



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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Both Sides Now. In many practices and industries, lawyers are commonly on one side or the other. Management versus employees. Non-practicing entities [aka patent trolls] versus practicing entities. Branded pharmaceuticals versus generics. Plaintiffs' class action lawyers versus defense lawyers. And there are many lawyers and firms who typically handle matters either on a contingent fee basis or non-contingent basis. We all have a tendency to look for new clients who are similar to former clients and to pursue new matters like ones we have handled successfully in the past. It is always a safe strategy to pursue more of the same kind of work you know well. But it is also valuable to retool and consider if your prior work has prepared you for different work and different types of clients. If you are hesitant to diverge from your standard matter, client or fee arrangement, here are some questions to consider:

- What have you learned from your experience on one side that could bring value to a client you could represent on the other side?
- If you typically represent one side, is there a reason you cannot represent the other side?
- Is it common in your practice for lawyers to represent both sides?
- Will former clients or referral sources shun you if you switch sides periodically?
- Would other firm clients be offended if you represented the kinds of parties to whom they are usually adverse? Do you need to confer with other firm lawyers who may be affected?
- If you represent both sides, will you undermine your credibility with the courts by taking conflicting legal positions?
- Will your firm tolerate differences in the way lawyers are compensated if you change sides?
- Do you need to confirm your management's willingness to handle different kinds of matters before approaching prospective clients?
- Is changing sides inconsistent with your personal or firm branding?
- Would being on the other side preclude membership in any industry or professional groups?

If there is no obstacle to representing clients to whom you have typically been adverse, in one simple strategic move you will greatly expand your pool of prospective clients. If there are obstacles, it may be worthwhile to look for ways to harmonize being on both sides of issues and industries.

Example: A lawyer made her reputation defending employers in wage and hour and other class actions. Her firm held itself out as a management side law firm. Occasionally the lawyer would counsel a senior executive, limiting the work to counseling and negotiation and excluding litigation. When a client's former CEO asked her to handle a high profile, high stakes sexual harassment and assault case, the lawyer initially declined. The former CEO pressed her to reconsider given the compelling evidence. The client also offered to pay a success fee on top of standard rates to the law firm. The lawyer agreed to seek her management committee's approval provided that the client would agree to send a demand letter to the employer before filing a public complaint. Based on the strength of the evidence, the lawyer also found a litigation funding firm that would finance any litigation. After the matter was resolved privately and very profitably to the law firm, the firm undertook a review of its policies on only representing employers.

What new matters and clients would be available to you if you are open to representing clients to whom you have been typically adverse? Can you find a way to operate on both sides without doing major harm to your brand or industry relationships?