

Ep #137: It's Not Procrastination; Overloaded Lawyers Struggle With (Ethical) Diligence



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John E. Grant

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So, earlier this week, in preparation for a webinar I was delivering to the Association of Legal Administrators, I came across a comment to RPC 1.3 in the ABA Model Rules that I've got a little bit of a quibble with. And it says, quote, "Perhaps no professional shortcoming is more widely resented than procrastination."

And aside from that being kind of highfalutin language, I get the sentiment, right? People don't like waiting on their lawyers. And yes, there is some procrastination that all of us have every now and then. But the firms and the teams I work with, they're not procrastinators. Now, there may be delays in their practice, but those delays don't come down to someone twiddling their thumbs. What I see over and over is good people buried under more work than the practice can reasonably handle in a quick time period.

So, I think whoever wrote that comment spotted a real problem, but they pinned it on the wrong cause. So today, I'm going to talk about, among some other things, why the 1.3 rule requiring diligence actually reinforces the need for capacity discipline that I talked about in the last episode and also elsewhere in this podcast.

You're listening to *The Agile Attorney Podcast*, powered by GreenLine. I'm John Grant, and it is my mission to help legal professionals of all kinds build practices that are profitable, sustainable, and scalable for themselves and the communities they serve. Ready to become a more Agile Attorney? Let's go.

Hey everyone, welcome back. So, earlier today, as I record this, I actually just wrapped up doing a webinar for the ALA, the Association of Legal Administrators. And the title of the talk was called Beyond the Board. And the idea is that we're in this era now where so much software, so many different tools are using a Kanban-style interface, what I sometimes call a cards-in-columns tool. But they're not really getting to some of the deeper practices or even really understanding some of the purposes behind the

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Kanban methodology or sort of Agile and Lean methodologies more broadly.

And so, I hit on a few things in that webinar that I thought I would repeat here today for you on the podcast. And if you are listening to this podcast because you attended that webinar, thank you and welcome. I hope you find a little bit extra or maybe a good review from what I talked about then.

And one of the things that interested me, and it was a true webinar, so I could talk to people through the chat, but not really face-to-face. But I did ask the extent to which people were already using a tool that used some sort of a Kanban interface. And there were quite a few responses that came back in the chat. There were people using Trello, Clio, Clio Matter Stages, Legalboards. Nobody using my tool, GreenLine, yet, but that's okay. I hope to convince a few folks eventually.

But when I asked for some details, everyone admitted that they were really using it at a pretty high level, right? So they were setting up some stages or pipeline ideas, but they were kind of just using the interface because it's what was given to them, not because they were being super intentional about how to set things up. In fact, it was interesting, one of the Asana users actually said that they were using Asana but just the checklist view, not even the Kanban view, which I thought was interesting.

And I also think it's natural, right? Checklists are a tool set that everybody understands. We all kind of inherently know how to use them. And without really understanding the purpose behind the Kanban board, it can be a little tricky to figure out, it can be unfamiliar, any number of things, right? It's easy to revert to the thing that we know.

And I'm not going to do a full rehash here on the mechanics of a Kanban board because I've covered that pretty recently if you go back to episode 129, and then also back in the 101 series, right? So if you go to agileattorney.com/101, that'll get you the first episode of that sort of

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11-episode arc in the 101 series. So there's a lot about the mechanics of Kanban board there.

What I did talk about today that I think is maybe useful and a little bit new to the podcast is sort of what is the purpose of maybe legal operations in general, and then specifically how that overlaps with the purpose or some of the goals behind the Kanban method.

And I described the purpose of legal operations as really the act of applying the firm's resources to achieving the right balance point between creating good outcomes for clients and getting a reasonable return on investment to the firm. And that's in a situation where we're treating the firm as a business, and I know not all of my listeners have sort of business law firms. You could be in legal aid or some other nonprofit; you could be in-house. But there still needs to be some sort of a return, right? It's not always going to be money. It's often money, but it could be impact, it could be good in the community, whatever. So I'm using return more broadly.

But high level, I think of the role of legal operations as trying to balance the available resources within the practice, within the firm, with committing those resources to the right kind of work, the right level of work, the right amount of work so that we can basically continue to do things in a profitable, scalable, sustainable way. Whatever the things I talk about in the intro to this podcast week in and week out.

And then I compared that, and you know, this is my lens on legal operations. So it maybe shouldn't be a surprise that I'm sort of using my knowledge and experience and work in Lean and Agile and the Kanban method to sort of inform my view of legal operations. But I compared it with kind of what I see as the purpose of the Kanban method, which is to, again, sort of make sure that we are balancing the right amount of work to the system, whatever the system happens to be. It could be a manufacturing line, it could be software, it could be your law practice, and making sure

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that we are committing to the kinds of work that makes the best use of our resources, right?

And it's really about finding that right combination of the right kind of work, the right kind of commitments, commitments that are actionable, that are realistic, that can be delivered by the team, and then committing to those things in the right amounts and making sure that we're not bringing in so much work that we create the kind of gridlock that I talked about in my last episode when we were talking about Kingman's formula and overwhelm and the inevitable traffic jam that happens when you either bring too much work into a system or too many different kinds of work into a system.

And then the big difference between the Kanban method and that checklist method that people tend to want to default to, of course, is the fact that a Kanban board accounts for work in progress, right? A checklist, it really only tells you work that is either done or not done. It doesn't really give you a good sense of what stuff is in flight already. And a Kanban board and a Kanban system is all about helping you understand what are the commitments you've already made and where are they in your overall process, right? And so I've talked about it as a promise-keeping machine, a promise-tracking machine, making sure that we are trying to marshal our assets in such a way that we are delivering on the promises that we've made.

Now, the other thing that I did in this webinar, and I've talked about this a little bit in the podcast before as well. I think back in episode 108, which is part of the 101 series. But it has long been my contention that what I refer to as the front five rules of ethics, right, the RPC 1.1 through 1.5, are really about project management. They are sort of these fundamental, foundational things that ultimately encourage people to have good management practices so that they're delivering work competently, diligently, with good communication, on time, etc.

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And I won't read through all five of those ethical rules, but I will pull something I hadn't really found before or hadn't paid attention to maybe as closely before, which is one of the preambles to the ABA model rules of professional conduct has this great line that says, quote, "In all professional functions, a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation." And I think that kind of sums up the front five rules of ethics. Maybe it doesn't cover fees, but it really does kind of get to the gist of what we're shooting for.

And I think the key things around competence and diligence, right? So 1.1 is competence, 1.3 is diligence. Number one, under competence, yes, we need to know the law as lawyers and we need to know how to apply it. But I think competence also encompasses this idea that we need to have a reliable way of producing the legal work, right? We need to have reliable systems for delivering the work or the outcomes for our clients.

I think there's something similar with respect to diligence. And yes, we need to diligently pursue a matter, but part of diligence is keeping the matter moving, making sure that it doesn't get stuck or that it doesn't have this unnecessary delay. And for me, a big part of that is controlling the workload of the system so that each matter can be handled well.

And again, this comes back to what I talked about in the last episode with Kingman's formula. If you bring too much work into your system, it's going to be really hard to be diligent about your pursuit of any one matter because the whole crush of work that comes from just the sheer volume is going to impact your ability to apply the requisite diligence.

And it's interesting because there's one other comment in the ABA model rules that caught my eye as I was preparing for this presentation. And it's a comment to 1.3, which is diligence. And it says, quote, "Perhaps no professional shortcoming is more widely resented than procrastination." Aside from that being sort of a big, highfalutin, sweeping statement, I'm not

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sure I agree with it because, I mean, yes, procrastination, we don't like procrastination. But I actually don't think that the problem that this comment is addressing is the one that they think they see, right? Because I don't see a ton of procrastination with the clients I work with, with the teams I see. I mean, it's not like it doesn't happen, right? I think everyone has a little tendency to procrastinate sometimes.

But in my experience, and the workload and the teams that I'm working with, it is not a matter of people twiddling their thumbs or scrolling Facebook or whatever. It really is this overwhelm of work that is causing everything to slow down.

So it's not procrastination that's causing the delay or the lack of diligence that I think this model rule is trying to address. It is the allowing of too much work or too many different kinds of work. Again, this Kingman's formula incorporates both, but it's not managing the input into the firm, into the practice in a way that allows the people on the team to maintain, again, that level of diligence that is expected and even maybe required under the model rules.

And so really, at the end of the day, I guess I'm using this episode to continue beating the drum that I started beating last time, which is you have to be so intentional about the amount of work you accept into your system. And I've been talking with a lot of my clients in the last couple weeks about whip limits, maybe because I did that podcast episode and Kingman's formula is on my mind, but also, I did that episode in response to what I'm seeing in my work with my clients. And so it's this sort of very real thing. Almost everyone I know, I mean, I'll give you an example, right?

I have some acquaintances here in town that had a not terribly urgent or terribly complicated legal question, but they just wanted to run it by a lawyer. And I gave them five different names for referrals, and not one of them was really able to find the time and space to answer the question,

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which, number one, is a good thing for them, right? You should be managing your practice that way.

But for me, it's another manifestation of the fact that there's just so much demand for our help right now that a lot of good people or a lot of valid cases or valid questions or whatever just can't find anyone to help them because everyone else is so busy, right? Lawyers are so busy.

So, again, the lawyers are behaving as I would instruct them to behave, but for these acquaintances who are looking for legal help, it's incredibly frustrating. And of course, they're probably going to wind up using AI to some extent because that's the only thing that's available to them, or friends, family, anecdotal advice, whatever. But they're not going to get that true competent legal help because there's just this lawyer shortage, which I've also talked about before.

Okay, I'm going to leave it at that for now. If you have any questions, I haven't gotten a good listener question for a while. So this is my invitation to you. If you've got something in the world of operations, practice management, workflow, process improvement, you name it, shoot me an email, john.grant@greenline.legal. I would love to hear your question. I'd love to try to answer your question. If I can't answer it or if it's too specific to answer it on the air, I'd be happy to set up a quick little call with you.

I love talking about this stuff, and sometimes frankly, it's hard to come up with new topics. So, which is why I'm kind of doing this rip from the headlines one based on something I did earlier today. But if you've got a thing you'd like to hear me touch on, please send it my way.

As always, this podcast gets production support from the great team at Digital Freedom Productions, and our theme music is "Hello" by Lunara. Thanks for listening, and I will catch you again next time.