

## Law Firm Marketing: Do You Know Who You're Doing Business With?

Over the years, I have watched the proliferation of so-called “lead generators” with a wary eye. Some are reputable, some are not. Many are law firms, but many more are not. Some have maintained longevity, while others seem to have disappeared as quickly as they emerged. The question I've often asked is how much due diligence are lawyers performing before they decide to engage the services of a legal marketing company or lead generator. In other words, do you really know who you're doing business with?

“So what,” you may say. As long as I get my leads, why should I care where they come from or how they are acquired? Troubling claims of overzealous and potentially unethical lead generation tactics in some high profile mass tort litigation should, at the very least, raise your level of concern. At the most, the prospect of jeopardizing your reputation, your business, and even your license to practice law should be cause for alarm.

Since the 1977 U.S. Supreme Court decision in *Bates v. State Bar of Arizona*, the legal industry, particularly the plaintiffs' bar, has made great strides in marketing its services to potential clients in need.

The growth of the legal marketing trade has allowed lawyers to continue to focus on lawyering while hiring others to do their marketing for them. There are hundreds of companies



MIKE SKOLER, CEO, Sokolove Law, LLC

more than willing to take a lawyer's money in return for the promise of generating new business for the firm.

### **Are lawyers asking the right questions before entrusting their marketing to an outside case generator?**

But are lawyers asking the right questions before entrusting their marketing to an outside case generator—whether it be a local advertising agency, a large-scale legal marketing service, or a law firm in the business of advertising? For example, is the company or firm reputable? How long has it been in business? Are you receiving each lead exclusively, or are they simultaneously

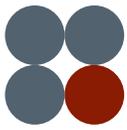
shopped to other firms? Where are the leads coming from? Does your lead provider actively file these cases as well? If so, how can you be sure they aren't keeping the best leads for themselves? And, most importantly, what methods are being used to find and capture leads and are such methods in line with state ethics rules?

If you are not performing even this most basic level of inquiry, you could be setting yourself up for potential trouble down the road.

Recently, accusations of unethical lead generation tactics were raised in the ongoing pelvic mesh litigation, including reports of repetitive and aggressive telephone solicitation of potential clients. A small number of women claim to have received harassing phone calls—up to 50 calls a month—from solicitors, possibly based in call centers as far away as India, who purportedly have access to their personal medical information, for the purpose of enticing them to file suit, regardless of an actual injury.

Whether true or not, public claims of such unscrupulous behavior not only cast a pall over the entire legal marketing industry,

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## Co-counsel SPOTlight

Modjarrad Abusaad Said Law Firm, Richardson, TX

In 2000, Sean Modjarrad was a young lawyer who had just started his law firm. With only one other employee — a receptionist — Sean worked vigorously to obtain and represent clients, with intense focus on delivering the best possible outcome. The young lawyer’s drive for justice was demonstrated when he worked for more than six years on a 1983 Civil Rights violation case. Sean’s client was wrongfully imprisoned for more than 13 years for a crime that he had not committed.

Today, Modjarrad Abusaad Said Law Firm, MAS Law Firm, as his firm has come to be called, is a leader in providing solutions to a broad array of legal challenges both inside and outside the courtroom. MAS Law Firm has obtained more than \$10 million in judgments and settlements in recent years. Sean’s reputation and

proven track record have fueled the success of the firm’s growth to 18 attorneys since its inception 14 years ago. Sean also makes time to share his passion and knowledge, teaching as an adjunct professor at the University of Texas at Dallas.



SEAN MODJARRAD, Shareholder and Founder

Sean and his colleagues are sought after for their continual results in the practice areas of business and

corporate law, civil litigation, personal injury, family law, immigration law, social security and disability, and criminal defense.

Working as a team to fight for justice and compensation for clients, MAS Law Firm and Sokolove Law have banded together to advocate for the rights of clients. “We appreciate the hard work performed by the MAS Law Firm and were pleased to have them participate in our recent national Auto campaign,” says Mike Skoler, CEO of Sokolove Law. MAS Law Firm echoes a similar sentiment when it comes to their relationship with Sokolove Law. “Our partnership with the Sokolove firm has been very beneficial for us. A majority of the leads are of high quality. The staff at the Sokolove firm are very helpful and strive to seek the best possible results for both firms,” says Sean.

*Contributing Editor*

### Is Legal Funding Right For Your Clients?

*By Kelly Gilroy  
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The American Legal Finance Association (ALFA) is a non-profit trade association that was formed in 2004 by a small number of companies with the purpose of establishing and maintaining the highest ethical standards and fair business practices within the legal funding industry. Today, ALFA has 40 diverse member companies that represent many facets of the consumer legal funding industry.

Consumer legal funding is a unique product that helps attorney-represented individuals with a pending legal claim make ends meet while they wait for a fair resolution in their case. This money covers life essentials such as mortgage payments, college tuition, utility payments and groceries. Since these clients have contingency fee arrangements with their attorneys, the money is not used or needed to cover legal expenses.

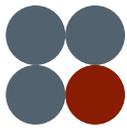
An important aspect that sets legal funding apart from other financial transactions is its non-recourse nature. In other words, companies are paid back from the proceeds of a settlement and in the event there are insufficient proceeds, the consumer will either owe nothing or a reduced amount. ALFA members do not garnish wages, impact credit or repossess cars, homes, or other assets. While consumer legal funding is not the appropriate

solution in every case, it can be a life saving resource under the right circumstances.

ALFA supports reasonable and appropriate regulation of this industry and has worked with various state legislatures to enact laws that address the unique nature of the product. In 2013, Oklahoma adopted legislation that provided for a regulatory scheme that included a robust and completely transparent set of notices and disclosures to consumers and standardized the contracts for companies doing business in the state. This new law strikes the balance of protecting consumers while allowing companies to operate.

Unfortunately, some of the attempts at regulation go too far. For instance, in 2014, Tennessee became the first state to pass legislation that in effect removed consumer legal funding from the state. Due to numerous poison pills in the new law, ALFA members stopped providing funding on July 1 leaving many Tennessee residents with nowhere to turn for assistance of this nature.

As we enter into 2015, ALFA will continue to advocate for fair and equitable industry regulation by educating and engaging stakeholders throughout the country.



## Campaign Highlight

### Financial Services Company Fraud: Targeted Marketing Generates Lead Plaintiff

When it came to light that a conflict of interest existed between a well-known financial services company and its employees participating in its 401(k) plan, Sokolove Law launched a marketing campaign to target former employees. Our efforts proved to be very successful—Sokolove Law was able to generate the lead plaintiff for this class-action lawsuit. Bailey Glasser, LLP, Levin Papantonio Thomas Mitchell Rafferty Proctor, P.A., Fishman Haygood Phelps Walmsley Willis & Swanson, LLP, and Schneider Wallace Cottrell Konecky Wotkyns LLP were the class counsel involved in the lawsuit.

The company’s employees claimed the company structured its profit sharing plan to benefit its bottom line instead of the employees’ long-term financial security. The 401(k) employee contributions were invested in high-fee company-owned mutual funds versus other mutual funds that may have offered lower fees and better return-on-investment rates.

To reach out to prospective clients, Sokolove Law ran

a five-week campaign focusing on local markets with large concentrations of the company’s employees. We chose a variety of methods to bring in leads, including TV and radio commercials, hyper-targeted paid display ads, and extensive use of the vanity URL Sokolove401k.com across all our marketing efforts, which elevated our SEO efforts and organic web traffic.

The company ultimately agreed to a multi-million settlement.

Our efforts were very successful at drawing high-quality and low-cost cases for our co-counsel firms. We anticipated that many former and current employees would want to take legal action if they knew their employer had not acted in their best interests. It was a matter of utilizing the trust in the Sokolove brand to create awareness among the general public and help the company’s employees understand how and why their investments may have been negatively impacted.

#### Operations Update

## Helping Us Help You

Sokolove Law is one of the best in the business, and we can attribute much of our success to the cooperation of our co-counsel firms. We don’t simply refer a case and remove ourselves from the equation. Our process is detailed and dependent upon the updates we receive from our co-counsel firms throughout the lifecycle of a case.

### WHY?

Sokolove Law requests a great deal of case information because our more than 30 years of experience have helped us identify the information that is crucial to the success of our businesses. It is critical in order for us to:

- Mitigate risk against potential malpractice claims
- Manage marketing campaigns most effectively
- Project cash flows conservatively and accurately

### WHAT?

Another important aspect of our process is understanding the type of information we request on a typical case. Some of the basic information we are looking for from

referral to closure includes receipt of lead/contract, SOL date and/or other defensive measures taken, stage in the litigation process and applicable documentation, and the settlement amount and date.

### HOW?

We understand you and your staff are busy professionals and we want to help limit the strain we may put on your resources as a result of our requests. Traditionally, information is requested and provided over email or phone. However, we also offer a self-service online portal, which allows you to provide information any time at your convenience. All communication with our office is secure and confidential.

### WHO?

Our Quality Assurance Managers (QAMs) are responsible for obtaining case information from co-counsel. Your dedicated QAM is available to help create a process for providing case information that works best for all parties. Additionally, our IT staff is available to speak with you regarding system integrations.

but can also have a very real effect on the pending litigation—giving defense firms ammunition with which to discredit scores of legitimate claims and impugn the reputations of plaintiffs' counsel.

Sure, this may be an extreme example of unethical conduct by one or more rogue lead generators, but it serves as a stark reminder of the ethical pitfalls that can ensnare unsuspecting lawyers who engage the services of any lead generation service. Being aware of these perils can help to avoid a potential hazard.

## **Some states impose additional rules requiring certain disclosures, disclaimers and approval procedures for legal ads.**

While *Bates* may have flung the door wide open to lawyer advertising, each state has adopted rules of ethics designed to reign in such advertising, restricting ads deemed false, misleading and therefore deceptive. Beyond that, some states impose additional rules requiring certain disclosures, disclaimers and approval procedures for legal ads.

Is your marketing partner familiar with the ethical rules regarding lawyer advertising in each state in which you are advertising and do they regularly monitor the rules for any changes that may affect your business? More importantly, do they adhere to these rules?

For instance, Florida requires that a copy of TV advertisements be filed with the State Bar, giving

it an opportunity to approve the ad before it airs. Missouri, among other states, requires that the names of funding lawyers/law firms be included in the ad's disclaimer. Some states may also require that the geographic location of the lawyer or firm who will actually perform the services be disclosed.

In other states, such as Texas, it is a crime, not a rule violation, to contact any person known to have an injury within 31 days of the injury or death occurring. This is not a private or public reprimand from the Bar, but a crime, which establishes a criminal record for the offending attorney.

The unauthorized practice of law is also considered a crime in many states. The question is not merely "are you admitted to practice in your home state," but "are you admitted to practice in the client's home state?" Nevada courts have ruled that the mere decision to accept a case is the practice of law. Thus, if you retain a Nevada client without a lawyer in your firm (or the referring firm) admitted in the state and providing guidance on the acceptance, you are committing the unauthorized practice of law. Losing the fee is likely only the beginning of your problems in this scenario.

As for referral fees, most lawyers know that sharing fees with non-lawyers is strictly prohibited. But are they familiar with the rules in each state regarding sharing fees with other attorneys or firms, including advertising law firms? In at least one state, referral fees are prohibited. Other states may require that the fee is proportional to the

work performed, that the referring attorney is jointly responsible for the case, and that the client consents to the referral fee.

## **Why entrust one of the most important aspects of your business to a marketer who doesn't meet the same high standards?**

With competition for viable clients increasing all the time, lead generation services will continue to abound. But there are steps lawyers can take to protect themselves and their bottom line when outsourcing case generation. Scrutinize your marketing partner in the same way you would your legal nurse, expert witness, or litigation support service. You wouldn't think of hiring any of these professionals if their experience was limited, their ethics were in question, their reputations weren't intact, they didn't possess an understanding of the rules imposed upon you, and their objectives weren't aligned with yours. So why entrust one of the most important aspects of your business to a marketer who doesn't meet the same high standards? Choosing a marketer based solely on cost can be a hefty price to pay in the long run. Get to know who you're doing business with—it matters.



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