

10 Annoying but Practical Practice Tips

By Robert W. Wood

Robert W. Wood practices law with Wood & Porter in San Francisco (<http://www.woodporter.com>) and is the author of *Taxation of Damage Awards and Settlement Payments* (4th ed. 2009), *Qualified Settlement Funds and Section 468B* (2009), and *Legal Guide to Independent Contractor Status* (4th ed. 2007), all available at <http://www.taxinstitute.com>. This discussion is not intended as legal advice and cannot be relied on for any purpose without the services of a qualified professional.

In this article, Wood offers 10 “admittedly annoying” practice tips to young tax lawyers. The tips are mundane yet practical, addressing such items as responsiveness and being engaged.

Copyright 2010 Robert W. Wood.
All rights reserved.

This column is irritating blather and may be condescending. So fair warning, you should stop reading now if you are irritated by know-it-all tips. There is nothing here that hasn’t been said or written before, more cleverly, and by more eminent people. Besides, it’s hard to write any of this without being downright pedantic.

However, common sense — unlike wing tips and wide ties — never goes out of style, and is not always, well . . . common. In particular, for young tax lawyers entering a profession and seeing seismic shifts in compensation, the ladder to partnership, and more, the following tips might be worth the annoyance. Even some not-so-new lawyers might find value in revisiting yesterday’s truths.

Also, unlike changing fashion trends, you don’t have to stockpile these nuggets-of-meant-to-be-wisdom in the back of your closet. They’re supposed to be evergreen. While all I know how to do is practice tax law, my intuition is that many of these points might translate across other areas of practice, just in case any young non-tax lawyers are reading this diatribe, despite my up-front blather warning.

So without further ado, here are 10 things I suggest to young lawyers practicing tax law.

1. Reply to e-mails and other correspondence. I know this sounds like it goes without saying, but do you actually reply to everything? Most of us don’t. That was true in the old days of regular mail (please don’t call it

snail mail), FedEx, or fax. It is even truer today, given the surprising ubiquity of e-mails (UGH!).

I’d argue it’s even more important to reply to everything today so that your clients, colleagues, and co-counsel are all on the same page. My ruminations cover client communications, but if you’re just starting or restarting your career, your client might be an aging ogre like me with a title such as partner. You don’t have to send an instant response, but you do yourself and your client a favor if you respond promptly to a letter, fax, or e-mail, perhaps with something like:

Thanks for your _____, and I’ll look into your questions [or comments or whatever] and get back to you as soon as I can.

You can make it more detailed if you want, such as saying you’ll respond in a few days, or on a specific day or time. But regardless of what you say, you’ve acknowledged receipt, which is always a good thing.

If you think like a couch potato, those responses actually buy you time. Once you’ve sent the acknowledgment, you can respond at your leisure and in a more substantive way. (Besides, you’ll likely find that you will do a better and more thorough job of responding when you do.) I call those acknowledgment responses “placeholders.” Whatever else they are, they are just plain courteous. By the way, e-mail auto responses (“I received your e-mail and will respond within 24 hours.”) may acknowledge receipt, but they accomplish little else, so they don’t count as placeholders in my book.

If a client asks a question by e-mail, reply right away and say you’ll look into it. That will appease the client and show you are working on his problem. If you don’t respond at all until you are ready to address the substantive question, the client may already be upset or anxious, or may think his missive went astray. He may even call on one of your competitors.

This obvious and very simple practice may make your course of communications smoother and better. If your client asks questions requiring more details, placeholder responses can also facilitate clarity. Rather than not responding for five days and then looking in-depth at the legal issue queried, a placeholder might say:

I received your query about the fish oil excise tax, and will get back to you next week when I’m back from Bophal. Is that timing OK? You’re talking about the cod oil tax, not the eel tax, correct?

Placeholders are more effective if you do them promptly. If you wait too long, the client may be upset because he hasn’t heard *anything* from you. Understandably, at that point the client may expect a substantive response, not a placeholder. The placeholder costs nothing and would have helped the situation.

The same line of reasoning applies when a client sends you a document to review. It is a good idea to respond

indicating that you received the document and will review it. Besides, you may be able to buy a little additional time to respond on the substantive issue:

Got your FedEx, thanks. Is tomorrow OK, or can we discuss this in Cleveland next week?

From a billing perspective, there may even be marginal utility to responding first with a placeholder or a modified placeholder (that's a placeholder with a little detail), and then later with a substantive response. If you multiply that experience out over a monthly billing cycle, the client will have had two or three interactions per question with you rather than just one. If the client asked five questions last month, you might have 10 to 15 interactions.

It's true that some of those communiqués are mere placeholders, but little bits of substantive guidance can creep into the placeholders. Besides, even if all of the substantive guidance is identical in the two situations, a client having 10 to 15 interactions with you may be more forgiving of a big bill than a client with only five.

2. Acknowledge receipt of voicemails. If you're like me, you get far fewer voicemail messages these days, because most communication is by e-mail. Still, even if you receive a voicemail message that doesn't say "call me back," it's courteous to respond. If I leave my lawyer a voicemail saying, "Be sure to change the first word on page three of the letter from 'questionable' to 'worthless,'" I want to know he got the message. I don't want to wait a day or a week for the final version of the document to show up so I can verify it.

And I don't want to have to call (or e-mail) again to say, "Did you get my voicemail message and make the change?" So call the client back or send an e-mail stating that you got the voicemail message. It only takes a moment and it is common courtesy. As with e-mail responses, responding to voicemails is a good habit. It acknowledges that you got the message and understood it.

Similarly, if your client or supervisor leaves you a voicemail on Sunday saying you need to be in Cleveland on Monday, for heaven's sake, don't just go. First, say you got the message and you'll be there (with bells on). If you just show up, you may find someone in your place. Less obviously, the same applies to other assignments, no matter how small.

If a client (or another lawyer) says, "I need this Tax Court petition prepared and filed by 5 pm," don't just do it. First say, "Sure, I'm on it." That lets the person know you are responsive, and they can mentally cross this problem off their list, which may have 10 or more items on it.

Placeholders are good business practice, and often buy you time and goodwill. They can let you raise questions too, as in, "Sure, I'll have them filed by 5 pm. Is it OK if I file them electronically, or do you prefer FedEx?"

3. Check voicemail and e-mail often. I hesitate to bring this up, given the many Blackberry addicts and those who feel they never get away. That's a danger, it's true. Nevertheless, you should check voicemail and e-mail on evenings and weekends. It doesn't take much time, and is an important habit. And it fits right in with placeholders.

I'm a dinosaur and don't use a Blackberry. If you do, you don't have to respond to everything instantly. Still, try placeholders, which seem ideal for Blackberry users. If the client sends you an e-mail Saturday morning asking you to do something on Monday, take this opportunity to reply on Saturday that you will take care of it Monday.

The same is true of voicemails. Even though you may check voicemail and e-mail in those cases and nine times out of ten have no messages, get in the habit. If you check and do have messages, you'll be glad you did. That can help you get a jump on the competition, impress clients, etc.

It may also help to ward off a looming problem. If a client (or senior partner) fires off an e-mail on Saturday saying, "It looks like the Smith filing didn't include the statute of limitations argument," you may help to diffuse the situation if you respond promptly:

I think it was included, but I'll confirm one way or the other on Monday. I know we had been debating it. Is that OK?

4. Keep your client informed. Copy your client on everything related to their matter unless there's a good reason not to. Of course, some clients will ask not to be copied, and some internal discussions may be best left as internal. But otherwise, copying the client is courteous and makes sense.

Even simple cover letters should be copied to clients so they are fully informed of what's going on. Do the same with e-mails unless there's good reason not to. If the communication is with opposing counsel and you do not what to show the client as a CC, you can always forward it to the client:

So you can see where we stand on the disagreement over the stipulated facts, here is the latest e-mail exchange below.

That applies to items you receive from others related to the client's matter too. Even if you think the client may have received a copy of the item directly from the IRS or another party, be doubly sure by sending it to the client:

You should have received a copy of this directly from the IRS, but just in case that process failed (as it sometimes does), I'm attaching a copy. Please let me know if you have any questions.

In fact, look for excuses to send items to clients. You can combine this with a placeholder, such as:

I'm enclosing a brief we just received from the IRS. We're reading it and will get back to you as soon as we can with thoughts about a response.

Clients like to feel you are keeping them informed every step of the way. Sending updates can also help to justify your fees, so the client sees the level of activity, even if much of it is occurring behind the scenes.

5. Dive in; don't just stick your toe in the water. Try to view each new matter as an opportunity, not a task, even if it is not the best of assignments. Consider it an opportunity to advance within your own firm or organization, to please the client, to work on interesting matters, to acquire substantive and procedural knowledge,

and to gain experience. If you have to keep track of your hours, it is also an opportunity to log some hours.

On that note, try not to merely stay on track to bill whatever is expected of you, but to get ahead. Getting ahead is the best way to meet your quota, because there are many things you cannot control. If you are only staying on track and not getting ahead, you may fall behind owing to lulls in work, sickness, nonbillable projects, and myriad other reasons.

Plus, all lawyers have occasions where they spend too much time on a project or matter, inevitably leading to write-offs. Big write-offs are more easily forgiven if your hours are high. Conversely, they are especially noticeable if you barely eke out your minimum quota.

When you get a new project on a Friday, a part of you should think — without any prodding from anyone — that you can get a jump on your billable hours (not to mention dive into something new) by getting started over the weekend. That doesn't mean you will do so every weekend or on every project. However, to be proactive and self-motivated, you should work some weekends without being asked.

There are lots of ways to address hours, and there is no magic bullet. Some people work late a few nights every week regardless of their workload, some work on Saturdays, and some carry work home to do it at night after dinner or very early in the morning. There's no right way to do this. But failing to consider it is (in my view) a mistake. Being a successful lawyer is not a 9 to 5, or an 8 to 6 job. You need to be self-motivated and constantly trying to distinguish yourself. Sometimes that means being willing to change your plans to capitalize on an opportunity. The best motivation is always personal motivation, not pressure from someone else.

Work hard, stay ahead, and be as productive as you can reasonably be. If you do this it will soon become second nature. In the same way, always try to ask yourself if there's anything more you can do, another source you can investigate, another rewrite you can do to polish your writing, a stone that has been left unturned. Being a tax lawyer (or any kind of lawyer) is hard work. Part of that work is creativity. Part of it is effective communication. Part of it is sheer doggedness.

6. Strive to impress, not to survive. When you take the bar exam, you're just trying to pass. After that, everything you do in your career should be designed to excel, to be better than everyone else. You don't have to be competitive or backstabbing to do this. You are really competing against yourself, trying to make the brief or memo the best you can make it.

Whatever else you hear or read about work quantity, quality is paramount. Lawyers need to find ways to do top quality work, to do lots of it, and to constantly try to impress clients and colleagues. I don't think you can do all those things without working really hard, no matter how smart you are. Be willing to float ideas and take chances. Don't just follow the safe path of a B or C student. Strive for an A, even if occasionally you might miss badly and get a C or a D.

Take responsibility for your work and be invested in it. Own the As and the Ds.

7. Be interested, really interested. We need to be ever aware that in our business, clients want us to be interested in them, invested in their projects, and to act and sound just as concerned as they are. Don't put this on if you don't feel it, but try to roll up your sleeves and understand the client, the tax issue, and the legal and practical dynamics. It should become a mindset that is borne out in what you do every day.

Even if you only have a little piece of the puzzle, you can still make it interesting. You might even make your small piece a more critical piece than it first appeared. If you wait until you have your ideal project to get enthused, you'll probably never get it.

You may find that this makes you happier about whatever project is on your desk. It also may help ensure that additional projects land there. On that note, every time you meet someone or have an e-mail interchange or phone conversation, you should be thinking of generating work. It is appalling to think that we need to be salesmen even to some small degree. I'm not suggesting that we *all* do, or that those that do must be undignified.

Still, most professionals need to think constantly about this. (See also point 10 below.) Only by being ever mindful of it will you or your organization succeed. Some will be better at generating new clients than others. But, minding and binding existing clients is important too. Try to constantly watch for articles or tips to pass on to clients. Constantly think of what they might find interesting.

For example, if you are handling a section 6672 100 percent penalty case, when you see a responsible officer authority, fire off a copy to your client with a note or e-mail:

I thought you might be interested in this recent case.

It costs nothing and builds goodwill. It can even help communication. If you send five similar cases over six months, and later have to discuss a mediocre settlement, you can allude to all those cases you've been sending, and that may aid your discussion.

But the primary reason to do it is simply to show you're on the case and engaged. Look for excuses to show you're thinking about clients, and it will become a (good) habit. And that applies outside the tax law too.

If a client with a hobby-loss case loves fly fishing and you see an article on fly tying techniques, send him a copy. In our increasingly impersonal world, this helps connect you and your client, making your work more rewarding. If you need a Machiavellian viewpoint, it can also help keep you involved with the client and contribute to your getting new work. Besides, it's just common courtesy.

8. Ask for work. Be prepared to devote some of your time to developing existing client relationships and exploring new ones. Ask clients and prospects for work, even though you may think those questions are implicit. To this day, I continue to be surprised that while I thought a client or colleague knew we could do X, Y, or Z, they may not. If you don't reinforce their awareness, they may send an X, Y, or Z to a competitor.

If you don't want to feel stupid as I often do, get in front of those situations. Stay in touch with people and

keep reminding them you exist. Remind them of what you do and the range of your services, and that your expertise and that of your colleagues runs deep.

If you are newly minted and your “clients” are partners or even more senior associates, don’t think this guidance doesn’t apply. If you are interested enough to solicit work, especially targeted work, it will be noticed:

If you need another pair of hands, I’d love to help out on one of your independent contractor cases — or anything really.

Be sensitive to your role within your firm or organization, and to whether (and of whom) you are allowed to ask for work. But if it’s permitted, try to expand your horizons.

Long before you’re thinking of getting work from honest to goodness clients, mine for work within your own firm. When you hear an oldster like me mention a new case or expert witness role, volunteer to help out. Step up and be counted. You’ll never succeed if you hide out hoping that tough new assignments (or Friday afternoon projects) will go to someone else.

Be creative, and don’t wait until someone asks you to play a role. Try to develop one for yourself. There are lots of opportunities, even if you start very simply.

9. Strike while the iron is hot. Get to work when work is available. Try to think like Oliver Twist: “Please, sir, I want some more?” You will never be entirely in control of timing, so you may as well get over that now. The good news is that most tax lawyers have much more control over timing and over their own schedules than many other kinds of lawyers, notably litigators.

Still, even tax lawyers need to be flexible. Sometimes a new opportunity will come at an inconvenient time, but that’s life. You must be willing to jump on new projects and on new developments. Unless you’ve made special arrangements in your firm about your schedule, it’s tough to succeed if your schedule is inflexible.

If you’ve been following sale-in, lease-outs and lease-in, lease-outs and a breaking case comes out, read it that night. Don’t leave it in your inbox for a month. If you are writing up new developments on hobby losses for your firm or a client, when a new dog breeder case hits the news, make a big deal of it and do it promptly. If you want to be the first one to write up a new development, you may need to get up early, stay up late, or both.

Try to minimize the number of times you find yourself saying that you could have done something and you wanted to do it, but you couldn’t find the time. You have to make time for what you think is important. An old

adage says that if you want something done correctly and promptly, give it to a busy person. You’ll find the time if you want to.

10. Think business development. All of us must consider business development and remain conscious that we’re in a service business. Without clients, we would close. Too many tax lawyers don’t think about business development, either thinking it’s not possible in tax, or that tax lawyers are only service lawyers beholden to corporate lawyers for their work. Whether that’s true in your firm or not, at least show you are sensitive to business development. (See “Be interested, *really* interested,” point 7 above.)

Many lawyers don’t think about this until they are partners in firms. (Some firms may encourage abstaining in this way, but many who give those notions lip service don’t really mean it.) It is hard to start walking if you don’t know how to crawl. Start small by being sensitive to it. Keep clients happy. Be interested and responsive and hard working.

As you consider more proactive steps, consider what might work for you. There’s no right or wrong way to do this, at least not that I know. Ask for guidance from colleagues and mentors and those in your firm. Don’t just duck and hide. Consider bar association activities, civic groups, working with nonprofit organizations, teaching, and more.

Even lunches with no agenda can help. Don’t expect your firm to underwrite everything you do, simply because it might conceivably have some business development hook. Be prepared to invest some of your own time (and some of your own money). Writing, speaking, and developing subspecialty areas of expertise and reputation can be effective. And a local bar association presentation to 10 may be more effective than a Tax Executives Institute speech to 100. Sometimes less is more.

Know that unless you get really, really lucky, nothing happens overnight. You need to take these steps and enjoy taking them, whether or not they lead to “business.” Make them second nature, like placeholders.

Conclusion

Adapt or adopt from this list only the items that work for you. Discard the rest. Nobody is perfect, and sometimes you’ll violate your own rules. But that doesn’t mean you should stop trying to obey them.

Make lists of what works for you and what doesn’t. Keep to-do lists. Make lists of different tax issues, of different types of clients, of who likes and dislikes what. We all have our foibles. Try different things. Be engaged. Enjoy yourself.