

# Legal Practice Management Best Practices



Don't ignore change

It's the *inevitable* event.

The one consistent theme in the legal industry that continues to threaten attorneys and law firms. Attorneys do their very best to resist this threatening event yet none are successful.

In the end, those who resist, fail.

How is this event so troublesome that it threatens even the largest, most successful law firms? What exactly *is* this “inevitable event?”

**Attorneys see this coming but many choose to ignore it**

What cryptic event am I talking about?

It's change.

Attorneys, law firms and the legal industry at large have a serious problem with change. Attorneys are seen as Luddites, rather than the early adopters they could be.

But why?

Pundits at Thomas Reuters [suggest](#) that this resistance to change may be baked into the legal industry:

“One underlying reason may be the legal profession’s focus on precedent. The very nature of the practice of law, and the U.S. legal system as a whole, largely rests on guidance from previous case law or interpretation of legislative intent. Additionally, the practice of law is inherently risk averse; lawyers are known for writing long memos that issue warnings of what might potentially go wrong, and transactional attorneys often draft from precedent, rather than creating documents from scratch.”

It's no secret that the legal profession is a cautious, risk-averse endeavor. If you're practicing law, your entire focus is oriented around reducing and eliminating risk for your clients.

### **It's a two-edged sword.**

The cautious, risk-averse nature that makes attorneys (you) *so formidable* is also the same nature that creates this strong resistance to change. Contrary to popular belief, this isn't a personal defect, it's a strength. This is how you're able to defend your clients so effectively.

Here's the downside.

This strength needs to be *aimed*. Most attorneys aim their cautious, risk-averse nature at anything that's perceived as a threat. But research shows this is the wrong move.

Why is it the wrong move?

## **When attorneys ignore change they increase risk**

Increased risk leads to danger, disaster and loss. Here are a few objective examples to demonstrate what I mean by increased risk.

- Law firms following the traditional model push their associates to [produce more work](#) (i.e. chargeable hours) year-over-year. Their associates eventually reach a breaking point as mistakes, errors, and negligence begin to take hold.
- Individual [attorneys lose six hours each day](#) to nonbillable work. They could automate, semi-automate, and/or outsource this nonbillable work but for whatever reason, most don't. Most attorneys/small firms struggle with rainmaking or business development unnecessarily.
- Clients aren't willing to pay for [legal research](#), [junior/first-year associates](#) and large bills for [legal miscellany](#) (e.g. photocopies, food, travel expenses, etc). Traditional firms have resisted this push leading to a significant loss of business.
- A research report by Verizon found ***legal professionals were the easiest to hack***. This creates an avalanche of liability that results in unnecessary lawsuits, penalties, fees, lost goodwill, and lost client trust. A key example? Cravath Swaine & Moore and Weil [lost \\$4 million](#) to cybercriminals in 2016.

Can you see the risk?

Change resistance increases risk, danger, disaster, and loss sometimes [exponentially](#).

## Why pundits perpetuate change resistance

Pundits and experts tell you to do something you know you can't do.

Take unwarranted risks.

They ask you to trust third-party firms (i.e. security firms) with your client's sensitive data. You're asked to trust, no, to let go of the responsibility that comes with business development.

These risks seem unreasonable.

If you're like most attorneys and law firms this triggers [psychological reactance](#). Most attorneys and firms in this position feel their choices are being limited in some way as if they're being asked to behave in an irresponsible or imprudent manner.

So they resist.

There's a better solution. One that provides attorneys with the agency and control they need to avoid risk while simultaneously addressing the need for change. I mentioned it just a few paragraphs ago, did you miss it? If so, here it is again.

## **Aim your cautious, risk-averse nature.**

When you don't know how to recognize the legitimate threats around you everything seems dangerous. What does this mean for you then? It means you need to follow a few specific best practices.

1. Create heuristics to recognize potential (yet unknown) threats and opportunities
2. Aim your cautious, risk-averse nature at threats. Attack aggressively, win decisively
3. Accept and plan for failure
4. Create heuristics to limit, learn from and exploit failure



### **1. Create heuristics to recognize potential (yet unknown) threats and opportunities**

You can use a basic form of heuristic analysis to identify unknown events that exist in or around your law firm.

What exactly is heuristic analysis?

[Heuristic analysis](#) is a methodology that's used by cybersecurity software providers to identify unknown threats. Here's how security professionals use this heuristic model.

1. They examine suspicious looking code
2. They compare suspicious looking code to a database of known/confirmed threats
3. They flag anything that matches confirmed threats in their database

Pretty simple, right?

Believe it or not, this simple heuristic model has all the tools you need to spot potential threats and opportunities for your law firm. We just have to adapt the process above to suit our needs.

Here, take a look.

1. Examine suspicious elements (e.g. people, circumstances, offers, events, etc.)
2. Search for precedents that match (or are similar to) your suspicious elements
3. Flag suspicious elements that are **confirmed**

Okay then.

How would you go about using this in your law firm? Let's look at a recent example. Law.com shared a [story](#) about a client poaching lawsuit.

A personal injury firm's case that accuses a New York area competitor of paying clients out of a briefcase full of cash to switch law firms has escalated, with the plaintiff revealing that one of its paralegals went undercover as a potential client to obtain "forensic" proof of wrongdoing by William Schwitzer and his law firm.

Ginarte Gallardo Gonzalez & Winograd raised eyebrows last year with a lawsuit in Manhattan Supreme Court claiming that Schwitzer and his firm, William Schwitzer & Associates, used non-attorney "runners" to entice Ginarte clients in a doctor's office waiting room to switch firms. The Ginarte firm revealed Friday that one of its paralegals pretended he was injured on a construction site and recorded conversations with the runners and two lawyers at Schwitzer's firm."

It's a wild story, isn't it?

It seems both these firms have missed the point. These firms are competing for client business. From the sound of things, their competition is routine and cutthroat. Can heuristic analysis be used to identify the types of clients most likely to switch law firms?

Absolutely.

Let's apply the same heuristic model to this scenario.

1. Examine suspicious elements (client poachers, clients switching law firms)
2. Search for precedents that match (or are similar to) your suspicious elements

### 3. Flag suspicious elements that are **confirmed**

First, we start asking questions to identify suspicious elements. We keep asking questions until we get to the source of the problem.

- Which clients switched firms in favor of [competitor]? What motivated them to *leave*?
- When did they decide to leave? Where were they?
- Which clients **stayed** with us. Why did they stay?
- What are the differences between clients who **stay** and clients who *leave*?

Research into this story confirmed some important details. Clients were being offered \$2000 and a free Uber to switch. This narrows things down considerably, doesn't it? The data in this example shows many personal injury clients need money but they're temporarily unable (or unwilling) to work.

These details aren't complicated, are they?

It's an opportunity for you to create a compelling [value proposition](#) for your firm and your clients. What does this mean then?

- You can identify the characteristics of a loyal/disloyal client, enabling you to market your services appropriately
- You can find a way to provide indigent/injured clients with the short-to-long term income they need (directly or via third-party providers)
- You can use the strong value proposition you created above as a sales and negotiating tool to win and *retain* prospective clients
- Create client intake tools and educational resources to inoculate new clients against poachers
- Create an irresistible offer that acts as an [economic moat](#) protecting your firm against bigger, stronger, unscrupulous or more aggressive competitors

### **This is the power of heuristic analysis.**

With the right set of questions, a clear plan of attack and actionable data, your firm has the tools it needs to create a competitive advantage your competitors will struggle to overcome. You can use heuristic analysis to identify strengths, weaknesses, opportunities and threats.

Heuristic analysis is a best practice that's rarely discussed. Use it to:

- Identify A player employees
- Discover the reasons why your clients are leaving

- Create irresistible offers and compelling value propositions that motivate clients to stay
- Simplify rainmaking and business development, attracting an avalanche of leads, clients and revenue
- Systematically increase your billable rates (and collection realization rates) year-over-year
- Keep A player employees happy and loyal without the exorbitant incentives and bonuses required by employees at most firms

The possibilities are endless. And here's the important part. Heuristic analysis works well when you compare and contrast across a variety of dimensions including:

- Region, location and jurisdiction
- Comparison by practice areas (e.g. real estate law vs. corporate law)
- Legal industry compared with other industries (e.g. venture capitalists, accounting, consulting, etc.)

When it comes to heuristic analysis, the sky's the limit.

## **2. In your cautious, risk-averse nature at threats. Attack aggressively, win decisively**

I've mentioned that you can use heuristic analysis to evaluate your firm's strengths, weaknesses, opportunities and threats. Strengths and weaknesses typically aren't time-dependent. Opportunities can be, but there's often a fresh one just around the corner.

Threats are different.

If you identify a threat it's typically wise to take action immediately. This is the time to do what you do best.

### **Attack.**

You want to use your cautious, risk-averse nature to minimize and/or eliminate threats. You aren't always required to rush into battle but it's a good idea to attack threats (the problem) aggressively, where appropriate, and win decisively. Here's a list of threats you may face in your firm.

- Losing prospects
- Losing clients

- New competitors
- Industry disruption via innovative processes, competitors or events
- Falling billing and/or [collection realization rates](#)
- [Poor/delayed timekeeping](#)
- Falling [utilization rates](#)
- Decreased [productivity and/or performance](#)
- Decreased morale
- Decreased lead flow
- Decreased [profitability](#) by client/practice area/timekeeper/role
- Consistent failure to hit/achieve goals and key performance indicators
- Law firm culture/values clash

You'll want to identify your primary, secondary and tertiary metrics.

- **Primary metrics** are about **survival**, these are the metrics you check regularly
- **Secondary metrics** are about **growth**, the ones you monitor on a semi-regular basis
- **Tertiary metrics** are concerned with **expansion**, those you monitor less often

This needs to be defined by you. Here's [a short list](#) of the metrics you can monitor your firm. Primary threats should be addressed immediately. Secondary threats addressed urgently and tertiary threats addressed promptly.

### 3. Accept and plan for failure

Good practice management takes time. It's difficult to extract both immediate and long-term value consistently. What does that mean for you? That you accept and plan for failure.

How do you do that?

Let's say the attorneys in your firm are turning their timesheets in at the end of the month. You know the longer they wait to record their time, the more inaccurate your billable time and realization rates will be.

- **You lose 10%** of your billable time (revenue) if you record time the day of, once a day.
- **You lose 25%** if you wait 24 hours to record your time.
- **You lose 50%** if you wait one week.



If they're turning in timesheets at the end of the month you're *losing 50 to 70 percent* of your billable time. That's an incredible amount of lost revenue. Imagine making 50 percent more simply by recording your time as-it-happens?

That's a painful example of failure.

You won't always be able to plan for failure ahead of time. Often times, you'll experience failure first. This is your chance. You can accept the failure now, then plan for that failure in the future.

Here's how you do that.

- Recount a personal or professional failure you've experienced
- Outline how things went wrong *and* how they could've gone wrong
- Identify **(a.)** Your ideal solution to the problem if you don't know that move on to **(b.)** The person or professional who knows how to solve your problem

You'll want to create a comprehensive list of the ways things can and will go wrong. This can be scary to outline in detail but it's important. Outlining your worst fears – the way things can go wrong, it's a form of inoculation. It de-fangs the fear, anxiety and stress that comes with failure.

The strategy is straightforward.

When you experience failure, make it worse. Outline the mistakes you made and the mistakes you could have made. Make a list of everything that went wrong. Then make a list of everything that could go wrong. Then identify the solution.

That's it, simple right?

#### **4. Create heuristics to limit, learn from and exploit failure**

How are you supposed to learn from failure? If you're running a firm with other associates you know how hard it is to change their behavior. How are you supposed to limit, learn from and exploit failure if you can't persuade your employees to change their behavior?

It's simple.

You apply the right behavior model. Best practices fail and poor behavior continues when you're missing the right behavior model.

Okay, first things first.

What do I mean by “behavior model?” It’s behavior prediction and forecasting.

A behavioral model is a collection of data you use to make predictions about future behavior. I’m oversimplifying things here intentionally. I don’t want us to get bogged down or lose focus.

[BJ Fogg](#), a researcher at the Stanford Persuasive Technology Lab, created the Fogg Behavioral Model (FBM). The FBM was designed to answer a simple question.

“What causes behavior change?”

The FBM shows there are three elements to behavior change.

- **Motivation.** A compelling reason for people to change their behavior.
- **Ability.** The capability to change behavior in the desired fashion.
- **Triggers.** A prompt or call-to-action that tells people to “do it now!”

These are the elements that work whether we want them to or not. This is how you change behavior and results in the long term. Here are some examples of each category.

## Motivation

Motivations rely primarily on desire, things we want and things we want to avoid.

- **Sensation** governs pain and pleasure. These can be both subjective and objective.
- **Anticipation** regulates hope and fear. This includes subsets like expectation and frustration.
- **Belonging** regulates social rejection and social acceptance.

## Ability

Ability relies on ease and simplicity. If it’s easy-to-do it more likely to be done. What about simplicity? You making simple by removing barriers. The more barriers you remove, the more simple behavior change becomes.

- **Time.** “It takes too long” **or** “That was faster than I expected.”
- **Money.** This has a negative financial impact on me/us **vs.** a positive financial impact on me/us.
- **Physical effort.** “This is exhausting and hard” **vs.** “easy and enjoyable.”
- **Cognitive ease.** Easy to think about, difficult to think about.

- **Social acceptance.** This is socially unacceptable (stressful) **vs.** this is socially acceptable.
- **Regularity.** “This isn’t something we normally do” (irregular) **vs.** “At 2 PM I usually...” (regular).

## Triggers

Triggers are known by different names. They’re often called requests, offers, cues, calls-to-action or prompts. When it comes to changing behaviors (i.e. as-it-happens billing) there are three types of triggers.

1. **Spark:** A trigger that’s paired with a motivator (like the ones we’ve discussed above) works best when motivation is low.
2. **Facilitator:** A trigger designed for people with high motivation but low ability. This trigger is a helpful way to learn how to use a new software feature. Acting on this trigger means a recurring task will be more difficult at first, then easier to accomplish again in the future.
3. **Signal:** This trigger is appropriate for staff members who have both high motivation and the ability to act. These triggers simply serve as reminders to take action. They’re simple, straightforward and clear.

This is how you limit, learn from and exploit failure. This is how you attack failure preemptively. These best practices aren’t as obvious, but they are timeless.

## Use these heuristics to improve:

Business development	Rainmaking
Time tracking	Expense tracking
Billing and invoicing	Online payments/payment processing
Collection realization	Utilization rates
Document assembly	Document management
Project management	Employee productivity
Data and cyber security	Access management
Accounting	Reporting (e.g. financial, practice, security, etc.)

The possibilities are endless.

Here’s the most important part about these heuristics and best practices. They’re timeless. These strategies and tactics aren’t trends or fads. They’re relevant today

and they'll be relevant in 2030. They're simple details that require a bit of consistent thinking.

### **Can your firm counter the inevitable?**

Change is the consistent theme of the legal industry that continues to threaten attorneys and law firms. Attorneys do their very best to resist change yet, in the end, none are successful.

Change comes for us all.

Attorneys, law firms and the legal industry at large have a serious problem with change. The same, cautious, risk-averse nature that makes you *so formidable* is also the same nature that creates this strong resistance to change. Contrary to popular belief, this isn't a personal defect, it's a strength.

Aim your cautious, risk-averse nature at your problems.

When you don't know how to recognize the legitimate threats around you everything seems dangerous. Follow these best practices and you'll find your firm is prepared for the inevitable, the unexpected and the unknown.

