

# Composting Files

Angus was talking to a group of lawyers about trial preparation and case management.

"There are some powerful traditions in the practice of law," he said. "Like talking to clients and laboriously taking longhand notes on 14-inch yellow legal pads. Another tradition is the way most of us treat new cases when they come into the office.

"There is an initial flurry of activity. We do a conflicts check—formal or informal—depending on the size and kind of practice we have. We open files, set up billing routines, put new names and telephone numbers in our files. Then we take the first procedural steps necessary to keep us out of trouble. We file a summons and complaint if we are for the plaintiff, or make our first dilatory move if we are for the defense.

"Then our secretary puts the file in the filing cabinet—or we leave it on top of the desk or a bookcase with other files just like it—and we let it compost for six months or a year."

Everybody started laughing (because it was so painfully true), and Angus went on.

"And we do nothing with the case because we are busy putting out fires that have started in other files—probably from spontaneous combustion—that have been composting even longer."

Then Angus stopped and looked at everybody before going on. "Let me ask you a serious question," he said. (And it turned out to be one that I have been asking lawyers myself.) "How many of you—let me see your hands—send quarterly reports to all of your clients about their cases?"

No hands.

"Okay," said Angus, "how many of you regularly send quarterly reports to *some* of your clients about their cases?"

Out of 150 lawyers, there were two or three hands raised. Even so, I had my doubts, based on whose hands they were. It was the same kind of result I get when I ask those questions.

Angus went on. "No wonder people like that Miller Beer ad that shows 'Lawyer Roping' in the rodeo," he said. "Even when you're on top of your cases, you're not telling your clients what you're doing."

Angus is uncomfortably accurate. Among the adverse attitudes people have about lawyers is the popular idea that we often do very little to justify our fees. It is reflected in the reasons people go to the bar association to lodge complaints. For example, in Wisconsin last year, there were three times as many charges of lawyer neglect as any other kind of complaint.

### Wizard of Ozitis

What a strange situation we have. Exactly when there is a glut of lawyers looking for work, big and little clients are turning from their traditional attorneys in disgust and taking their work in-house, and the pipeline of new lawyers coming from law schools is crammed beyond capacity, lawyers can't figure out how to treat their clients right.

Not that we are bad lawyers. On the contrary, most American lawyers are quite competent, thoroughly honest, and work hard for their fees. But we seem to have something like Wizard of Ozitis. Remember when Dorothy discovered the Wizard of Oz behind the curtain? She said, "You're a very bad man!"

And the wizard said, "No, I'm a very good man. I'm just a bad wizard."

That's the way too many of us are. We're very good lawyers. It's just that we're very bad businessmen and businesswomen.

And the simple truth is, a law practice is a business. That takes nothing away from the professionalism that is involved. We just have to understand that a good law practice is also a well-run business. (That, by the way, shows why it is strange that a number of states that have mandatory continuing legal education do not give CLE credit for office practice courses.)

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Now suppose you could stay on top of all of the files in your office. Instead of them controlling you, you were controlling them. Then suppose that every ninety days you took stock of where you were in every case, seeing what you had done and what you had yet to do. Then you would write a short letter to every client, telling what had happened to his or her case in the last three months.

Think of how many clients who were disappointed in the other brand of mousetraps who would beat a path to your door.

But wait a minute, you say. Is this remotely realistic? Good intentions run amok? Utopian ravings of a mad dreamer?

Not hardly. In fact, lots of business experts are shocked when they find that this is not what most lawyers do. If those quick oil-change shops can send their customers a postcard every three months telling them it's time for another oil change, then wills and trusts lawyers should be able to send letters to their clients every year or so telling them it's time to review their wills—and litigators ought to be able to keep up with their clients, too.

But it is truly easier to say than do.

The first step is to control the input of cases into your office. Most of us take on too much work. (I happen to know that Angus is guilty of this too, although he won't admit it.)

When your docket is really too full, a number of things happen. First, your evenings and weekends (already strained) go entirely. Then lesser cases start to cause serious trouble as you concentrate on the bigger ones. Your calendar often lists you in two places at once, and you are able to manage only by figuring which one you can cancel at the last minute.

The costs become unacceptable when you find yourself apologizing to the same federal district judge for the third time in a month when you are late for a hearing or a conference.

Steal a page from Bill Barton's book. Barton practices with another lawyer in Newport, Oregon. They specialize in psychological injury litigation and limit the number of cases they will handle at any one time to thirty. The number obviously depends on the kind of work you do. The idea applies to all kinds of practice.

Second, tell your clients what you are going to do and give them an idea of when you are going to do it (in addition to letting them know what it is going to cost). A simple handout listing the steps that a case has to go through before it gets to trial can go a long way toward putting their minds at ease.

Third, organize the way you prepare cases for trial. Spend an hour next Saturday morning listing all the things you normally do to get a case ready. Don't worry about the order at this point. Just brainstorm your typical case preparation, writing down everything you can think of that you usually do. If you have several different kinds of cases that require different kinds of preparation, make a separate list for each case category.

### Systematic Discovery

Now put your list aside for a minute and think about formal discovery. Most of us don't have an organized way of approaching discovery. We just dig in and keep doing it until we can't justify doing any more. That, by the way, winds up costing more money and getting less information than you would get if you used a good discovery plan.

#### Interrogatories

Start with interrogatories. But instead of firing off hundreds of useless questions, ask for facts—solid information that you know you are entitled to. Get names, addresses, telephone numbers, model numbers, production runs—the kind of hard data that the other side must make available to you. Don't ask for opinions, admissions, information about conversations, and other kinds of soft information.

Using interrogatories for soft information only leads to equivocating answers, angry lawyers, and contested hearings on discovery questions. If you use interrogatories the right way, you will ask only a few questions but you will get useful information.

#### Documents

Next come document requests. The answers to your interrogatories help point you toward the documents you want and the people whose depositions you will take. But before you take any of those depositions, study the answers to the interrogatories and go through the documents. Few things are less productive than a deposition in which you don't know what to ask because you haven't studied the documents.

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### Depositions

Now you are ready for depositions, and you should have an idea of what you want to pursue with each witness.

### Admissions

Finally come requests for admissions. Use them to clean up what is left over. Here's how that works:

No matter how carefully you conduct discovery, by the time you are through taking depositions, you think of some questions you should have asked—but didn't. The court won't let you take a second deposition of any witness except under highly unusual circumstances, so what do you do?

You know the questions you would like to ask, and you know the answers you would like to get. So write out those answers—in English, not in "legalese"—and submit them as requests for admissions. And if your rules will allow, send supplementary interrogatories that the party must answer for each fact it refuses to admit.

Now you are ready to take that four-part discovery plan and work it together with that list of everything else you do for case preparation that you put aside a minute ago.

Spend some time thinking about timing and case strategy, but don't try to solve every problem in advance. You are after a general approach that you can modify when you need to. The point is to make a system that will work for you—not the other way around.

Now you have a master preparation plan for each of your case categories. If you do it right, it should be only one page long—two pages at the most.

What do you do with it?

Set it up as a checklist and put a copy in the front of every trial notebook (or staple a copy to the inside cover of every file if you still don't believe in notebooks) for each case in your office.

Then, as each step is finished, it is checked off—dated and initialed—by you, your secretary, or your paralegal.

Lean back for a second and think about what you've got—a simple case preparation plan that doubles as an instant status report.

Back to the present. Go ahead and dig into your compost heap and pull out a typical file. Read through it and see how long it takes you to get up to speed on where you are in the case—what you've done and what is yet undone. That twenty or thirty minutes you

just took is what the preparation checklist—the instant status report—saves you each time you pick up the file.

Now look ahead and see yourself going over the checklists in all of your active files—dictating your quarterly status reports as you go. Each case takes only four or five minutes, and you are on top of everything in the office.

Maybe you can go skiing next week after all.

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