

EVERYDAY TASKS

1) External Phone Calls – In General

a) Importance

- i) This is our most frequent oral opportunity to leave an impression on clients, witnesses, and other counsel. They may extrapolate our handling of phone calls with how we'll handle a hearing or deposition.

b) Keys

i) Team Huddle: Plan ahead with team. Someone should have at hand the case schedule and other info. client expects us to know. Discuss strategy alternatives in advance so we plan how best to air any competing views.

ii) Early Bird: Start on time. Call in 5 mins. before start. Start call precisely on-time even if some are late. (Rare exceptions do exist.) Don't let tardy clients waste time of punctual ones in multi-client calls. But, set agenda with that in mind. (E.g., if client paralegal always on time but client attorney often late, start with paralegal items.) Do not start discussion before start time (other than greeting new attendees). Those joining on time should not have to listen to off-agenda chatter mid-stream.

iii) Conductor: Predetermine who here owns running the call. Owner should conduct (not monopolize) the call, naming others to address most topics but keeping others from dragging call off agenda or off schedule. Predetermine who here will lead which agenda items, preferably including each team member, within reason.

iv) Structured: Circulate agenda day before the call. Start call by stating the agenda (if short). Only then ask if anyone wants to add to the agenda. (If client is burning to discuss X, we need to know that at start of call.) Do not start call off topic; that defeats point of an agenda. If recent event needs to be discussed, add it to end of agenda.

v) Keep It Moving: Our clients should not suffer through long pauses between points, no more than we would make a judge wait for us to get to our next point or a jury wait for our next question to a witness.

vi) Quiet Off Stage: Speaker phones are SENSITIVE ... no side discussions, rustling papers, loud typing, etc.

vii) Stop! Listen: Do not cut off clients. Do not talk for more than 30 seconds non-stop, generally, without allowing others to comment. Before moving to next topic, ask if others (esp. client) have anything to add before we move on. Then state the agenda item number we're next addressing (helps participants who joined late or are multitasking).

38 viii) Mirror Mirror: If you're not sure you followed a point, mirror it back. "Let me
39 make sure I understand that. You're OK with us doing A today, but will get back
40 to us tomorrow on whether you prefer B or C?"

41 ix) Exit Strategy: End call on time or early. Rarely more than 30 mins. After our
42 "anyone have anything else to discuss?," end call either by summing up the
43 action items and/or promising to send a list of action items shortly after the call,
44 and confirming next scheduled call. Send redlined case management doc. or
45 other summary of call shortly after the call ends.

46 c) Peer Feedback
47 i) We need latitude for varying communication styles, of course. But, if you feel
48 that someone here repeatedly has annoyed client, e.g., talk to them about it,
49 privately and respectfully.

50 **2) External E-mails – In General**

51 a) Importance
52 i) This is our most frequent written opportunity to impress or annoy. Every day,
53 our clients receive e-mails from us interspersed with e-mails from our
54 competitors.

55 b) Keys
56 i) Better to call (or suggest they call to discuss)? E.g., proposing something client
57 may misunderstand and/or resist? Haven't spoken to client or opposing counsel
58 for some time? Opportunity to learn what opposing counsel is thinking on topic?
59 The only thing we can learn clicking Send is whether our computer has crashed.

60 ii) To/CC:
61 1. Copy in-house paralegal on most e-mails to client in-house attorney.
62 2. CC or BCC responsible legal assistant.
63 3. Check To and CC lines for errors.
64 4. Violating protective order?

65 iii) Subject: Case Name: Topic(s)

66 iv) Attachments: attached?

67 v) Forwarding?: don't forward e-mail string not meant for outside world.

68 vi) Body:
69 1. Begin: Where need a decision, begin the e-mail body with bolded or
70 underlined flag. E.g., "Decision Needed." "Filing Deadline 3 pm Friday."
71 2. Make it easy on the reader. Brief, organized and clear.

- 72 3. Put short points/questions in numbered list, so response may be: "1-3 yes; 4
73 no."
74 4. Typos? Can I shorten it further?
75 5. Consider tone from reader's perspective.
76 vii) Particularly important e-mails:
77 1. Print and edit.
78 2. Run by another on the team.
79 c) Peer Feedback
80 i) Tell sender asap if you see us send an e-mail that is unclear, mis-addressed, or
81 missing attachment. If you see an e-mail to opposing counsel that would cause
82 concern if displayed in court in front of a judge, note that to sender, politely.

83 **3) Giving a Project – In General**

84 a) Importance

- 85 i) Asking someone else to do a task is critical to most of what we do. Doing that
86 basic project-management function poorly can cause much angst, delay,
87 inefficiency, and poor work product.

88 b) Keys

- 89 i) We're Not Keyboards: Giving a project to another normally is much smoother
90 when the two of you have a good relationship.
91 ii) We're Not Vulcans: There is no mind meld. Be clear on when you want what.
92 "Like one-page bullet point outline by EOD Tues. so I can review Wed. a.m. and
93 send you comments. Need to get final 2-page outline to client by noon Thurs.
94 OK?"
95 iii) Mirror Mirror: After being as clear as possible in your request (including when
96 it's needed), ask the other, when appropriate, to mirror back what they
97 understand the project to be and its timing...without being perceived as
98 demeaning.
99 iv) Clarity Through Context: If not self-evident, explain why this task is needed and
100 why it's due when it's due.
101 v) Project Management: In multi-part projects, think ahead so that parts that can
102 be done in advance are able to be done in advance. (E.g., proposed Order,
103 declaration authenticating exhibits, civil cover sheet, etc.) Determine early if you
104 will need support for the project and delegate tasks early to avoid last-minute
105 rushes that cause undue stress and mistakes. E.g., at least week before a depo.
106 you should have identified to paralegal most of the exhibits you'll need.

107 vi) What Happened?: When there is a miscommunication, wait a day or two and
108 then together try to figure out how to better communicate the next time.

109 **4) Receiving a Project – In General**

110 a) Importance

111 i) Imagine being the third baseman on a team whose first baseman disappears a
112 few times per inning.

113 b) Keys

- 114 i) See above. It's a team sport.
- 115 ii) Mirror Mirror: No project is too simple to mess up. Therefore, no project is too
116 simple to mirror back what you think has been asked of you.
- 117 iii) Checking In: If project is a particularly long, complex, or important one, check in.
118 "Identified 6 good expert candidates, talked to 3, hope to reach others by Friday
119 and will summarize status EOD Friday."
- 120 iv) Delays Expected: As soon as you have sense that you may not be able to do the
121 project or get it done on time, say so. This is the single most common problem
122 I've seen in this area. For lots of reasons, attorneys (like pilots) tend to delay
123 accurately reporting expected delays.
- 124 v) Overbooked: Do not take on projects that you can't reasonably complete, at
125 least not without clearly explaining your bandwidth problem.
- 126 vi) Feed on Feedback: Particularly if it's a project for someone you don't work with
127 much, solicit feedback.

128 **5) Meetings**

129 a) Importance

130 i) This is where ideas happen, improve, and spread to full team; where decisions
131 are made; and where churn and inefficiencies are stopped. Those with an idea
132 for winning use the meeting to bounce around the idea to be improved, and turn
133 it into an agreed plan for action. The same goes for those tasked with
134 implementing the idea. Make sure full team is on same page before you waste
135 time going off in some direction.

136 b) Signs of Trouble

137 i) Direction is changed at last minute, after lots of time spent drafting/working in
138 another direction. This is much less likely to happen if full team discusses the
139 strategy first at a meeting and records the common understanding, before
140 starting to implement it.

141

- 142 **6) Attorneys – Working With Our Paralegals and Legal Assistants**
- 143 a) Importance
- 144 i) Our paralegals and legal assistants are at least as skilled and experienced in what
145 they do as our attorneys are in what they do. And, their jobs border between
146 difficult and impossible. Our job in part is to help them stay on the right side of
147 that boundary.
- 148 b) Keys
- 149 i) Golden Rule: Constructive suggestions are important. But, if you question the
150 approach being used by a paralegal or legal assistant, don't assume you're right
151 and they're wrong. Feel free, of course, to ask them why they're doing it that
152 way. If you still don't like it, talk to the appropriate partner, together if possible.
- 153 ii) Let Them Do Their Job: Communicate clearly and nicely what needs to be done
154 but do not micromanage tasks a paralegal or legal assistant knows well, and
155 perhaps better than you.
- 156 iii) Keep Them In The Loop: Paralegals and legal assistants are invaluable members
157 of our team. Make sure to keep them informed of what is going on in the case,
158 etc., so they are up to speed and can contribute in meaningful ways. No one
159 likes receiving assignments piecemeal and without context. Copy paralegals on
160 e-mails that might be useful to them. Include them in meetings that might be
161 useful to them. Paralegal should know facts and documents in case as well as
162 anyone.

OVERRIDING PRINCIPLES

- 164 **7) Build Relationships of Trust**
- 165 a) Importance
- 166 i) Each of us is responsible for developing personal relationships of trust with our
167 firm colleagues, clients, court staff, and opponents, if possible. Nothing we do is
168 more important.
- 169 b) Keys
- 170 i) Most of the tips/keys in this document speak to this goal.
- 171 ii) Some ways to diminish trust:
- 172 • Promise to do something by a certain time and not do it and not timely warn
173 of possible delay.
 - 174 • Promise to do something by a certain time and do only part of it.
 - 175 • Provide a rosy analysis of a document, court decision or issue or a rosy report
176 of a communication w/o conveying fair, full analysis/report including
177 information that might cast doubt on your conclusion.

- Let client learn of a bad development from someone other than us.
- Be unprepared to address questions/topics client reasonably raises with us.
- Give wrong information to the client, especially if you don't explain that it's a best guess and you'll get back to them immediately after the call.

8) What Would a Judge Think?

- a) Before sending anything to the court or another party, stop and think what a judge would think of us if they had only this communication to judge us on. Do we appear unprofessional, uncivil, petty?
 - i) E.g., if a client's employee is head developer of a feature, let's not say in initial disclosures that he/she "may have information regarding [that feature.]"

9) Instantly Report Problem to Lead Partner

- a) Importance
 - i) How we deal with our screw ups goes to the core of our practice. Trust is challenged by a screw up. It can be destroyed by a delay in reporting the screw up.
- b) Keys
 - i) No Exceptions: The general rule is to report every significant problem to the appropriate partners on the case asap. The exceptions? None. Do not wait until you're certain there is a problem. Do not wait until you have all the information needed to assess severity of the problem. Do not wait until steps are taken to fix problem.
 - ii) No Falling on Sword: Be precise in reporting. Don't overstate or understate the problem or our level of certainty about the facts.

10) Instantly Report Problem to Client

- a) No Exceptions: General rule: If we suspect or believe at 8:05 that we missed a filing date, appropriate partner should alert client by no later than 9:05 same day, a.m. or p.m. The exceptions? None.

CLIENT RELATIONS

11) You Look Familiar: Arrange several face-to-face meetings with in-house attorneys, paralegals, legal assistants, etc., per year. Talk to those here who know client best, to strategize how to do this.

12) No, We Can't Do That: One reason to get to know client through face-to-face meetings is to prepare you for telling client NO. E.g., we often need to tell client NO in area of document retention and collection. These are not client's sole decisions. If client has an absolutely unchangeable collection practice that would bother you if you were the judge or the opponent,

214 then we probably need to get it changed. Note: this advice is not to protect us; it's to protect
215 the client.

216 **13)** Spoliation Spoils Everything: Document retention is our job. E-mailing the client a proposed
217 document retention e-mail notice is step one of ten. We need to actively manage the client's
218 efforts at preserving evidence.

219 **14)** Interviewing Client Witnesses: Before interviewing a client employee, first talk to the
220 attorney(s)/paralegals here (and, sometimes, at client) who know this client the best, to learn
221 what this client likes/dislikes in such interviews.

222 **15)** Budgets: Have clear understanding of client's expectations regarding budgets. Maintain open
223 communication with client regarding budgets and case progress, and discuss budget
224 adjustments when necessary. No bill from us should ever unpleasantly surprise a client.

225 DEPOSITIONS

226 **16) Deposing Patent Applicant or Technical Expert**

227 a) Importance: This typically is the most important deposition. Partly because it typically
228 is the most important witness cross examination at trial. Partly because admissions
229 here may have the most impact on summary judgment.

230 b) Keys

231 i) Ready Week Ahead: Have detailed outline ready week in advance. Run it by
232 others on team. Rearrange modules envisioning how the day will unfold.

233 ii) 30-Minute Drill: First 30 minutes often the best, before defending attorney can
234 cure the witness's problems. Plan ahead so this will be fast paced, with no multi-
235 page exhibits or likely privilege instructions that might slow pace. Think, Oregon
236 Ducks football.

237 iii) Scattershot: Start with scattershot opening, mixing up questions relevant to
238 damages, laches, equivalents, and just for fun (e.g., "what do you think of [our
239 client]), etc., back to back, so witness understands question but has no idea why
240 you're asking it. The truth can slip out when they're dizzy.

241 iv) Indirection. When you're seeking admissions re non-enablement, you want
242 witness thinking about obviousness.

243 BRIEFS

244 **17)** Start: Know the Rules: Don't draft a brief first and then check the applicable federal, local and
245 judge rules and orders governing page length, format, meet and confer, etc.

246 **18)** Start: Know and Set the Deadlines: Set deadlines for circulating to team, to client, and to co-
247 defendants, and realistic deadline for final substantive edits—leaving ample time for relaxed
248 TOC/TOA, final proofing, and filing.

- 249 **19)** Outline: Even if you think outlines don't help you as author, they help rest of team suggest a
250 better organization of the brief.
- 251 **20)** Spunk and Bite: It's OK to be interesting, to be non-traditional, to invoke a smile.
- 252 **21)** Visuals: Many briefs benefit from graphics, timelines, photos, etc.
- 253 **22)** Case Narrative: Are we advancing our case narrative? At least not harming it?
- 254 **23)** Revise, Proof, Revise, Proof: Again and again.
- 255 **24)** End: Check As-Filed Version: Print and proof the as-filed version received from ECF.

LITIGATION DON'TS

- 257 **1)** **Don't Delay Until Last Day**: Delaying any significant writing so that substantial edits are
258 necessary on the last day, decreases the chances of spotting last-minute typos, decreases the level of
259 meaningful review from the rest of the team, raises stomach acid to unnecessary levels, and risks
260 annoying clients who operate on tight schedules and see last-minute drafts as unduly burdensome
261 (except where absolutely necessary). Outline your brief early, and aim to have a proposed final draft
262 circulated at least 48 hours before the deadline – sooner if possible.
- 263 **2)** **Don't Overstate**: Saying something in a court-filed document that is not true, or fairly can be
264 read to state something that is exaggerated or not true, is one way to lose credibility and a case. Don't
265 overstate case law, record support, our position, opponent's alleged admission, or anything else. For
266 example, do not say "X explicitly admits that Defendants were diligent in disclosing the reference"
267 when X actually said: "While Defendants' prompt disclosure of the new references after obtaining
268 them is a factor weighing in Defendants' favor, the unexplained delay of over a year from the original
269 filing of the invalidity contentions weighs strongly against allowing amendment."
- 270 **3)** **Don't Take Unnecessary Positions**: In a writing provided to an opponent, don't take any
271 position that is unlikely to help us on a current issue and might hurt us later in the case.
- 272 **4)** **Don't Carelessly Concede or Imply Anything**: Don't carelessly use language, even well-
273 accepted patent practice terminology (e.g., "inventor") that might be read by a law clerk, judge, or
274 juror, as conceding or implying something we in fact do not wish to admit.
- 275 **5)** **Don't Carelessly Cite Cases Whose Holdings Are Against Our Position**: Don't unnecessarily cite
276 a case just because it contains good language, if it holds or rules against our position on any significant
277 issue in the litigation.
- 278 **6)** **Don't Overlook Judge and Local Rules**: Recheck Judge's Rules/Standing Orders, and Local
279 Rules, before filing each paper.
- 280 **7)** **Don't Forget to Have Fun!**

BUSINESS DEVELOPMENT (INTERNAL/EXTERNAL)

INTERNAL MARKETING

- Actively market your skill set to your colleagues, particularly those in other practice groups (if you are junior, focus on your lower billing rate and willingness to sacrifice; if you are senior, focus on your expertise and efficiency).
- Don't wait for work to appear on your desk. Make a regular habit of walking around the office, offering to help, no matter the size of the project. Those with work are often too busy to hand it out, so make it as easy for them as possible.
- Ask for deadline and budget up front. Partners appreciate your efforts to pay attention to the same things that are important to them in dealing directly with clients. Then be sure to meet or beat the deadline and budget.
- Provide the same level of "client" service to your internal colleagues that you would for an outside client.
- Be a team player. Build up others around you, recognize their efforts and good work. Share successes and don't be afraid to be responsible for failures; people respect the personal integrity and it demonstrates your own self confidence.

EXTERNAL MARKETING

- Under promise, over perform—Be more responsive than your clients expect.
- Watch out for and protect your client's interests regardless of whether you are being hired/paid for it.
- Evaluate what works for you and what does not in finding and maintaining clients. Introspection is very important. Then focus your limited marketing energies on what works, not what may be popular.
- Community/industry visibility is important to some, not to others. Find out what type of work you like to do, and do well, then what type of marketing works for those clients. E.g., if your clients' lifeblood is regular trade show attendance, you should attend with them.
- Do not "nickel-and-dime" clients; reward your client's loyalty by giving them discounts and "freebies."

Applied Law Practice, Business Development, Oct. 24, 2013

- Your best source of work is through cultivating professional contacts and providing excellent, timely and valuable services.
- Devote time to professional development and training, e.g., CLEs, presentations, etc. Your clients will benefit from your enhanced knowledge and experience.
- Face time is critical. If business does not lead to seeing your client often, try to find other ways, useful to your client, for face-to-face meetings, such as offering free training of in-house personnel.

ETHICAL MARKETING

- Be yourself in marketing, be honest and forthright. Clients can sense disingenuous behavior and a lack of integrity.
- Do not claim to be something you are not. Be careful about use of the words “expert” and “specialist.”
- Never promise a particular outcome. Ultimately your job is to provide legal counsel and advice for your clients to allow them to make the best business decision.



**TOP WAYS TO GET FIRED
(WHETHER AS AN OUTSIDE FIRM OR AS AN ASSOCIATE)**

- **Promise what you can't deliver.**
 - Be realistic about the merits and risks.
 - Be realistic about budgets.
 - Be realistic about schedules.
- **Be full of surprises**
 - Control expectations and identify critical aspects of case that might impact risks and costs.
- **Don't listen.**
 - Understand your client's/supervisor's goals and expectations.
 - Understand their policies on billing, communications, etc.
 - Be clear on receivables and date due.
- **Don't communicate well.**
 - Regularly report status and upcoming events.
 - Promptly communicate new developments, especially where they might impact risk or budget.
 - Ensure that your client/supervisor understands your strategy and agrees with it.
- **Embarrass your client.**
 - Remember that you are a representative of your client, so act professionally.
- **Be completely passive.**
 - Anticipate potential problems and, if possible, address them in advance (e.g., determine how to streamline or minimize discovery).
- **Blame others for problems.**
 - Take responsibility for actions of subordinates.
- **Do shoddy work.**

Applied Law Practice, How to Get Fired, Oct. 24, 2013

- Proofread well. Clients might not know every nuance of the law, but they know sloppy proofreading.
- Have an answer if asked why you are doing something (e.g., as opposed to perfunctorily performing tasks, such as serving overly broad discovery requests).
- Learn proper grammar (don't say "please call John or myself!").
- **Be unprepared for meetings or calls.**
- Treat your client's or supervisor's time as valuable.
- **Do things at the last second.**
- Distribute briefs or papers well before they are due.
- **Be unpleasant to work with.**
- Don't act too busy to talk.
- Return calls and emails promptly.
- Don't whine and complain – no one wants to work with someone who seems unhappy.
- **Generate sloppy bills.**
- Ensure the time spent on a task is justified by the description (not "0.6 Review and forward stipulation to extend time to respond to complaint").
- Don't bill for inappropriate tasks (e.g., "conference with assistant about finding lost files").
- Ensure entries for the same joint task correspond (e.g., the same amount of time for a call).
- Provide a sufficient description for large blocks of time (not, e.g., "8.5 Preparing validity charts").
- **Don't manage your team well.**
- Ensure there is not duplication of effort or too many people on conferences or calls.
- Ensure that there is a good reason for having each member of the team.
- **Don't care about helping the client.**
- Focus on your job -- helping your client or supervisor resolve his or her problem.