



THE NEW ELLIS GROUP

Monday Monday

Connecting the Dots with Karen Kaplowitz



*Helping you create and reinforce the habits of successful career building,
gleaned from my work as a business development strategist, trainer and coach*

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Avoiding the Wrong New Business. The subject of “vetting” new business has been in the news since King & Spalding attributed its controversial role in defending the Defense of Marriage Act to a failure of its vetting process. The firm is now paying a heavy public relations price for its subsequent withdrawal. Most client matter “vetting” issues arise in the context of financial concerns, not political ones. Since rainmaking success controls compensation and power in most firms, and since business has been scarcer in the recession, lawyers press hard to get firm approval of all new business. In this setting, law firms are at risk of excessive risk-taking by partners hungry for short-term rewards, the same phenomenon often cited as leading to the 2008 financial crisis. In evaluating whether you have lowered your own standards for accepting new business, consider these questions:

- Are you taking matters you would have passed on before the recession?
- Are you urging your firm management to accept slimmer profit margins and more risk to the firm in fixed fee agreements?
- Are you doing enough due diligence on new clients, especially ones who are changing counsel? Do you routinely do credit checks on new clients, for example?
- Are you insisting on adequate financial protection in evergreen fee deposits, guarantees, liens, and timely payments?
- Are you ignoring warnings that new clients are of questionable character?
- Are you fighting harder to get other lawyers to press clients to waive conflicts?

As critical as new business is, avoiding the wrong cases, the wrong clients, and the wrong balance sheets are equally important. No one will remember that you were a hero last year if your risky new matters cause significant financial losses or reputational damage to the firm this year or next.

Example: When a recent lateral partner was asked to meet with a potential new corporate client about a fraud suit, she decided it would be prudent to check with her practice group leader first to formulate a proposed fee agreement to discuss with the client. She was surprised to hear the demands the firm would impose on taking the new matter, including a hefty evergreen fee deposit. She was concerned that the proposed fee agreement would kill her prospects of winning the new business.

At the meeting, she sized up the matter as challenging, especially given the clients’ somewhat sharp business practices. When the subject of the cost of the matter came up, she was glad to have a detailed and stringent fee proposal. Based on her prior consultation with her practice group leader, she could assure the client that the firm would not handle the matter on less demanding financial terms. In fact, having met the clients, she added a few protections to the proposed fee agreement. Given the nature of the clients and the matter, she felt more secure accepting the representation with a protective fee agreement.

Even though you are under pressure to generate more business, are you avoiding the temptations to take on risky new clients and new matters and holding firm to your firm’s vetting standards and process?