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SELF-LIMITING BEHAVIORS: HOW ATTORNEYS UNDEREARN

As a consultant to small law firms, I have discovered an unsettling phenomenon amongst the attorneys I meet. So many of these practitioners are struggling with chronic underearning, and I am at a complete loss to explain why. Simply put, ***underearning is earning below your potential***. Some of the symptoms of underearning include:

- not living the life you want;
- not being able to provide the lifestyle you would like for your family;
- not making enough money to cover your basic needs;
- not having enough money each month to be able to save for emergencies or retirement;
- not being able to give your staff the raises or bonuses they deserve;
- living in deprivation;
- not being able to do the things with the business that you would like; and
- constant stress about money.

Underearning is about making the choices that keep you earning below your potential. In his book, *Earn What You Deserve*, Jerrold Mundis tells us that underearning may take an active form or a passive form. ***Passive*** underearning is about choosing not to do something, or failing to do something that would have resulted in you making more money. Failing to raise your fees, refusing to spend money on software or equipment that would make you more efficient and productive, or not tending to your marketing are examples of passive underearning. ***Active*** underearning involves knowingly doing something that will cause you to underearn. Examples include: accepting a client whom you believe will not be able to pay your bills, providing excessive pro bono services, discounting your fees, writing off time, handling certain administrative (nonbillable) tasks yourself that could be outsourced (e.g., payroll and bookkeeping responsibilities, etc.).

Either consciously or unconsciously, too many attorneys are making the choices that cause them to underearn.

You are responsible for you.

Consider the stories of several solo practitioners. Each has a different set of issues, a different set of circumstances. You be the judge—who's an underearner and who isn't?

For the past 15 years, Sarah has been a solo practitioner with a lovely office suite in a wealthy community. With the help of her loyal, but frustrated, assistant, Sarah handles family law matters and does a few wills here and there. She is thousands of dollars in debt with credit cards and a line of credit. Sarah gives away hours of time each week because she "can't be bothered" making time entries for reading and responding to e-mails or chatting on the phone with clients. She offers free 30-minute initial consultations, but then loses control of the time and ends up spending one to two hours with each potential client. Sarah hates the idea of marketing, so her marketing plan consists of a small ad in the Yellow Pages and a one-page website. She much prefers to wait for her clients to refer others to her. She has never seen a profit and loss statement for her business, and has no interest in doing so. Sarah isn't overly worried about her financial problems because she knows she's the lone beneficiary of her 76-year-old Auntie Carole's estate and that money will more than settle her debts and get her back on her feet (providing Auntie Carole doesn't go into skilled nursing for the last few years of her life).

Is Sarah an underearner? Big time. Can you spot the self-limiting behaviors? How about these, for starters:

- fails to record all time worked (passive);
- consistently spends more time than planned in her free initial consultations (active);
- sends out client bills only 3-4 times per year (passive);
- writes off time (active);
- pays little to no attention to her firm's financial statements (passive);
- puts little effort into marketing to increase business (passive); and
- lives in hopes that someone else will get her out of her financial mess (passive).

Now, let's take a look at Roger's situation. While his issues differ from Sarah's, the end result is the same—underearning.

Roger has been in a small firm for most of his 23 years as an attorney. With a focus on business litigation, his practice is a nice complement to the practices of his two partners. Roger records all of his time meticulously every day. In fact, his time records are monuments to the art of timekeeping:

8:07-8:09	Read e-mail from client Jordan re settlement offer
8:09-8:14	Respond to client's e-mail
8:14-8:27	Coffee run
8:27-8:43	Review and sign motion in Smith case
8:43-8:48	Photocopy motion for forms file

If anyone could bill accurately and fairly for work performed, it would be Roger. He captures every minute of every day, so his billings should be maximized, right? One would think; however, Roger routinely writes down every client bill by about one-third of his time. It is apparently without conscious design (as far as the percentage of write down goes), but that's how it works out. Nearly every time entry on every bill shows some amount of "N/C" (no charge) time – usually 30-35 percent of each entry. In fact, his client bills look a lot like this:

2/9/09	Preparation for and meeting with opposing counsel to discuss the proposed sale of the laundromat to settle the debts of the parties to this matter; follow-up telephone conversation with client to provide an update on the status of her case; follow-up letter to opposing counsel confirming the agreement reached today during our meeting.	3.4 hrs (N/C 1.2 hrs)

Bill after bill after bill reflects this strange practice, an automatic write-down of each time entry, but always showing the client the actual time recorded, as well as the write-down. When asked the reasoning behind this, Roger replies, "I guess I just don't see the value of my work." With a stellar reputation in the local legal community, it is hard to understand why Roger doesn't have more self-confidence. His work is good, it is correct, it is timely, and it is responsive to his client's needs. He records every minute of his day, yet Roger is a chronic underearner. His self-limiting behaviors are crystal clear:

- not billing for all time worked;
- writing down time; and
- undervaluing his work.

Both Sarah and Roger are on the verge of destroying their practices. Sarah continues to complain about her financial woes, but thus far has been unwilling or unable to change her behavior to stop her pattern of underearning. She much prefers to wait for something or someone to save her (her clients to refer business, her boyfriend to marry and support her, a winning lottery ticket, Auntie Carole to catch a bad cold). Roger is more amenable to change, although at times he is merely going through the motions for the sake of the other partners in his firm. He still has difficulty believing he is worth his fee. Both attorneys are still hanging on by a thread. What a sacrifice! Their careers could have been quite different for both of them.

Don't be fooled by your income.

Now, let's look at Allan. His underearning isn't so easy to spot because he's making a decent living. Allan is a bankruptcy attorney with a good practice based on lots of referrals from past clients. He has three full-time employees to help him provide a superior level of customer service. Allan is well-thought-of in the local legal community, and he donates time to a legal clinic. Last year, Allan's firm grossed $425,000 and Allan took home about $115,000.

With a personal income of $115,000, how can Allan be classified as an underearner?

First, you need to remember the definition of an underearner: someone who is not earning at his/her potential.

Second, a peek at his aged accounts report will explain Allan's underearning. To attract clients, Allan advertises "payment plans available," and virtually every client accepts his offer. (I would, too!) He suggests a small amount each month, ranging anywhere from $25 to $100, depending on the client's general prospects. The problem is that these are bankruptcy clients, and all of their debts are about to be discharged. Allan doesn't exempt his fees because he claims, "My clients always honor their obligation to me."

With all due respect, they don't. Allan has more than 300 clients on his books who haven't made a payment in more than a year—many haven't sent money in several years. This means that although Allan charges $895 for a Chapter 7 bankruptcy, the clients who are delinquent have paid far less than that to achieve their freedom from debt.

Allan is guilty of both passive and active underearning. His passive underearning (not doing something which, in turn, causes him to underearn) is seen in his failure to collect his fee in full before beginning work, and failure to exempt his fees from his client's discharge of debts. Passive underearning also appears in his failure to pursue past-due accounts. Along with not getting paid in full, carrying excessively aged accounts on his books is costing him money in administrative expenses. Allan's active underearning is seen in his payment plan offer to people who are consulting with him because they have serious money issues. He is choosing to do something that has a high probability of causing him to underearn.

There are at least four steps Allan can take to stop the underearning:

1. He needs to accept only the clients who can pay his full fee up front. If they can't do it all at once, he might allow the client to divide the fee into several smaller payments over one or two months (all due before Allan will file the case with the court).
2. He must actively pursue his past-due accounts. He's got about $250,000 on the books in accounts receivable. Given his revenues, he shouldn't be carrying more than about $70,000-$75,000 in aged accounts. He's either got to get more aggressive with his collections policy, or he needs to write off the very old accounts, vow never to get into this situation again, and move on.
3. He must stop offering payment plans. Period. Think about it for a minute. If you needed to file for bankruptcy and had to come up with $895 for attorney's fees, I'm sure you could figure out a way to get the money. You could go to your parents for a loan, ask four friends to loan you $225 each, ask nine friends to loan you $100 each, sell back vacation or sick time to your employer, have a garage sale, sell some of the stuff you bought on credit on eBay, etc. Putting clients on payment plans isn't working for Allan, so he needs a different policy.
4. Allan needs to respect and care for his business. If he doesn't, who will?

Allan has made the choices that cause him to underearn. Now, it's time for Allan to choose to earn at his potential.

Sometimes it's okay to earn less.

Our last solo practitioner is Kay, an estate planning attorney. Kay gave birth to her first child early in the year and took two months off on maternity leave. Since then, she has been working only about 3.5 days a week to spend more time with the baby. Last year, Kay's practice grossed about $89,000, and she pocketed about $45,000.

From her numbers, you might assume that Kay is an underearner. Indeed, some might say that she isn't earning at her potential because she works part-time; however, let's take a closer look at Kay and her money.

Kay pays by the hour to share a legal assistant's time with another attorney on her floor. Her downtown office is located in a large suite, which is leased by her husband's employer. The boss cut her a terrific deal because he likes the idea of having an attorney handy, especially one who is also a notary public. Kay's overhead averages about 35 percent of revenues, so she runs a pretty tight ship. Probate is a small part of her practice, and she does bill hourly for that work (using an evergreen deposit account); however, most of her work (estate planning) is paid on a flat fee basis, and she never starts work until she's been paid in full. She's able to pay all of her office expenses, contribute to the family pot, fund her retirement plan to the maximum each year, save for the unforeseen, enjoy the lifestyle she wants, and spend precious time with her baby. Does Kay have the potential to make more money? Sure, but it would be at the expense of her preferred lifestyle. So, given her personalized business model, minimal overhead expenses, and all the circumstances of her life right now, Kay isn't underearning. She's meeting her needs at all levels.

Over the years, I have encountered a variety of behaviors that lead to underearning. Some are personal issues, while others are poor management strategies. Do any ring a bell with you?

- Failure to tend to the business side of the practice
- Giving away time
- Discounting fees
- Irregular billing
- Failure to market or relying on ineffective marketing strategies
- Accepting bad clients/cases
- Accepting clients who can't pay
- Lack of self-motivation
- Undervaluing your work
- Underbilling for work performed
- Write-offs
- Self-limiting beliefs
- A continuing expectation that someone or something will save you
- Rationalizing low income
- Lousy negotiating skills
- Reverse snobbery ("People with money aren't nice")
- Subtle self-sabotage
- Co-dependency (putting other people's needs ahead of your own)
- Living in financial chaos
- Lack of self-discipline
- Not working enough hours
- Filling free time with non-business activities and tasks (Internet surfing, computer games, endless chores, personal e-mails, shopping, and gazing out the window for long periods of time).

If you are an underearner, unless you understand how your behavior is taking money out of your pocket and those of your partners, you're going to have a hard time changing your behavior. Unless you see underearning as depriving your family of a better lifestyle, you aren't going to change. Unless you see underearning as earning below your potential—and recognize that you could be earning more—you will never believe that it doesn't have to be this way. Unless you get angry about it, you are not going to stop underearning.

Recognizing the signs of underearning.

Okay, so do you think you might be an underearner? Take a moment to answer the following questions and decide for yourself.

Circle the statements that apply to you, as well as those that might apply but you just aren't sure if they accurately describe you or not.

1. I often give away my services (pro bono work, not billing for all of the time worked, volunteering, answering questions for free on the telephone, free initial consultations, etc.)
2. My initial consultations almost always run over the time allotted, but I don't charge more for the extra time.
3. Raising my fees causes me such stress and fear that I only do it every few years.
4. I regularly discount my fees to encourage prompt payment.
5. Sometimes I feel that I'm not worth what I charge, so I write off part of my time.
6. I don't record my time contemporaneously for either hourly or flat fee work.
7. I let my accounts receivable become 90 days or more past due before I take action.
8. I continue working for clients who aren't paying me.
9. Talking with clients about money is uncomfortable for me.
10. I waive my advance fee deposit if a potential client can't afford it.
11. I have time management issues.
12. I am good at self-sabotage (accepting clients who are unable or unlikely to pay my fees, not setting goals and developing action plans to reach them, taking cases I'm not qualified to handle, billing irregularly, not doing focused marketing to attract my ideal client, etc.)
13. My debt level is high, I have very little in savings, my retirement account is underfunded, and I'm not clear on where my money goes.
14. I don't really know how much I actually earn until I see it on my tax return.
15. I continually put others' needs before my own.

16. I am often worried about money.
17. I fear for my financial future.
18. I believe that I can make money.
19. I am confident in the value of my services to my clients.
20. My expenses are always below my income.
21. Money is my friend and I appreciate what it does for me.
22. I believe I have a rosy financial future.
23. I experience very little fear or insecurity around money.
24. I am committed to getting paid what I am worth.
25. I love my work.
26. I am blessed with a supportive fan base (including spouse/partner, other family members, close friends, etc.)
27. I admire wealthy people.
28. I have little or no credit card debt.
29. I get myself in situations beyond my ability and then rise to them.
30. I am resilient and able to bounce back when I fail.
31. I am filled with gratitude for the success I've achieved.
32. I work very hard, but I know I don't have to do everything myself. I know how to delegate and set limits.
33. I am tenacious in achieving my goals.
34. I take action on past-due accounts as soon as they become delinquent.
35. I fire clients who don't pay me.

The dividing point in these questions is pretty obvious. If you answered "yes" to any of the first 17 questions, you probably are an underearner. A "yes" to questions 18-35 demonstrates that, even if you are underearning, you have a healthy relationship with money and a great chance of breaking that self-defeating pattern.

So, are you an underearner? Do you see that your underearning is a result of choices you make or actions you take or don't take?

Underearning — what's in it for you?

Why do you set yourself up to underearn? Any psychologist will tell you that we get something out of negative behavior, as well as positive. Underearning issues are frequently rooted in a lack of self-worth or a feeling of helplessness or hopelessness. What's behind your underearning?

When considering this issue, it's important to ***remember the insidious damage caused by a long-term pattern of underearning.*** It robs you of the peace that comes from knowing you are financially secure. Underearning seldom impacts only the underearner. Your pattern of underearning can:

- keep your practice partners from earning more;
- deprive you and your family of a lifestyle that could offer the activities, opportunities, and level of comfort you would all like to enjoy;
- restrict the growth of your practice;
- affect your ability to represent your clients to the best of your ability because you don't have the money to invest in the resources that would aid in representation;
- undermine your self-esteem and may even make you question your career choice;
- saddle you with constant worry about money that can distract you from your work; and
- cause you stress which can endanger your health by causing depression, anxiety, stress, sleeplessness, and over- or undereating.

In addition, underearners frequently feel guilty about not making as much money as they could.

Several years ago, I met an attorney who was the biggest underearner I had ever encountered. He prided himself on the fact that he drives a 40-year-old car. His home has no electricity. He works only about 1-2 hours a day and gives the rest of his time over to pro bono work. He has a wonderfully kind and caring heart, and pro bono work is his passion and his motivator. What he came to realize, though, is that this hippie-like lifestyle is ***his*** choice, not the choice of his eight-year-old daughter. She wants the things her friends have, and she wants to participate in the activities enjoyed by other eight-year-olds. His underearning no long affects only he and his wife; now, they have a child growing up in a life of deprivation. The problem is that his lifestyle is so ingrained in his psyche that he is terrified at the thought of giving it up and putting more emphasis on earning money. He has eschewed what he called the "superficial trappings" of mainstream America in favor of just getting by. It remains to be seen if he can make the change from chronic underearning to earning a sufficient amount to provide his family with some of the niceties of life—like an electric lamp.

How do you want to live out the rest of your career? What are you willing to do to achieve that?

If you suspect your pattern of underearning is rooted somewhere deep inside, search out a therapist who deals specifically with money and/or esteem issues, or a certified financial recovery coach to help you break out of your self-limiting practices. It may not be easy to change the behaviors that are keeping you from earning at your potential, but the end result will be well worth the effort. You've worked hard to get where you are, and being able to make enough money to take care of yourself and your family is one of your rewards. You deserve it!

Tip: If your choices have caused you to earn below your potential, make the choice to change that behavior and start earning what you are worth!