

Legal Malpractice and Judgment Collection – Disparate Niches

BY JOEL G. SELIK, ESQ.

Yes, judgment collection and legal malpractice. Not two areas of law one would ordinarily think to put together. But that is my law practice in both Nevada and California.

What is a Niche Practice?

A niche law practice, often referred to as a “boutique,” is one that concentrates in a subspecialty¹ area of law. Some examples of niche practices of law are environmental law, cannabis law, and cybersecurity. (Family law or personal injury are not subspecialties.) Military divorce, for example, would be a niche of family law. For personal injury, federal

tort claims could be a niche. A niche practice necessarily excludes other areas of practice. While an attorney might also take on other cases, the attorney works on being known as “*the attorney*” in the niche.

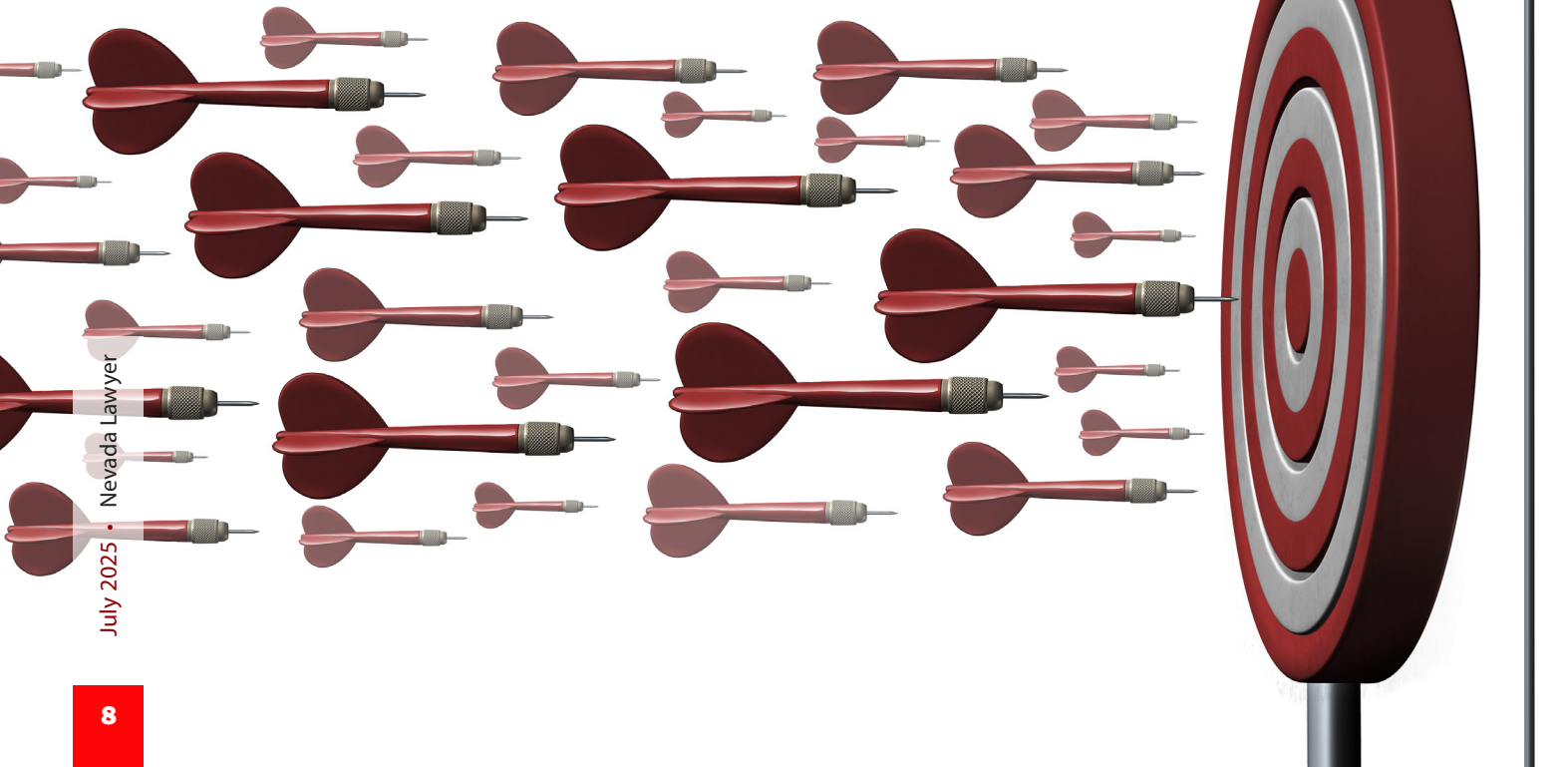
Should Have Done It Sooner

Some attorneys always knew they wanted to do one area of law or another. Most niche practice attorneys had their practice morph to the specialty over time.

In my case, when I was in law school, I wanted to do entertainment law, but my first job was insurance defense, medical malpractice, and personal injury. It stuck—I liked injury litigation. I then switched to plaintiffs’ personal injury. As I had medical malpractice defense experience, I included malpractice cases in my practice.

Years later, someone who knew I did medical malpractice referred me a legal malpractice case. That was successful and I received more legal malpractice cases. I enjoyed the legal malpractice cases and began to reject and refer other cases.

As to judgment collection, my practice started when a friend had a judgment another attorney obtained but could not collect.



I took on the case and began to learn judgment collection law. I had success and I, surprisingly, enjoyed the judgment collection area of law. So, I sought other judgment collection cases.

Because I found both these two areas of law enjoyable and lucrative, they became my focus. I will still, on occasion, take on medical malpractice, pre-judgment collection, and other cases that interest me, but I generally refer those cases out.

And it has worked. I enjoy the work. I have much more confidence. I do a better job for my clients. I receive so many cases that I cannot take on all good cases. And, yes, I make more money. I wish I had concentrated my practice sooner.

Why Two Disparate Areas of Law?

As indicated above, my two areas of practice developed organically. They developed at different times, and I liked both.

Concentrating in two areas of law instead of just one provides several advantages. Having two areas of law hedges against potential changes in laws, limitations on attorney fees, and other issues. While I've never been bored practicing law because of all the different cases I get to work on, having two separate areas makes it even more interesting while still enabling me to have a level of expertise.

The Advantages of a Niche Practice

To many, the largest advantage of a niche practice is marketing. And it is a big advantage. How many attorneys do you know who do divorce cases, auto crashes, business litigation, or bankruptcy? Many. On the other hand, when you think of legal malpractice, how many Nevada attorneys come to mind? By concentrating one's practice, an attorney can have name recognition. As we can see from billboards and TV commercials, name recognition has a high value.

In referring to a specialist, there is an advantage to the referring attorney. In referring a case, the referrer can be comfortable in getting the case to an attorney who is a known quantity and knows what they are doing. It can also limit the referring attorney's malpractice exposure.

Having a niche gives you expertise and confidence. When you limit your practice you can learn not just the law, but, more importantly, the subtleties of the niche.

With a niche practice you do not have to reinvent the wheel with every case. You have the knowledge of that particular niche, and you do not have to learn it brand new for each case.² You can have procedures that work best that can be used in each case. This allows you to concentrate on the particular facts of the case in question.

A specialist is able to keep up with developments more easily in their niche.

The Disadvantages of a Niche Practice

There are disadvantages to a niche practice as well.

The first is FOMO—Fear of Missing Out. This was my issue. I didn't want to not get a case because others thought I only did another area of law. The opposite happened. While I did hear "I did not know you did those type of cases" on occasion, it was made up for many times over by having people think of me anytime someone had a judgment collection or legal malpractice case.

Another potential disadvantage to a niche is that, if there is a law change, the niche could be harmed or even eliminated. For example, in 2004, attorney fees for medical malpractice were reduced and general damages were capped.

Other changes in the law or society can affect a niche practice more than other practices. The global pandemic affected some more than others. While these concerns should be evaluated in picking a niche, there are not likely many areas that will be legislated or diseased out of existence.

One issue to consider is whether there is enough work available in the chosen niche. Overspecialization is possible.

You must have the knowledge and skill to take on cases in the niche. Specialized knowledge can be hard to come by if you have not already worked in

that area of law. (See the next section about having a mentor³ and co-counseling).

If you are seeking out a niche that is already in existence, speak with attorneys practicing in the area.

How to Develop a Niche Practice

There are many ways to develop a niche. It can happen organically, as it did for me, or it can be done with intention by choosing an area of law.

A quick internet search for what niche areas of law will be needed and can be expected to grow will provide a great deal of information. Some of these areas are cybersecurity (the American Bar Association's Cybersecurity Handbook is more than 600 pages long!), cannabis law, artificial intelligence, and elder law. But there are many more.

In finding a niche, make sure it is an area you will like and fits your personality.

My two practice areas do both.

Of course, you must be "competent" in an area of law. NRPC 1.1. Trial and error would leave you open to stress, malpractice, and ethical violations.

There are several roads to competence, including study of the area of law, and associate with "a lawyer of established competence in the field in

question." ABA MRPC 1.1 Comment 1.

Contact attorneys who practice in the niche in which you have an interest. Experienced niche attorneys often have more good cases than they can take on. These attorneys may be willing to co-counsel cases with you, either cases you bring in or their own cases. Experienced attorneys may also be willing to refer cases and assist you as the case progresses for a referral fee.

With its numerous advantages and minimal drawbacks, pursuing a niche practice is an excellent option for newer attorneys or those seeking to carve out their own specialized area of expertise.

A niche practice provides not just the potential of increased income, but also adds to one's quality of life, and your

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Disparate Niches

increased expertise adds service to your clients.

In a deposition in legal malpractice case against a family law specialists, I asked the attorney why she chose family law. The answer was that with a divorce rate of more than 50 percent that there would never be an end to the cases that would come her way.

While income is a big advantage of having a niche, more important is serving our clients and enjoying the practice of law.

A lawyer may communicate that the lawyer is a specialist or expert or that he or she practices in particular fields of law provided the lawyer complies with this Rule. ... (1) Certification. The lawyer must be certified as a specialist or expert by an organization that has been approved under Rule 7.4A.

[But, n]othing in this Rule shall be construed to prohibit communication of fields of practice unless the communication is false or misleading. [Quotation reordered].

There is no state bar certification for judgment collection. Selik is a Certified Legal Malpractice Specialist in California and Nevada.

2. This is not as much as an advantage in legal malpractice cases. In legal malpractice cases, the attorney must learn the area of law of the underlying case. For example, I've had to learn, or relearn, estate planning, immigration, tax, and wrongful termination.

3. My experience, as both a mentor and a mentee, is that attorneys are generous with their knowledge, time, forms, ideas, and experience. This is true not just with co-counseling and referring/supervision relationships, but in many cases.

JOEL SELIK is a Legal Malpractice Certified Specialist in Nevada and California. His practice concentrates on judgment collection and legal malpractice with offices in California and Nevada. He is chair of the State Bar of Nevada's Standing Committee on Ethics and Professional Responsibility, and the Ethics Column Editor for *Trial Bar News*. He is a Nevada and California fee dispute mediator and arbitrator.



ENDNOTES:

1. In this article, "specialization" and "specialty" are used in the general sense. Attorneys commit an ethical violation by using the terms "specialist," "specialized," "specialty," or the like in a way that implies a state bar certification that they do not possess. It is an ethical violation to state you are a specialist when you are not. NRPC 7.4(a):



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