



SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
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MARKETING YOUR PRACTICE

The 411 of Marketing Communications

FACULTY

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The 411 of Marketing Communications

Timed Outline

Identifying Your Target Audience	10 minutes
What Content to Include	10 minutes
Using Storytelling to Convey Your Message	10 minutes
Potential Communication Channels	10 minutes
Cause Marketing	10 minutes
Constitutional Protection of Commercial Speech	5 minutes
New York Regulation of Attorney Marketing	15 minutes
Other Legal Considerations in Attorney Marketing	5 minutes

SCAL Two Part Series on Marketing 101

Part 1 - June 21, 2017 – Lunch and Learn – The 411 of Marketing Communications

The focus of this program is to provide lawyers with basic communication skills and techniques to help them market to clients, prospects, colleagues and referral sources.

1. Who You Should Communicate With

First, identify your major sources of business such as current clients, colleagues who concentrate in another area of law and referral sources such as accountants, financial planners, real estate brokers, etc. Then, provide them with information that will be of value to them. By doing so you establish yourself as a leader in your industry. In addition you have an opportunity to talk about results you have achieved for clients in a manner that will be of interest to them. For example, an insurance defense law firm was advised to begin an email marketing campaign with a monthly newsletter. The firm's source of business came from claims managers and in-house counsel at insurance companies. When asked what that audience was interested in, the attorney said decisions of note and methodology for successful defense verdicts. That became the focus of information for this firm's monthly newsletter, which became a monthly training tool for major insurance carriers across the country. In addition, it helped develop a relationship with a major national insurance carrier who became this firm's largest referral source.

2. What You Should Be Talking About

The "what" you should be talking about are results you have achieved for clients in a non-specific manner (see example below), solutions to problems your clients face and information that is helpful to referral sources. Also, look to current events that people are talking about and relate that to the services you provide. Understand that people are always looking for "What's In It For Me?" Answer that question upfront. It is important to communicate "who" you are as well as "what" you do. Here is an example of an attorney bio that achieves this objective.

This portion of the Bio describes “what” this attorney does:

John Doe is the principal of the firm and concentrates his law practice in advanced wealth transfer planning for high net worth individuals, corporate executives, entrepreneurs, investment bankers and real estate developers. He has extensive experience and creative skills in the following areas of law:

- Drafting sophisticated estate planning documents, wills and trusts
- Tax planning for individuals, trusts and estates
- Preparation and filing of estate tax returns and gift tax returns
- Representation of individuals and corporate fiduciaries
- Sophisticate business structures
- Advising individuals and families in connection with real property, business succession planning and corporate planning
- Charitable giving advice and plans

This portion of the Bio describes “who” this attorney is:

John Doe is an innovative and creative counselor who will help you protect your assets, minimize taxes and develop a plan for you, your family and your business. He is responsive, strategic and knowledgeable. To him, clients are family. John is an entrepreneur and managing partner who puts clients’ interests first.

3. The Art of Storytelling

In her best selling biography of Abraham Lincoln entitled A Team of Rivals, Doris Kearns Goodwin explains that Lincoln captured the “hearts and minds” of the American people through storytelling. Stories provide context for you to stand out, be heard in a noisy, crowded marketplace. For example, you can say, “People either see the glass as half full or half empty.” Or, you could tell one of my favorite stories about perspective from the inspiring book, The Art of Possibility.

A shoe factory sends two marketing scouts to a region of Africa to study the prospects for expanding business. One sends back a telegram saying, “Situation Hopeless. No one wears shoes.” The other writes back triumphantly, “Glorious business opportunity! They have no shoes!”

Clients retain lawyers they believe are competent, but also someone they can relate to and trust. This is where the Art of Storytelling becomes important. Below is an example from a personal injury plaintiff's law firm of how to turn a factual situation into a compassionate story.

Before:

\$2,000,000 Settlement In Wrongful Death of 32-Year-Old Mother of Three

Plaintiff went to the emergency room complaining of severe abdominal pain. She was diagnosed with food poisoning and sent home. Two days later she returned and exploratory surgery was performed. A blood clot was found on an artery in the bowel, requiring that the patient have her bowel re-sectioned, and an ileostomy performed. The next day, another surgery was performed, the ileostomy was removed, and the bowel was reconnected. The patient remained hospitalized and required two additional surgeries for bowel obstruction. The patient died about 8 weeks after surgery. Our firm contended that the patient should have been admitted the first time she went to the emergency room and that the ileostomy was removed prematurely. The case settled prior to jury selection.

After:

\$2 Million Settlement In Wrongful Death of 32-Year-Old Mother of Three

Our Client, a 32-year-old mother of three, went to the emergency room with severe abdominal pain. She was misdiagnosed with food poisoning and sent home. After two days of further pain and suffering, our client returned to the hospital and an exploratory surgery was performed. A blood clot on an artery in her bowel was found. Surgeons performed additional procedures to resection her bowel and an ileostomy was performed, which allows waste to bypass the reconstructed portion of the bowel while it heals. Despite having eight surgical procedures done within two weeks, for what was originally diagnosed as "food poisoning", our 32-year-old client tragically passed away leaving three young children to grow up without their mother. Our client died a wrongful, premature death caused by medical malpractice. To ease the surviving family's financial burden of raising three young children without their mother, and to compensate for the pain and suffering of the surviving family, our firm recovered a \$2 Million settlement prior to jury selection.

4. How You Should Communicate

Consider that each interaction you have is a marketing event. Whether you are meeting with an existing client, prospect, colleague or referral source, you have an opportunity during that interaction to market yourself and your firm. The other opportunities for marketing are found in the various forms of communication including your web site, brochure, newsletter, social media accounts, email and letters. It is important to find a comfortable way to talk about the services you provide and the results your clients achieve in a professional and compelling manner.

5. When You Should Communicate

Random acts of marketing do not work. Consistency and frequency are important. People can only understand the value you offer if you tell them. The more often you communicate, the greater the opportunity to remain “top of mind”.

6. About “Cause Marketing”

Many attorneys support non-profits and offer pro-bono services as a way to give back to the community they serve. This is called “Cause Marketing” as in marketing for a cause. Look for opportunities to visually maximize your contributions by getting involved with committees that build relationships and generate good will. Here is an example of how to describe an attorney’s commitment to non-profits and professional development.

John Doe is committed to serving the community and advancing the profession of law. He is a member of the National Academy of Elder Law Attorneys, Inc., which is a non-profit association that assists lawyers, bar associations and others who work with older clients and their families. He has lectured before numerous groups and organizations. John is a member of the New York State Bar Association, its Trusts and Estates Law Section and its Business Law Section. He is the founding father of a chapter of the Alpha Epsilon Pi Fraternity at the State University of New York at Buffalo.

Again, this describes “who” John Doe is as well as “what” he does.

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ETHICAL AND LEGAL ISSUES IN ATTORNEY ADVERTISING AND MARKETING

Lisa Renee Pomerantz, Attorney at Law

1. Background and Constitutional Issues

The First Amendment provides: “Congress shall make no law abridging the freedom of speech.” Until the 1970’s there was substantial doubt that this applied to “commercial speech” advertising products and services. During that decade, there was a series of cases striking down professional association restrictions on price and other advertising and recognition of the importance and value of commercial speech. The Supreme Court observed as follows in its 1977 decision in Bates v. State Bar of Arizona , 433 U.S. 350 (1977) holding a ban on attorney price advertising as unconstitutional:

“Our cases long have protected speech even though it is in the form of a paid advertisement. Even though the speaker's interest is largely economic, the Court has protected such speech in certain contexts. The listener's interest is substantial: the consumer's concern for the free flow of commercial speech often may be far keener than his concern for urgent political dialogue. Moreover, significant societal interests are served by such speech. Advertising, though entirely commercial, may often carry information of import to significant issues of the day. And commercial speech serves to inform the public of the availability, nature, and prices of products and services, and thus performs an indispensable role in the allocation of resources in a free enterprise system. In short, such speech serves individual and societal interests in assuring informed and reliable decision-making.”

The Supreme Court acknowledged that potential restrictions on advertising as reasonably necessary to prevent them from being

demonstrably unfair and deceptive could be permissible. This led New York to promulgate very stringent restrictions on attorney advertising, many of which were held to be unconstitutional in Alexander v. Cahill, 598 F. 3d 79 (2d Cir. 2010).

2. Current Rules of Professional Conduct on Attorney Communications and Advertising

This led New York to amend the applicable Rules of Professional Conduct. There are three categories of commercial communications:

1. Informative materials and communications, such as articles, topical newsletters, bulletins, webinars, etc. are not generally characterized as advertising. “Advertising by lawyers consists of communications made in any form about the lawyer or the law firm’s services, the primary purpose of which is retention of the lawyer or law firm for pecuniary gain as a result of the communication.” (Comment 6 to Rule 7.1) An otherwise informational communication, such as a webinar, would be considered advertising and solicitation if the purpose was to solicit attendees for representation. See NYSBA Ethics Opinion 1110 (2016). Similarly, press releases and tweets directed to potential clients in shareholder suit are considered advertising and solicitation. NYSBA Ethics Opinion 1009 (2014). All communications, whether advertising or not, are subject to general prohibitions on fraudulent or deceptive conduct.

Suggested newsletter disclaimer: “This newsletter is for education and information purposes only, and is not intended to provide legal advice. No attorney-client relationship exists or is created by the use of this newsletter or the information provided herein. This newsletter should not be used as a

substitute for competent legal advice from a professional attorney in your state.”

2. Advertising is governed by Rule 7.1 which contains a general prohibition on “false, deceptive or misleading” ads and permits and restricts or regulates other content. Generally, purely factual information concerning the firm or the attorney, its services, pricing, payment arrangements, etc. or describing attributes not susceptible of proof, such as “dedicated” or “compassionate” is permitted without restriction. The restrictions on other content are designed to ensure that the advertising is not misleading: mandatory disclosure that an endorser is paid; requiring caveats on statements suggesting results that can be achieved. All advertising is subject to labeling and record-keeping requirements. As a note, these advertising restrictions closely track established FTC policies and guidelines on advertising.
3. Advertising which is “directed to, or targeted at, a specific recipient or group of recipients, or their family members or legal representatives” is defined as “solicitation” under Rule 7.3. In-person, telephonic, text solicitations prohibited unless to friend, relative or client. Written solicitations prohibited if recipient has objected, if harassing, coercive, targets those unable to make reasonable judgments about retaining an attorney, or if use of unaffiliated attorneys not disclosed. “Ambulance chasing” prohibited. Solicitations must be filed with attorney disciplinary committee or applicable judicial department.

3. Other Legal Considerations In Attorney Marketing

1. CanSpam Act : The header, containing the identity of the sender and the routing information, must be truthful and accurate. The subject line must be accurate. Commercial messages promoting or selling a particular product or service must be identified as an advertisement, and must include the sender's physical address. An opt-out mechanism must be included with such commercial messages. See generally CAN-SPAM Act: A Compliance Guide for Business

<https://www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business>

2. New York's right of privacy NYCVR § 50: anyone who "uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor."

3. Avoid infringing other parties' trademarks or copyrights. Don't copy text from others' brochures or websites. Don't use unlicensed photos, illustrations or music without permission.

CECILIA ALERS - BIO

Cecilia Alers is an Award Winning Marketing and Public Relations Consultant with expertise in law firm marketing. She has worked with hundreds of lawyers on marketing and communications representing some of the area's largest and most prestigious law firms as well as boutique practices and solo practitioners. Prior to starting her consulting practice in 2002, Cecilia was the in-house Marketing Director at the law firm of Farrell Fritz, P.C. and prior to that she spent several years working for a NYC law firm. Her work is original and creative enough to win several awards in the categories of law firm brochure, web sites, blogs, print advertisements, logos and public relations campaigns. Cecilia was an early adaptor of email marketing and social media for marketing professional services. A sought after Speaker, she has presented a variety of programs on different facets of marketing and communications to several organizations including the Suffolk County Women's Bar Association, Moxxie Network, the International Association of Business Communicators, Public Relations Professionals of Long Island, Chambers of Commerce and the Nassau County Library Association. In addition, she provides in-house lunch and learn programs to law firms, corporations and business organizations.

Cecilia is highly creative, knowledgeable, intuitive and a strategic thinker. She is a perpetual learner, avid reader and enjoys immersing herself in her clients' industries. Cecilia is highly skilled at understanding what motivates people and the psychology behind successful marketing campaigns. Her clients say she is effective, efficient and reliable. Cecilia is passionate about her profession and loves to help clients grow and succeed.

Cecilia is active in the business community and has served on several boards including as President of Dress for Success, the Girl Scouts of Nassau County, the Long Island Advertising Club, Millennium 3 Partners and she has served on committees for Non-Profits including the American Heart Association, Swing for Kids and the Foundation for Sight and Sound among others.

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LISA RENEE POMERANTZ BIO

Lisa Renee Pomerantz has more than thirty years of legal and dispute resolution experience. After graduating from Harvard University and Boston University Law School, Lisa clerked for a federal judge. Following a stint as a litigation attorney, she worked for fifteen years as a senior-level in-house counsel for a major corporation.

Since 2003, Lisa has practiced law in Suffolk County. She works primarily with entrepreneurs on commercial and corporate matters involving customers, vendors and collaborators, and to resolve business and employment disputes amicably and cost-effectively. She serves on the AAA's Roster of Neutrals as a commercial mediator and arbitrator and has served in a variety of leadership roles with the Association for Conflict Resolution, the New York State Dispute Resolution Association and the Suffolk County Bar Association. She currently serves as Co-Chair of the Suffolk County Bar Association ADR Committee and on the Advisory Council of the Commercial Section of ACR.

Lisa is a popular keynote speaker at legal and business meetings and conferences, and publishes an email newsletter entitled "Making the Connection." She writes the ADR column for the Suffolk Lawyer and has contributed several articles to ACRResolution Magazine. She also has provided on-line and live training for business and legal audiences.

Lisa has received numerous awards for her professional activities. She was named Member of the Year by Moxxie Network for 2015. Lisa also received an award in 2015 from the Association for Conflict Resolution for exemplary leadership. In 2010, the Long Island Business News named Lisa as a recipient of its Top Fifty Around 50 Award and in 2011 as a recipient of its Leadership in Law Award. In 2007, Lisa received the Suffolk County Bar Association Directors' Award in recognition of her service as ADR Committee Co-Chair and also received Awards of Recognition in 2004 for her contributions to continuing legal education and as IP Committee Co-Chair.