

**Marketing a Worker's Compensation Practice —
A Low Budget, Shotgun Approach**

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1. Do I want to develop a Worker's Compensation practice?

a. Positive Factors

i. Stable compensation system – not subject to “tort reform” attacks.

1. Revisions every two years to statute and compensation rates (i.e. TTD, PPD, mileage and death benefits).

ii. Low costs of prosecution.

1. Average costs from intake to hearing: \$200 – 1,500

a. Largest expense – vocational evaluations and medical reports.

iii. Ability to project potential damages/attorney fees.

1. At front end, can estimate whether or not it is likely that case will be profitable.

iv. Ability to limit amount of time devoted to case.

1. No formal discovery. No interrogatories. No Request for Production. No depositions.

2. No scheduling conferences, pre-hearings or mediations.

3. Physician testimony via WKC-16-B report. Eliminates time and expense of videotaping physician testimony or having physician testify live at the hearing.

4. Vocational expert testimony – typically via reports.

v. Hearings vs. Trials

1. Turn around time from intake to hearing date: 8 – 10 months.

2. Hearing Duration: typically 2 hours

3. Hearing Procedure. Typical hearing involves testimony of client. Employer witnesses usually present at hearing. Can cross-examine in case in chief.

a. Pure “cross-exam.” Have no idea what witness will say.

b. Negative Factors

i. Damages are limited – Worker’s Compensation system is a statutory “cap” system.

1. No compensation for pain and suffering.

2. No compensation for loss of society and companionship.

3. Limited compensation for loss of earning capacity.

4. Limited compensation for permanent total disability.

5. No guarantee of payment of future medical expense even if that issue preserved via settlement.

ii. Many Roadblocks to Practicing Efficiently

1. WC-3 (medical bills) – who the heck paid what; what was written off and why don’t the numbers add up?

a. Requires significant amount of support staff time to verify outstanding balances.

b. No attorney fee on medical bills.

2. Subrogated Carriers and Reimbursement Agreements – or can you say “blackmail.”

- a. Some ERISA health plans require injured worker to sign a reimbursement agreement BEFORE any medical bills are paid.
 - b. Some ERISA health plans are difficult to deal with at time of settlement.
- iii. Union rights – termination and seniority.
 - 1. Employer’s often want injured worker to throw in the towel on employment issues as part of a WC settlement.
 - a. As applicant’s attorney – often forced to deal with these issues. No additional compensation but potential for future problems if issued not handled properly.
- iv. Retirement vs. Disability Retirement.
 - 1. If unable to return to work, may be collective bargaining rights, which can be exercised – need to look into this issue.
- v. Lingerin g Issues after settlement
 - 1. Bill collectors and subrogation recovery machines keep calling – no communication between collection service and health care provider.
 - 2. Medical providers call to find out why they have not been paid even though the Compromise Agreement states that the insurer will pay the bills.

2. Establishing a Flow of Cases – Beyond Yellow Pages, Radio and Television.

a. Co-Counsel Arrangements

i. From Standpoint of Referring Attorney

- 1. Benefits
 - a. Avoids cost of additional overhead for attorney to handle.
 - b. Avoids headache of dealing with a practice area you may not want to deal with.

- c. Generates cash flow with minimal expenditure of time.
- d. Generates good will with client.
 - i. Good practice, when possible – have joint meeting with referral source and potential client.
 - ii. Copy co-counsel in on crucial letters (i.e. case analysis; settlement demand and settlement documents).
 - 1. Creates inference that referring attorney is still involved and wants to know how things are going.
- e. Potential Disadvantage
 - i. Sending existing or potential future client to another attorney is difficult.
 - 1. Justified fear – could lose client.
 - 2. Attorneys receiving co-counsel referrals need to be keenly aware of this issue.
 - ii. How to handle – If referred client comes back to you on another case, send client back to referring attorney.
 - iii. Tell referring attorney that you will not actively market to referred client.
 - iv. Impact – preserves good will with referring attorney and shows client that you respect and value the relationship with the referring attorney.

2. *From Standpoint of Attorney Receiving Referral.*

- a. Benefits
 - i. Good way to build a reputation with referring attorney.

- ii. Increases your name recognition with defense attorneys and insurers.

- iii. Increases volume of cases.

b. Potential Disadvantages

- i. Feel compelled to accept all referrals.

- 1. Address this issue at the front end with referring attorney. Reserve right to turn down cases lacking merit or ones which are not economically feasible to handle.

- ii. May not get the “cream of the crop” of referrals.

- 1. Tracking callers on computer database will allow you to assess volume of calls versus new cases in the door.

b. Referrals from Non-Attorneys (i.e. Friends, Existing Clients, Former Clients, Business Acquaintances etc.)

- i. Great to get referrals from past clients, friends or business acquaintances.

- 1. When this happens – important to recognize the referral source.

- a. Send a hand-written thank you card or letter – keep it simple. Just let referral source know that you met with Mr. Smith and you are pursuing a claim. Thank them for their continued confidence in you. Enclose a card.

- i. Be surprised at how a simple thank-you card or phone call creates good will.

- ii. Residual benefit – keeps your name and the name of your firm in the mind of the referring source.

- b. Send another thank-you card or place a phone call once case is resolved – again thanking for the referral and continued confidence in your firm.

- i. Referral sources want to know how things turned out.
 - ii. Residual benefit – keeps your name and the name of your firm in the mind of the referring source.
- ii. Don't Be Shy – Continue Marketing to Clients.
 - 1. Emphasize that your practice is built on referrals from satisfied clients.
 - 2. At conclusion of case, provide several business cards and reminder that if client was satisfied with how case was handled, you welcome the referral of any friends or family members who many need your services in the future.
 - 3. Promote other areas of your practice at a time when client is most pleased (i.e. check is in hand).
 - a. Everyone needs a will and simple estate plan.
 - b. Introduce client to attorney in firm who handles wills.
 - 4. Walk client around your office and introduce them to other attorneys.

3. Sowing Seeds for the Future.

- a. How to Handle Calls when Worker's Compensation Benefits are being conceded – the "Hand-holder" approach.
 - i. Different scenario than typical Personal Injury case.
 - 1. Ex: In PI cases, usually want to immediately sign up this case before you lose it to someone else. May not want to do this in conceded worker's compensation case.
- b. With worker's compensation cases, view every call as a marketing opportunity.
 - i. Give your time and assess whether or not additional claims may develop in the future.
 - 1. Example – low back injury claim followed by surgery.

- a. Even though benefits are paid, if job is lost, may be a significant loss of earning capacity claim down the road.
- ii. At time of call, obtain crucial information . . .
 1. Background of injury and job duties.
 2. Earnings history (rate of pay dictates value of TTD claim).
 3. General information: address and phone number.
 4. **Most importantly** – find out how person got to your firm.
 - a. Most people are eager to tell who sent them.
- iii. Track background information in a database (i.e. Time Matters, ACT)
 1. Keep ongoing notes of conversations in contact database. This eliminates need for paper file. Also allows for quick retrieval of information in the future. Can cut and paste letters into database.
 - a. When person calls back 2 months later, you can read your notes before getting on the phone.
 - b. Caller often says “you probably don’t remember me . . .” They are surprised when you not only “remember” them but also recall the extent of their injury and treatment status.
 2. Tracking calls can also protect other attorneys in your firm from a caller whose case you are not interested in.
 - a. Not uncommon for people to call back and try to solicit opinions from multiple attorneys in a firm.
- iv. If caller sounds like a decent person, **immediately** add them to your mailing list.
 1. Not a complicated task.
 2. Add to list while conversation and assessment of person is fresh in your mind.

- a. In our system, this is as simple as placing the letter "M" in a data field.
3. Adding to list does not mean you will send them anything in the future. Adding to list simply means that you view this person as someone who will be receptive to receiving literature from your firm in the future.
4. Adding to mailing list is judgment call, which should be made by the attorney handling the call.
 - a. If person is combative or rips on other attorneys, probably do not want to solicit potential future calls. Do not add to mailing list.
- v. ***Immediately*** send a follow-up letter.
 1. These letters are NOT a waste of time. Once forms are developed, legal assistants can draft.
 2. Only send out letter if caller sounded like someone you would want for a client.
 3. Potential clients are impressed with . . .
 - a. Willingness to talk to them.
 - b. Immediate follow-up letter.
 4. Purpose of letter
 - a. Outline, in general, what was discussed on the phone.
 - b. Confirm that attorney-client relationship not established, *at this time*.
 - c. Suggest that potential client contact you when certain events happen (i.e. permanent restrictions issued; job lost, etc.).
 - i. Leaves the door open to future calls.
 - ii. Covers your backside if person ever claims he/she thought you were handling the case.

- iii. Impresses that you are accessible and willing to continue to provide general advice.
 - d. Confirm statute of limitations issues, if necessary.
 - i. This is more of an issue in PI cases.
 - e. Introduce caller to other areas of practice handled at your firm (i.e. estate planning; family law etc.).
 - i. Message you want to send – we want to be your law firm.
 - f. You have now created a relationship with someone who sought you out. Showing them that you value their call will probably bring them back in the future.
 - i. Timing is everything – purpose of letter is to keep your name in their mind. When time is right, get potential client in the office and sign them up.
 - ii. Keep the door open for future contact.
 - g. Enclose copy of firm Newsletter or Brochure.

4. Newsletters

- a. Simple and inexpensive tool to keep name out in the market.
 - i. Tools needed
 - 1. Creativity – develop articles designed to “educate” as opposed to sell, sell, sell.
 - 2. Microsoft Publisher – inexpensive software for in-house development of newsletter, announcements, brochures etc.
 - a. Can print internally or send to printer
 - 3. Bulk mail permit.
- b. Target existing clients, former clients and prospective clients (i.e. hand-holders who were added to mailing list).
 - i. Becomes ongoing and fluid list.

- ii. Keeps firm name out in the market.
- c. When file is closed, make determination if you want to keep former client on the mailing list. Some times you may not want to continue relationship.
- d. How to introduce Newsletter to clients and prospective clients
 - i. *Prospective Clients*
 1. Don't just send mass mailing without explanation. Respect prospective client's right to privacy. We all hate to get "junk mail."
 2. With initial follow-up letter, enclose a copy of recent Newsletter. Include language in letter explaining the purpose of the newsletter (i.e. to educate and advise consumers).
 3. Include language confirming your respect for their right to privacy. Provide a toll-free number and e-mail address to contact to remove name from mailing list.
 - a. Will be surprised at how few calls you will get requesting removal from the list.

- ii. *New Clients*

1. At time of interview, provide folder with card and Newsletter.
2. Explain purpose of Newsletter (i.e. to educate and advise) and confirm that you will be sending newsletters to them in the future.

5. Integrate Other Practice Areas

- a. Natural offshoot to WC practice is Social Security Disability practice.
 - i. Reason: Many WC claims lead to SSDI claims.
 - ii. Can use same medical reports in SSDI claims.
 - iii. If do not handle SSDI, losing potential opportunity to earn more money and to continue representing satisfied client.

6. Bottom Line

- a. Keys to developing a profitable Worker's Compensation Practice . . .
 - i. Volume + Efficiency + Marketing
 - ii. If **any** "key" is missing – difficult to be profitable handling worker's compensation cases.