events such as additions of lawyers.

CASE MANAGEMENT

(Excerpts from *How to Build and Manage a Family Law Practice*, by Mark A. Chinn, published in 2006, by the American Bar Association Family Law and Law Practice Management Sections.)

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

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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 ART OF NEGOTIATION FOR THE FAMILY LAWYER¹

Civility and Opposing Counsel

Our job as lawyers is to resolve civil disputes *civily*. Law is designed to replace resolution of disputes through force or violence. Isn't it logical then that civility and courtesy should be the commitment of every lawyer?

Follow the following negotiating rules:

1. Never Retaliate. Whenever a lawyer does something mean, or sends a nasty letter, there is great temptation to retaliate. This should never be done. 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. If a lawyer sets a hearing at the last minute without notice to you, do not respond with anger. Act like nothing bothers you. Herb Cohen, in Negotiate This! writes, "Even in the face of provocations, don't get ruffled or riled but remain placid and untroubled."²

For athletes out there, one way to look at this is that you do not want the other team to dictate the way the game will be played. You must stick to your game plan. If their game is cheap shots and throwing elbows, you ignore it and continue to play the game the way *you* think it should be played. If you start throwing elbows, you will forget how you play the game and you will lose.

2. 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." As a matter of fact, the nasty letter not only does not change someone's mind, it usually makes the receiver all the more determined to prove the sender wrong. It operates more like a red flag in front of a bull than a conduct changer.

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.

3. Talk to Opposing Counsel. Letters and emails create obstacles to open and honest communication. They also foster delay and inaction. To facilitate negotiation, call opposing counsel and talk with them. Or, schedule a time for a personal visit.
4. Cooperate with Opposing Counsel. In Negotiate This!, Herb Cohen writes, “I believe it’s always advisable to begin every negotiating encounter in a cooperative fashion.”³ Even Donald Trump agrees, stating, “Most negotiations should proceed calmly, rather than in a hostile manner.”⁴
5. Never Argue. Herb Cohen, writes: “Never be confrontational, dogmatic, or abrasive. Express your point of view in a soft tone without hesitation.”⁵ For example, a lawyer calls you 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 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 negotiation 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.”⁶

Techniques to Avoid Retaliation

Negotiations break down when one party reacts to something in anger, and the other party retaliates.

There are a couple of techniques for checking yourself when you want to retaliate. The first technique is to remember that the lawyer that you want to smash today, may be a Judge tomorrow!

Another technique is the “civility conference.” Whenever a lawyer in your firm has a desire to retaliate by filing a nasty pleading or sending a nasty letter, make them to call together at least two other members of the firm to discuss the matter. The result will usually be that the planned action is abandoned.

Different Personalities

All lawyers are different. There is no one “lawyer personality.” When dealing with lawyers, remember that they have a certain personality. Know that personality and plan your negotiation tactics to communicate with them. Never get angry with who they are. The way they treat you is probably not personal. You are never going to change them. Here is a list of lawyer personalities I have developed over the years:

1. **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.
2. **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.
3. **The Advocate.** The lawyer who believes the client is boss. This lawyer operates under the philosophy that people are paying him to be a 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.
4. **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.
5. **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 excellencies’ 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.
6. **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

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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.

7. **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.
8. **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. They 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.
9. **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.

Abandon the Winning Mentality

One of the mentalities that creates a break down in negotiation is the mentality that you have to "win" a case. While this mentality may prove useful in other areas of law, it is destructive in family law. How many times have you dealt with a lawyer that acts like there is some great scoreboard on the Interstate with the won/loss records of each lawyer posted for all to see? Are you able to work things out with this type of lawyer? No.

Family law courts were established with the very notion of taking "winning" out of the equation. Family law courts are courts of *equity*. All of us are taught in the first years of law school, that "one must do *equity* to receive *equity*." Equity is about *fairness*, not winning.

Family law cases instruct that a family law court expects a party to do the right thing *even* if the other side doesn't. Family law courts are not commissioned to pick a winner; they are commissioned to listen to the evidence and do the *fair* thing, given the law and the equities.

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What this means is that you can't "win." Even if you "out lawyer" the other side, the Court's obligation is to do what's fair. The Court is actually obligated to keep you from "winning" if the result is not fair. And, if you should somehow "win" in the trial court, the appellate court will probably take the "win" away from you.

Therefore, abandon notions of "winning" in your negotiation. If you are "winning," the other side is not going to agree to the settlement. Instead, look for win/win situations in your negotiations. Look for ways to frame the agreed settlement that will make the other side want to give you what you want.

Provide Information and Research

No intelligent opponent is going to negotiate and make compromise concessions without information. Providing information facilitates negotiation. Many lawyers hold on to the concept that they should keep the other side off balance by refusing to provide information or withholding important information. They don't want to appear to be anything less than a fighter for their client. They don't want to give up the opportunity from some grand surprise at trial. But here's the problem with that approach: with discovery and disclosure the way it is today, you are not going to surprise someone. At some point, you are going to have to disclose the information or the research, or you won't be able to use it.

Providing information or research makes the other side know that you are prepared. Preparedness is more intimidating than surprise. Moreover, if you disclose your information and position to the other side, you will receive feedback on how they might respond to it in court. Finally, sharing information communicates confidence to both the other side and your self.

Force People to Work

Negotiations bog down because people do not buckle down and work on cases. They usually consist of attorneys exchanging brief telephone calls or letters. The phone calls and letters make it appear some work is going on, but the truth is that no work is getting done and time is being wasted. True efforts to settle the case do not usually take place without an event to force them. Here is a list of ways to force work on a case to settle it:

1. Deposition. Depositions force the parties and counsel to meet and prepare and go over the case and their demands in detail. The deposition brings the parties and the

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lawyers together. The fear of the deposition often puts people in the right frame of mind to get down to business. Many times I will schedule a deposition, but never take the deposition, because the parties engage in constructive settlement talks.

2. The Lawyer Meeting. Schedule a meeting with opposing counsel at his office. Sit down and discuss the pros and cons of the case and work on looking for creative ways to create a “win/win” situation.
3. The LA Law Meeting. On LA law, parties and lawyers were frequently shown in what I would call “four way meetings” at a conference table where there was open discussion of settlement. I always scoffed at those scenes, because I never saw such meetings take place in Mississippi. But then I decided to try it. If you have an opposing counsel that you trust, this type of meeting can work.
4. Pre trial conference. If the parties cannot get together, schedule a pre-trial conference. Most Chancellors will hear the lawyers in chambers and give the lawyers indications of how they might decide certain issues. This helps the lawyers and parties settle. Bring the clients to the conference to facilitate resolution.
5. Trial. The pressure of an upcoming trial can put people in the right frame of mind to settle. If all else fails, get a trial date. Nine times out of ten, the case will settle either before or on the day of trial.

Techniques

Prepare an agreement. Many negotiations involve the exchange of letters or phone calls or emails with the basics of the proposal, but not the exact language. This slows down the process and leaves important details and thought processes out of the discussions. It also creates the risk that the settlement will break down over the language of the agreement after everyone thought there was agreement. At the very beginning of the negotiation, put work into preparing a written agreement. Structure future negotiations around the actual language and mechanics to be used.

Take a Lap Top. Take a lap top to all settlement conferences, mediations and court appearances. Have a proposed agreement on the lap top. When accord is reached, make the parties and lawyers stay in place to finally prepare the actual agreement or order and then print it and get it signed right then and there. Delay in preparation of the agreement gives parties the opportunity to change the deal. Delay in preparation leads to delay in implementation and increased cost and hassle.

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1. Much of the text of this material is taken from the book, *How to Build and Manage a Family Law Practice*, by Mark A. Chinn, published by the American Bar Association Family Law Section and Law Practice Management Section.
2. Cohen, Herb, Negotiate This! p. 198, (New York: Warner Books, 2003).
3. Cohen, Herb, Negotiate This! p. 88 (New York: Warner Books, 2003).
4. Trump, Donald, How to Get Rich p. 116 (New York: Random House, 2004).
5. Cohen, Herb, Negotiate This! p. 279 (New York: Warner Books, 2003).
6. Cohen, Herb, Negotiate This! p. 227 (New York: Warner Books, 2003).