

AN ENLISTING APPROACH

Firms Are Turning to Clients to Assist in Their Marketing Efforts

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IN THIS NEW WORLD OF LEGAL MARKETING, potential clients might begin to feel as though all lawyers are exceptional, as in Garrison Keillor's fictional Lake Wobegon, where all the children are above average.

Clients seeking lawyers want a way to more precisely measure the fit and capabilities. The tried-and-true Martindale-Hubbell representative client listings still accomplish that, to a degree. But the Internet, desktop publishing and greater acceptance for showing a public face have been expanding the metric.

"People want to hear success stories," says David A. Milberg, who is the director of marketing and communications for Chicago's Schiff Hardin. "All law firms say the same thing: 'We've got great lawyers, we're cost-effective and efficient, ad nauseam.' People want more than that. They want something they can relate to."

They want to know not only who you swim with, but with which strokes and how fast and how far.

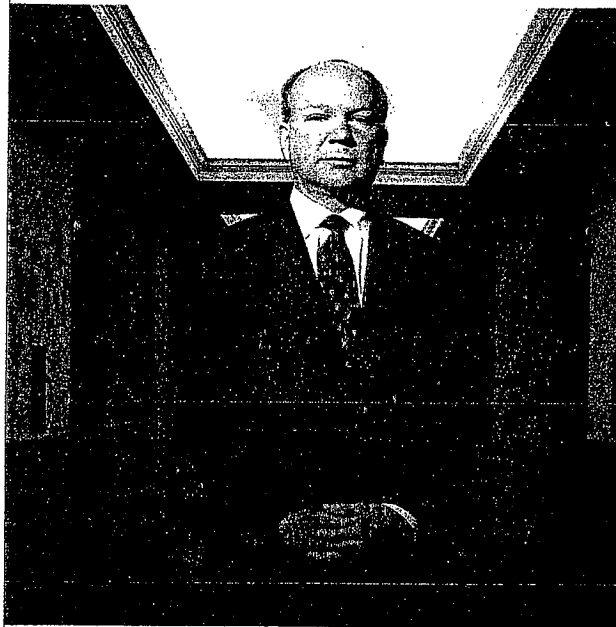
More and more firms are putting lists of representative clients on their Web pages—often tucked several clicks away—and in brochures, but some go further and do it better.

The studied approach on www.schiffhardin.com begins at the home page with a series of six photographs and illustrations representing certain clients, such as PepsiCo Inc. These stream in a loop toward the left side of the home page, where the eye usually goes even without that extra inducement. The stream flows into a bar with six tabs, each one a clicking point to a detailed narrative about the firm's work for a particular client.

There you can learn, for example, the firm's litigation strategy when a key executive left PepsiCo for a competitor, which resulted in a now widely accepted precedent concerning inevitable disclosure of trade secrets.

Much of this kind of information is available online as well as elsewhere. Firms out in front are simply saving people who want to know more about them the bother of sleuthing. Some old-line lawyers and law firms still eschew such a practice as unseemly. Not that Schiff Hardin is an edgy upstart: It is Chicago's oldest firm, founded in 1864.

And not that there aren't strictures. Using client testi-



Kevin Hein: Clients "see it as a tangible benefit when we get their name out"

monials is a form of advertising, and jurisdictions vary on how detailed they can be as far as creating expectations and possible outcomes are concerned.

Then there is confidentiality, which is the client's right and the lawyer's ethical obligation. Even if a client matter has received considerable publicity, ethics gurus advise getting informed consent before touting them or victories achieved on their behalf—even when not using the client's name.

"And I don't think you can comply with your obligation to the client by getting blanket consent to use the fact that you represent them," says William E. Hornsby Jr., who is staff counsel to the ABA Standing Committee on the Delivery of Legal Services and author of *Marketing and Legal Ethics*, published by the Section of Law Practice Management. "You need to discuss with the client the exact way you want to use their name and information."

'THE JUICE AND THE PULL'

ACCORDING TO RULE 1.6 OF THE ABA MODEL RULES OF Professional Conduct, "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent." A number of states have tinkered with that to narrow the scope. Virginia rules, for example, stipulate that for an ethical breach to occur, the information must be detrimental or embarrassing to the client or released against the client's expressed wishes.

Signed consent forms, including detail about use of name and publicity, are standard, says Kevin Hein, marketing partner for the Denver office of Phoenix's Snell & Wilmer. But he's found that his clients—many of them franchisors—are not only willing but eager to go along.

"The smaller ones in particular love whatever publicity we can get," Hein says. "They see it as a tangible benefit when we get their name out there in front of the franchise community. It's a benefit they don't feel they're even paying for and it helps them sell franchises."

Bigger companies are more cautious, he says. An initial approach to the general counsel might go well, "and then you run into people in the branding or marketing department who say they don't feel it fits their message."

It depends on the individual matter, and sometimes on persuasion. Those branders and marketers usually like publicity about a big transaction, Hein says. And they often like publicity that dissuades others from tangling with them.

"And," Hein adds, "it's not like we're going to go out and use their name to say we just got our clocks cleaned in litigation."

Sometimes the process of getting a client on board for such a promotion can itself prove to be a marketing and cross-selling tool with that client.

"You're calling the client and saying, 'We're putting together a list of our biggest victories and best work and think having your name associated with the firm will bring in more business and help in recruiting top-notch associates,'" says Andy Havens, who formerly worked in a law firm as a marketing director and is founder and president of Columbus, Ohio-based Sanestorm Marketing. "Clients love to hear that they've got the juice and the pull."

Some firms invite the clients themselves to do the talking. Boston's Posternak Blankstein & Lund has audio clips of clients touting the firm, accompanied by still photos of them zooming in and out in the style of a Ken Burns documentary. And the testimonies are prominently linked from the left side of the home page, where it says: "What's it like when your law firm is the perfect match for your business. Ask our clients."

Four clients speak in succession, mostly about things like versatility, meeting deadlines and returning calls quickly. Only one mentions a specific matter: a new sponsorship agreement with the Boston Red Sox.

NEW VERSION OF RULE

THAT CAUTIOUS APPROACH IS TYPICAL OF THE WAY MANY firms are touting clients and using their testimonials. Revisions in 2002 to the ABA Model Rules of Professional Conduct loosened restrictions, but only a few states have accepted them, while some have rejected them and many are still considering them, says Hornsby, the legal marketing ethics expert.

The new version of Model Rule 7.1 states that a lawyer "shall not make a false or misleading communication about the lawyer or the lawyer's services." In addition, it dropped a prohibition on comparing one lawyer's services to those of others and another that had prohibited communications that created an "unjustified expectation" about results that might be achieved.

CUTS BOTH WAYS

"MOST STATES STILL HAVE THE unjustified-expectation prohibition, and it is a two-edged sword," Hornsby says.

On the one hand it prevents, for example, personal injury lawyers from talking about specific settlements unless that is accompanied by detailed disclaimers about results.

On the other hand, Hornsby adds, "when translated into a business setting and broadly in-

terpreted, it prevents people from identifying the lawyers providing exceptionally good service."

Massachusetts is one state that has adopted the revision, though Posternak Blankstein's client testimonials indicate an abundance of caution. The state's rule 7.1 prohibiting communication that is "false or misleading" could apply if it creates unjustified expectations, according to commentary accompanying it.

In Washington, D.C., where, like Massachusetts, the only prohibitions are against material misrepresentation or omission, some firms are going a bit further.

On Dickstein Shapiro Morin & Oshinsky's Web site, for example, there is the following quote from the chairman of one corporate client that compares the firm to others.

"In one of those cases, involving a significant claim, the assessments of our prospects by the other law firms we consulted were not optimistic. With the support of the persuasive legal arguments developed by Dickstein Shapiro's attorneys, we were nevertheless able to arrive at a negotiated settlement on terms favorable to Northville."

However, Hornsby says, the District of Columbia Bar is "looking at the rule and thinking about making it more retro, and tighter."

Which goes to the most important point: Any lawyer or law firm seeking to tout clients to gain a competitive edge needs to look carefully at the rules wherever they beckon business.

"But remember: The more specific the quote or example, the more powerful it's going to be," says Havens, the marketing consultant. "It's about goals and measurement. People want to hear exactly what you did for a client." ■

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