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# KMS ProfitPower Tips for Lawyers™



Issue 30... **May 2007**

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## Robservations

Welcome to the May 2007 edition of "KMS ProfitPower Tips for Lawyers"... Issue 30

I trust that you enjoy the read, and find it both thought provoking and useful to you in practice. Please feel free to e-mail me any feedback by clicking this link...[Editor@lawfirmprofit.com](mailto:Editor@lawfirmprofit.com)

There is plenty of activity in the Australian legal market with some progressive firms noticeably acquiring firms, and also "cherry-picking" good partners and their teams from smaller firms, including suburban firms.

Having watched a number of the situations develop recently it occurred to me that some readers might wonder what their strategies may be to try to prevent key departures.

Importantly you need to be thinking well ahead. Ensuring that your firm is going well enough that all key players are as happy as possible is not something that happens overnight!

Some practitioners prefer the independence and flexibility that a smaller firm culture can offer...and will not naturally be inclined to lean towards the culture of some of the more predatory firms.

However, if they are already working very hard in the present environment, bringing in good work and delegating and supervising it and growing the firm, they need to be getting big rewards.

Any persistent perception that they are

### Covered in This Issue...

- Value billing ..... 1
- Seven Major Myths about Time Recording..... 2
- Tip on one aspect of planning the use of traditionally quiet times ..... 3
- Some thoughts on Business Development by Associates ..... 4
- The Benefit Of Monitoring Firm Time Quality ..... 4
- Busy, busy, busy! Really?..... 4
- Common Watch-Outs in Practice Management..... 4

"carrying" other parts of the firm without suitable adjustment in rewards can work to create an environment where cultural concerns may be put aside, or given less importance, when a new suitor comes calling.

Further, the issue of smooth and wide succession options is important. A partner who does not see fellow partners developing their part of the practice, and introducing the type of new blood likely to want equity in due course, may be more likely to take early opportunities to sell-out to an external player to avoid being trapped with limited succession opportunities later.

Firms need to avoid allowing partners to "cruise", in anything other than a planned strategy, because those who are not

cruising may feel forced to examine options they formerly would have considered not appropriate.

### Value Billing... A practitioner angle on the value of writing your client a letter...

Garry Barnsley is a lawyer in a NSW country town who crusades for his fellow lawyers to value their work and advice, and to learn to charge better for it.

I have excerpted some thoughts of his about the value of writing a letter to back up your advice...often long precedent letters...and below is an offer of a free copy for you of an article he wrote recently (based on a real life situation with a client) in which he makes a serious point about value billing, in an entertaining style.

I recommend the article to all lawyers in small firms...and am sure that many in larger firms will also find thoughts below, or in the article, that resonate. I have read the written advice Garry provided his client, and know the fee he charged, and agree that many lawyers have difficulty seeing value in this type of advice and difficulty charging reasonably for it.

Excerpt from a letter Gary wrote recently about the article...and written letters of advice...

**"It is not just about style or personal preference.** My crusade (to persuade lawyers to think differently about the value of the advice they give) raises big issues:-

- The profitability and survival of small legal practices, especially in the country, where my roots are.

The Editor, Rob Knowsley, is a lawyer, admitted 33 years, who practiced successfully with firms of all sizes – city, suburbs and country...in Australia and New Zealand. As KMS Senior Consultant, his insights are further based on the experience of nineteen years of consultancy assignments, and telephone/e-mail support, for lawyers...in all areas of practice management and profit building. Many practices have quickly reaped the monetary benefits and enjoyed the feeling of being in more control of their business through his practical help...as multiple referees attest.

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- Future access for the public to legal services in rural areas.
- The economic effect of the continuing decline in our market share of conveyancing in the face of competition from conveyancers (a very live issue for suburban and regional law practices).
- The impact of tort law reform (posing the question: what, if anything, will take the place of personal injury litigation as a revenue earner?).
- The cost of professional indemnity insurance (and how the cost can be contained, or better still reduced, through exceptional risk management).
- The reputation of the profession for giving quality advice, avowedly independent, across a broad range of topics, to ordinary Australians, for an affordable cost.
- The potential for our profession to earn tens of millions of dollars for work they presently give away free, or for next to nothing.

My two books (Letters for Lawyers – Conveyancing; Letters for Lawyers – Powers of Attorney) are still selling, and I've had some good feedback from purchasers (the comment I treasure most is from the colleague who said "Garry, your letters make me look good in the eyes of my clients").

I've had my share of detractors too. The two most common observations are: "Your letters are too long and my clients don't want/ won't pay for/ can't read long letters" and "I don't have time to write letters".

The answer to the first of these complaints is obvious: "Tell me what part of my advice you don't want to hear".

In a profession that is now regulated in NSW by legislation that runs to 739 sections (Legal Profession Act 2004) I maintain that the job has to be done properly, and that includes generating a written record of work done.

As for earning a proper fee for it, I see no distinction of substance between me urging my colleagues to charge fairly and reasonably for their work, and the legislature saying that lawyers must not charge unfairly or unreasonably for their work.

As for the second complaint, I can only say that the job isn't done, and the fee not earned, until the advice is documented. And if you are going to make a file note, you may as well write it in the form of a letter to the client. The development of templates, using a system, is just the efficient re-use of an existing asset. The templates get better over time as experience adds to our stock of knowledge.

Value billing – what's it really mean? With rare exceptions, much of what I've read on value billing is long on theory, and short on practical guidance. I was inspired to write a Best Practice column on the subject of value billing, because that was the theme of our yearly conference in Bowral in September. Fourteen of us sat around for three hours debating value billing. Then, to prepare for writing my article, I did a lot more research and reading among the published literature.

What if I'm wrong? I sometimes wonder whether I'm not just barking up the wrong tree, but barking mad. I've racked my brains for decade now trying to work out if there's a better way of making a better living out of practising law. I've watched our bread-and-butter lines here in the country shrink, while the big city firms get bigger and more profitable.

I've watched fads come and go. The current one is Elder law, and it gives me cause for disquiet. I worry about all those tens of thousands of Enduring Powers of Attorney let loose out there. I sense that we'll soon be making hay out of Deeds of Revocation!

I also worry about testamentary trusts being foisted on ordinary people who neither need nor can afford them. I worry about retirement village contracts that effectively make property developers the principal heirs of a resident's estate. I worry about churning in the finance industry, reverse mortgages, and the 110% home loan...

Chief Justice Gleeson was recently reported in the "SMHerald" as bemoaning the pending loss of experienced country lawyers and observing that they do "a great deal of good" by giving ordinary people sensible, practical advice.

While it's terrific that country lawyers are so well thought of, and so adept at providing advisory services for the common man and woman, we also have a duty to ourselves and our families not to give away the benefit of our immensely valuable skills for next to nothing.

I find it absolutely staggering that section 325 of the Legal Profession Act can have found its way onto the statute books. That's the one that says that a law practice "must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the value of any property or reference to... or of any transaction involved in the matter to which the agreement relates..."

**For your free copy of Garry's article just click here [Barnsley@lawfirmprofit.com](mailto:Barnsley@lawfirmprofit.com) and type "Yes Please" in the subject line of the e-mail and I will get it to you by return. Garry and I would love to hear your feedback.**

### **Seven Major Myths About Time/Activity Recording That Will Really Cost You Dearly...**

My points under this heading in Issue No. 29 generated a lot of feedback from readers.

The most common theme was that they hadn't really thought enough before about how time/activity recording is so much wider and more important than time-costing.

This is also a response I have been receiving during and after my recent seminars on SuperProfits, held to date in Sydney twice, Melbourne and Brisbane...and to be held in Auckland June 6th...

Practitioners are beginning to realise that with nominal charge rates at quite high dollar values, and opportunities in Client work and in work for the firm often able to produce many times the nominal rate, the effective utilisation of the agreed available time of each fee-earner is critical.

The baseline goal is to use Firm Time well and also to achieve the collectable Work in Progress goal in your WorkPlan™. Given that effective practitioner can do this quite easily,

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and produce substantially more than base levels it is a major problem if others fail to even utilise their available time to the base level.

As an example, take a lawyer with a goal of 1.5 hours effectively used Firm Time per day, and 6.5 hours Client Time recovered at say 85%...8 hours a day on average reasonably used.

Many managers will accept that 80 6-minute units equates to 8 hours captured, but of course for many lawyers it is nothing of the sort. In my wide experience a reasonably busy lawyer who actually works an average of 8 hours a day will capture an absolute minimum of 10 extra leverage units...often many more.

If these are Client Time at \$265/hr billed and recovered at say 90%...it represents \$54,855/year additional SuperProfit because almost always the overheads will not need to increase to generate that extra amount.

On the other hand if a lawyer on the same WorkPlan™ and rate falls short of his/her base goals by just ten Client units a day, and has a Realisation Rate of say 80%...the shortfall is \$68,568...loss of SuperProfit, and importantly the difference in production between these two lawyers is a whopping \$143,000pa...

It is this huge SuperProfit impact from apparently small differences in activity and activity capture that is striking home to more practitioners, helping them to appreciate that proper management of individuals, and proper management of business development and work allocation, are the keys to creating genuine SuperProfits and protecting them.

The key tools we use in this system for closely managing individuals are KMS WorkPlans™ and KMS FeedBack Reports™.

### **A brief KMS Tip on one aspect of planning the use of traditionally quiet times...**

Just a small reminder that occurred to me as I was doing my analysis and comments on the KMS FeedBack Reports™ for a client firm recently...

It has always been of interest to me over the years how different people use the days they are in the office in periods that

can be traditionally quiet...such as early January in particular. Individual personalities and workloads are of great relevance here...

Some people may be busy with a healthy work backlog anyway and will perform pretty normally.

Others will have little to do and will use the days less than fully...with maybe 50-60% Client work as compared to WorkPlan™ and will try to fill the rest of the day with housekeeping...bearing in mind that a lot of potential Business Development is unsuited to January as so many clients and referrers are away...they usually fall well short...

Someone who was well ahead on Client Time to Dec 31 anyway and uses the time for some Client work, some housekeeping, and sensible effective BD preparation... by writing ten or fifteen information pieces and a couple of seminars to be used throughout the remainder of the year... is yet another profile.

Here's the ProfitPower™ Tip...early enough to be able to manage the issue...identify who on your team fits what profile, and review whether it might be better use of your wages invested in them to require them to take holidays in early January if they are likely to be people who cruise during that time and cannot use it well...

Keep this in mind when reviewing the Monthly FeedBack Reports of people in your teams...

### **Some thoughts on Business Development by Associates...**

Recently I was approached by an Associate in a substantial firm to include in this newsletter some thoughts on how Associates might best address business development without treading on the toes of their supervising partner.

It has to be assumed that the firm itself has not addressed this issue sufficiently through its own programs, and I will not address that obvious issue here.

A key role of a partner is to grow the team through both leadership from the front and encouragement of others. Inherent in a concern about not treading on toes is a perception by an Associate that the supervising partner is over-protective of

clients and fearful that they might be taken over/taken away.

This is a big negative to team growth and a major inhibitor to training and development of Associates, who must be encouraged to take over parts of the client relationship and work both alongside the partner and also independently, to create and maintain new relationships.

Relationships are by their nature fluid, so a constant onward and upward mentality is essential to keeping as many relationships as possible healthy and productive while nurturing new ones too.

To best progress in creating new relationships though an Associate should proceed following all the basic principles of making oneself truly useful.

It is very important to realise that building relationships is not something that needs the introduction of innovative, quick-results, new, sexy, ideas. Quite the reverse... employ sound, solid, tried and true, techniques that have stood the test of time.

Leaving aside any planned program of making new contacts, (which many find very daunting) there's plenty of scope for sensible activity just with the wide variety of contacts with potential clients and referrers which occur naturally in day to day life and practise.

Really taking an interest in the person is a big starting point. People respond well to interacting with others who show a genuine interest in their business and other interests, and if there are interests in common so much the better.

Having a strong system of follow-up is important. The simple courtesy of a note or an e-mail after a first meeting is often overlooked.

Treat people as individuals...this journey is not a competition to meet as many people as possible...that's the antithesis of quality in relationships. So, for example, flicking a series of business cards gathered at a function to a support staff member and instructing them to, "Send the usual letter", is missing the point, and missing a big opportunity to interact with the individual personalities and interests of the owners of the cards!

The long-given advice to jot down a few points from your casual meeting

Keen to see a pet practice management topic of yours addressed in a future issue of ProfitPower Tips?

Feel free to click this link and e-mail Me [your suggestion...](mailto:your.suggestion...)



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conversations on the back of someone's card as an aide memoire is good advice if you then go on to use some of it in your follow-up communication.

Use a simple database and capture all the relevant information you can at the outset and as the relationship develops. Having a good profile of contacts allows you to individualise communications better as you go forward, and to track responses and keep the information quality building over the long haul.

Wherever possible, include people carefully in distribution of communications you do or plan to do as a matter of course, such as newsletters or brief information e-mail updates. This ensures that there is an overlay of contact there for all those selected, whether you have the opportunity for further individual contact or not.

The aim is to build in the mind of your contacts the perception that you are a friendly, organised, helpful expert in an area. That perception is built over time by the total communication contacts that occur...whether they be in person, on the phone, by e-mail or simply by your contact seeing your article in a publication, or your letter to the editor of a magazine, your contribution to an on-line discussion, you listed as a speaker at an industry conference or seminar, or whatever.

It follows that getting a good flow of things happening increases your total exposure and increases the chances that your contacts will see plenty of them and continue to perceive you as an important player in that segment. Then, when an opportunity arises, you are among the top of mind few for a "foot in the door" legal project or a referral of an associate of your contact.

Remember to thank for the thought of referral, not the dollars flowing from that thought. For many reasons a person referred may never actually use you...but the thought of referral is golden, and you must acknowledge it early and fully to keep the likelihood of further referral maximised. Many inexperienced lawyers hold off thanking a contact for a referral until they see if any work eventuates...a simple trap to fall into.

Do things that suit your style and personality and do them regularly and consistently. Above all, think about the

contact and what success and happiness means to them, and direct your information flow accordingly.

For your free checklist of 41 tools of business development to get you headed in the right direction just click here... [kmsbd41tools@lawfirmprofit.com](mailto:kmsbd41tools@lawfirmprofit.com)

### The Benefit of Monitoring Firm Time Quality...

Totally unmonitored, recorded Firm Time activity may be largely unfocussed and largely useless.

The allocation of valuable time in a person's WorkPlan™ for Firm Time is not an acknowledgement that this amount of time is wasted on average each day.

It is intended as a wise investment of valuable time in activities tailored to an individual in a fit with your Business Plan.

Any good practice management software will allow you to drill down to recorded Firm Time by category during a chosen period for any individual, and assessing the recorded activity, and making clear by your communications to the team member that you are assessing quality, will help you to guide the team member to better use of the allotted time.

This is important at all times but especially early in the team member's time with your firm as they may have perceptions about what they should be doing which differ wildly from yours. Perusing their recorded Firm Time at least each week will give you the opportunity to get them on to the right track early, before bad habits become ingrained.

### Busy, busy, busy! Really?

From bitter experience, you simply cannot afford to take most people's word for it when they say, "Yes, I'm pretty busy"...

Many people who think they are busy are not doing anything worthwhile with 20% of their WorkPlan™ day, and critically, that is the part of each day in which they should be creating your SuperProfit.

Take a lawyer with a WorkPlan™ of 2 hours Firm Time and 7 hours Client Time, who is on a rate of \$315/hr and typically recovers 90% WIP.

If this person says they're busy but is in fact falling short of Client Time by just 10% of the day, a mere 9 six-minute units...you lose billings of over \$58,000 a

year...around 50% of the SuperProfit you hoped that lawyer would generate for you.

The answer is to ensure someone is busy...recording the required activity and still possessed of a healthy backlog of Client work. Don't take their word...review the recorded activity and point out disparities between perception and reality.

Where there is clearly no healthy backlog, option 1 is to delegate some more work (files or simply tasks within files).

If there isn't enough work to do that clearly the time to ramp up business development programs has long since arrived and is now urgent. Identify the key areas where all in the team can "hit the accelerator" and do more business development now...because the lead time can be many months before increased new files result from today's activity.

### Common Watch-Outs in Practice Management...

Many errors made in firms ten years ago are being repeated each month in 2007...causing much angst for partners.

A simple one to watch out for is allowing inadequately trained team members to handle billing, and discovering later that they had no understanding of the imperative of writing down the relevant accumulated Work in Progress.

This dramatically skews Realisation Rate calculations, inflates unbilled WIP improperly, and creates headaches for staff who later need to go in and do all the housekeeping belatedly.

It also makes next month's billing very messy as WIP which should have been billed and off the relevant ledger is still appearing and to an extent intermingled with newly recorded Client Time activity.

KMS Tip...Billing is too important to be left to inadequately trained or insufficiently supervised staff. Train well, insist that systems are followed and monitor closely to ensure that the systems are in fact being followed to the letter.

### Upcoming KMS SuperProfit Seminar...

Auckland... Wednesday 6 June 2007, from 9.30am to 1.30pm. For details to be forwarded to you by e-mail please click here and e-mail us...

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