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Consumer Practice Extravaganza

Successfully Marketing a Bankruptcy Practice

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80% OF SUCCESS IS JUST SHOWING UP
Woody Allen



When I began practicing law 36 years ago, most lawyers paid little attention to any aspect of marketing. Lawyers apparently relied upon their expertise, reputation, and success to garner business, similar to other professions like doctors, and considered almost all forms of marketing to be distasteful. This is not to suggest that they did not engage in marketing, but they did so in such a subtle and low key manner so as to avoid any type of negative taint and to maintain their “professionalism.” However, this all changed when two rather innovative Arizona lawyers, Bates and O’Stein, fought the Arizona State Bar all the way to the U.S. Supreme Court and ultimately succeeded in convincing that tribunal to overturn the Arizona State Bar’s efforts to prevent most forms of lawyer advertising. Not surprisingly, this had a dramatic impact on all aspects of lawyer promotions to such an extent that today’s lawyers have little reason to be concerned about their advertising programs with very few exceptions.

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Now, in a highly competitive environment, the ability to generate business is as important, if not more vital, than other professional skills. Yes, you need to know what you are doing since incompetence will frustrate even the most brilliant marketing program, but recognizing, designing, and implementing some type of marketing program is an important tool for any lawyer seeking to advance in private practice.

War stories and personal experience are normally frowned upon in most presentations of this type, but when it comes to marketing, “imitation is the sincerest form of flattery.”

So, what has worked for the author of this article, what has not, and what general lessons have been learned?

A few prefatory thoughts are appropriate and necessary.

PREFATORY THOUGHTS

A) Some lawyers are naturally better than others at marketing

Certain individuals have a gift for marketing. It may be genetics or how they were raised, but some lawyers generate business with very little effort. Fine tuning such individuals can convert them into super rain makers.

Many people have certain quirks which make it almost impossible for them to become proficient at marketing. Over the years, I have learned that little true return is generated by working with these lawyers.

The majority of attorneys possess some marketing ability, which needs to be refined. These individuals are normally the ones that can benefit the most by devoting time and energy to learning marketing strategies.

B) It is hard to truly guarantee marketing success

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Quantifying your marketing success is very difficult. It can be done in some instances, but I'm a believer in not devoting too much energy painstakingly tracking your marketing efforts. You will quickly reach a point of diminishing returns if you do so.

Marketing is more an art than a science. Marketing experts will tell you that is not the case, but they are trying to sell you their services. Even if you buy into the concept that it is a science, it is an inexact one.

C) Be honest about what is marketing or not

Be totally honest with yourself when you spend dollars on alleged marketing projects. There is absolutely nothing wrong with donating a large sum of money to a worthy cause, but if the true reason you are doing so is because it is a deserving cause and not for potential marketing benefits, admit this from the onset. It is important to be honest with your partners and your firm. As importantly, it is crucial to your firm's marketing success to make sure that dollars are available for marketing, which is not the case if substantial charitable dollars are misidentified as marketing dollars. Over the years I have talked to a number of professionals who have told me that they don't bother with marketing because of failure because they don't recognize that the supposed "marketing" dollars they have spent are not really for marketing purposes.

D) Personalize marketing programs

Finally, and most importantly, marketing programs either have to be individualized for the subject lawyer or designed for a firm based on its personalities and philosophies. You may find this to be an obvious comment, but matching marketing to the individual or firm requires the lawyer or firm to be introspective and recognize inherent strengths and weaknesses.

Before discussing specific marketing strategies, I will spend a moment analyzing this issue from the perspective of the potential client.

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HOW CLIENTS CHOOSE THEIR LAWYERS

It's difficult to successfully market if you don't understand which marketing efforts produce new clients. As importantly, identifying the client types you are seeking is just as crucial since certain marketing is far more effective with targeted potential client classes.

Every article I read on this topic recognizes that a high percentage of individuals seeking lawyers search for those lawyers on the Internet. This is a given. It is also an inherently risky way of selecting a lawyer unless you are an extremely sophisticated consumer. However, regardless of other steps you may take as a practitioner to bring in business, you have to accept, recognize, and address the reality that all types and classes of potential clients do look on the Internet.

This still leaves a percentage of individuals who consider other means to find their lawyers, including other types of advertising, word of mouth, specific referrals, or one on one contact. Because the consumer has so many options, how do those individuals reach a final decision?

On a personal level, what I have learned is relatively intriguing. Most of my clients, regardless of the referral source, ultimately meet with me because they have been advised that I am the appropriate lawyer for their specific issue. My retention is normally not based upon traditional criteria considered when individuals are seeking lawyers on the Internet. Price is rarely a concern, though of course the potential client wants to make sure he can trust your charges are fair. I have also discovered that I have a reputation for being proactive and responsive, which attracts discriminating clients. Finally, clients oftentimes hire me because of

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commonality that I have with their lives. They feel as though they can connect with me, which is why I spend so much time creating opportunities for what I call “connectability.”

I probably draw more referrals from lawyers than non-lawyers. Not surprisingly, prospective clients are very comfortable selecting a lawyer based on another lawyer’s referral. This aspect of marketing is oftentimes overlooked and underrated. I continuously ask lawyers who refer me business why they do it. Over the course of my career, I have discerned that they send me work for the following reasons.

1. They know I will serve the client well. This may be obvious, but the attorney sending me the case has reason to know that they have nothing to worry about regarding my expertise and competence.

2. The client will like working+ with me. This is crucial because even if I was doing a good job, if the client did not like me, the relationship could be impaired. Referring professionals are confident that the client will find me pleasant to deal with, which is very important.

3. I will not steal business from the referring lawyer. Many years ago, a national leasing company, which had been referred to me by a large Phoenix law firm because of a bankruptcy issue, asked me to take over all of their business matters in Arizona because the client wanted to change a number of perceived shortcomings with their other firm, which I knew I could avoid. I told the client that I was uncomfortable speaking with it about the other business unless it first addressed its concerns with the referring law firm. The client refused to do so, fired its existing firm, did not send me the business, and went elsewhere.

4. I will never bad mouth, for any reason, the referring lawyer. You may be wondering why this is even an issue. It’s an issue because over the years I have had a number of

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situations in which the referring lawyer sends me a matter because the client is now facing a serious financial problem which I may have recognized was the fault of the referring lawyer. If the client asks about the previous lawyer's handling of the case and there may have been problems, I will candidly tell the client that I'm not comfortable responding.

5. Our swag.

CLIENT REFERRALS

I am very sensitive to the need to generate referrals from existing clients. I utilize customary strategies like taking clients out to lunch or other social events and I always thanks them by letter for sending me business. I also will "no charge" certain work and if appropriate, will discount a client's bill. I also recognize that in the end, providing high quality and responsive representation is the best way to generate future referrals.

So what marketing has worked for me that is unusual or may not be used by other practitioners?

MY MARKETING EFFORTS

For a number of reasons, many fellow lawyers assume I don't have a strategy for my marketing. I have been accused of using a shotgun approach and much worse. I've been called irresponsible, offensive, directionless, and probably the most accurate of all, immature. Yet, I live by some basic guidelines in all of the marketing that I originate. They are as follows.

1. Develop niche areas of practice to market – I deal with individuals facing a hybrid of legal issues. Only a couple of bankruptcy lawyers in Arizona focus extensively on working with folks divorcing and needing bankruptcy advice. To do so, I generally follow trends in domestic relations law, whereas the other individual is married to a divorce lawyer, which

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provides him an advantage. I also work extensively with individuals or companies which have inadequate insurance coverage and need independent representation. I follow general trends in insurance and coverage law so I can be of assistance in this area. We focus on representing professionals, such as doctors, accountants, and lawyers, both as debtors and creditors. This has been successful in separating us from other highly qualified law firms.

At one point we represented the debtors in a large number of restaurant bankruptcy cases. Because the sheer number of them in Arizona triggered aggressive marketing tactics by other firms, we no longer handle a large percentage of these cases, but can easily do so when asked.

2. Market to non-bankruptcy lawyers – My firm and I are well known among divorce lawyers for the work we do. Many of the insurance lawyers have worked with us and recommend us as well. Similarly, we have relationships with many lawyers doing personal injury work or major commercial litigation.

3. Market to other bankruptcy lawyers in a non-threatening manner – Between 2008 and 2012, when record breaking numbers of bankruptcies were being filed, we referred to other bankruptcy lawyers many smaller cases. Many of those lawyers would then send us larger cases. This trend has changed since many of the lawyers who were only handling simple cases will now take anything that comes in the door and won't refer anything out; at one point this strategy was highly effective in ensuring that most of the cases we were referred justified our involvement.

4. Regional marketing – Almost all of the major law firms handling bankruptcy matters are on Central Avenue in Phoenix or on the 24th Street and Camelback Road corridor. Our firm is in north Scottsdale / Phoenix, and the only firms with the ability to handle complex bankruptcy matters are located approximately 10 miles south of us in old Scottsdale. We therefore have concentrated our firm advertising and promotion to our immediate geographic

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area. An unscientific survey disclosed that our potential client base is about a million citizens and interestingly enough, the vast majority of Phoenix area individuals with great wealth are in our geographic area as well, which increases the chances that we receive more complex bankruptcy work. We are also in the Airpark corridor, which is the major tech and business center in the Phoenix metropolitan area.

5. Focus our civic, community, and charitable contributions and involvement to the same geographic area – The firm probably spends 90% of its marketing dollars for organizations in the north Phoenix / Scottsdale area. Obviously, a lot of this support leaks out into other geographic areas, but we rarely try to match up with national and international firms promoting their practices out of Phoenix. As a result, the Nussbaum Gillis & Dinner firm, which also handles business, real estate, transactional, construction, and estate planning and probate, is very well known in our geographic area.

6. Know how to maximize the cost benefit of your marketing – My firm rarely targets contributions for opportunities in which we are dwarfed by other sponsors or have to share sponsorships. A \$5,000 commitment is a big deal for a 13-lawyer firm and we have no interest in putting ourselves in situations in which the competition is many times 5 to 10 or 50 times our size. We have done a good job at ensuring the dollars we spend make a noticeable impact.

7. Promote client supported causes – We will rarely turn down a solicitation request from any organization in which a client is involved, which our clients appreciate. The extent of this support oftentimes has a relationship to the size of the client, but not always. If the cause otherwise meets the firm's criteria, we may spend 5 to 10 times more on that cause in comparison to bigger client's causes which don't meet our criteria.

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8. Involvement in law based organizations – We discourage our lawyers from becoming involved in organizations unless they are committed to the cause. Consequently, many of our lawyers have taken on leadership positions with the different organizations they support, which is recognized by the legal community.

9. We try to be innovative and fun in our marketing – Many of our written pieces have created a positive buzz in the community. At the end of this article are some of the pieces we have run since we were formed in July 2008. We did not copyright or protect the “Super Lawyer” piece, so at least two of our sponsors stole it and it has now become extremely popular with a variety of businesses.

10. Marketing consistency – We have owned a page in the Scottsdale Airpark News from the day we started and the audience has come to learn to expect to see it every month. We also run a feature article in the Airpark News as well and we try to make sure it is timely and not offensive to the reader. I have attached the article I wrote a few months ago for the Airpark News.

11. We also promote the organizations we support – Oftentimes when we purchase space in magazines or papers, we use it specifically to promote causes we believe in. When we sponsor shows at the Scottsdale Center for the Performing Arts, we normally utilize our page in the Airpark News to specifically promote that show.

12. When we were a major sponsor of Scottsdale Leadership’s 25th Anniversary Party featuring Kurt Warner, we got permission from Kurt Warner to run ads with his profile in them to not just help boost attendance for the event, but take advantage of Kurt Warner’s relatively recent appearance in the Super Bowl. As a result, many citizens thought we were

directly associated with Kurt Warner, who is well regarded because of his charitable work in the community.

13. Timing of marketing – We have been successful in the timing of our marketing so it is pertinent in nature and is related to current events.

We have an Internet presence, which is obviously necessary in today's society, but a more in depth discussion of that area will be left to another speaker.

I will now devote a separate section to our swag.

WHAT'S THE DEAL WITH THE SWAG?

Simultaneously with forming my own firm in the summer of 2008, I began utilizing swag to promote the firm. Because my old firm and I had agreed on a six-month transition to ensure it went smoothly, I ordered the swag even before my new firm started because the NCBJ was coming to Phoenix in the early fall of 2008 and I wanted it available for the judges and other guests when they came to town.

Our inaugural swag was first aid kits which have now gone through three generations of changes.

I will admit, in the spirit of full disclosure, that I don't anticipate generating direct business by these giveaways. Instead, I have found the swag to be invaluable for three distinct reasons: 1) swag does a phenomenal job of branding your firm; 2) it's a lot of fun to design and select; and 3) we want the recipient to enjoy it just as much as we enjoy handing it out.

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There is actually a “method to the madness” to the Nussbaum Gillis & Dinner swag. First of all, we insist that anything we give out is high quality. Inexpensive or cheap giveaways send the wrong message since our firm is not price competitive.

We require that it be useful. When this firm sponsored whale watching at a winter conference in California a few years ago, we purchased high quality binoculars for the attendees. Our first aid kits normally include sun tan lotion for visitors from other parts of the country coming to Arizona. The casino chips with our firm name on it included a two gig drive built into the chip. A few years ago, we purchased workout bags with separate compartments so the user would have someplace to put their dirty gym clothes separated from the rest of the contents. The small books containing multi-colored post-its were durable and the new version is of reduced size for convenience. We copied the design used by the Ritz Carlton for our pens and we were the first firm that I know of to put stylists on them when everyone was getting i-phones. The miniature flashlights attached to our key chains were designed to last for years without burning out.

Every year we come up with a new item to compliment the old ones which are oftentimes revived depending upon popularity.

So what does all of this cost separate and apart from man hours and brain damage in trying to come up with ideas?

We probably spend an average of \$5,000 a year, though there have been certain years where I know we spent more. We actually have a storage room in which we keep our swag at the office and we try to have two or three different types in our inventory at all times.

We give it away at major conferences like the ABI Southwest, or whenever any member of the firm does any type of presentation, for tournaments that we sponsor, and oftentimes I use

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it in place of a business card. I normally keep some on me at all times and I always have it in my car. I actually try to give some thought as to which type of swag to have available depending on the event I am attending. I also consider whether I will be interacting with bankruptcy lawyers, lawyers generally, prospective clients or non-lawyers generally. I am very sensitive about not handing out swag at an event being sponsored by another law firm unless I have that firm's permission.

Does it generate business for the firm? Probably not direct business, but it's enjoyable, harmless and many times useful and is a top notch conversation starter.

I will now discuss marketing efforts which have either been or bordered on fiascos.

NO ONE IS PERFECT

My favorite debacle was a travel kit for travelers which contained a variety of items that most individuals could use when flying. It included essential items like Scotch tape, a stapler, and also a set of scissors. The scissors were just large enough so you could not take the kit through security at the airport. When too many recipients understandably complained about being stopped at security, we quit distributing them.

The workout bags were wildly successful because of their quality. Because they were the most expensive item we have ever ordered at \$25 per bag, we only wanted to distribute them in very specific situations. However, we started receiving requests for them from both lawyers and non-lawyers alike and meeting the demand would have blown away our budget, so we quit featuring them. We were victims of our own success.

On two occasions, we have sponsored shows at the Scottsdale Center for the Performing Arts, which for a variety of reasons clients were not really interested in attending.

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We have run full page ads in the ABI Journal, but because we really don't do a lot of national work, it's questionable whether doing so really benefits a local firm like ours. On the other hand, doing so endeared us with the ABI, which doesn't hurt.

All too often we have purchased tables for major fundraisers and had difficulty filling the table. We have never done a good job of marketing that involvement to our clients and therefore really have not been able to take advantage of that type of support.

I'm happy to report, though, that all things being considered, we have suffered very few disasters in our marketing efforts.

So what are the takeaways from all of this?

LESSONS LEARNED

Regardless of how skilled you are at it, in the end, marketing is hard work and takes a lot of time.

It helps if you have some natural people skills, though even if you do, you can definitely fine tune those abilities.

Marketing is most effective when it's innovative and sends a clear message. It also has to be directed to the right people at the right time.

You have to separate yourself from the competition. You also have to know how to spend your money efficiently.

In the end, you have to deliver on what you promised. All of your marketing will be for naught if in the end your services are deficient.

Finally, select a goal and be totally honest with yourself as to whether the marketing effort is achieving it. Don't be afraid to alter your strategies, but you also have to be unbelievably patient.

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GIVING BACK

This month's column will discuss the importance of giving back to the Scottsdale community. Whether it be involvement with your church, support of the cultural community, or assisting the less fortunate, Scottsdale has a proud heritage of generosity. This month's writing explains why that involvement is crucial to Scottsdale and the dividends received by such participation.

If you travel anywhere in the USA, everyone you meet will identify Scottsdale, Arizona, not just as a recreational hot spot, but a cultural Mecca as well. This reputation has not only drawn tourists to our fine city, but businesses and retirees as well. Your support of the arts therefore maintains a vibrant economy, but there is a more important reason for that giving.

Cities are judged by their culture. A city without true culture is a city without heart. Visitors and those considering relocating to Scottsdale are attracted to our community because the city truly embraces the arts. These individuals want to reside here because of that artistic diversity and the city's emphasis on furthering those endeavors.

A vibrant cultural climate makes Scottsdale a much more pleasant place to live. You may not agree with every artistic option or attend every performance, but the very fact that those opportunities are available makes the city exciting.

Similarly, citizens' unabashed support of their religious options creates a solid family environment while promoting a strong moral philosophy, which benefits all facets of our daily life.

Finally, numerous community resources helping those less fortunate derive a substantial percentage of their support from Scottsdale citizens. Citizens should be proud of this attitude and this elevates Scottsdale even higher.

But there is another reason why those who have been fortunate in life need to recognize the necessity of helping out. The rewards you reap from doing so are incalculable. You may help out your church, the arts community, or charities because it is the right thing to do, but oftentimes there are unexpected rewards from doing so.

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The lifeblood of your business, your clients, are appreciative if the people they conduct business with are community stewards. Your new client may not specifically acknowledge you were hired because of your altruism, but oftentimes your generosity is recognized. You may not realize it, but the customer's decision to choose you over a highly qualified competitor may be because of your firm's philosophy in this area. Furthermore, if you truly are a caring and concerned individual, a surprisingly high percentage of the public wants to interact with that type of individual.

For many volunteers, interacting with others with a similar attitude may actually improve one's outlook on life and turn you into a more effective business person. If you are fulfilled and satisfied with your personal life, this could translate into more professional success.

This of course leads to my personal experience in this area.

I am an unabashed supporter of Scottsdale Leadership, the Scottsdale Center for the Performing Arts and its sister organizations, and the Scottsdale Chamber of Commerce. Each has had a significant impact on my life personally, and as importantly, in my development as a business owner in Scottsdale. I now have a 26 year history with Scottsdale Leadership and have developed scores of close personal and business relationships on account of that outstanding organization. Every hour devoted to it has been returned by it a hundred fold. If you want to help out or apply for next year's class, go to www.scottsdaleleadership.org.

For 15 years I have volunteered at the Scottsdale Center for the Performing Arts and also served on the Board of the Cultural Council. Through that involvement, I have met and befriended many of the icons in the Arizona cultural community, including individuals like Laura Grafman and Ellen Andres-Schneider. I consider the Scottsdale Center for the Performing Arts my second home and everyone there a true friend, ranging from individuals in the box office to security to the marketing management and development staff. I volunteer because I love everything from the programming to the very brick and mortar of that cultural masterpiece. For further volunteer opportunities, go to www.scottsdaleperformingarts.com.

My recent involvement with the Scottsdale Chamber of Commerce was sparked when I realized it was comprised of employees and volunteers who genuinely cared about my business and me. When the Scottsdale Chamber honored my firm with a Sterling Award in 2014, we knew we had arrived. All of us in Scottsdale are blessed to have such an innovative and interactive Chamber of Commerce. Go to www.scottsdalechamber.com for more information.

Many times over the years I have been rewarded for my volunteerism and commitment to a variety of causes. I may not have expected nor was seeking any benefit for my contributions, but I attribute much of my success, both professionally and personally, from participation in Scottsdale cultural, civic, charitable, and religious activities.

Randy Nussbaum is a founding shareholder and the managing partner of the law firm Nussbaum Gillis & Dinner. His legal practice includes complex bankruptcy law, real estate, construction and contract law. Nussbaum is a certified specialist in bankruptcy law by the Arizona Board of Legal Specialization and is also a certified specialist in business bankruptcy law by the American Board of Certification. Nussbaum can be reached at (480) 609-0011 or rnussbaum@ngdlaw.com.

The content of this article is for informational purposes only and should not be construed as providing legal or tax advice. If you have any questions regarding the topics discussed in this article, you are advised to contact an attorney or tax adviser.

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Faculty

Randy Nussbaum is a senior member with The Cavanagh Law Firm in Scottsdale, Ariz., and has assisted individuals and businesses with complex bankruptcy protection (debtor and creditor), transaction and litigation matters for more than 40 years. He has represented secured and unsecured creditors, surety companies, creditor committees, lessors, professional athletes, doctors, attorneys, and trustees in chapter 7, 11 and 13 proceedings, including adversary actions (bankruptcy litigation). The cases have involved such diverse matters as real estate, construction, manufacturing, trucking, asset-based lending, bankruptcy related to divorce, and high-value, complex individual bankruptcies. Mr. Nussbaum is a Certified Bankruptcy Specialist by the Arizona Board of Legal Specialization and is Board Certified in Business Bankruptcy Law by the American Board of Certification. He has been named to *Super Lawyers*' "Top 50 Arizona" list of attorneys multiple times and has been selected three times by *The Best Lawyers in America* as "Best Lawyer of the Year." Committed to community service, Mr. Nussbaum is a 1990 graduate of Scottsdale Leadership and has volunteered for the organization for more than 30 years, serves on its advisory board, and is a recipient of the prestigious Frank W. Hodges Alumni Achievement Award. He also serves on the advisory boards for the Scottsdale Center for the Performing Arts, Scottsdale Historical Society and Scottsdale Community College. Mr. Nussbaum served as a Sterling Awards Jurist for the Scottsdale Chamber of Commerce, and he received the Chamber's 2017 Volunteer of the Year Award. Recognized for his life-long commitment to community service, in 2018 he joined the distinguished roster of honorees inducted into the Scottsdale History Hall of Fame. Mr. Nussbaum received his B.A. *cum laude* and in 1977 his J.D. in 1980 from Arizona State University, graduating in the top 25 percent of his class.

Summer M. Shaw is the founder of Shaw & Hanover PC, a bankruptcy boutique law firm serving Southern California with its main office located in Palm Desert, Calif. She is a Bankruptcy Specialist certified by the State Bar of California and represents debtors, creditors and trustees in chapter 7, 11, 12 and 13 bankruptcy proceedings and enjoys litigating matters before the U.S. Bankruptcy Courts in the Central District of California. Ms. Shaw is a very active member of the bankruptcy bar and has served as a professor of bankruptcy law at the California Desert Trial Academy (CDTA). She also served as co-chair of ABI's first Consumer Practice Extravaganza in 2021, and she served as an education co-chair for the Consumer Education Programs at the Annual California Bankruptcy Forum Conferences for 2016 and 2019. She also served as program chair for the Inland Empire Bankruptcy Forum in 2024, shaping the continuing education for the local bar, and currently serves as its president. In addition, she has been invited to speak at various education programs covering secured debt litigation, small business bankruptcies, individual chapter 11s, and bankruptcy law and crossover issues with civil litigation, family law, probate law and criminal law. Ms. Shaw is admitted to practice in all state and federal courts in California as well before the Ninth and Tenth Circuit Court of Appeals, and before the U.S. District Court for the Central District of California. She enjoys volunteering her time as often as possible through her local bar association's "Lawyer in the Library" program, assisting veterans through the Veterans Legal Institute, and volunteering her time to help educate new attorneys in the bankruptcy community whenever possible. Ms. Shaw was selected as a member of the inaugural class of ABI's "40 Under 40" in 2017, and in 2018, she received the National Association of Consumer Bankruptcy Attorney's National Distinguished Service Award. She has also been named one of *Palm Springs Life Magazine*'s Top Bankruptcy Lawyers and was honored to be a part

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of the 2015 and 2016 Central District of California Bankruptcy Court's *Pro Bono* Honor Roll. Ms. Shaw received her B.S. in political science with a minor in law and society from the University of California, Riverside and her J.D. from Western State College of Law.