

Ten Tips for Making Partner in a Plaintiff's Firm

By Bill Daniels

The long and winding road.

There really aren't any hard and fast rules for forming a consumer trial firm. It follows that there isn't a straightforward partner track, if what you are planning is a career in protecting consumer rights.

Now my brother, the corporate defense lawyer, always knew exactly what he faced as he set about trying to make partner at his silk stocking firm. From day one he was told what to expect, counseled on his progress, educated in the hallowed tradition of the firm and shown the way through whatever hoops he was expected to jump through in order to make the grade.

I've always assumed the only rule that universally applies to my own economic mobility as a consumer lawyer is survival of the fittest. So far, I haven't seen anything to convince me I am wrong. Of course, I'm only mid-career.

You see, unlike institutional silk stocking firms, consumer firms tend to be smaller, less formal and more practical in how they move employees up into the ranks of owners.

Even the largest plaintiff shop tends to have a mom-and-pop flavor, with the culture generally reflecting the tastes and personalities of the individual owners. The reason is, firms that make up the plaintiff's bar are, by and large, true entrepreneurs of the legal profession. While large firms tend to cultivate stable client bases built around old school ties, we consumer lawyers tend to focus our efforts on fixing problems that pop up in people's lives to whatever extent the law, economics and the civil justice system will allow.

This fact of life is both the strength and the challenge of a plaintiff trial practice. The strength comes from our having to be a little smarter and a bit more creative than other lawyers who have the luxury of practicing the same type law over and over. After all, your suite buddy down the hall might get to focus each day on probate or contracts or even insurance defense. You, on the other hand, will be prosecuting sexual harassment on Monday, a truck accident on Tuesday, insurance bad faith on Wednesday, consumer fraud on Thursday and civil rights from Friday through Sunday. Then, come Monday, something else will come along.

It follows that to make it as a consumer lawyer at any level, you need to be tough, flexible and resilient. You also need to be a sharp business person. Not so much because money is a reward, but rather, because cash in the bank is fuel in the tank. Running a plaintiff's practice can be an expensive proposition. Can't get far without fuel.

How does this all add up to making partner? Or, perhaps, choosing one?

Well, if you step back for a minute, you'll see that even though consumer firm structures vary, there are common principles that apply.

Adam Smith wrote:

The uniform, constant and uninterrupted effort of every man to better his condition, the principle from which public and national, as well as private opulence is originally derived, is frequently powerful enough to maintain the natural progress of things toward improvement, in spite both of the extravagance of government, and of the greatest errors of administration.

The Wealth of Nations, Book II Chapter III. I think what Mr. Smith was trying to say was, as people strive to better themselves and their communities, they ultimately succeed despite the hurdles a hostile government and its functionaries raise in their path. This should be encouraging to you as a consumer attorney in an age of tort reform. It also gives us some insight into just what licks it takes to be an owner in a consumer firm.

In my view, the successful plaintiff firm is populated with highly motivated attorneys, all determined not to be naturally selected out of their industry. What they share in common is a passion for the work and an idealism that keeps their hearts fresh in the face of great adversity.

Sound like you? Then God bless, and let these ten basic principles guide you on your path to success.

1. Be a Believer.

It's easy to zealously advocate for a client who pays your hourly billing regularly and at the highest rate the market will bear. Heck, if the money is coming in, it's hard not to over-advocate.

Much more difficult is standing up for someone who might not be so sympathetic. Especially when they have a close call claim and you are financing the case on a contingent fee. Then, it's a whole different game.

In my experience, the single most important difference between a great lawyer and a mediocre functionary is whether that attorney truly believes in the people and causes he or she represents. Truly, the ability to believe and act on that belief can make all the difference.

A few years back, I took on the case of a young woman who was developmentally challenged. Physically, she was in her early thirties. Mentally, though, she had the intellectual capacity of a third grade child. She was a sweet, kind child, struggling along in a cold, adult world.

Her mother kept this woman-child at home as long as she could. But the mother, who was poor and disabled, eventually had to hand her daughter over to the care of a facility specializing in serving the mentally challenged.

At first the woman-child did well. She was placed in a six-member group home where all of the residents were women. She was happy there.

But the home operator had a sixty bed facility they needed to fill for business reasons. So, off this woman-child went, to a new home.

The sixty bed facility was mixed gender with little supervision in the living quarters. One of the male residents, higher functioning at about an eighth grade level, zeroed in on this young lady who was new in town.

The mother was horrified when her daughter started telling her, in a child-like manner, about having a male visitor in her room. The mother complained frantically to the home operator. She had meetings, made telephone calls. The operator refused to take any action.

Eventually, a child was born. He was beautiful to look at, but suffered severe neurological maladies from a malformation of his brain. So, he was blind from birth, had a chronic seizure disorder and faced a number of other physical and mental challenges. The woman-child's mother, now a grandmother, came to us for help. She knew her grandson needed special care. She didn't have any money to help him.

We took the case in as a medical malpractice matter, but it quickly became apparent that wouldn't pan out. The defense was arguing we had no case at all. They claimed, with good support in law, the woman-child was above the age of consent, had a right to sexual privacy and the group home had no right, let alone duty, to interfere. When I asked one of the other lawyers in my firm to sit in on some medical expert depositions, he came away saying that this wasn't a case we should be spending our time or money on.

Only, I couldn't let go so easily. I'm a parent myself and I kept asking, "What sort of people would leave an eight-year-old girl" -- because mentally, that's who this woman-child was -- "in close contact with a sexually active teenager?" It didn't seem right to me, no matter what the case law was saying. The grandmother believed what had happened to her daughter was wrong. I believed that, too.

So, we set aside the law as it applied in general and started documenting why the home operator was derelict in this one particular case.

Discovery uncovered documents confirming the grandmother's complaints. That led to evidence that the home's operator had moved the woman-child into the mixed gender facility to enhance their profits. This created an inference that they were deliberately providing inadequate supervision to enhance their bottom line.

We turned up a trail of regulatory citations where the facility had been criticized for not adequately administering medication to the residents, which supported the grandmother's testimony that she had been promised if her daughter couldn't be relocated, then the group home would have its doctor administer a contraceptive.

At the end, what had looked like a no liability case settled for \$2 million, the total policy limits available. The grandmother was able to buy a home where the entire family could live in dignity. That's where they all live today. All because we believed.

Now it is true there are impossible cases that cannot be won or maybe should not be won. I'm not talking about those.

Rather, to win the right to partner up with real plaintiff's lawyers, you need to have a sense of the righteous, the possible and the real. With all that in mind, believing in your clients and your cases will put you a long ways ahead in reaching your ultimate goal.

2. Shoot straight.

People have expectations regarding consumer lawyers. Generally, they are low.

A lawyer named Impos Syble was shopping for a tombstone. After he had made his selection, the stonecutter asked him what inscription he would like on it.

"Here lies an honest man and a lawyer," responded the consumer lawyer.

"Sorry, but I can't do that," replied the stonecutter. "In this state, it's against the law to bury two people in the same grave. However, I could put 'here lies an honest lawyer'."

"But that won't let people know who it is!" protested the consumer lawyer.

"Sure it will," retorted the stonecutter. "People will read it and exclaim, 'That's impossible!'"

I remember my father telling me while I was growing up that he would only do business with people who could be trusted to keep their word on a handshake. There are people who will argue that in this day and age that's a quaint, outdated notion. I disagree.

It might be true we can't avoid interacting with dishonorable individuals. Yet that doesn't mean there isn't value in being honorable ourselves. Or that cultivating character doesn't have it's own tangible rewards.

If becoming a partner in a law firm is much like getting married, then your known habit of dealing fairly and honestly with people outside the firm is likely to count in your favor when other lawyers are deciding whether they want you as a permanent member of their family.

Don't fool yourself into thinking you can treat people outside your office badly or unfairly and word won't come back that this is how you practice.

Trust is especially critical in a plaintiff practice, where the partners will often pursue their own cases with little outside supervision and their actions carry a direct financial consequence for everyone in the firm.

Be straight in your daily dealings and your path to partnership will straighten in turn.

3. Be a closer.

A plaintiff attorney needs to be a closer, pure and simple.

Simply put, being a closer is the ability to figure out the right solution to your client's problem and get it done. The less wasted motion and inefficiency, the better. Being a closer means the cases are moving, time and resources are used judiciously and the business of the practice progresses at an optimum pace.

Back when I was starting out with my old firm, I got a call from a gentleman who was having a run of real bad luck. He was a former sales manager for an insurance company who was disabled from working and whose home had been badly damaged in the Northridge earthquake. He had disability insurance, but it wouldn't pay. He had earthquake insurance, but the carrier, the company he used to work for, was lowballing him. He had been forced out of his business. He had an unresolved claim for a personal injury totally unrelated to all his other troubles. He had been through two or three lawyers already and was a plaintiff in at least two lawsuits with two more waiting to be filed.

I'm honestly not sure I would take on that man's troubles today, but this was early in my career and I liked the fellow. So I dug in and started working to dig him out.

What I discovered was, even though this fellow had several prior attorneys, none of those had been focused on closing anything. Which, as it turned out, was all the client needed.

So, I settled the injury case with a couple of telephone calls, which took care of lawsuit number one. I filed a bad faith claim against the disability carrier and then sent the defendant our own doctor's report along with form interrogatories, which resulted in a quick mediation and a \$1 million policy limits settlement thirty days later. A prior attorney had filed the earthquake bad faith case too late, so that case went away quickly. My client decided not to pursue a legal malpractice claim since the lawyer was a personal friend.

That left only the breach of contract claim against the insurance company that used to employ my client. I worked that case up for trial. Though I left the firm before the trial date, my old boss went ahead and tried the case. The jury awarded \$17.5 million. The client was happy with that result.

Pretty much every successful plaintiff lawyer remembers a similar case where the big challenge was not so much legal reasoning as it was untangling a tangled mess. Closers are up to this challenge, because they never lose sight of why the client sought out counsel in the first place. After all, we are supposed to fix our client's problems so they can move on with their lives. Our purpose is not to prolong the agony.

Failing to understand this key principle is probably the single biggest obstacle to either qualifying as partnership material or, more importantly, succeeding in a plaintiff practice.

I have known many fine lawyers who could think clearly, write compellingly and argue eloquently, but couldn't close a case to save their lives. Some can't resist the urge to hit for the fences every time out, even when the facts aren't there. Others become fascinated with the legal process but forget that the client's best interest might be a shortcut through the legal thicket rather than the long, long, way around. Some simply forget about the client's best interest all together.

In a consumer practice, if you aren't comfortable being a closer, you are probably destined to live out your days as an employee. Contingent fee lawyers are rewarded for being efficient. Inefficiency is punished. Not being a closer makes you horribly inefficient and certainly won't make you a partner.

4. Be realistic.

As I mentioned above, consumer firms are basically mom-and-pop small businesses that reflect the personalities of their owners. This being the case, it may be you are working with an owner or owners that love you personally and appreciate your work but are never going to share their business with you.

Sometimes, it's because the owner doesn't work and play well with others and knows it. Maybe there is a failed partnership relationship in the past and once bitten, twice shy. There are as many reasons why owners don't take on partners as there are stars in the sky. Do not take it personally.

On the other hand, take a tip from the relationship gurus. If you believe you are stuck in a dead-end situation and it is making you crazy, it is probably time to think about moving on.

Only, be realistic about this, too. Not everyone is cut out to own their own business. A plaintiff's practice is a risky undertaking. There are plenty of failed legal ventures past and there will be an abundance in the future. Consider whether you are willing to put your entire net worth on the line for a string of cases only a mother could love. The idea of a regular paycheck might seem more appealing.

As for myself, I went to law school in order to own a business. I made it clear to each of my employers that I intended to be an owner. In the end, I wound up becoming a partner in a firm that had a declared no new partner policy. So at least I have the personal comfort of knowing that, if it all goes south, at least it's what I bargained for.

Make sure you ask yourself how much risk you are realistically willing to take. Answer yourself honestly.

5. Keep a good work ethic.

There is a difference between having a good work ethic and being a good worker bee. The former makes you partnership material. The latter defines a valuable employee.

What's the difference? I believe it has to do with whether or not you approach your practice with a passion.

Partners in a consumer firm must be passionate about their chosen profession to the point of near obsession. There's a practical reason for this. We're collectively a constant target of bad jokes, we have powerful enemies and our general public image is at something of a record low. Contingent fee law is a

gusher business, with funds coming in irregularly and unpredictably, so, a good month can be very good and a bad year, very, very bad. It is a practice environment where only self-starters able to perform consistently despite breathtaking discouragement will qualify, let alone survive.

There's also the simple business management necessity of a strong work ethic. Plaintiffs, of course, carry the burden in a civil proceeding. I've seen many practitioners take on a file and then allow it to sit dormant until the very last possible minute. Malpractice risk aside, this won't get optimum results for the client in nine out of ten cases. Yet, since usually the clients don't know the difference between proactive and reactive representation, it's possible to get away with quite a bit of laziness, assuming it does not rise up and bite you on the nethers.

On the other hand, owners recognize sloth and are not likely to offer ownership to a slug. Work hard, my friend, always giving your best.

6. Watch your caseload.

Work hard, but also work smart.

Besides being a closer, a prospective partner in a plaintiff's practice must be an effective case manager.

Always keep in mind that as contingent fee lawyers, we are in the business of managing portfolio risk. By this I mean, there are a certain number of cases on your docket, only a portion of which will have any significant value. The remainder will either break even or be complete flops. In organizing your time and dedicating resources, you need to be able to separate the stars from the duds and deal with them accordingly.

In my experience, the 80-20 rule applies pretty well to a normal plaintiff's practice, meaning roughly 20% of your cases will account for 80% of your revenues. What does that mean?

Well, for one thing, it means that if you have forty cases on your docket, on average you may expect that eight should come in strong, while the balance will either be non-productive losers or repay your time and investment, but just barely.

The clear upshot of all this is you don't want to over-invest time and money in go nowhere cases or under invest in the ones voted most likely to succeed.

How do you tell the difference? Watch the caseload. If you don't have good case picking skills, you probably shouldn't be worrying about partnerships anyhow.

Case management software can make it easier to track your files. If your firm provides it, learn how to use it. But the old noodle is your first line of defense.

As Robert Heinlein once wrote, "Put all your eggs in one basket, and then watch that basket!"

7. Give back to your profession.

Being a partner in a plaintiff's firm means being a business getter. There are all sorts of strategies for marketing, branding and generating referrals, but the one that is time tested and mentor approved is giving something back to the profession you love.

There are plenty of opportunities out there. Just seek out one or two that suit your special passions or talents.

Writing scholarly articles to share your knowledge can work well and has the added benefit of helping you establish yourself as an expert in your field. Organizations like CAALA provide speaking opportunities where you can help educate your peers on current developments in the law.

If you have an interest in politics, get active with CAOC and the legislative process. Politics and lawyering go hand in hand and we can always use dedicated souls willing to volunteer their time to help preserve our precious right to seek redress through the American civil justice system.

Now, it is true there are attorneys and firms that sit back and take a free ride on the system. Don't be that kind of lawyer. Be someone who gives back to your profession. It's an important quality in a future partner.

8. Be a part of your community.

I've never been particularly athletic. I can't throw a baseball to save my life. But, when my son's little league team needed a manager and no one else stepped forward, I volunteered for the job. The kids on the team all got to play. My son remembers that season very well. The folks in my neighborhood got to know me a little better and I made some friends.

Then there was the developer who wanted to put a high density senior residence in the middle of our single family home neighborhood. The neighbors started organizing to fight. I showed up to a meeting and they asked me to be a spokesperson because I was the only lawyer in the room. I wrote one letter and went to one meeting. Now, I'm the abogado who lives in the grey house under the oak tree with the horses. People smile and wave at me as they walk past the gate. It's really a great feeling.

I went to law school to make a better life for my family. Now that I've spent some time in the profession, I've come to understand that what lawyers also need to think about is how to help build a better life for the communities they live in.

When I talk to my friends about young lawyers in their firms, we don't usually share how competent they are or whether they are punctual or speak well. Usually, it's about what a great person they are and how something they did touched the life of another in a good way. We assume that partner prospects are competent, skilled practitioners. Asking someone to join the family business requires looking at other qualities.

For me, when I see someone is actively contributing to their community, that's a strong positive. If they

give themselves generously to their neighbors, I assume they will give themselves generously to the firm. I like that in a lawyer.

9. Don't just do it for the money.

If you ask me I'll tell you my law practice is a business, not a hobby, and I expect to earn money for my labor. Don't make the mistake of thinking what we do is all about money, though. There's a balance here. In order to succeed, you need to find where your personal balance lies.

When I was just starting out as a lawyer, I remember attending a vehicle inspection in a motorcycle crash case. When the experts were done with their photographs and measurements they left the room where the bike was kept and I was about to do likewise. Then I felt a hand on my sleeve.

It was the mother of the young man who had been killed in the crash. She'd been standing quietly in the background until now. I don't know that we'd spoken more than a few words the whole day. I was engrossed in the technical part of the exercise. For her the occasion was solemn.

"I want to show you something," she said, pulling me to the motorcycle. She bent down and pointed to some rust-colored stains on the frame. "Do you see that?" she asked. "That's my son's blood. I thought it was important for you see."

Over the years, I've thought about that mother a lot because she taught me something important that day.

You see, up until that inspection, I'd thought my law practice was about filing complaints, answering interrogatories, taking depositions and arguing in court. That mother, my client, taught me I was completely and totally wrong. A consumer practice, you see, isn't about paper and argument. It's about blood.

I've been mentored by great lawyers. I've sat through lectures by legal legends. I've listened to war stories, read case briefs, poured through hundreds of practices guides, treatises and legal memorandum.

Yet, when I think about the core of our practice, my first thoughts always go to that mother mourning her son on that cold desert day so many years ago. What we do truly isn't about the money. It's about something infinitely more valuable.

10. Be a mensch.

The dictionary defines mensch as meaning "a decent, upright, mature, and responsible person."

Will being a mensch make you partner more quickly? I don't know the answer to that.

I do know that the menschen who populate our profession are truly too numerous to name. I think there's a reason for this and a lesson to be learned from their example.

At the end of the day, consumer lawyers are something unique in this world.

The human condition insures a steady abundance of trouble and strife. To address the fact of human frailty, society charges us to serve as advocates and counselors in a court of law. In an age where so many feel powerless and disenfranchised, we are empowered to help shape the laws of this great nation.

How we go about our charge defines not only ourselves and our profession, but because of the reach of our influence, the entire nation. This is weighty stuff. It's one reason why the bar exam takes a full three days.

With great power comes great responsibility. It follows that all consumer lawyers are duty bound, if not honor bound, to live our lives according to the highest human principles and society's most enduring moral values. I mean, it's obvious, don't you think?

So, you should be a mensch. It's good for you. It's good for the country.

Also, you might make partner. It couldn't happen to a nicer person.

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