Ep #139: Two Metrics That Can Sabotage Your Law Firm Marketing



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With Your Host

John E. Grant

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There is a type of law practice that looks great on paper. The marketing is working, new clients are signing up at a healthy clip, everyone on the team is booked solid, and even the bills are getting paid. And if you ask the owners what's holding that practice back, they'd tell you that they just can't bring in new work fast enough.

I talked with a firm like that this week. They're doing a lot of things right, but I'm still pretty sure they're headed for trouble. The warning sign showed up when I asked them about two metrics that I correctly suspected they were not looking at side by side.

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, this is a little bit of a rip from the headlines episode. I just got off a discovery call with the owner and operations manager of a smallish law firm, and it's interesting because they're having a set of challenges that I think is just so, so common, but they also have some assumptions about how the practice is working that maybe aren't so much flawed, but are certainly missing some pieces of the picture.

And obviously, I'm not going to name the firm. I'm going to be a little bit vague about the practice area and the location and everything. Well, I probably will talk about the practice area because it's hard not to. But in any event, I wanted to get some of this out into the podcast because it just is so indicative of, number one, the types of conversations that I will end up having with potential new customers. And number two, because I think that it helps highlight, again, some of the blind spots or the missing pieces that I

think are really common in a lot of otherwise thriving and effective law practices.

So, I should say this was a referral from a friend, colleague, who does a lot of sales training and basically helping small businesses set up their sales functions, including a lot of legal businesses. I'm not going to name-drop him, partly because he recently told me that he is sort of moving away from doing this in the legal space. So, he's not looking for your work, at least, best as I know, unfortunately, right now.

But he had been working with this firm and I think had a lot of success, right? So number one, improving their knowledge and sort of theory about how to find and close new clients. Number two, setting up the right team, the right people, processes, tools, etc., for converting those early leads into actual closed new clients that are looking to this firm for legal work. So, they had very much been working in what I think of as the getting the work pipeline, right? I've got this three-pipeline paradigm I think about where there's the getting the work pipeline, the delivery pipeline, and the getting paid pipeline.

I will say we did talk briefly in this discovery call about their getting paid pipeline, and they said that their accounts receivable is at about 95%. So, not really a bottleneck there. I asked whether they were doing hourly or flat fees; they're doing hourly. I asked whether they were doing evergreen retainers; they are.

So, quick side note: evergreen retainers work if you're billing hourly. That is the best way I know of to remove any bottlenecks in your getting paid pipeline. Your getting paid pipeline is really easy to solve. If you're billing hourly, do evergreen retainers. If you're billing flat fee, take the flat fee upfront. Don't do work that you don't have money in the bank for. Full stop. That solves your getting paid pipeline.

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Okay, so we established that this practice doesn't have a bottleneck in their getting paid pipeline. That leaves the two others, right? And so I asked them, between those two, where do you think your primary bottleneck is in your practice? And they said the getting-the-work pipeline. Now, that's interesting, partly because I knew that they'd been doing all this work with my colleague that was meant to be improving their getting-the-work pipeline.

And what they told me was that they're currently closing, and this is closing from the sales process, about 30 cases a month, and they had a goal to increase that to about 50 a month. And they knew they weren't going to get that overnight, but they wanted to make sure that they were taking advantage of the marketplace that they knew existed, right, or the market demand that they knew existed for their practice area in their particular region, and make sure that they were capturing more of the demand for their business.

Perfect, good business plan. I like it. It makes sense, with one caveat. And so I said, you all are using the term close to mean close the sale. What's the word you use for closing cases? And they actually said also “close”. So, number one, just from a data and nomenclature standpoint, I think you should have two different terms for that because if you're going to measure them, if you're going to talk about them, it's helpful to be accurate.

But for sake of the discussion, I said, okay, let's call that the case completion rate. If you're bringing in about 30 new cases a month, how many cases are you completing, getting all the way done through your matter sequence every month? And they said, 12 to 15.

That's a problem. And let's just take the math to make it easy at the high end of that range. If they are bringing in 30 new cases a month and they are only closing out 15 cases a month, that means they are adding 15 unfinished cases to their total case count month after month after month.

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And I know I keep referring back to this Kingman's formula episode from several episodes ago, but it's just crystal clear from these formulas, from these metrics, that if you keep adding more in-flight matters to an already busy workflow, what's going to happen is you're going to go from closing 15 cases a month to closing 12, to closing 10, to closing eight, to closing five, because you're going to get more and more gridlock inside of your systems. There's going to be more friction, there's going to be more competition for the finite time and attention, right, the overall capacity of your delivery workflow, so that you're actually going to have that cycle time, that delivery time, get longer and longer, and you're going to be delivering fewer and fewer and fewer cases.

And of course, eventually that's going to sabotage your biz dev and marketing efforts, right? If people start to not get their case closed, if it starts to take longer, the other thing that inevitably can happen- I guess I won't say inevitably, but I sure almost always see it happen- is that when you get too much in-progress work in your system, too much competition for your finite time and attention, people miss things, right? They start dropping balls; maybe the quality goes down, maybe work gets missed.

And now all of a sudden you're in this other loop where you're dealing with failure demand, right? So if work gets missed, you have to then go make a diving catch in order to get it. If it gets done incorrectly, you have to go engage in rework, which is taking up even more of your finite time and attention to do things that should have been done right the first time, right? That's the definition of failure demand.

But this is the pattern that I see over and over and over again, and I get it, right? We want as business owners, we want to capitalize on a strong market. We want to be able to position our business, our law practice in a way that we can take on the excessive demand for our services. I'll go back to my last episode and say that some of the reason there's so much demand for your services is there's a lawyer shortage. And that's not a

knock on your ability, that's not a knock on your marketing skills, but look, there just aren't enough attorneys to do work right now. And so everybody is feeling this relatively high level of demand.

That doesn't mean that you should capture all of that demand for yourself, at least not right now. And I want to take you back to episodes 105 and 106 of my Agile Lawyering 101 series. Go to those episodes in this podcast. This is sort of drum-buffer-rope 101. We want to make sure that we have tied a rope from the exit door of our system to the entrance door, and we don't get to open up the entrance door until something else goes out, right, an existing piece of work exits.

This is the nightclub policy that I talk about in those episodes, right? We know we have a finite capacity, or we at least should know we have a finite capacity. This firm obviously wasn't thinking in that frame of mind. And so, whether they wind up working with me on the Agile Attorney consulting side, I actually think they are an excellent candidate for GreenLine because GreenLine helps show you all of your commitments. It helps show you all the things that you have in flight, and being able to see that visually is a really effective way to start to get smarter about whether you're letting more and more work into an already overcrowded system.

But again, regardless of how they do it, I think this firm needs to begin with the honest reckoning with capacity, right, thing I talk about all the time. And then begin the process of saying, okay, even though we've built this amazing marketing machine, even though we've got this kick-butt sales and intake thing, and even though we're really good at closing leads, and even though we have a KPI, a goal that tells us that as far as the market demand goes, we should be able to go from 30 to 50 new cases a month. That's great. That's amazing.

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But you can't do it if your delivery pipeline can't keep up. In fact, like I said, eventually your lack of ability to deliver is going to sabotage all of that effort that you've made on the marketing side.

So, I don't know whether this firm will wind up working with me or not. They're probably not going to love the first piece of advice that I will wind up giving them if they do, which is even though they've invested all this time and effort and money into improving their getting the work pipeline, they should actually intentionally throttle it for a while. It gets back to my whole thing of when your bathtub is overflowing, the first thing you've got to do is turn down the tap.

So, my advice for them is if their close rate is only 15 a month, and like I said, it's actually 12 to 15 a month, so it's slightly lower than 15, then their new matter intake, as long as they've got the same number of resources on the delivery team, their new matter intake should be no more than 12 matters a month. In fact, it probably should be closer to five to 10, because otherwise you're never going to make progress on clearing that backlog.

Until we can consistently get to the point where we're closing 20 matters a month, because that tells us we're starting to get back ahead of things. And again, closing being the final close of the delivery workflow, not closing sales in this case. The closeout rate: we want to be doing the work inside of our delivery pipeline to improve our closeout rate. That then tells us when we can safely ramp back up our intake rate. But you've got to tie those two things together; otherwise you are flirting with disaster.

There's one other thing that came up in the conversation that it didn't occur to me at the time, but as I've been sort of processing it afterwards, I wanted to bring up, which is I asked them what they were using for sort of making sure that tasks and matters were moving forward, and they said they're using Clio task lists. And I hear that a lot. People have varying opinions on

the utility of Clio task lists, whether or not people are using Clio matter stages.

But most people that I talk with and a lot of the firms that I wind up working with find them to be a little bit lacking, right? And I can't remember if I've talked about this in the podcast before. I talk about it off the podcast all the time, which is one of the problems with the way Clio automated task lists work, is that they don't have any concept of capacity.

So, they're these automations, and as you change the stage of a matter, whether or not you're using the Kanban interface or sort of the Kanban-like interface that is Clio matter stages, those task lists all apply to a card or to a matter, and they get assigned to people with deadlines regardless of whether two things are true, right? Number one, it doesn't care how overloaded the people it assigns work to already are, right? So, Clio task lists have no concept of existing, well, of capacity overall to begin with, and then no concept of how much of that capacity has already been committed by other matters, other work, other things within the firm.

So, it will happily pile task after task after task on top of an already overloaded resource, usually a person, right, an overburdened person. And I want to come back to that in a minute because it's actually part of what I think contributes to a little bit of a false framing or a false assumption, a mistaken mindset when it comes to people that are working in that kind of system.

The other challenge or problem from my perspective with the way that Clio and most other practice management tools, frankly, assign tasks is that it has no concept of the difference between what we on the GreenLine side call a target date, which is the date that you hope to have something done, and a deadline, which is something that has a severe and immediate consequence if it gets missed. And because Clio uses the terminology, and again, most systems, this isn't just a Clio thing, the terminology that gets

used is either due date or deadline. And for the most part, we don't really draw a distinction, like most humans can't tell the difference between those two things.

Then it winds up creating this really challenging signal-to-noise ratio problem where it looks like you've got 30 things and they're all due tomorrow, but some of them are nice-to-have due dates, and some of them are actual deadline due dates. But when everything is marked as a deadline, it's really hard to tell what is the thing I should actually be paying attention to right now.

So, like I hinted at, right, that's something that we have taken into account on GreenLine. We try to be really clear about the difference between a target date, which is the date we hope to have something done, but if it slides by a day or even a week, it might not be catastrophic, versus a deadline, which is something that absolutely positively has to get hit or something bad is going to happen.

Coming back to that overloaded resource problem, right, this idea that Clio will happily just pile tasks on people, the false perception that winds up doing is the lawyers, the paralegals, the other team members who are doing all of these tasks are incredibly busy. So, they feel like they're doing their jobs because they're never without something new to do, right? The demand for their own personal time and attention outpaces the supply of that time and attention. And on the one hand, that, I think, is a recipe for overwhelm. If it lasts for too long, is a recipe for a lot of frustration, including burnout.

But then the other problem, and I think the thing that maybe was happening- I can't say for sure, but with this particular practice is everyone feels busy; we're billing all of our hours, so what's the problem?

And of course, the problem, as evidenced by their matter closeout rate, is that yes, they might be busy; they might be hitting all of their billable hour

targets; they might be making all of the money right now in the short term because nobody's super frustrated by the fact that they're not maybe getting cases closed, but busy and productive are not the same thing. And again, this is one of these challenges with the billable hour model is the billable hour rewards busyness; it doesn't reward productivity. As long as you're doing work that can show up on somebody's bill and that person is reasonably likely to pay that bill, then what's the problem from a revenue standpoint? And it's not wrong.

But eventually, it's going to start leading to frustrations, right? If you're not getting work out the door, if balls are getting dropped, whatever, people are going to get frustrated by it.

And then in reality, my experience at least, and you've probably seen this too, is that the over-busyness does cause problems because you wind up really busy, but you then have to do some rework, or maybe it's been so long since you've opened up a matter that it takes you a half an hour to get up to speed before you can do the thing you actually need to do. But is that really billable work? Should the client have to pay for it? Do I need to put it on the bill? Do I, should I even track it? These become all the little holes in the billable hour pipeline that start leaking that it's almost impossible to get that back once they start to leak.

And so, I would venture that even though, in theory, high utilization, high busyness is a good way to make money under a billable hour model, in practice it never really works out because, in practice, what's happening is you have these competing priorities, you have this administrative overhead, you have these switching costs that don't wind up on the bill. And when there's all this friction and all this interference, the amount of stuff that doesn't wind up on the bill or winds up getting disputed if it does show up on the bill gets bigger and bigger and bigger, and that starts to create a different set of problems.

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So, even if you're in the billable hour model that doesn't inherently reward efficiency, it doesn't inherently reward the difference between productivity and busyness, I still think there is a great argument for making sure that you are balancing your commitments with your capacity so that the work is moving forward, the work is moving smoothly, predictably, and it's getting through your system so that you free up capacity to bring on the next case.

All right, I will leave it there for now. Because I talked about GreenLine a fair bit in this episode, I will just plug, I would love to give you a demo of GreenLine, right? You can head on over to greenline.legal, click that book a demo button.

I'm in the process of working on some videos and other sort of walkthroughs that will give you a little bit better sense as well about how the tool works. But in the meantime, just get me on the phone, get me on a Zoom call, a Teams call, Google Meet, and let me show you what it looks like because I think you'll find it's pretty cool and even, dare I say, pretty fun in terms of a way for modeling and running your law practice.

If you have questions about commitments versus capacity, about drum-buffer-rope, about tying your entrance door to your exit door, any of the things that I talk about on this podcast, please don't hesitate to shoot me an email. You can reach me at john.grant@greenline.legal and I will either answer your question via the email, I might maybe answer it via a podcast episode. I'd love to get it from you.

If you know of someone who runs a law practice that is maybe a little over-focused on sales, marketing, and intake, and probably is going to get in trouble if they don't also start focusing on throughput, please forward this episode to them. It really helps if you share it with people, helps them discover what I think is this far better way of thinking about law practice management, law practice productivity under the capital A Agile umbrella.

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All right, that's it for this week. As always, this podcast gets production support from the fantastic team at Digital Freedom Productions, and our theme music is "Hello" by Lunara. Thanks for listening, and I will catch you again next time.