

ARE YOU WASTING AN IMPORTANT ASSET? The Case for Strategic Referrals

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There are many reasons why law firms need to refer matters to other firms:

1. Conflicts of interest.
2. Lack of necessary specialized skills.
3. Workloads which would not enable a matter to receive requisite attention or to be handled within client time restraints.
4. Matters (usually litigation) requiring qualification in a different jurisdiction.
5. Matters with a geographic nexus requiring substantial travel and other expenses, that could be handled more economically by a firm elsewhere.

Most law firms allow their lawyers to decide independently when and to whom to refer such matters. As a result, a single law firm may send work to many lawyers in many firms. The aggregate fee value of such cases might total tens or hundreds of thousands, or even millions of dollars per year for a larger law firm. The firm's reputation rests on the performance of the referee firm, with two potential downside ramifications:

1. Inadequate performance can reflect poorly on the care taken by the referring firm and adversely affect long term client relations.
2. Lawyer malpractice defense specialists report that "negligent referral" is emerging as a cause of action in cases against lawyers.

These risks are aggravated by the motivation of some lawyers to send referrals to particular lawyers or firms not necessarily in the best interests of the client:

1. A lawyer / friend in need of work to sustain a failing practice, in some cases failing for reasons relating to competence and effectiveness.
2. A lawyer, regardless of competence or expertise, who has demonstrated a willingness to reciprocate with referrals back to the referring lawyer.

Why don't law firms act to protect themselves from potential risks involved in outbound referrals by managing them to the long-term best interests of the firm and its clients? This might be done by:

1. Aggregating them for maximum reciprocity by sending sufficient volume to competent firms who themselves have potential to refer work back.

2. Selecting referee firms institutionally, based on a careful assessment of specialized competence in various geographic areas, choosing firms that promise the potential for greater reciprocity by their own management of such referrals institutionally.

Resistance to such measures comes not from clients, but from lawyers themselves who want unfettered authority to make such referrals without interference — despite the risks involved and the potential opportunity costs of erstwhile inbound referrals from like-minded firms who are looking for reciprocal referral relationships. That is not to say that such arrangements can or should be exclusive — ethical considerations require that referrals be made to competent lawyers and firms, which requirements sometimes conflict with exclusivity. However, much can be done to increase the value of outbound referrals by their institutional management, even in smaller law firms.

Implementing such a program involves:

1. An inventory of outbound referrals.
2. A follow up with clients to determine levels of satisfaction with work done by other firms.
3. Development of an “approved list” of referee firms by practice area and geography.
4. A policy and process to capture information regarding outbound referrals.
5. A system to track inbound referrals to measure the implicit “quid pro quo.”
6. A periodic review of outbound and inbound referrals to determine if certain referees might be reconsidered and replaced to improve the economic return on outbound referrals.

In establishing their approved list, most firms should consider smaller firms or boutiques who are not competitors, so that fundamental client relationships are more likely to be maintained. Referral of work to full-service or larger firms could result in successful cross-selling by referee firms and less potential for reciprocal referral, due the scope and depth of the larger firm’s capabilities.

Managing outbound referrals to reduce client relations and liability risks and increase inbound reciprocal referrals makes sense. Maybe more firms will consider implementing this simple strategy in the future.