Ep #14: How to Prioritize Work Within Your Law Practice

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With Your Host

John E. Grant

Have you ever had one of those weeks where it's Monday morning in your law practice and you've got a dozen or more items in your inbox that are all competing for your time and attention and you need to figure out the best order to attack that list and be as effective as possible in your work? You're probably used to going on sort of a gut feel and that can work okay a lot of the time. But as I talked about in my episode on explicit policies, going off your gut can fail you in times of stress or overwhelm.

In today's episode, I'm going to give you a framework for how to more effectively think about the act of prioritizing the various demands on your finite capacity. Ready to become a more agile attorney? Let's go.

Welcome to *The Agile Attorney* podcast powered by Agile Attorney Consulting. I'm John Grant and I've spent the last decade helping lawyers and legal teams harness the tools of modern entrepreneurship to build practices that are profitable, scalable, and sustainable for themselves and their communities. Each episode I offer principles, practices, and other ideas to help legal professionals of all kinds be more agile in your legal practice.

Hi, everyone, welcome back to *The Agile Attorney* podcast. In today's episode, I'm going to go back to some of the core principles that I keep talking about. The first, the honest reckoning with capacity is of course something you hear me say a lot. And today we're going to really focus on its companion, the brutal assessment of priority. And while I stand by my characterization that the act of prioritization is something that can be brutal and often is brutal, I'll admit that that isn't an especially effective piece of advice on how you should go about prioritizing your work.

So in today's episode, I want to talk about specific prioritization strategies. And I'm going to do it using two frameworks from the Kanban method and also other agile and lean methods and these are complementary. The first one is known as cost of delay and the second is called classes of service. And I'll explain what I mean by classes of service in a moment. But I'm going to start with cost of delay because in a lot of ways it's the easiest one to wrap your head around. Really it's exactly what it sounds like.

Over time, the cost of not doing certain chunks of work will grow. That's the delay, the cost will go up. But the way in which it grows is different depending on different situations or different types of work. And that's where the classes of service is going to come in. And this is a little hard to do in an audio format, but really the easiest way to understand cost of delay and the context of classes of service is to envision a graph. And I'm going to do my best to describe that graph to you.

The x axis of the graph is just elapsed time. And it doesn't really matter what unit you're thinking of, months or weeks or days or minutes. Most of you probably aren't doing the types of work where minutes and hours are critical, except maybe right at the very end of something. So maybe think in terms of days or weeks.

The y axis is cost. And there's different ways to think about the components of cost and I won't dive all the way deep into that, but high level, there's obviously a monetary component. Either an expense you'll have to incur or your client will have to incur or an opportunity that you or your client wants to seize upon. And there also might be less tangible things like reputational cost or sort of this social emotional cost. The feeling of guilt or stress that comes from not getting a particular chunk of work done when you meant to. Lots of different components, but I think you get the idea high level.

And so if you think about what this graph might look like, and especially the shape of the line inside of those axes, it's different for different types of work. And I'm going to explain some shapes of that line in the context of the four primary categories or archetypes of class of service. So what's this notion of class of service? And rather than dive in and sort of explain that in detail. I think the easiest way to help you understand the concept overall is to just start by telling you what the four primary archetypes for class of service are, and what those graphs look like.

The first one is standard work. These are your regular day-to-day tasks that you'll probably just get done when you can get them done. If you're a litigator, it's the stuff that is in your pre-filing negotiation or letter writing, assuming you don't have a statute of limitations coming up. If you're an estate planner and you're working with a healthy client who needs a will or a trust, but there's no particular urgency to it, that's standard work.

It also can be a lot of your internal projects around marketing or training. It's the stuff that doesn't have a particular deadline or any extreme urgency to it, but the cost of delay is still growing over time. And ideally you want to get it done as soon as you can, but if it waits another day or maybe sometimes even another week, it's probably not going to be a huge deal.

So if you try to visualize cost of delay for a project that is a standard class of service, what you'll usually find is that the line is sort of going up and to the right in a pretty steady way over time. There might be a little bit of a bend of the curve, there's some variation. It's not always just a straight line, but at the beginning of the time period, it's pretty close to the intersection of the x and y axes, down at zero for each and it's going to go up as time passes. And the more time that passes, the higher the cost of delay is going to be.

The next class of service is called fixed date or sometimes I refer to this as deadline driven. And these are the tasks that have a specific deadline and also that have consequences, sometimes considerable consequences for missing that deadline. It includes things like court filings or statutes of limitation or tax deadlines. If you're on the transactional side, it might be the end of a particular sales cycle or deliverables due by a certain date under a contract.

And I want to draw a little bit of a distinction here between something that is truly deadline driven, where missing that deadline results in tangible consequences. As opposed to something like a promised by date or an expected delivery date where there's still going to be consequences for missing it but it's not necessarily a major thing. It's going to sweep in more of that sort of feeling of guilt or maybe a little bit of reputational harm.

Now, when you visualize the cost of delay for a fixed date item, it results in a graph that looks something like a stair step. The cost of delay before the deadline is pretty low and it usually doesn't grow that much over time, so the line kind of looks pretty flat. But as soon as you hit that deadline, the cost of delay spikes almost like a wall. And after that deadline gets missed, the costs are significantly higher, but then once you've missed the deadline, it often sort of levels out again.

Sometimes it continues to grow if there's daily penalties or interest or things like that, but oftentimes it's pretty binary. You either meet the deadline or you don't. And if you don't meet the deadline you suffer the consequence.

The third class of service is called expedite. And these are the urgent time sensitive tasks that come up unexpectedly and require your immediate attention. I often tell my clients that an expedite class of service is where something has caught fire. And if you don't do something about it quickly, that fire is going to spread rapidly. A lot of HR emergencies fall into this category.

Going back into the estate planning context, it could be that a client has become gravely ill or injured. In the business context, it might be a data or security breach, something in that frame, an actual emergency. And if you look at the cost of delay graph, the shape of the line is pretty much the same as with the standard class of service. It's going up and to the right, but with one important difference, it is a whole lot steeper. The rate at which the cost grows over time is really fast.

The final class of service is called intangible. And as the name implies, it's kind of one of the harder ones to wrap your head around. But one way to think about intangible items is deferred maintenance or what the technology world refers to as technical debt. A non-legal example is replacing the roof on your house. It's something you need to do every so often to make sure a leak doesn't form, but there's no real way of knowing when that leak is going to spring. It's unlikely to happen with a newer roof, and it's more likely to happen with an aging roof, but it's anyone's guess when the failure will actually occur.

So the best practice is to put the maintenance of that roof on a schedule. Make sure it doesn't get any older than its materials are rated for, and that's usually going to be good enough to prevent the really bad things from happening.

In your law practice, examples of intangible class of service items might be keeping your software up to date. And this might be one with a more direct client impact, keeping your forms and templates and policies up to date, especially obviously in the context of changing statute or court opinion. The challenge with the intangible class of service is that the cost of delay graph can lull you into a false sense of security. And at first the graph might look a lot like the standard one, except sort of the opposite of with the expedite issue.

Instead of the slope of the graph being really steep, the intangible class of service actually presents at first as a lot shallower, nothing is sort of a big deal. Going back to the roof example, as long as there's no water getting into my house, then the cost of delay for fixing my roof seems pretty low. But once that leak springs, and especially if it's the rainy season here where I live in the Pacific Northwest, then the slope changes and it starts to look a lot more like that expedite class of service where the cost of delay grows quickly.

And so the actual shape of the intangible class of service is something of that hockey stick where it's going along at a certain rate and then all of a sudden something happens and causes it to spike. As I said a minute ago, the trick with the intangible class of service item is to make sure that you're addressing it at some point before the cost of delay spikes, before it hits that hockey stick. Because that's where it changes from sort of this non-urgent work item type to something that really falls under the expedite category.

So those are the four primary classes of service from the Kanban method and I'll say them again, standard work, fixed date work, expedited and intangible.

In a moment I'm going to give you some tools for using those classes of service to prioritize the various projects and task sets inside of your law practice. But before I do, I want to touch on something for a minute that I see a lot and I want you to be on the lookout for. And that's the tendency for some projects or task sets to masquerade as one work item type when it really is something else.

And specifically because we live in a world where a lot of people and that might be clients, it might be bosses, it might be co-workers, will try to give you emergency or urgency signals to try to get you to prioritize their work ahead of everybody else's, even if it doesn't actually fit one of those more urgent work item types.

One example of this is false deadlines. And this is something that all of us have probably been guilty of at some point or another where the person requesting the work understands that it's human nature to scramble to get something done right before a deadline. So they give you a false deadline that's earlier than when they actually need the thing, because they think they're building some safety or a buffer into the overall system.

And again, I get why people do this when they're requesting work, but as a service provider, it can really muddle your ability to prioritize one project or task set against another. So I think it can be important for you to question the deadlines that people give you and make sure you're clear on what the actual deadline is as opposed to something like a preferred delivery date or a stated deadline.

Another example, and these aren't mutually exclusive, is when the person requesting a piece of work tries to make you think that there's an emergency even when the actual cost of delay isn't really spiking on that cost of delay graph. It's essentially someone trying to hijack your stress reaction to get you to prioritize their work over your other work.

So as you think through the suggestions I'm going to give you in a minute for determining classes of service. It can be important to adopt something of a trust but verify approach to what people are telling you their class of service should be. And obviously they're not going to use the term, class of service, but you get what I mean. Oftentimes that's going to mean digging a little deeper, trying to get more information so that you can either number one, do your own cost of delay analysis.

Or number two, work with your client or the requester to agree upon a more clear-eyed approach to understanding the genuine cost of delay. And then you can figure out the class of service from that.

Alright, so how do we actually do this in practice? I'm going to actually walk you through a quick example of how you might categorize a set of tasks using this class of service and cost of delay framework. So let's say that you have the following items on your to-do list on a Monday morning. And as I rattle off this list, I'd like you to think to yourself which work item type you'd assign to each item. And remember the four work item types are standard work, fixed date or deadline driven work, expedite and intangible.

The first item on your to-do list is that you need to file a document before an agency filing deadline that is on Wednesday at 5:00pm.

Number two, we want to review a proposed agreement that was sent over from opposing counsel that's part of an ongoing negotiation you're handling on behalf of a client.

Number three, you need to review an intake sheet that was sent to you over the weekend by a new client and you're really excited about this work. You're really eager to begin working on their matter.

Number four, you need to respond to a client who sent you something over the weekend saying that they urgently need some piece of work from you before their vacation starts on Tuesday.

Number five, you need to update your computer's operating system with a critical security patch, which will put your computer out of commission for at least an hour, but the update indicator on your machine has been on for the past three weeks.

Number six, you need to respond to a client email you got late Sunday night, worrying that a recently fired employee has posted the company's trade secrets to a Reddit forum.

And number seven, you need to attend a lunch and learn CLE on Wednesday that you're going to need for your access to justice MCLE credit at the end of the year.

Okay, hopefully you got sort of a mental first impression on what each of those would be. I'm going to go through each work item type and talk about which of those items I think falls into each one. And I'm going to start with the expedite category. Hopefully you identified the trade secret breach as something that almost certainly requires immediate attention to get it taken down and start determining the extent of the damage. I think that's pretty clearly expedite style work.

There was a second item in the list that may have been giving off urgency signals, but may not be truly urgent, the request from the vacationing client. Now there's a chance that the request truly is urgent, and therefore it belongs in the expedite category. But there's also a chance that the client is just doing that flurry of brain dump ahead of their vacation. And this isn't a drop everything and attend to this sort of task, they just want to get it out of their head.

And you're going to need more information to figure out whether this is really an expedite thing, or whether it maybe belongs more squarely in standard work.

Next is the fixed date work item type. And I only see one on this list and that's the agency filing deadline on Wednesday. And because we're only three working days away from that deadline, getting that filing in should be the next thing you tackle after you've put out the other client's trade secret fire. Note though, that if the deadline for the agency filing were next Wednesday or maybe a few weeks down the road. You might actually be better off making that work part of your standard work item list. And tackling it on a first in first out basis instead of prioritizing it over other standard work.

The closer you get to the deadline, the more you need to prioritize it above other types of work. Now, speaking of standard work, there are a couple of tasks that clearly fall within that standard work category. Reviewing the opposing counsel's proposed agreement and reviewing the new client's intake sheet.

Between the two of them, I would prioritize the opposing counsel's agreement ahead of the intake sheet. Because in my mind it's generally better to prioritize work that's closer to done than it is work that's just getting started. That cuts against human nature. We like to focus on things that are new, but one of the reasons to have these policies is to fight human nature. And trust me, it's a better practice overall to work on older things first, because then you get them closer to actually delivering the valuable work to your client and also you get them off your plate.

Finally, there are the two items on that list that I think fall into the intangible work item type. The computer operating system upgrade, and the CLE credit. And neither one of them is likely to have severe consequences if they don't get done today or maybe even this week, but eventually the cost of delay on them could spike.

Now, not updating the security patch would probably spike in an unpredictable way if someone were to try to exploit the vulnerability. So that's probably a highish priority item. I'd want to really try to keep that on my list for this week at some point. The CLE cost of delay spikes in a more predictable way. And I could argue that maybe it's really a fixed date type where the date is far into the future, but those specialty credits can sometimes be hard to come by, so there might be a smaller blip in the cost of delay if you missed this particular opportunity.

My advice would be to keep it on your calendar but be prepared to skip it if you still haven't made that agency filing deadline by noon on Wednesday, and then you can reclaim the time for that.

So hopefully that was pretty close to how you categorize things. The one thing I will say is that you need to make sure that you're reviewing this backlog of tasks semi-regularly, probably at least weekly. And adjust their class of service as you need to because a standard task might start to become expedite as circumstances change. Or obviously, as I've talked about, an intangible task might become a lot more pressing if you've been neglecting it for too long and you hit that hockey stick part of the graph.

So why go through all this effort? Why bother with this process of trying to categorize your tasks like this? I think there's a few key benefits.

Number one, it helps you establish a policy, something that you can fall back on that becomes your default practice, your standard operating procedure. And that really is the thing that's going to help you better accomplish your goals and keep things moving in a clear and consistent and predictable way over time.

Number two, it creates a shared language and a framework for prioritization. And especially if everyone on your team or inside of your practice understands what these classes of service are and what they mean. It can be easier to communicate about what tasks need to be prioritized higher than others. It also ensures that the important but non-urgent tasks don't get neglected.

When you're constantly in this place of overwhelm where you feel like you're on the hamster wheel and you're constantly putting out fires, it's easy to let things like professional development or process improvement sort of fall by the wayside. And by intentionally categorizing these tasks as intangible and then blocking off time on a regular basis to handle those intangible tasks, you remind yourself that these are things that actually do need your attention.

Number four, it helps you to balance that short term firefighting with the long term practice improvement. And yeah, you need to handle the expedite tasks quickly. But if you only focus on the urgent stuff then you fall prey to the tyranny of the urgent. You don't make progress on some of the bigger picture or standard class work items and then they wind up becoming urgent. And that just keeps you on that hamster wheel in the long run.

Alright, so wrapping up this episode, how can you get started with using classes of service in your own practice? A few things. Number one, just take a look at your current to-do list. And try categorizing each task into one of the four classes, just like we did in this mental exercise. And don't worry if it feels a bit arbitrary at first. Don't worry if there's a debate between one or the other. Just take your best guess at it, because the more you practice, the more you'll get used to using the model and the more consistent it will be for you, and the easier the process of doing this categorization will become.

If you have a team, then I think it's really useful to talk about this framework within your team. And obviously you can ask them to listen to this podcast episode. I've got some materials that I'm going to be putting in the show notes that show these actual graphs instead of having to explain them to you. But I think the more that you all are on the same page about what each class of service means and how you'll prioritize and handle the tasks in each category. Again, the more consistent and predictable your overall work is going to be.

And finally, see how it feels to you. See if it changes the way that you approach your work. And if you have any questions or feedback about the process, please don't hesitate to get in touch with me.

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