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ABA
AMERICAN BAR ASSOCIATION
**General Practice,
Solo & Small Firm
Division**

The Nine Steps To a Successful Practice

**Saturday, October 17, 2009
11:00 a.m. - 12:00 p.m.**

**2009 Fall Meeting and
National Solo and Small Firm Conference
October 16 - 17, 2009
Millennium Biltmore Hotel
Los Angeles, CA**

American Bar Association
General Practice, Solo and Small Firm Division

CLE SESSION

“The Nine Steps to a Successful Practice”

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October 17, 2009
11:00 a.m. – 12:00 p.m.
National Solo and Small Firm Conference
Fall Meeting 2009
General Practice, Solo and Small Firm Division
Los Angeles, CA
October 15 – 17, 2009

ABOUT JAY FOONBERG



"Yoda", "Guru", "Dalai Lama" are titles frequently given to Jay Foonberg because of his wisdom and because he shares and teaches his wisdom to all lawyers seeking help with their daily practice life. His teachings have made possible the success of hundreds of thousands of lawyers throughout the world. His teachings are as classic as the Ten Commandments and as up to date as Twitter and webinars.

The word "Foonberg" will produce more than 20,000 links on Google, or visit www.FoonbergLaw.com for more information.

Mr. Foonberg is a very successful lawyer and internationally known author of many books and articles on Ethics, Lawyer Marketing, Starting a Practice, and Practice Management. He also speaks to bar associations throughout the world. He has presented CLE and spoken in every one of the 50 states, all 6 US territories, every one of the 10 Canadian Provinces, and on every continent including Antarctica as well as several foreign countries in the English, Spanish and Portuguese languages.

Notwithstanding his many Lifetime achievement awards, he is quick to say: "Neither my lifetime nor my achievements are anywhere near over."

Mr. Foonberg is the only person to have been honored with lifetime achievement awards by 4 sections of the American Bar Association. He is the recipient of the Donald C. Rikli Lifetime Achievement Award of the ABA General Practice, Solo and Small Firm Division, as well as the recipient of the Lifetime Achievement Award of the ABA Law Student Division, as well as the Sam Smith Award of the ABA Law Practice Management Section for having demonstrated lifetime achievement in the field of law practice management.

He is also the recipient of the prestigious Harrison Tweed Award as the Most Outstanding CLE Educator in the United States, as well as being the recipient of the Louis Goldberg award as the Most Outstanding Attorney-Certified Public Accountant in the United States.

He has been decorated by the governments of Brazil and Argentina for his work in international trade. He has been honored by many state and Local Bar Associations and governments.

Mr. Foonberg is, or has been an active member of the House of Delegates of the American Bar Association and of many State Bar of California and ABA committees, sections, divisions, etc. He is past Chair of the Senior Lawyers of the State Bar of California, and has served on the Councils of the American Bar Association's Senior Lawyers Division, Law Practice Management Section and Law Student Division. He was

September 8, 2009

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a founder of both the California and American Bar's Law Practice Management Sections. He was also founder of the Beverly Hills Bar Association's Citizen's Law School.

Mr. Foonberg's published books include: *How to Start and Build a Law Practice* (5th edition), *How to Get and Keep Good Clients* (3rd edition), *Finding the Right Lawyer*, *The ABA Guide to Lawyer Trust Accounts*, and *How to Draft Bills Clients Rush to Pay* (2nd edition). All are available from the American Bar Association. His books are the most stolen law books from law libraries in the United States. Many of his works are now published in book, CD, DVD, and PDF download formats and are purchased by lawyers throughout the world as e-Books.

Mr. Foonberg received his law degree from UCLA Law and has studied at Harvard Law School, Cambridge University England, Duke University School of Law, and the Institute Louis Pasteur in France.

Born in 1935, he keeps physically active by running marathons, having run his first marathon at age 56, and has completed 35 marathons and 30 half marathons as of August 2009. He has completed at least one marathon or half marathon on every one of the 7 continents, including Antarctica.

He also enjoys the retort "Why should I act my age? My age is dead."

He practices and lives in Beverly Hills California (90210) with his wife of more than 50 years, Lois, also a UCLA graduate. His sons Alan, David and Steven are each highly successful in their chosen fields of computer science, music education and real estate.

He welcomes your comments on the materials and books and your suggestions for improving them. He also responds to email requests for help.

Mr. Foonberg's books, published articles, lectures and programs are now available Globally anywhere in the world as internet downloads.

A complete biography, list of publications, and available works can be found on his website: www.FoonbergLaw.com

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FOONBERG'S 9 STEPS OF A SUCCESSFUL LAW PRACTICE - FROM WOMB TO TOMB

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"Successful people aren't born that way. They become successful people by establishing the habit of doing things unsuccessful people don't like to do. The successful people don't always like these things themselves; they just get on and do them."

- William Makepeace Thackeray, Author of Vanity Fair

Whether a lawyer is just beginning practice or has been practicing for many decades, the basic fundamentals of excellent client relations must always be observed until they become habits on every occasion.

The basic fundamentals do not change. These 9 steps, when they become habits, will always work to enhance the attorney-client relationship resulting in more repeat work from past and present clients and more referrals from past and present clients. They will also reduce or eliminate non-meritorious ethics or malpractice complaints. They will serve the lawyer well at every stage of the lawyer's career and practice.

Observing these 9 steps will go a long way in assuring a successful and profitable law practice. This is a system which, if followed, will bring you success.

We must begin by defining each of these terms.

Significance of 9

The number 9 is the number of the seven traits that clients want from their lawyers according to a study done for the American Bar Association by Temple University. These seven traits plus two critical rules not referred to in the study constitute the 9 steps.

It must be noted that if the study had never been done, any successful lawyer would know intuitively the traits clients want, although they would not have the statistical percentages. They are in fact just plain common sense.

The steps must become habits to insure success.

Habit

There are many definitions of the word habit. I personally like what my Grandma Sarah taught me when I was a little boy. Grandma Sarah taught me, "Jay, habit is like a cable of threads. Each time we repeat the habit we are adding a thread to the cable until at last the cable cannot be broken." Other definitions of habit refer to

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force of habit. If you do something from force of habit you do it without thinking because you have done it so often before.

Habitual behavior becomes known as a habit. Habits produce standard responses to situations. No one, including lawyers, can avoid forming habits. Therefore, the issue becomes whether the habits are good habits leading to a successful law practice or bad habits leading to an unsuccessful law practice. A lawyer must adopt a conscious intentional system of good habits as set forth in this exposition and then must act upon the intention to improve the quantity and quality of his or her practice and life. The lawyer must be willing to try new methods leading to new habits until the new habits become automatic.

A successful law practice will incorporate each of the 9 steps into its case handling and client relations routines until they are automatic habits.

Success

The word success, as may be expected, has different meanings to different people. Some people would spell the word success as **\$UCC\$E\$\$. The gaining of money would be a good definition of the word success for a mercantile business but law is a profession not a business. Those who declare law to be a business typically are not practicing lawyers but rather non-lawyers, and in some cases lawyers who were not successful.**

My definition of success in the practice of law includes all of the following:

1. Finding happiness and satisfaction, and a sense of contribution in the practice of law.
2. Earning a reasonable living to be able to maintain a reasonable standard of living for the lawyer and family, providing for the education of the lawyer's children and the retirement of the lawyer.
3. Having clients and staff who appreciate and respect the lawyer and the profession of law.
4. Having clients who pay their bills as agreed.
5. Making adequate time for family and self outside the law.
6. Practicing in an atmosphere of staff and other lawyers who also enjoy what they are doing.
7. Practicing without ethics or malpractice complaints from unhappy clients.

My personal definition of success as a person in all aspects of one's life is: "The feeling of satisfaction that comes from knowing that you did your best with what you had to work with." (With acknowledgments to John Wooden and my aunt Bertha.)

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Law Practice

The term law practice refers to what the lawyer does as a lawyer, whether as a sole practitioner or as part of a firm. It has been said that a medium sized firm is in reality a collection of sole practitioners and a large firm is in reality a collection of medium sized firms.

Emphasis here is placed on what lawyers do rather than those things which non-lawyers do within a law practice. Emphasis is placed on the relation between the lawyer and the client, and in some instances between the lawyer and the staff, rather than on the relationship of staff to one another.

Womb to Tomb

The 9 steps bring success equally to adoptions and to probates, as well as bring success to the newly admitted lawyer and the lawyer about to retire.

Happy Clients

For purposes of this presentation, happy clients are happy with their perceived level of legal services.

They:

1. Pay their bills on time.
2. Follow your advice and instructions.
3. Are timely in keeping appointments and showing up for depositions, etc.
4. Are timely in responding to your correspondence and to interrogatories.
5. Return for more legal services.
6. Refer other good clients to you because they are so satisfied.
7. Respect the law as a profession and you as a professional.
8. Do not file nuisance or non-meritorious ethics complaints against you.
9. Do not file nuisance or non-meritorious malpractice complaints against you.

Non-Meritorious Ethics Complaints Non-Meritorious Malpractice Complaints

It should be noted that more than 50% of all ethics complaints filed by clients against lawyers have no merit from an ethics point of view. The lawyer did nothing wrong from an ethical point of view. The client filed the complaint because of perceived mal treatment and poor communications from the lawyer. The client did not know any other way of "getting back" at the lawyer. The complaint would never have been filed if the lawyer had acquired and implemented the 9 steps. As one of my children said to me, "Dad, it's much easier to stay out of trouble than to get out of

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trouble." I prefer to say, "I am not trying to teach you how to win the ethics war. I am trying to teach you how to avoid the ethics war."

It should also be noted that in more than 70% of malpractice claims no indemnity is paid to the claimant. Again, we are simply dealing with an angry client who feels mistreated and provoked to the point of wanting to attack the lawyer.

Observing these 9 steps is critical in maintaining a successful and profitable law practice.

FOONBERG'S STEP NUMBER 1

Understand That the Golden Rule is Dead. The Platinum Rule is Here.

The golden rule was that the lawyer should treat the client as the lawyer would treat himself or herself. The platinum rule is that the lawyer must treat the client as the client wants to be treated.

Technology and the Internet have empowered clients to define what they want from their lawyers. Prior to 1990, there was a larger demand for legal work than there was a supply of legal work. In 1990, there was a crossover and for the first time in American history, the supply of legal services exceeded the demand for legal services, and legal services became and remains a buyers' market.

This change in the market place became the death knell for the Golden Rule and the beginning of the Platinum Rule.

Lawyer selection is no longer supply driven (what the lawyer can do). It is now demand driven (what the client is seeking).

FOONBERG'S STEP NUMBER 2

Bombard Your Clients with Paper and Email.

Clients want to be kept informed of the progress of their matter. Remember the ditty, "One for the Court, One for Me, and One for the Client Who Pays the Fee."

At the initial interview, give the client a red well expandable file folder with your card stapled to the outside of the folder. Tell the client, "This is for you. You will get a copy of everything that happens on your matter. Put your copy in this red folder and you will have a duplicate file of the entire matter. You will receive information automatically without having to ask. We will keep you fully informed."

Ask the client where and how they wish to be kept informed. Ask the client if they want hard copy or email, or both. Determine where the client wants the information sent. The client would not want you to send information on a pending divorce to the home nor would the client want you to send information about a possible criminal matter or bankruptcy to the business or place of employment.

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You might be concerned that the clients will call you when they get the information to ask you what the information means or if they are supposed to do anything about the information.

Get a big red rubber stamp or watermark for the first page: "FOR YOUR INFORMATION ONLY. NO REPLY NECESSARY."

You will find that clients will call you less often to find out what is happening on their matter.

According to the ABA study, 84% of the "happy" clients, those who pay their bills, cooperate, come back for more services and refer other good clients reported, "My lawyer kept me informed." Only 34% of the "unhappy" clients said their lawyer kept them informed.

Make it a habit to keep the client fully informed at all times even if the client did not ask to be kept informed, after determining how and where the client wants to receive information.

FOONBERG'S STEP NUMBER 3

Never Let the Sun Set on a Non-Returned Telephone Call. If You Can't Return the Call, Have Someone Else Return the Call for You.

Clients want a return call as soon as possible. The client does not know if you are in court, or in the office, or out of the office, or on vacation, or when you will return their calls. In general, clients want a return call from someone in 2 hours. The return call need not be from the attorney so long as someone returns the call. The return call can be from the receptionist who took the original call, or a secretary or legal assistant, or any non-lawyer staff member.

The person returning the call might say something like, "Mr. Foonberg is out of the office, but will be in touch with the office in a few hours, and he checks his voice mail and emails frequently. When and where would be a good time and place for Mr. Foonberg to return your call?"

The person returning the call can set up a return call appointment at a specific time or encourage the client to provide information by email or on your voice mail.

According to the ABA study, 83% of the "happy" clients said, "My Lawyer returned calls promptly," as compared with only 47% of the "unhappy" clients.

The client simply wants to know his or her call is not being ignored or lost in the system. There are many stories of clients leaving messages on the voice mails of lawyers who were in fact dead, but no one had checked or turned off their voice mail system. Make it a habit to either return your calls promptly or to be sure that someone else is returning your calls promptly.

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FOONBERG'S STEP NUMBER 4

Double Your Estimated Time before Promising a Completion Date.

When you promise work will be done by a certain date, you are creating expectations in the client that the work will in fact be done by that date. When the work is not done by the date you promised, clients will conjure up all sorts of bad thoughts ranging from your being incompetent to your ignoring their needs in favor of other clients.

You should learn from the experiences of other lawyers. Several years ago, a study was made in California. Experienced competent lawyers were asked to estimate the number of hours needed for them to complete an assignment and then to keep very detailed and exact time records of the time actually required. This was done before the prevalence of Board Certifications. The lawyers were experienced in that they had at least 5 years of practice and they were competent in that they said they were competent to handle the matter involved. No testing of their skills was done and their self-assessment was accepted.

These lawyers were shocked to find that they had consistently underestimated their time by 100%. When they thought they could do the work in x hours, it actually required 2x hours.

You have nothing to lose by extending the completion date. If you can do the work more quickly, your clients will appreciate your letting them know you were able to get the work done in less time and cost than estimated. If the completion date is too distant, they will tell you before you start the work.

According to the ABA study, 83% of the "happy" clients said, "My lawyer did the work promptly." Only 47% of the "unhappy" clients said their lawyer did the work promptly.

Be a compulsive list maker to plan what will get done first, next, or not at all. List making is the key to getting promises and work done in a timely sequence.

FOONBERG'S STEP NUMBER 5

Listen to Your Client. Learn Foonberg's Papal System of Listening. End All Interviews by Asking if There is Something Else the Client Wants to Ask You or Tell You before the Interview is Done.

You will be amazed at what the clients tell you or ask you. It's good lawyering to avoid malpractice by asking that question.

According to the ABA study, 93% of the "happy" clients said, "My lawyer listened to me and paid attention to what I said." Only 47% of the "unhappy" clients said their lawyer listened and paid attention.

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FOONBERG'S STEP NUMBER 6

Give Your Client a Road Map of Where They Are and What Will Happen, and What it Will Cost.

A client wants to know what will happen and when it is likely to happen. They want to know what their legal position is and where they are going, and when and how the matter is likely to end. In short, the client wants and needs a road map. With a road map, the client knows what to expect and when and where to expect it. The client also wants and needs a road map as to fees. When the client has this information, they are more likely to be cooperative and less likely to start something they know they cannot finish.

According to the ABA study, 95 % of the "happy" clients said their lawyer explained the legal process and their legal position. Only 50% of the "unhappy" clients said their lawyer explained the legal process and their legal position.

FOONBERG'S STEP NUMBER 7

Do Not Allow Interruptions during Client Meetings or Talk More Than 1/4th of the Time. You Must Affirmatively Demonstrate Interest and Concern.

Every client wants 4 things from their lawyer:

1. They want to tell their story.
2. They want the lawyer to listen to them tell their story.
3. They want the lawyer to validate their consultation.
4. They want conclusion of the matter, which is an interference with their life.

Clients want your full and non-distracted attention during client interviews. Do not allow interruptions for document signing or telephone calls. Be sure to tell your secretary or assistant, in front of the client, that you are not to be disturbed during the interview. Repeat to the client that he or she will not be interrupted or disturbed (explain exceptions in advance if there are to be any exceptions to the non-disturbance rule).

Tell the client to turn off his or her pager or cell phone so you can pay close attention to what they say to you.

Do not talk more than 1/4th of the time. Remember Jay Foonberg's father's advice: "The Lord gave us two ears and one mouth so we could listen 2/3rds of the time and talk 1/3rd of the time. Otherwise we would have two mouths and on ear."

It is not sufficient that the lawyer is in fact interested and concerned. The lawyer must demonstrate by acts that he or she is interested and concerned. Tell the

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client to turn off pagers and cell phones because you want all their attention. Slap the desk or take some action, or say something in front of the client to demonstrate your interest and concern.

According to the ABA study, 91% of the "happy" clients said their lawyer demonstrated interest and concern. Only 47% of the "unhappy" clients said their lawyer demonstrated interest and concern.

FOONBERG'S STEP NUMBER 8

Never Lie to a Client. Have an Accurate and Complete Fee Agreement and Time Records.

Do not make untrue or unrealistic promises to get the client. These promises will come back to haunt you when you cannot deliver. Do not accept a case without disclosing the total cost to get the initial retainer or payment when the client cannot afford to finish what is started. The client will have wasted money to get half of what they need and you will have a large uncollectible receivable. Let the client go elsewhere. Do not start the matter unless you are willing to work for a small fee. If the case is likely to be a loser be honest with the client and tell him or her so. Time records must be accurate and honest. A lawyer is a fiduciary and a client is a beneficiary. Lying to a client can get you disbarred.

Learn how to keep time records. I recommend contemporaneous hand written entries to serve as a "to do" list followed by descriptions and data entry into your system.

A proper fee agreement and complete and accurate time records will go a long way in satisfying clients' doubts or fears.

According to the ABA study, 95% of the "happy" clients said their lawyer was honest with them. Only 51% of the "unhappy" clients said their lawyer was honest with them.

FOONBERG'S STEP NUMBER 9

Cash Up Front.

The lawyer must understand that the client who can't or won't pay cash at the beginning of the case usually won't be able or won't be willing to pay cash during the case, or to pay cash at the end if the case. This is simply an application of Abraham Lincoln's advice, "The lawyer should always get some part of his fee in advance, that way the lawyer knows he has a client and the client knows he has a lawyer."

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Clients should not start legal matters they cannot afford. Doing so results in undone work and uncollected fees with unhappy clients who will be provoked into filing a non meritorious ethics or malpractice complaint.

All lawyers should do some pro bono work, with the lawyer deciding to do the work at a low fee or no fee BEFORE the work is done, rather than the client not wanting to pay after the work is done.

The lawyer should always keep a photo of his or her loved ones or cherished objects, or unpaid student loans on the desk, facing the lawyer, to be continually reminded of the practice's need for cash flow.

Learn to use an evergreen trust account system.

The foregoing 9 steps have served lawyers and clients alike well in the past, and will continue to serve lawyers and clients alike in the future, thus assuring a successful and profitable law practice from womb tomb.

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