



UNLOCK YOUR POTENTIAL

An ABA/YLD Member Service Project

Resource Guide

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The Special Projects Team thankfully acknowledges the Texas Young Lawyers Association for granting their permission for the ABA/YLD to reproduce material from their *Hangin' Out Your Shingle* project and the California Young Lawyers Association Board of Directors and The State Bar of California for their general guidance on format and presentation derived from their *Opening a Law Office* handbook.

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Introduction

For several years, the American Bar Association Young Lawyers Division (the “Division”) has sought to provide more value to its membership by choosing and promoting special projects of interest to young lawyers advancing their careers.

This year’s member service project, *Unlock Your Potential*, is designed to aid young lawyers in determining whether they have chosen the right career path for their future and, if they decide they have not, then to offer resources and support to aid in successful career transitions. With this project, the Division will provide young lawyers with programming designed to highlight various career paths and to provide the tools necessary for a successful career.

The focal point of the programming designed for the 2004-2005 bar year is solo practice. The Division will provide programs to assist young lawyers in evaluating whether solo practice is the career path best for them. The Division hopes to help young lawyers interested in solo practice in unlocking their potential with a resource guide for starting a solo law practice. The *Hanging Out Your Shingle* Resource Guide and related program is designed to explore the various facets of owning and managing your own law firm.

Please keep in mind that the materials and information provided in this Resource Guide are only suggestions to assist you in making your decision regarding a solo practice. This Resource Guide is not intended to be legal advice, and the Division encourages you to contact your local state bar association for professional guidance on how to officially open your own law firm. It is our hope that you will find the information in this guide useful in making your decision regarding a solo practice and in implementing that decision.

Good Luck to you with your new career!

(insert signatures)

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Are You Ready to Start Your Own Law Practice?

Take a moment to consider the questions below in evaluating whether you are ready to start your own law practice. There is no right or wrong answer. It is important that you answer honestly and in view of past actions rather than future goals. This list is not exhaustive but is designed to assist you in identifying your aptitude for becoming a successful solo practitioner.

1. Are you a self-starter? Do you require prodding or supervision to complete tasks? Do you procrastinate often?
2. Are you generally realistic about the major projects you undertake? Do you usually finish them on time? Do you ever get in over your head? Are you able to ask for help and accept constructive criticism?
3. Do you enjoy interacting with different kinds of people? Are you uncomfortable dealing with people you do not know very well?
4. Are you generally confident about yourself? Are you confident with your abilities as a lawyer?
5. Are you emotionally equipped to handle the difficult times in a small practice as well as the good times? Do you handle pressure and stress well?
6. How do your family and friends feel about your decision to open your own office? Will they be supportive?
7. Have you ever done anything as an entrepreneur before? How did it turn out? Why?

8. Are you likely to attract the kind of legal work you enjoy and do best by starting your own office?
9. Are you willing to spend a significant portion of time on the managerial and administrative aspects of a law office? If not, have you made arrangements for someone else to handle these aspects? Will you be able to afford someone else to handle these aspects?
10. What special training and interests do you have? Can you make good use of these in your own practice?
11. Can you survive financially during slack periods, particularly in light of ongoing financial obligations?
12. How will you handle the lack of steady income and financial security that are part of self-employment?
13. What legal business can you count on in the first year of opening your own office? In the first three years?
14. Do you have a strategy for developing your business? Has this strategy worked for you in the past? If you are trying something new, have you considered a back-up plan for developing business?
15. Do you have an established network of peers and more experienced colleagues to assist and mentor you with cases or the business of a law practice when needed? If not, have you made plans to develop such a network?

Are You Ready to Start Your Own Law Practice?

Assessing Your Responses

1. **Are you a self-starter? Do you require prodding or supervision to complete tasks? Do you procrastinate often?**

If you are in business for yourself, there will be no one else there to organize and schedule your work. If you have problems organizing your work or motivating yourself, then a solo practice may not be the right environment for you. You alone will be responsible for the timely and successful completion of every project.

2. **Are you generally realistic about the major projects you undertake? Do you usually finish them on time? Do you ever get in over your head? Are you able to ask for help and accept constructive criticism?**

Every lawyer knows how easy it is to underestimate the time and energy requirements of a particular case. In addition, we have all experienced those cases that give true meaning to the motto "expect the unexpected." In a solo practice, this can create problems if you have taken on more work than you can handle or failed to allow time in your schedule for unforeseen problems. When considering opening your own practice, you must be realistic about this fact and, at a minimum, develop a contingency plan to implement when things get out of hand.

3. **Do you enjoy interacting with different kinds of people? Are you uncomfortable dealing with people you do not know very well?**

Clients and employees come in all varieties. To be successful in a solo practice, you must be comfortable interacting with different types of people. If you are not, then you may have difficulty developing the communication level you need with clients and employees to have a successful practice.

4. **Are you generally confident about yourself? Are you confident with your abilities as a lawyer?**

It is very important that you be confident about acting on your own judgment on your client's behalf. There is no particular personality type required to have a successful solo practice. Rather, clients are looking for your confidence that you can assist them with their problems.

5. **Are you emotionally equipped to handle the difficult times in a small practice as well as the good times? Do you handle pressure and stress well?**

As you have undoubtedly experienced or expect, no one wins every case, makes every client happy or collects every fee. There will always be difficult times in every practice. Successful solo practitioners are those who are realistic about practice and do not become disheartened when times are bad or overconfident when times are good. Keep in mind that clients and employees will look to you for reassurance during bad times.

6. **How do your family and friends feel about your decision to open your own office? Will they be supportive?**

In any area, the attitudes of those close to you have a great impact on your work. You will rely heavily on family and friends for emotional support during the development of your own practice. You should also consider the insights of family and friends into your strengths and weaknesses while evaluating whether to open your own office. It is important to communicate your goals and expectations openly and honestly with those who will be supporting you during this time so that everything and everyone keeps on track.

7. **Have you ever done anything as an entrepreneur before? How did it turn out? Why?**

If you have succeeded in a past business, then you are aware of the responsibilities, time and management skills required to start your own business. If you were previously unsuccessful, then you should carefully evaluate your past experience to avoid repeating your mistakes.

8. **Are you likely to attract the kind of legal work you enjoy and do best by starting your own office?**

Can you develop your practice from ground up? Be realistic about the clients in your particular area and whether you will be able to attract them in a solo environment. Your clientele in a small office will likely consist of small business and individual problems. This is important to consider before opening your own office to ensure your competency in taking on the clients that you will likely attract, at least at first.

9. **Are you willing to spend a significant portion of time on the managerial and administrative aspects of a law office? If not, have you made arrangements for someone else to handle these aspects? Will you be able to afford someone else to handle these aspects?**

With your own practice there will be a lot of managerial and administrative work in addition to your case load. You need to be prepared to make the time to do it personally or plan on the resources necessary for someone to assist you in that role.

10. **What special training and interests do you have? Can you make good use of these in your own practice?**

Consider your talents and hobbies and whether they can be useful to you in creating new clients. It is always easier to work on things we enjoy doing. Be creative and resourceful.

11. **Can you survive financially during slack periods, particularly in light of ongoing financial obligations?**

Be realistic when considering your personal financial needs and the overhead requirements of your office. Careful budgeting and self-discipline are important to establish a successful practice.

12. **How will you handle the lack of steady income and financial security that are part of self-employment?**

If you have trouble establishing credit or saving for a “rainy” day, then you should seriously consider whether you want to open your own practice. Any successful business can have cash flow problems. It is important to keep this in mind and be prepared.

13. **What legal business can you count on in the first year of opening your own office? In the first three years?**

It is important to develop short and long term plans for your practice. Careful budgeting and attention to the bottom line will be necessary as you develop your practice.

14. **Do you have a strategy for developing your business? Has this strategy worked for you in the past? If you are trying something new, have you considered a back-up plan for developing business?**

A plan is essential to starting your own office. Use your past experience, if applicable, or be creative. Without a plan, you should not have great expectations for your new endeavor.

15. **Do you have an established network of peers and more experienced colleagues to assist and mentor you with cases or the business of a law practice when needed? If not, have you made plans to develop such a network?**

This is critical to both you and your clients. Everyone needs help from time to time. If you do not believe that you are willing or able to establish such a network, then you should give careful consideration as to why and whether you will be able to survive in your own practice.

The above questions and answers were adapted from “Opening A Law Office:- A Handbook for Starting Your Own Practice”, 6th Edition, published by the California Bar Association.

Starting Your Law Practice

Most, if not all, attorneys have considered opening his or her own law office, either in solo practice or in association with a few close friends. For many, the thoughts quickly vanish. However, a growing number of young lawyers are moving beyond the thinking stage and are planning to embark on a solo career.

Prior to finalizing your decision about becoming a solo practitioner, there are many practical considerations. First and foremost is the realization that while self-employment provides the ultimate freedom for a young attorney, it also comes with sole responsibility for the success or failure of your career. It is easy to get caught up in dreams of the big verdict (that actually gets paid) that you don't have to share with a firm. However, this dream doesn't factor in the hard work required to prevent losses due to an unorganized office and employees who do not complete work properly.

Your reasons for wanting to open your own practice will vary from others considering the same alternative. However, one thing that all solo practitioners have in common is the initial underestimation of the amount of work, particularly administrative, involved in running a law practice. We hope the information you find in this Resource Guide will assist you in acquiring all of the information needed for a sound business decision.

What Do I Need to Know?

Before you decide whether to work for yourself or someone else, you must seriously consider both the benefits and the drawbacks of solo practice. These materials are designed to provide you with the basic information needed by an attorney who is thinking of starting an office but is uncertain. There are many criteria to consider before making the decision whether to go solo. However, there are three key areas that must be considered before any others: income, management, and practice setting.

Income

As with any legal job, your income during the first year or two in solo practice is not indicative of your future earnings. In solo practice, you are likely to generate less income in the first few years than you would working for a firm. However, depending on your skill at developing your business and managing caseloads, you can make a very good living.

When considering potential income as a solo practitioner, it is important to remember that income comes from fees, which come from work performed, billed and collected. For purposes of this discussion, it is assumed that the solo practitioner will be billing on an hourly basis, as contingency cases are too difficult to predict or estimate for a meaningful discussion. It is important to be honest with yourself and have realistic expectations as you consider this issue. If you work 8 hours a day, five days a week, including every holiday, and do not take time off for vacation or sick leave, then you will work 2080 hours a year (at least you will get weekends off).

Assuming you bill \$150.00 per hour, you immediately see income potential of \$312,000.00 per year! However, this is a gross number that must cover your overhead expenses (office rent, office furnishings, insurance premiums, staff salaries, library, computer and supplies to name a few). This number also assumes that you bill forty hours per week and collect 100% of those fees you bill, which we all know is very unrealistic. Moreover, it assumes the only time you have off during the year is the weekend, unless you work late hours or weekends to make up other missed days. To put this in perspective, assume that your combined expenses are approximately 40% of your annual income. This means that billing and collecting 2080 hours per year will net you approximately \$124,800.00.

For a more detailed discussion about financial considerations related to running a law office, please see Chapter 5.

Management

Solo practitioners have the sole responsibility for office caseload, employees and general office management. Some of the challenges involve coverage for time off, emergencies or preoccupation with a case. Many attorneys successfully handle these challenges of solo practice. However, careful consideration and planning are required.

One example of the planning required is the development of a business plan. A business plan provides an opportunity for you to give attention to the details of running your own law office. The more attention you give to the business plan, the easier it will be for you to evaluate your potential as a solo practitioner. We encourage you to use these materials as a resource in developing your business plan. However, you should not rely on them exclusively. This is an area where communication with your peers can provide invaluable information.

For a more detailed discussion about management issues related to running a law office, please see Chapter 6.

Practice Setting

In order to make many of the decisions required to open up your own office, you will need to determine what form of practice you want to establish. Options include solo practice, space sharing, partnership, limited liability partnerships, corporation or professional corporation.

For a more detailed discussion of these options, please carefully examine the material in Chapter 4.

Am I Ready?

Leaving the comfort and security of an employer to blaze one's own trail is not for everyone. Of course, the prior statement assumes there really is "comfort" and "security" with the current employer. These materials will provide you with information and insight into the issues related to starting your own practice. With this information, then you can look closely at yourself to determine whether you are ready to take on the challenge of solo practice. An easy place to start is to consider the questions posed on the questionnaire contained at the beginning of these materials. This questionnaire will help you identify particular areas of concern you may have about starting a solo practice.

A good follow-up to the questionnaire is to give serious consideration to whether you have the constitution for the job. Attorneys that work in firms benefit from someone else managing the firm, handling staff and accounting issues and often, directing marketing. While a solo practitioner can hire employees to assist in this (after the practice is profitable), the ultimate responsibility falls on the attorney. It is important to honestly assess your ability, willingness and comfort level regarding these issues.

If you have determined that you have the desire, skills, discipline, marketing abilities, etc., to be successful in solo practice, then the next step is to focus on the tactical and preparation phases of the firm's birth.

What Should I Expect at the Beginning?

Regardless of the reasons behind a lawyer's decision to launch a new law practice, the time period immediately before the start of the firm is often the most exciting but unsettling period. Interrupted sleep patterns will likely be the norm during this time period as uncertainties concerning finances, clients, office issues, self-confidence, etc., often seem much larger during the wee hours of the morning. Shortly after the resignation letter has been handed in, these issues will come more clearly into focus. However, if the issues have been properly addressed in advance, the anxiety associated with the decision to leave the familiar for the unknown can be greatly reduced.

There are two time periods when you should affirmatively and deliberately evaluate whether sufficient preparation has been made to start your own firm. Before the notice of resignation is submitted to your employer is the obvious first time, and the second is shortly before the first day of business for the new firm.

Resignation

The time for a serious self-evaluation is before announcing your decision to resign from your current employer. The act of submitting your resignation is usually an irrevocable decision and is not the time to discover you are not quite as ready as you thought you were to launch your own firm. Even if your employer would consider reinstating your position, the relationship would never be the same because you breached your loyalty and tipped your hand that you have entrepreneurial inclinations. Significant planning should

occur well in advance of submitting your notice of resignation. In addition, you need to keep in mind that generally thirty days notice of your resignation is required (or at least appropriate).

Assuming you are currently employed, it is unlikely your work will stop the moment the resignation is submitted. In fact, in light of the lawyer's ethical duty to manage the client's work, the time period from the resignation day to the first day of business at the new firm may be very busy. As you busy yourself preparing letters to notify clients of your departure, working on the transfer of your cases to your new office (or to another lawyer), addressing the hassle of cleaning out your office, moving, and making yourself available for the good bye lunches, etc., you will find 30 days has passed in a flash. For this reason, a lawyer must be truly realistic about the self-evaluation and assessment of whether things really are in order. Before you know it, you will be sitting at your new desk (assuming you remembered to order one).

See Exhibit 2.1 for a checklist of items that are essential to have prior to submitting your notice of resignation.

Opening the Doors

You have evaluated your readiness, developed your business plan, made your timeline, and completed your numerous task lists – now what! Are you ready to open your doors to the public? For this, we will go back to the basics and ask “who,” “what,” “when” and “where.” ***If you can answer the questions in Exhibit 2.2, then you are ready to hang out that shingle!***

Exhibit 2.1 – Resignation Checklist

Completion of a Business Plan

A complete and thorough business plan is essential because it forces you to consider all aspects of your own practice. The result of an original business plan will be a plan of action, tailored to your needs, to address issues such as where you expect to get your clients, what services you will offer them, how much time you will devote to marketing and to what methods, and most importantly, how much fee income you need to generate to make your firm profitable. Your business plan should also include a timeline, which can be a very helpful tool for setting targets and tracking progress as you prepare to open for business. A well-planned timeline will reveal the long lead-time items and will help you set realistic goals and factor in other issues that might affect your plans. For example, if the type of business entity you are forming requires a filing and entails a certain lead time, then the date for filing these documents should be entered on the timeline well in advance of the day you open for business.

Office Arrangements

Before you resign, you should have selected the new firm's office location, and, if applicable, signed a lease. In addition, you should have made arrangements to order office equipment and furnishings such as a desk, file cabinets, reception area, computers, printers, telephones, etc., in addition to initiating utility service and formulating a plan for initial marketing. Equally important is to have made arrangements for administrative assistance. In short, you should be ready to start up business (especially if your employer's reaction is "why don't you leave today?"). When deciding what you need, take inventory of the items you use in your daily practice setting for a good starting point. If you have not been in practice before, then it is a good idea to visit a few offices of practicing attorneys and pay attention to the surroundings, right down to the stapler!

Resources

There is a proverb that says: "In the multitude of counselors is safety." Although it is possible to start a business based completely on your own research and intuition, it is unnecessary and somewhat foolish, especially since there are good resources available. An obvious place to look is to your local, state and national bar associations for their law practice management sections and programs. Many of these associations also have sections specifically targeted to solo practitioners.

Finances

Because most entrepreneurs worry about the financial aspects of starting a new business more than anything else, there is little need to emphasize the importance of this issue. Financial planning issues should be thoroughly addressed in the business plan. Needless to say, prior to resignation day you should have a very clear understanding of how much it will cost to start and operate the firm, where the money will come from to start the firm, and how long it will take before the firm is profitable. Do not assume that you will begin receiving client fees immediately as you will probably not see the first client check for a few months.

The areas identified above are obviously not all-inclusive. However, these items should encompass most of the key issues, and can act as a barometer to gauge your planning.

Exhibit 2.2 – Basics Checklist

- Who am I?** *Last week you were an employee; this week you are owner, manager, administrator, bookkeeper, marketer, etc.*
- Who will take care of my administrative and paralegal tasks?**
- Who will be my first client?**
- Who will be my future clients?**
- Who will I call for assistance?**
- Who will I contact regarding referrals?**
- Who will I meet for lunch?** *This is a great way to avoid the feeling of loneliness and stay connected with the profession. This is also a great marketing tool.*
- What is the name of my firm?** *Get used to saying it often and proudly!*
- What are my areas of practice?**
- What clients and matters will I refuse to accept?** *Make a list and stick to it.*
- What is my billing rate?**
- What are my billing arrangements?**
- What is the first matter on which I will work?**
- What will I do if I have nothing to do?**
- When is my first day of business?**
- When will I arrive for the day?**
- When will I leave for the day?**
- When do I expect my first check from a client?**
- When will I pay myself?**
- When are the bills due?** *Don't forget your professional dues and taxes.*
- When will I mail my new firm announcements?**
- Where is my office?**
- Where is my next client coming from?**
- Where will I go when I need help?**

The above list is just the beginning of the questions you will need to answer in your own practice. However, it is a sampling of the level of detail that you need to consider and address when starting a new firm.

Forming Your Law Practice

This chapter introduces the various forms of entities available for the practice of law. It is not intended to be a detailed analysis of all of the complexities involved in each form of entity. Rather, it is a concise overview to assist you in your determination about which type of business entity to form.

Basic Requirements

Federal Employer Identification Number

This number identifies your business for all federal tax reporting requirements, such as any required income tax returns and payroll tax returns. This number may be obtained by filing IRS Form SS-4 with the Internal Revenue Service.

State Employer Tax Identification Number

Some states require a state tax identification number as well. This number is used for employer reporting requirements. A state tax identification number is typically issued to an entity required to file organizational documents with the Secretary of State.

Tax and Accounting Preliminaries

Depending on the type of entity selected, there may be time sensitive tax and accounting filings to be made contemporaneously with the formation of your business.

Insurance

Although a characteristic of many types of practices include a qualified limitation of liability, the existence of an appropriate plan of insurance coverage remains very important in your practice of law.

State Bar Dues and Attorney Occupation Taxes

There is a number of compliance requirements for maintaining your individual license to practice law as administered by your state, such as mandatory Bar Dues, Continuing Legal Education, and an Attorney Occupation Tax.

Types of Practice

Sole Proprietorship

The Sole Proprietorship is the most basic form of entity for the practice of law. A lawyer need do little more than “hang out your shingle” to commence the practice of law as a Sole Proprietorship. Some of the more important characteristics of a Sole Proprietorship are summarized below:

- A single owner, with or without employees, entitled to all of the profits and responsible for all of the losses.
- There is no limitation of liability for the owner of a Sole Proprietorship. The owner is legally responsible for all professional and non-professional liabilities.
- There is no federal income tax return or liability separate and apart from the individual owner. Federal income taxes are reported on Schedule C of the U.S. Individual Income Tax Return, IRS Form 1040.
- There is no state income or franchise tax return or liability as a Sole Proprietorship.
- There are no special or continuing compliance requirements for the practice of law as a Sole Proprietorship. You are the sole decision-maker of your practice.

General Partnership

A General Partnership is an association of two or more individuals, partnerships, corporations, or other associations. Some of the more important characteristics of a General Partnership are summarized below:

- Requires at least two owners, with or without employees, to share in the profits and losses of the business. There is no maximum number of partners allowed in a General Partnership.
- There is no limitation of liability for the partners of a General Partnership. The General Partnership and each of its partners are jointly and severally liable for the professional and nonprofessional liabilities of the General Partnership and its partners and employees in their capacities as partners or while acting in the course and scope of their employment.
- General Partnerships must file a U.S. Partnership Tax Return, IRS Form 1065; however, items of income and deductions are generally passed through to the individual partners in proportion to their respective partnership interests, and each partner will receive an allocation of these items on Schedule K-1's included in the Partnership Tax Return in order to complete their respective Individual Tax Returns.
- There is no state income or franchise tax return or liability as a General Partnership.

- There are no special or continuing compliance requirements for the practice of law as a General Partnership; however, it is advisable to have a written partnership agreement.

Professional Corporation

Most states allow attorneys to incorporate as a Professional Corporation (“PC”) and thereby limit personal liability. Some of the more important characteristics of a PC are summarized below:

- The number of shareholders in a PC is unlimited, unless the corporation elects to be taxed as a partnership under Subchapter S of the Internal Revenue Code. In the event a Subchapter S election is made, a PC shall be limited to 35 shareholders. In addition, there are negative state franchise tax implications for having more than 35 shareholders.
- Unless otherwise agreed, each shareholder’s liability in a PC shall be limited to his or her interest in the corporation; provided, however, that each shareholder will remain liable for professional errors, omissions, negligence, incompetence or malfeasance with respect to professional services rendered by the respective shareholder. It should also be noted, with respect to the limitation of contractual liability, that it is unlikely for a PC to obtain financing or other contractual obligations without the personal guaranty of each of its shareholders.
- A PC can be taxed as either a corporation (IRS Form 1120) or a partnership (IRS Form 1120S). Partnership tax treatment for a PC requires the timely filing of a Subchapter S election on IRS Form 2553. A PC may also be required to pay a state franchise tax.
- A PC is subject to all of the corporate formalities as any other corporation, i.e., articles of incorporation, bylaws, conducting board of directors and share holder meetings, maintaining the minutes and resolutions of such meetings, and maintaining a registered office and agent. There is a fee for filing the articles of incorporation with the Secretary of State. The name of the corporation must include the words “Professional Corporation” or the abbreviations “PC” or “P.C.” as the last words or letters of its name. As discussed at the end of this chapter, it is advisable for the shareholders to have a written shareholders’ agreement.

Limited Liability Company

State law governs Limited Liability Companies. Professional Limited Liability Companies (“PLLC”) offering professional services such as the practice of law are perhaps the most attractive and flexible forms of entities available for the practice of law. Both the PLLC and the Limited Liability Partnership provide limited liability for their members/partners without all of the corporate formalities, requirements and restrictions of a Professional Corporation. Some of the more important characteristics of a PLLC are summarized below:

- The number of members is unlimited; however, as with a PC, negative franchise tax implications may exist for PLLCs with only 1 member or with more than 35 members.
- Unless otherwise agreed, each member’s liability in a PLLC shall be limited to his or her interest in the company provided, however, that each member shall remain liable for professional errors, omissions, negligence, incompetence or malfeasance with respect to professional services rendered

by the respective member. As with a PC, it is unlikely for a PLLC to incur debt or other contractual obligations without the personal guaranty of its members.

- PLLCs with at least 2 members are currently taxed as a General Partnership under current IRS regulations, unless an election is made to be taxed as a corporation.
- As with a PC, a PLLC may also be required to pay a state franchise tax. PLLCs with only 1 member or with more than 35 members may also be subject to greater franchise tax liability, as they are not allowed certain deductions that are otherwise allowed to PLLCs.
- The formalities and requirements of a PLLC are similar to, but somewhat less restrictive than a PC. In addition, the terminology commonly used with corporations is slightly different for Limited Liability Companies, as shown in Exhibit 3.1:

| Exhibit 3.1 – Terminology Comparison | |
|---|-----------------------------|
| Corporation | PLLC |
| Articles of Incorporation | Articles of Organization |
| Certificate of Incorporation | Certificate of Organization |
| Bylaws | Regulations |
| Shareholders | Members |
| Directors | Managers |

As with a PC, a PLLC must maintain a registered office and agent in the state. There is a fee for filing the Articles of Organization with the Secretary of State. The name of the company must contain the words “Professional Limited Liability Company” or the abbreviations “PLLC” or “P.L.L.C.” as the last words or letters of its name.

Limited Liability Partnership

State law governs Limited Liability Partnerships (“LLP”). Some of the more important characteristics of a LLP are summarized below:

- The number of partners is unlimited.
- Generally, a partner is not liable individually beyond his or her partnership interest for debts and obligations of an LLP incurred while the partnership is properly registered. However, a partner will continue to have personal liability for claims arising from errors, omissions, negligence, incompetence or malfeasance committed by such partner. Partners not directly involved in handling

the matter giving rise to the claim and not otherwise having prior notice of the wrongful conduct of the other partner will continue to enjoy some level of limited personal liability for such claims. Partners will continue to remain liable for partnership debts and obligations imposed by law or contract independently of the partner's status as a partner, such as individual guaranties of partnership debts. It is also important to note, as a condition to maintaining registered status and limited personal liability of its partners, a LLP must maintain a minimum financial responsibility in the form of appropriate liability insurance coverage, a special cash fund, bank credit, or corporate bond designed to cover the kinds of errors, omissions, negligence, incompetence, or malfeasance committed in the course of the partnership's business.

- The LLP is taxed as a partnership for federal income tax purposes.
- A LLP must file a simple disclosure application with Secretary of State. An initial registration fee for each partner may be charged. The name of the partnership must include the words "Limited Liability Partnership" or the abbreviation "LLP." or "LLP" as the last words or letters of its name. Other than these requirements, a LLP is operated and managed as a general partnership.

Written Business Agreements

For many reasons, if you are intending to practice law in a formal entity with other attorneys, you and your colleagues should give careful consideration to possible contingencies in a written agreement. The most common agreements for this purpose are partnership agreements, shareholder agreements, regulations, and offices sharing agreements. In the absence of such agreements, most state laws contain legislative resolutions to these and many other events that may not be appropriate for your situation.

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Business Financing

As any small business, your new legal practice needs initial capital to purchase assets, pay start-up costs, and provide for necessary working expenses. It is the hope of every new firm to be profitable and create jobs. However, a new business venture has a difficult path to finding money. For obvious reasons, a start-up business cannot provide a bank with historical financial information that can illustrate past performance. Banks and other lending institutions must rely on information that projects future returns. This is a hurdle that must be overcome. Planning ahead to meet the challenge of raising capital will increase the likelihood of finding the financing you need to run your law practice.

Financial Resources

There are several avenues to consider for financing. Take the time to explore all of your options.

Personal savings

A major source of capital for most new businesses is personal savings and other resources. Credit cards are often used to finance initial business needs. However, this may not be the best option, even if your needs are small. It may not be wise to finance long-term needs with a short-term financing vehicle such as credit cards.

Friends and family

It is not uncommon for business owners and professionals to look to private sources when they are getting started. This type of assistance comes in many forms; low interest loans, interest-free loans, or bank loan guarantees. If you have planned well, you may find that financially capable friends and relatives are willing to assist you in getting started.

Banks and credit unions

The most common source of funding is through banks and credit unions. With a carefully planned business proposal, sufficient equity, collateral, and sound financial projections, you should be able to secure financing. Again, you may seek assistance from a friend or relative to guarantee your loan. It is always desirable to approach a lending institution where one or more of the partners has a relationship with a business banker.

Business Loans

Terms of the Loan

The term of a loan may be different depending on the lender. Basically, there are two types of loans: short-term and long-term. A short-term loan generally matures within one year. The loan proceeds are used for working capital, accounts receivable financing, and lines of credit. Long-term loans have maturity dates greater than one year, but normally less than seven years. Loans for real estate may have maturities of up to 25 or 30 years. Long-term loans are used for major expenses such as the purchase of assets, which could include but is not limited to, real estate and facilities, office equipment, and furniture. An initial long-term loan for a new firm could also include funds for start-up expenses and a few months of working capital.

Line of Credit

Securing a line of credit from a financial institution is one of the more common short-term loans relied upon to pay for the daily expenses. Typically, you should secure a line of credit that will pay for all office related expenses for three months. These expenses include, among other items, support staff salaries, rent, phone systems, copy and facsimile machines, offices supplies, medical insurance, and malpractice insurance. Your business plan is a good place to start in estimating your line of credit. As the funds are needed, you simply transfer the amount you need over to your checking account, and the interest on that amount begins to accrue until it is paid off. Be prepared, however, for some of the pitfalls of borrowing against a line of credit. The interest rates are typically higher than for fixed loans and you will most likely be required to provide a personal guarantee on the promissory note.

Business Plan

Qualifying for a loan is related to how well you present yourself, your firm, and your financial requirements. Banks and other financial institutions want to make loans, but they will only seriously consider those opportunities that have the capability to repay the loan. A written business plan is an important step in successfully obtaining funding. ***For the elements of a business plan, see Exhibit 4.1.***

Loan Request

When reviewing a loan request, repayment is a primary issue with the bank. The bank officer may order copies of personal credit reports to help in this process. It is always advisable for the partners to check their personal credit reports in advance to make sure that nothing erroneous has inadvertently found its way into these reports. Using the credit report and the proposal provided, banks will consider the following issues:

- Have the partners invested equity in the practice? Thirty percent is an approximate average for an equity investment. A lender will not finance 100% of a business start-up.
- Are the principles' credit worthy, as indicated by credit reports, past history and letters of recommendation?
- Is there adequate experience to operate a business?
- Does the business plan demonstrate a commitment to operating a successful venture?
- Have the financial pro-formas illustrated sufficient monthly cash flow to service the loan request?

Exhibit 4.1 – Elements of a Business Plan

A business plan is a short written business description with well prepared financial pro-formas. The key elements of a business plan are:

Executive Summary

A description of the firm and the target market for its legal services. This section should summarize the entire business plan including the financial data.

Firm's Description

This section should describe how the firm is owned and organized. It should include, among other things, the firm's name and type of legal entity. Prepare a short statement on each principal in your firm detailing his or her background, education, experience, and accomplishments. Provide résumés of each partner and key employee in the appendices.

Description of Services

Provide a complete and accurate description of your services. Discuss who will be using your services.

Market Information

Provide a list of clients that will be retained and their average annual billings. Also include marketing strategies the firm will employ, along with cost estimates.

Sources and Uses of Funds

This section provides at-a-glance how the funding will be provided and how it will be used. This information usually comes from your opening balance sheet.

Financial Projections

The following monthly projected financial reports (at least twelve months) should be provided: income statement, balance sheet, cash flow statement, and critical ratio analysis.

There are numerous resources for business plan templates. The above information is a summary of what is required. There are many entities that assist businesses with the development of business plans.

Basic Credit Issues

1. A strong equity position in relationship to the amount of debt provides a start-up firm the necessary financial foundation. It is the equity investment by the firm's principles that ensures that they will remain committed to their mission.
2. Cash management is crucial to the successful operation of a business. Having cash available at the right time is important to meet financial obligations. Generating a profit is not a guarantee that a firm can operate within its available cash balances. Bankruptcy is the inability to pay current liabilities.
3. Working capital is the surplus of current assets over current liabilities. The adequacy of working capital is a measurement of a firm's ability to meet its short-term obligations.
4. Adequate collateral is required for security of most business loans. However, if a firm's requirements are for uses of funds that lack substantial collateral, personal collateral will be required. If insufficient collateral exists, then a qualified third party guarantee is an alternative to qualify for a business loan.
5. The ability of a firm's partners to manage the conflicting elements of a business is an important consideration for a business loan. Management expertise, education and training are factors that lead to business success.

Summary

Just like any new business, managing a new law practice is not easy. One of the major hurdles may be qualifying for a business loan. Be persistent. It is not uncommon for most successful entrepreneurs to be turned down a number of times for a loan. Here are a few final thoughts that can help:

- Prepare a comprehensive business plan/loan proposal;
- Be prepared to explain sources and uses of the funds;
- Be realistic about your current financial capacity;
- Give an impression of confidence and competence;
- Work with a lender that has a real interest in your venture and makes you comfortable;
- Negotiate the loan terms and fees; and
- Review all terms of the agreement.

Office Infrastructure

Once a decision has been made to “hang out your shingle,” you must then ask yourself, “Where do I hang my shingle and what do I need for my own office?” While there are many choices in today’s market place, the three main options for office space are:

- Establishing a traditional office;
- Sharing space with others;
- Having a home office.

With today’s technology the items needed to practice law have been greatly reduced, but the solo or small office practitioner still must possess the tools necessary to provide competent legal services to clients. To determine the best type of space and what tools will be necessary, the solo practitioner should be clear on the type of clients he or she hopes to serve and the type of services to be provided.

Selecting Your Location

The big question in selecting an office is first and foremost—what type of practice am I going to have? For example, a criminal practice generally needs to be in close proximity to the courthouse or the jail in order to be close to clients and potential clients. Most criminal clients at some point in time are going to be dealing with the local jail and a bail bond company. Many criminal practitioners’ offices are in the same area as the bail bond companies. These attorneys have numerous walk-in criminal clients. However, if the practice is seeking commercial litigation clients, an office building is more appropriate. Can you imagine your typical small business client coming to your office if you are next door to a bail bond company?

One attorney who planned to focus on family law leased an office in a shopping area that shared a parking lot with Wal-Mart. Clients lined up at the door. One can imagine the parent who just spent \$100 on the kids at Wal-Mart being agitated that the ex is not helping enough financially, and then seeing this attorney’s sign as she loaded up the car. This attorney has a great location for her type of law practice.

Space Considerations

Now that you know where you want to hang your shingle, how much space do you need and how much is it going to cost? Make sure that you have adequate space for both clients and staff. Do not place your law clerk's or legal assistant's workstation in the lobby or other common public area. It could compromise confidential communication if waiting clients can see what is on the computer or the desk of your legal assistant. A client lobby should be tasteful, neat, and have adequate space for several clients.

Traditional Office

If you are going solo and decide that you do need a traditional office, you will need to plan for adequate space for clients, attorneys and staff. If you meet with clients regularly, try to have a conference room. Many attorneys today opt for smaller offices and only meet with clients in larger conference rooms. This provides flexibility to spread out when preparing for trial or to host a meeting with several people. Others prefer a large office and meet with clients there. Also, pay careful attention to the layout of the office. If the layout is efficient and meets your needs, you may be able to get by with less space.

You may want to try a less traditional setup, such as an office share. In most urban areas there are executive suites where a young lawyer can share space with other lawyers or other business people. By sharing space, the lawyer generally pays a pro rata share for the receptionist and the copier. Common areas, such as the lobby and the break room, are shared and the young lawyer can still have a nice office.

When leasing space, either traditional office space or an executive suite, pay close attention to the lease agreement and try to plan for the future. Make sure your lease agreement provides some options in the event that your firm grows. Most landlords and leasing agents can work with you as long as you communicate your concerns and negotiate those issues up front. Once your lease is signed, it is hard to renegotiate the terms.

Home Office

Another option is to have an office at home. While this may sound like a great idea, you should carefully consider whether a home office fits your practice. For example, an appellate attorney with little client traffic may find it easier to set up a home office rather than a busy criminal law lawyer. Even if you have the type of practice that allows you to have an office at home, make sure that you can stay on task and efficiently work from your home. You will still need to have a place to store files, a designated place to work, and the necessary tools of the trade (computer with e-mail, printer, fax and copier). The most dangerous thing about working from home may be the "at-home" distractions. Instead of working, you end up doing household chores, watching too much ESPN, playing with the dog, etc.; anything but working. Assess your own personality and make sure that even if your practice is compatible with a home office, you can be productive and efficient when you work from home.

Office Furnishings

In opening an office, furniture and framing expenses are two of the largest expenses. Everyone wants a nice office, but make sure it is not too nice. Too nice could send the wrong message. Likewise, do not just throw an office together with old, worn out furniture.

In purchasing office furniture, durability is a key issue. If you invest in furniture wisely, it could last your whole career. Desk styles do not change often and if you spend a little money on a good desk for both you and your secretary, chances are that will be the last time you pay for these items. Also, make sure that your clients have comfortable places to sit in the waiting room and in your office. Clients are often uncomfortable enough when they come to a lawyer's office, so do your best to make them feel at ease.

Whether you start out with files of your own, or develop them with clients, to store files you need filing cabinets. This can be expensive, but you should try to find good, durable equipment, and even consider used office equipment. Auctions are a great place to find good buys on the items that you need for a start up practice. Better yet, if you get lucky you might find a law firm that is moving or one that is renovating space. Many firms that are renovating will sell their old furniture.

Technology

In today's technological age, all you really need to practice law is a computer, a printer, and an internet connection. In the old days, you needed a law library, a secretary, and a Dictaphone. Times have changed. But there are still many things that need to be considered when you budget for your new practice, for example: computers, a network server, printers, copiers, phone system, cell phones, files, paper, sticky notes, and pens. Every little thing needed to practice law from the copier and computer server down to the paper clips is your responsibility; in the old firm, the office manager or the tech guy or your secretary took care of those things. But today you are on your own.

It seems the only time a copier goes down is when you are in the middle of producing discovery and need it the most. Consequently, whether you lease or purchase your copier, make sure you have a maintenance agreement with a short minimum response time. While times are changing, we still get paid to produce paper and if your copier is down you are losing money.

A common question when setting up an office is: "Should I lease or purchase my large office equipment items?" Computers, servers, copiers, and fax machines can be leased. Consult your business accountants to determine the best option for your needs. Often, if you add up the payments on the lease, the lease costs much more than a straight purchase, even if you finance the purchase. However, you can generally deduct 100% of the lease payment as a business expense. Regardless of whether you lease or purchase, the bottom line is to make sure you have the maintenance support to fix your equipment when it goes down.

Clients need to talk to their lawyer, so you will need a phone system. Phone systems can be expensive. Get help from qualified people and consider purchasing a used telephone system. Voice mail can

also be expensive, but so is a receptionist. Make sure you have enough telephone lines to adequately serve your clientele.

Computer Programming

In today's world, there are many programs that can help you run your law office. There are law office management programs like Amicus, Abacus, Practice Master and Time Matters, just to name a few. Accounting programs include Timeslips, PCLaw, and Tabs III. From basic word processing to complex law office management software, you are now in charge of all software decisions.

In starting your own office, plan and budget for the right kind of software. You may think you can't afford to have a certain software and computer network. However, the law office management programs and the accounting programs will easily pay for themselves, if you use them. They help you keep track of files and events and, better yet, allow you to keep track of time and prepare high quality, professional bills to send to your client.

In going out on your own, you must understand that the most glamorous job in law practice is yours, but so is the least. All the little things you might have taken for granted back at the firm are now your responsibility. Find the right office for your practice, purchase the right furniture and the right tools for your practice and you will be ready to "hang out your shingle." With some luck and hard work, you will be on your way to building a great practice.

Office Administration

Every law office needs basic procedures in place for both business practices and legal work product. These procedures should be developed prior to opening your doors on the first day of your own practice. You should commit them to paper and have them easily accessible to both you and staff so that you have a framework for developing your practice. Keep in mind that these procedures are likely to change, often at first, and you should not be unwilling to make those changes required by everyday practice, provided that they are not contrary to your initial and personal goals. The experiences of you and your staff will be one of the best indicators for whether a preconceived procedure is right for your office.

In developing your initial procedures, you should focus on the reasons you have decided to go into practice on your own so that you do not lose your perspective and goals. It is important that you feel satisfied in your practice and not overwhelmed! For example, you should consider how many clients you believe you can effectively handle, how you will divide responsibility for firm and client business among you and your staff and how you will prioritize client demands on your time so that you can effectively communicate with clients and staff. Again, all of these areas are likely to change as you gain experience but if you start with the basics, then you will be a lot more successful in managing your practice in the future.

In this chapter, we will attempt to assist you in developing basic procedures by discussing issues related to the daily operation of your office, calendar control and effective timekeeping. In the next chapter, we will discuss issues related to client funds, billing and collection.

Daily Operations

It is imperative that you think through the details of each operation you or a staff member will have to perform at your new firm and commit these procedures to writing. This will serve as a useful resource for you and your staff. In addition, this resource will free your time to focus on your clients and the generation of new clients.

In this section we will highlight ideas for you to consider in implementing procedures tailored to your office. For a more comprehensive resource, we direct you to the American Bar Association Law Practice Management Section, which offers many excellent resources for you. A few of our favorites include *How to Start and Build a Law Practice* and *Law Office Procedures Manual for Solo and Small Firms*. These publications can be purchased from the American Bar Association. For more information, please visit their website at www.abanet.org and link to either the law practice management section or publications.

Professional Work Procedures

Probably the easiest place to begin is to create a comprehensive binder including samples of pleadings you routinely prepare in your practice (a.k.a. the form file). You should keep a copy of these pleadings in an easy to access place on your computer as well. The benefit of the binder version is that for each type of pleading you can include filing information such as the court's filing requirements, if any, number of copies to prepare (including the file and client copies), and how those copies are to be distributed. This information can serve as a resource for both you and your staff so that your work is distributed efficiently to all those who need to receive it. This binder could also include form letters such as a shell for your fee agreement, a form letter to transmit client copies to them, a form letter for court filings, and any other forms you decide to use in your office. It is a good idea to have your staff familiarize themselves with the contents of this binder as it will provide the answers to many of their routine inquiries.

Client Records

Nothing is more important to a law office than accurate and complete client records. Below we will try to highlight areas to consider in developing procedures for handling and maintaining these critical documents. This section assumes that you will have done an appropriate conflict check before having an initial consultation or intake meeting with a potential client.

Follow-Up

Once you determine whether to accept a potential client, it is imperative that you follow-up, in writing, to the client with your decision to take or not take the case. If you are taking the client's case, then your letter should include clear terms regarding the scope of services you will be providing and the associated fees the client will be charged. This letter should be very specific and leave no room for "guessing" what the terms of your representation will be from that point forward.

If you do not take the case, then make it clear in your letter to the potential client that you are not their attorney and that they need to continue in their search for an attorney to represent them with their matter. To be sure and protect yourself, you should thoroughly analyze the professional guidelines of your state regarding client communications, client confidences and attorney liability to non-clients (i.e. for failure to notify the potential client of the statute of limitations on the matter). After reviewing these guidelines, you might consider including a paragraph in your follow-up letter indicating that confidential information either was or was not imparted and offer a standard reminder to non-clients that there are statutes of limitation that apply to their case and that they should promptly seek the representation of other counsel in the event that they wish to proceed with the matter. You should also keep a consult file regarding this client and make sure that the client is included in your conflict check procedures to minimize any future liability.

Many attorneys who fail to take this simple step find themselves trying to explain this failure to their malpractice carrier! For example, a potential client assumes that he or she has retained you but you assume that no relationship with the client was formed. It can be quite uncomfortable for an attorney facing a malpractice claim to testify before a jury that he or she was never retained and yet be unable to produce any written confirmation of that fact while the "non-client" testifies that the attorney had definitely accepted the case.

Opening a New File

Every new file starts with some type of new case memorandum or client interview sheet. This document should be completed by you during the initial intake meeting so that you can keep the information on file regardless of your decision on whether to take the case. The new client memorandum should be specifically tailored to your own taste and the necessities of your practice. This form will also provide your assistant with all of the information necessary to open a file for the client.

At a minimum, the client information sheets should contain the names of the parties, the names of the lawyers, the nature of the case, the addresses, including email, and phone (office and cellular) and fax numbers for all parties. If you have not invested in some type of client management software for conflict checks, etc., then you should also keep an easily accessible index with the names of the client and the opposing party identified. This will assist you in evaluating potential conflicts. When determining the format of your list, you should try to minimize the need for repeatedly entering data (i.e. entering names and addresses again for a billing file). If case management software is not an option for you, then you may want to explore other software packages that have database capability (i.e. mail merge and database files).

If you are not starting out with law office management software, it is imperative that you make the purchase of such software a top priority. These programs are designed to assist you with the necessary tasks related to client records and billing. While there are other methods, those methods are more time consuming and less likely to be updated due to the time they require. There are many options for such software. To find the one right for you, you should talk to other attorneys in your area with the same or similar practice area to find out what works (and didn't work) for them.

After the new file has been set up, it needs to be entered into your records. All dates and statutes of limitation should be calendared, and an initial review and evaluation letter written and sent to the client.

Case Memorandum

So you have the new client, now what? You should immediately get into the habit of preparing case memoranda for each new client file. This may seem like an inconvenience at the time but it will pay off later. This memorandum should be prepared while your initial communications with the client are fresh in your mind. It will serve as a reminder of the facts presented by the client and a roadmap for proceeding with the case. It is an excellent place to indicate your initial factual and legal questions for development of the case. The form of the memorandum is up to you. ***For a list of things to include in a memorandum, see Exhibit 6.1.***

Calendaring

Every attorney has preferences for his or her calendaring procedure. However, your firm should implement a consistent method to avoid confusion by staff and other attorneys and allow you to keep track of the firm's obligations to clients. The details of this system are flexible but should include a few basics – ***see Exhibit 6.2.***

Exhibit 6.1 – Things to Include in a Memorandum

Client Objective

This, by far, is your most important information. What does the client want out of this case?

Case Strategy

How can you achieve your client's objective? This section should include discovery planning, motion planning, and trial planning.

Negotiation Strategy

Consider at the beginning of each case how the dispute might be resolved quickly instead of waiting a year down the road.

Deadlines

When do you need to take your depositions? File motions? Be specific with case deadlines.

Problems

Identify the biggest problems with your client's case. Is there a document that undermines your client's position? Is there a "smoking gun" type of evidence that would destroy your client's case at trial?

Preparation of a Case Plan

From the information collected, create a case plan which is a detailed summary of the events, dates, staff and other resources to be used in the pursuit of the client's objectives. Be sure to include a budget necessary to achieve the objectives and obtain the client's approval.

Exhibit 6.2 – Basic Calendaring Considerations

Each person in the firm is responsible for filling out calendar entries; this includes attorneys, secretaries and other staff members. Calendar entries are to be filled out immediately upon making any appointments, setting any hearings, or when discovering that any of these events are happening. Be sure to include lead-time to comply with all notice requests. Some basic calendaring options to keep in mind are having:

1. A daily firm calendar, maintained in a central location showing the dates of appearances, appointments, and depositions, as well as the due dates of pleadings and responses to discovery requests.
2. A daily calendar maintained by each attorney.
3. A statute book calendaring applicable statutes of limitations and procedural statutes.

A designated staffer who completes calendar entries for each date appearing in the incoming mail must review the incoming mail daily. The original calendar entry should be filed centrally with the calendar, and a copy of the entry should be matched to the relevant piece of mail or placed in the case file. Each day, the person designated to handle the daily calendar should enter the information from the calendar into the daily calendar, and initial and date the calendar entry. The original calendar entries are retained in the central file. When depositions go off calendar or are rescheduled, the person entering the information on the calendar should make sure the court reporter and all involved persons are informed of any changes. It is that person's responsibility to make sure that the calendar reflects that everyone involved has been informed of the change.

You need to check the calendar daily for each day's appearances. Additionally you should check one or two days ahead to make sure that the matter scheduled will actually proceed, and to confirm that everyone involved will attend. Having both you and your secretary (if you have one) examine the calendar provides a double check so that appearances are not missed. In the event you are out of the office, it is the responsibility of your secretary to check the calendar, confirm appointments and pull the necessary files for the next day's appearances. It is standard practice to have a dual calendaring system. So, in addition to the office's central calendar, you and your assistant should maintain a backup calendar of critical dates.

Mail Opening and Distribution

You should develop a procedure for opening and reviewing mail. Even in a small office, it is not unusual to receive ten to twenty pieces of mail per day. A trained secretary must review mail carefully for dates to be calendared, and should complete calendar entries immediately. The mail should then be matched to the file and given to the attorney responsible for the matter.

Alternatively, the attorney may review all of the mail and designate those pieces of mail that can immediately be put in a file and those pieces of mail which must be matched to client files for further review or work. *See Exhibit 6.3 for a checklist of mail distribution procedures.*

File Maintenance and Diary System

Maintain all files on some type of diary system to ensure their periodic review and continued orderly work process. However, a diary system, in and of itself, will not solve problems. The diary system must be followed; that is, when a file comes up on diary, you must look at the file, determine what should be done, and do it.

Diary slips are prepared each time a file is reviewed. You should record after every review of a file the work that should be completed by the date. Or, the current diary slip may simply be re-dated and filed. Prepare diary slips in duplicate; file the original by date in a file box in the secretary's desk and place a copy in the file. Always keep diary slips on top and do not file subsequent correspondence on top of them.

Each day, the secretary should pull the diary slips for the attorney. Depending upon the attorney's preference, the slips may be stapled to their file and the files placed on the attorney's desk, or, the attorney may simply review the diary slips, noting which are to be filed and which may be redacted and refiled in the secretary's file box. Every file in the office should have a current diary slip in it at all times, without exception.

Exhibit 6.3 – Mail Distribution Procedures

Each day, the person who distributes the mail should:

- _____ Open each piece of mail and date stamp each item, retaining the envelope. (The attorney should decide if envelopes are to be discarded after reviewing the correspondence. Envelopes with postmarks may prove to be important evidence of receipt of certain documents.)
- _____ Mark in pencil the case number and the initials of the attorney handling the matter in the upper right hand corner of each piece of mail regarding a litigation matter.
- _____ Read and review each piece of mail and each document in any package of mail for dates that should be calendared. For each date that should be calendared, fill out a calendar memo and circle the date on the pleading; the person calendaring the date should initial his or her name next to the circle. The original copy of the calendar entry should be placed in the calendar file. If two calendar entries are filled out for the same appearance, they will merely act as a double check.
- _____ Attach all mail regarding litigation matters to the file with a rubber band; locate all files which are not in the file room and attach the mail.
- _____ Distribute all files to the proper attorney or attorneys.
- _____ Attach to each file all miscellaneous items pertaining to that file, such as cash receipt forms and attorney service forms, and re-shelve the files properly.
- _____ Attach a route slip to any piece of mail which should be seen by all attorneys and give to an attorney for circulation.
- _____ Distribute all personal mail to its addressee.
- _____ Give all items regarding new files to be opened, and other items such as banking and invoices, to the designated secretary.
- _____ If a particular file cannot be located, then a routine search of all offices should be made to locate the file so that mail pertaining to it can be distributed to the proper attorney. Mail regarding a matter in litigation should be given to the attorney responsible for managing the file.

File Inventory and Review Procedures

Develop a system to maintain a complete inventory of all files, both open and closed. You can use the case-information index cards or files for this purpose. You can also maintain open and closed file lists, and any automated timekeeping system you use should also generate an inventory of files.

At least once a year, you should conduct a shelf inventory. Examine each file to determine if it is properly listed as open or closed, and review the list of open files to locate every listed file.

As each file is pulled, review it for at least the following items:

- Is the file on diary?
- Is there a current status letter to the client?
- Are any important statutes of limitation coming up?

Statute Book Procedures

A statute book is a small, centrally located ten-year diary. Each page represents a month in a given year. Entries are made in the statute book by the same person and in the same manner as in the daily calendar, with information obtained from the calendar memo. Your statute book should contain important dates, which include as follows:

- The date the statute of limitations runs on each matter.
- After suit is filed, enter the date of any “fast track” deadline (see below) or other crucial procedural event that must occur and the date of the five-year mandatory dismissal for failure to prosecute.

You should be familiar with the federal, state and local rules regarding the particular matter you are handling so that you do not miss any important deadlines. If you are handling a matter in another jurisdiction, then it is even more important to determine these deadlines and add them to your statute book for that particular matter.

The primary responsibility for completing calendar memoranda for entry in the statute book rests with the attorney handling the file. During the initial client interview and file setup, the attorney should complete the calendar memorandum for the initial statute of limitations. When suit is filed, the attorney should complete the calendar memorandum for any fast track deadline or other crucial procedural event and the five-year dismissal statutes. Secretaries should back up this procedure. Whenever an attorney files suit, the secretary must check and calendar these significant dates.

You should review the statute book weekly for the current month and the following two months so that appropriate action may be taken immediately if any crucial date is coming up. This action may include taking dates off calendar if the case has been settled or closed, or preparing complaints, or motions to specially set matters for trial.

Accounting

The importance of keeping accurate and complete accounting and banking records cannot be overemphasized. Half the attorneys subject to discipline actions erred by commingling their funds with client funds. By organizing internal records and setting up proper bank accounts, you can avoid possible commingling problems in your new practice. We cannot stress enough how important it is to know and understand the ethical obligations regarding client funds and trust accounts prior to opening your own practice.

Your law practice should have at least two checking accounts. The first is a general account, which is the business account. This account is used to deposit earned fees and to pay business expenses. The second is a client trust account, which is the account for money you are holding for clients (such as retainers). This account should be treated as an escrow account.

Your personal finances must be kept separate from the firm's, even if you practice alone. Some solo practitioners even keep their personal checking accounts in a different bank from the one that has the office's accounts, to avoid confusion and mistakes in deposits. Whether or not you take that approach, an essential method of enforcing the separation of office and personal finances is to pay yourself a draw once or twice a month. The draw should be for a set amount, and should be paid on schedule, as though it were a salary.

Avoid advances on the draw and deviations from the schedule except in emergencies; solo practitioners must use particular caution to impose self-discipline in the matter of draws. If there is a surplus in the office general account, you can transfer some to an office savings account, to serve as a reserve for insurance premiums and contingencies. Likewise, you should keep quarterly payroll taxes in the office savings account. When there is a surplus of office savings that is truly net profit, a bonus is in order. You can change the amount of the draw as the practice grows, after making a careful projection of income and expenses.

Accounting Systems

There are several ready-made accounting systems for lawyers, or you can hire an accountant to install a system that is tailored to your needs (unless you are capable of designing your own system!). A simple accounting system for a small office needs, at a minimum, a separate ledger for each bank account. You must record income and disbursements accurately and promptly for each account, in the appropriate ledger. The first ledger is for the general account, which should detail fee income and a breakdown of expense items, by type. Examples of expenses include: leasehold improvements, furniture and fixtures, telephone, rent, library, continuing education, office expenses, professional fees, subscriptions, miscellaneous, and staff salaries and costs you advance for clients. A check of categories listed on appropriate income tax return schedules, such as IRS Form 1040, Schedule C, will provide additional guidance.

You must have another ledger for each client trust account. This must be a record of money received by date, client and amount, along with an account of when and to whom the money was disbursed. Many attorneys find that one trust account is sufficient as long as the records accurately reflect the amount held for each client.

In addition to the general and trust account ledgers, you will need a ledger card for each client, to record hours billed, costs advanced, and trust account receipts and disbursements. Some lawyers keep a separate set of client records for recording time spent on each client's matters, and make entries on the client's ledger card only for time actually billed. No matter what system you use, though, you should regularly balance the general and trust ledgers against the client ledger cards.

Finally, you must have a filing system that contains the bills (justification) for all checks written. For example, there should be a file folder for each expense category in the general account, such as telephone and library expenses. You should maintain separate files for bills and receipts reflecting expenses paid from the trust account.

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Marketing

As an attorney, you or your firm will likely decide to engage in a marketing effort or program. The issue then becomes a design problem. How do you do this? Do you start out like Elmer Fudd blazing away in all directions with a shotgun at “that pesky wabbit” or do you fire a single well-defined shot with a telescopic rifle at a known target? Both tactics have some appeal and some usefulness depending on the circumstances.

The first step is to formulate a marketing strategy. Marketing is defined as the activity of selling a product in an organized market. Strategy is defined as the execution of a carefully thought out plan to achieve an ultimate goal. Thus, we have the blended definition of a marketing strategy, which is the execution of a well thought out plan to achieve a goal in the sale of a product or service. We can reduce this to a working definition: a marketing strategy is a plan of what you are going to do to communicate with targeted persons to increase your business or to achieve a particular marketing goal consistent with a budgeted expenditure for the effort.

Defining the Marketing Problem

The classic marketing problem has several variables to be considered. First, you must identify a “target” audience. Who do you want to be the target of your strategy? Second, what do you tell them? Third, what response or effect do you wish to cause? Fourth, what level of information do you want to disseminate? Fifth, what is the cost? Sixth, how do you measure the result?

Purpose

First, you must determine who your target audience is and what you want to tell them. Your target audience may consist of the following persons:

- New clients
- Existing clients
- Both new and existing clients
- Persons with a certain problem
- Persons who are perceived to need your services
- The universe

Marketing has several purposes, and the information disseminated must be tailored to fit the purpose. In the problem definition stage, you must decide what you want to do with the information.

What do you want to do?

- Create general name identity
- Amplify the consumer's awareness of the problem and offer a solution
- Introduce a new service or expertise
- Increase general interest in your services

What effect or result do you expect?

- Higher overall awareness of your firm
- New files immediately
- Standby status or recognition that potential clients need your services (e.g., "If I ever get a divorce, I am going to use Lawyer X to represent me.")
- Existing client awareness or use of additional services
- Reminder of your existence

What is the level of the desired information?

- Name only
- Services available
- New information about or changes in your practice
- Details of new services or details such as your new website address

What is the cost?

- Monetary cost
- Attorney and staff time
- System design time
- Liability costs

How do you measure the results?

- New files
- Opener sheet to ask for the source of business
- Comments on the street
- Call volume
- Revenue
- Surveys

General Principles

The repetition principle of education is also applicable to marketing. A one shot piece of marketing without follow up can work, but it must be spectacular or it will require follow up. The usual manner of marketing is to use an initial campaign with regular and consistent follow-up.

The best way to illustrate this strategy is by the review of general principles and then the construction of a plan. Let's assume certain facts before we proceed: (1) you have just started a new office, either as an attorney straight out of law school, by a section splitting off from a law firm, or as a single attorney going into private practice or solo practice from a company or from a large firm; (2) you want to generate a client base from your new constituency and your expertise is general in nature and not in the plaintiff's personal injury business, which is very dependant on repetitive, hard hitting television marketing; (3) your budget is unknown at this time, but will be limited because of the many necessities competing for the budget dollar.

Choice of Marketing Engines

Who is driving this train anyway? The completion of a marketing strategy requires the selection of marketing tools, which cannot be selected before you know what you are marketing. Therefore, you need to determine early on what it is that you are marketing. The simplistic answer is legal services, but this answer is non-specific, vague and adds little to the strategy.

You need to analyze two questions: (1) What you are selling? and (2) What does the target audience want or need? This is the difference between product-driven marketing and client-needs marketing. The basic idea of product-driven marketing is that you have widgets or you make widgets; therefore you sell widgets. In client-needs marketing, the client wants gadgets not widgets, whether you have any or not. Can you solve this dilemma? The answer is yes, if you do two things: (1) recognize the client's needs, and (2) stay flexible enough to change from widgets to gadgets in your supply line.

The combination of your abilities and ever-changing client needs, such as solving the immediate problem confronting the client, dictates that your marketing strategy not paint you into a corner. The marketing paradigm has to be sufficiently flexible to recognize the similarity between your legal services and then move your resources from one client need to the next. In short, marketing strategies must blend the skills and strengths of the firm with the needs of a target audience.

Proposed Solutions

The solution to your marketing problem depends on the variables you have identified as important in your marketing plan, goals, and budget. Your proposed solutions involve the front-end planning, arranging of funding, and design, publication and distribution of your materials. The solution also includes the design of any system necessary to facilitate the business generated by your marketing effort. You should also follow up and analyze the marketing program's effectiveness and then make any immediate adjustments. If your budget permits, you may want to hire an outside marketing consultant to help you with this process.

Possible Avenues of Market Success

Let's explore the methods of marketing, such as:

- Television, limited and in good taste, i.e. sponsorship of public television programs
- Radio, especially content programs such as "Ask Your Lawyer"
- Printed advertising, such as handouts or a firm brochure
- One-time publications, such as a feature article, book, or monograph
- Ongoing publications, such as newspaper columns, or newsletters
- Phone calls and visits to clients with regard to general client matters
- Follow-up materials such as greeting cards, birthday cards, and reminder letters
- Booth presentation or display at trade shows or conventions
- Pro bono work
- Community involvement
- Class work with networking potential, such as a community college language or arts course or a golf seminar
- Organizations, whether social, religious, civic or service
- Seminars, sponsored courses, speeches
- In our scenario, mass television coverage is not feasible because of its cost and perceived negative implications on the part of potential clients, at least in part. It is important that your marketing method work with your chosen audience. Therefore, you must choose your audience before selecting the marketing method.

In our scenario, the target audience is the following group:

- General public, for non-personal injury needs
- Prior/current clients
- Businesses
- The target audiences will be the determining factor in the marketing methods used. Therefore, as the planning process continues and the method or tools are reviewed, each method must be measured against the desired and anticipated effect on the target audience. Just as a great beer commercial will be lost on a teetotaler, your best offerings can be lost on the wrong audience.

Mass Marketing Tools

In selecting marketing tools, first consider mass media. Will a mass media campaign be effective with your target audience? In our scenario, typical “hard,” “tough,” “mean,” “get the money from the insurance company” advertising is not likely to appeal to potential clients.

So, can you use mass means at all? Yes is generally the answer. A small, inexpensive “tombstone” ad run regularly in small town or suburban newspapers may be quite effective. Boring though they may be, they work. The mass media tool of choice still remains the yellow pages. The phone book is still used by potential clients to find a lawyer. You need to be there. Do not spend every dime you have on a phone book ad, but do use a professional looking ad. Hiring a consultant to design an advertisement is less expensive than the ad cost, so consider employing these professional services. Being billed monthly for an ad that you do not like is painful.

Through short sponsorship ads, mass media also will enhance the general awareness of your services to the general public. Watch public television for examples. You should also investigate whether there is an active local access channel, which may offer lower cost sponsorship opportunities.

Chamber of commerce or other trade association publications offer low cost, “mini” mass media opportunities. Check around - there are tons of these out there. Business organizations will also generally welcome a well-written, short article of current interest to their members, usually published for no charge. In monetary terms, mass marketing is the least expensive method per person contacted. Of course, the drawback is that mass marketing is limited in the amount of information that can be conveyed, and it is not tailored to every client or everything you want to say.

Non-Mass Marketing Tools

The most frequently used non-mass marketing tools are business cards, brochures, greeting cards and letters. Everyone has business cards, and they should be distributed liberally. Give everyone two - one for home and one for their billfold or for a friend. Seldom will you get one back. Also, a firm brochure has come to be expected. Some experts suggest that the firm brochure is overdone, expensive, and is never looked at, but it still is absolutely necessary because clients expect them.

Another effective non-mass marketing tool is a personalized letter to a class of people. The idea here is to send a piece of mail or literature that combines the intimacy of personalization to the recipient with form text about your services. With today’s technology, a beautifully designed brochure accompanied by a letter that says, “Dear Postal Customer” is rather unimpressive. If you have a client name database, well designed “list sorts” can accurately identify the different groups to include in mailings. For example, if you are an estate planning attorney, you could send letters to all persons for whom you have done wills in the last five years reminding them that they may need their will updated or other similar services.

The further you go along the scale from mass marketing to individual marketing, the more tailored and more detailed your information must be. The information must be current. It must be of interest, and it must be professionally produced to differentiate it from every other circular on the recipient’s desk. The method of delivery, whether bulk mail or first-class mail, makes little difference because someone other than

the ultimate recipient will probably open the envelope. The important thing is that your target audience receives it. Unless circumstances dictate otherwise, save money with a bulk mail permit.

Revisit the Purpose of Using Marketing Tools

Especially in individualized or direct pieces of mail, you should determine what you are trying to do with that piece of mail. It is expensive to simply spread your materials out there in hopes that you have advertised your services. You would have wasted your time and money. You must again go back to the basics in determining if you want to:

- Create general name identity
- Amplify the consumer's awareness of a problem and offer a solution
- Introduce a new product or expertise
- Increase general interest in your products and services

Marketing Evolution

The launch of your marketing plan is much like introduction of a new product. As you grow older you may have changes in your interests, lifestyle or health that necessitate a change in your “product.” In your marketing plan, you should be sensitive to the fact that you are introducing a product that may evolve over time. The evolution of your product may be a natural evolution, resulting from the aging population of your clients or even you. No matter how it occurs, you should leave room in your marketing plan for the changing nature of your practice.

Evaluating Your Options

No matter what the solution to your marketing problem, you should sort through the solutions in the manner we have illustrated here and pursue those that you believe are cost effective in your situation. You can solicit bids from vendors, and you should consider using a consultant to obtain these.

As you develop your marketing plan, you will, at minimum, need three tools: business cards, a firm brochure and a direct target marketing list. ***You should consult with your local state bar association regarding the ethical and procedural rules regarding direct mail and target marketing.***

Do not be afraid to repackage or rename a service to make it appeal to new clients. Litigation management is the same as handling your lawsuit, but it gives your service a modern tone. If you send a letter to clients, use words like cost control, briefings, status and the like. Of course, the challenge with the use of these words is that you have to do what they imply, that is work with your client to control the costs of litigation and other transactions. You may also want to advertise your willingness to work on a non-hourly basis. Alternative billing arrangements are another way of catching a potential client's attention.

Quality Control

The most important type of quality control in your marketing program involves maintaining the quality of your work product. Referrals from current clients and other attorneys are arguably the most effective means of obtaining clients. You can develop referral-based marketing by consistently producing timely, high quality work. Because of the significance of the word of mouth in attracting clients, you should view any written work that you send out as a marketing piece.

Quality control also comes into play in anticipating the results of your marketing efforts and planning to handle the outcome. For example, if you send out 100 brochures, do not buy 1,000 folders for new cases - buy five or ten and have some ready. If you introduce a new program, for example the "I want to be your general counsel program," then prepare talking points for your receptionist to use in the event a potential client calls for more information. A nice problem to have, but a problem nonetheless, is a great response to an advertisement, but no intake or screening system to assess potential cases. To avoid becoming overwhelmed, think ahead and include in your marketing plan the steps you will take to handle an influx of new cases.

Cost

The total cost of a marketing program includes in-house costs and vendor costs. In-house costs include items such as attorney time to draft and edit ad or brochure copy, and staff time to copy and collate brochures, answer telephone calls and schedule speaking events, as well as the cost of materials. In-house costs depend on the computation of the billing or overhead rates, but suffice it to say they can be very large. If you are just starting your practice, however, you may have more time available than you do cash on hand, so this is a tradeoff that must be considered in your marketing cost analysis. Here, we will evaluate the vendor costs.

Exhibit 7.1 – Print Advertising Cost Example

To get an idea of the expense of print advertising, let's take a look at some numbers:

| | |
|----------------------------------|---|
| Postage: | \$.37 per item; paper and envelope \$.10 per item; handling \$.05 per item |
| Calling cards: | approximately \$50 per 1,000 |
| 3-1 color brochures: | approximately \$1.00 per item in quantities of 1,000 |
| 4 color brochures: | approximately \$1.50 per item plus \$500-\$1,000 in set up costs for separations and color work |
| Consultants: | approximately \$35-\$100 an hour. |
| Reasonable ad in telephone book: | \$250-\$1,000 a month depending on the market. |

Exhibit 7.2 – Time vs. Cost Trade Off Comparison

The following chart illustrates that time vs. cost trade off of various methods of marketing:

What is your comfort zone? Time vs. Cost

^ = Cost

\$ = Time

| | |
|-----------------------|--|
| \$\$\$\$\$\$\$\$\$\$ | Large Market Mass Media Advertising (i.e. television and radio) |
| ^\$\$\$\$\$\$\$\$\$ | Small Market Media (i.e. cable television and small town radio) |
| ^^\$\$\$\$\$\$\$\$\$ | Brochures, Promotional Items (i.e. calendars, rulers, etc.) |
| ^^^\$\$\$\$\$\$\$\$\$ | Yellow Page Advertisement, Newspaper, Magazines |
| ^^^^\$\$\$\$\$\$\$ | Brochures Limited in Scope and Audience |
| ^^^^^\$\$\$\$\$\$ | Target Letters to a Select Audience |
| ^^^^^^\$\$\$\$\$ | Business Cards |
| ^^^^^^^\$\$\$\$ | Public Service Column for Local Newspaper |
| ^^^^^^^^\$\$\$ | Speaking to Civic Groups |
| ^^^^^^^^^\$\$ | Involvement in Local Issues (i.e. Social, Religious, Civic, and Service) Hand Shake and a Smile |

When you review these typical expenses, you begin to see the true cost of marketing using vendors. Bids should be solicited for all vendor services. Most advertising consultants have a connection with a printing broker who puts printing out for bid for you. Also, you can usually expect a cost savings by using a marketing consultant for telephone advertising. Instead of a telephone salesman who jumps in and demands that you place the ad right then, allow a consultant to work out pricing. A consultant may be able to give you a multiple market discount or have other good ideas that will help control your costs. All in all, yellow pages advertising appears to be a good investment for lawyers. A recent survey shows that in the yellow page section of the local telephone book, 58% of the advertising was done by lawyers. Does that tell you something about what other lawyers think of its effectiveness?

Measuring the Effectiveness of Your Marketing Strategy

After you play with the marketing strategy, select the items to be used in executing the plan and put the plan into effect, the next question is how do you evaluate what you did right or wrong? Monitoring the results of marketing has always been somewhat of an Ouiji board operation. Non-legal marketers and some legal marketers use telephone interviews or surveys to determine the results. For lawyers, the number of new files opened is obviously one measure of the success of the marketing plan. Beyond that, to assess the effectiveness of specific marketing tools, the attorney or staff can complete new files sheets that record comments on the source of business.

On the information sheet completed by a new client, a question should ask “the source of your contact with the firm,” or “how did you find out about our firm” and then give options like yellow pages, calling card, and word of mouth. These choices should be tied to each direct marketing method that you have selected. If there is a blank for “other,” leave a blank to fill that out and ask that the client be specific. If the client was referred, the referral opens up a new avenue for marketing. Follow up with the person who referred the client with a brief thank you note for sending the new client to the firm.

The correlation between marketing and revenue should also be monitored. Not only should the marketing bring in more income, but the income hopefully will have the proper margin to it. Measuring margin or net income versus gross income is certainly a proper and necessary monitor of the results of your marketing plan. If you are getting a lot of bothersome telephone calls and no real cases, then you need to look at your marketing plan. If you are getting good cases out of your marketing plan, then look at your marketing plan to see what you have done right. General awareness and market position are very difficult to measure but they need to be measured or evaluated. Do people know the name of your firm or your location? To the extent possible, the monetary configurations should be quantified in numbers in comparison to the cost of the marketing plan. If you cannot find enough revenue to pay for the marketing then a revision is necessary either in your marketing plan or your measuring system.

Exhibit 7.3 – Sample Marketing Plan

| | |
|---------------------|---|
| Mission Statement: | To create a new client base from prior clients and new clients Detailed description of current and new services General representation of industrial and small businesses |
| Target Market: | Description of clients and potential clients New and Old clients Persons with a certain problem Persons that are perceived to need our services |
| Marketing strategy: | Create general name identity Amplify the consumer’s awareness of problem and offer a solution Introduce a new product or expertise |
| Specific goals: | Higher overall awareness of firm New files immediately Stand by status or recognition that potential clients need our services, (e.g. “If I ever get a divorce, I am going to use Lawyer X to represent me) |

Methods of promotion:

- Use business cards - 1000 for \$50.00
- Mail out capability brochures to all members of social organizations, or other local groups.
- Write a “letter to the editor” regarding an event of popular interest.
- Generate publicity through involvement in school board meetings, city council meetings, etc.
- Contact a marketing consultant. This can cut down on time and can also save money by discount offers or ideas that could reduce advertising costs.
- Publish a newsletter with quality article on a regular basis, i.e. every calendar quarter.

Monthly projections of income:

- New clients and new matters from existing clients
- Average income per file = revenue increase expected, e.g. 25 new files @ \$2,379 = \$59,425

Means to monitor results:

- New files - Monitor weekly
- Opener sheet asking for the source of business. Catalog opener sheets
- Comments on the street with regard to the general awareness of the firm
- Call volume. Track the call volume and keep a record of the calls pertaining to new business
- Revenue - Have our receipts increased?
- Surveys - do these or have them done by a consultant

Human Resources

You've made the commitment to start your firm. Now you need people. What kind of workforce are you going to need?

Employee Selection

Whether a person is an independent contractor or an employee generally depends on the amount of control you exercise (as the employer) over the work being done. The other major impact is how you process the person's pay. A contractor gets a 1099 form. An employee is paid in line with the Fair Labor Standards Act (it is also good to check state labor laws), and you pay taxes for FUTA/FICA and Social Security.

Generally, small firms should not attempt the independent contractor route as a substitute for regular employees. Government agencies like the IRS generally find that people in the workforce are legally employees for tax purposes, and the cost of being wrong, remitting unpaid payroll taxes, interest and penalties can be very high.

Temporary employees may be a perfect solution if you are experiencing high and low periods of production and are still wrestling with whether you need, say, a receptionist/secretary or a degreed paralegal. The main consideration here is that a temporary employee typically costs more in hourly labor than an employee. No matter which category of help you decide upon (contractor, permanent employee or temporary employee), you will still want to interview the person before making the agreement to have them join you. **See Exhibit 8.1 for a listing of the different types of Employees.**

Interview Techniques

There are several interview techniques, but studies show behavioral based interviewing to be the best tool to use when analyzing a person for your team. In behavioral based interviews, you ask open-ended questions with phrases such as:

1. "How did you successfully accomplish . . ."
2. "Give me an example of a time when you . . ."
3. "Tell us how you . . ." and
4. "What would you do . . ."

The reason the behavioral based methodology works is because it:

- Identifies knowledge, skills, behaviors, and core competencies key or critical to successful job performance based on an analysis of the job and the incumbent, and
- Develops a tailored, structured format for asking questions.

You want to have a structured and standard format for interviewing, because no matter what type of relationship this person is going to have with your firm, there are numerous employment discrimination laws that guide what can or can't be done in the hiring/interview process. Although most small businesses will not trigger the minimum number of employees necessary for most discrimination laws to be relevant, establishing procedures for making legal hiring decisions is just the right way to do business. And if you have those habits in place, you will already be compliant with the law when you do grow to having 15 or more people on your staff.

Exhibit 8.1 – Types of Employees

Traditional Employee

- Performs duties dictated or controlled by you
- Is given training for work to be done
- Works for only one employer
- Typically gets benefits (e.g. health insurance)
- Depending on length of time worked for you, will create a higher operating tax should he or she leave and claim unemployment

Independent Contractor

- Operates under a business name
- Has her own employees
- Maintains a separate business checking account
- Advertises her business's services
- Invoices for work done
- Has more than one client
- Has her own tools and sets her own hours
- Is responsible for her own insurance
- Keeps business records

Temporary employee

- The temporary service (a.k.a. temp agency) is the employer who deals with the payroll
- Control is shared between the agency and the firm (for example, if a claim of harassment were to arise, both would be parties to the investigation)
- Has been trained by the service in most cases
- Has her personnel files maintained by the temp agency
- Obtains benefits through the agency

Employment and Discrimination Laws

The discrimination laws make it illegal for employers to treat employees or applicants adversely on the basis of something about themselves that they cannot change, or should not be expected to change. Such factors are called “immutable characteristics.” For example, one cannot change one’s race or color, gender, age, national origin, and cannot readily change one’s disability status, nor should one be expected to change one’s religion as a condition of getting or keeping a job.

The major discrimination laws are as follows:

Title VII of the Civil Rights Act of 1964 (as amended) - prohibits employment discrimination on the basis of race, color, religion, sex, or national origin (the trigger is 15 or more employees)

The Age Discrimination in Employment Act of 1967, as amended (ADEA) - prohibits employment discrimination against individuals 40 years of age and older (the trigger is 20 or more employees);

The Equal Pay Act of 1963 (EPA) - prohibits discrimination on the basis of gender in compensation for substantially similar work under similar conditions (virtually all employers are subject to this law, even if an employer has just 2 or 3 employees);

The Americans with Disabilities Act of 1990 (ADA) - prohibits employment discrimination on the basis of disability in both the public and private sector, excluding the federal government (the trigger is 15 or more employees).

Background Investigations

If you are making a decision to bring in a temporary employee, the background investigation is typically completed by the agency. In all other cases, you need to make sure you conduct a background investigation. There are a couple of reasons to do this:

1. It helps protect you from hiring someone who has misrepresented his or her skill or education.
2. It helps protect you from hiring someone with a past record of conduct that would be detrimental to your practice or that could subject you or your firm to a negligent hiring suit. Probably the most famous example on this topic is from the Fuller Brush Company. The company had an independent contractor going door to door doing sales. He went into a home and raped and assaulted a potential customer. The company later discovered he had prior convictions of this type and therefore they should have never hired him for that specific job.

In order to conduct a criminal, educational and personal background investigation, you should have all applicants sign a waiver and release of liability form. The form should clearly authorize prior employers to

release any requested information to you and relieve both the prior employers and you of all liability in connection with the release and use of the information.

As you conduct your investigation, unless a law requires such a question, do not ask about arrests. Courts have found that type of question to have a disparate impact on minorities. A firm can ask about convictions and pleas of guilty or no contest. However, if an EEOC claim is filed, you must be prepared to show how the criminal record was relevant to the job in question.

Extending an Offer

The remainder of this chapter presumes you have chosen to hire employees. When discussing the job offer you should be matter-of-fact and to the point—skip the usual “feel-good” comments that can get a firm in trouble, such as “don’t worry, if you work hard and follow all the rules, you’ll always have a job with us.”

When writing the job offer there are several points to include:

- Clearly state the relationship is employment at will.
- In the employment at will situation, you should express the compensation in terms of a weekly or biweekly pay period.

Managing Your New Hire

You should check state and federal laws on when, how and where a new hire must be reported. Specifically, most states and federal law require you to report each newly hired employee within 20 days of the first day of work. Usually, reporting may be done via the following:

- Electronic (via mailed diskette or tape)
- Internet, including online submission and file upload (<http://www.newhire.org/tx>)
- Shareware program that generates an output file for submission. (www.newhire.org/tx/)
- Hard copy (W-4, printed list, state form) either faxed or mailed
- Telephone via the step-by-step interactive voice response system (888-839-4473 option 4)

I-9 Form

The Immigration Reform and Control Act (IRCA) places responsibility on all U.S. employers to verify the employment eligibility and identity of all employees hired to work in the United States. All employers are required to complete Employment Eligibility Verification forms (Form I-9) for all employees within three days of their first day at work. Independent contractors are excluded from this process.

Unlike tax forms, I-9 Forms are not filed with the U.S. government. They are kept at the firm, separate from the personnel file, and must be maintained for three years after the date of hire or one year after the date the employee’s employment is terminated, whichever is later.

Personnel file

The firm needs to keep certain records relating to each employee in a file. One of the most important reasons to have a well-established process regarding personnel files is that many federal and state laws require paperwork to be maintained and available for production.

Wage and hour laws (FLSA), for example, require employers to keep records on wages, hours, and other items. The records do not have to be kept in any particular form and time dockets need not be used, but must include the following:

- Personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
- Hour and day when work week begins;
- Total hours worked each workday and each workweek;
- Total daily or weekly straight-time earnings;
- Regular hourly pay rate for any week when overtime is worked;
- Total overtime pay for the work week;
- Deductions from or additions to wages;
- Total wages paid each pay period; and
- Date of payment and pay period covered.

While some payroll records need be kept only two years, most must be kept for at least three years. To be safe, keep all payroll records for at least three years after the date of the last payroll check. Other related records that your firm needs to keep are as follows:

- **Unemployment compensation**—*keep all records relating to employees' wages and other compensation, as well as all unemployment tax records, for at least three years.*
- **Hiring documentation** — *under EEOC rules, all records relating to the hiring process must be kept for at least one year following the date the employee was hired for the position in question; if a claim or lawsuit is filed, the records must be kept while the action is pending.*
- **Benefit-related information (ERISA and HIPAA)** — *generally, keep ERISA- and HIPAA-related documents for at least six years following the creation of the documents.*
- **Age-discrimination documentation (ADEA)** — *keep payroll records for at least three years, and any other documents relating to personnel actions for at least one year, or while any claim or lawsuit is pending.*
- **State discrimination laws** — *keep all personnel records for at least one year following an employee's last day of work.*
- **IRS payroll tax-related records** — *keep these records for at least four years following the period covered by the records.*

It is important to remember that not all documents should be kept in the same file. Records relating to medical conditions and leave, records relating to investigations, and I-9 Forms are considered strictly confidential. Access to those records should be limited only to those who have a job-related need to know the information.

Employee Handbooks

Although many small firms don't take the time to write out their personnel policies, it is best to do so to ensure they are on record. It's easier to enforce them and treat everyone fairly if they are. Putting your personnel policies in writing is essential in this day and age of lawsuits. It is the employee's responsibility to read and understand the company's policies.

At a minimum, your handbook should include:

- **Statement of At-Will Employment/Disclaimer**
- **Employee Acknowledgement**
- **Equal Opportunity and Harassment/Discrimination Avoidance**
- **General Policies on Attendance**
- **Outline expectations for employee attendance**
- **Confidentiality**
- **Anti-Substance Abuse**
- **Worker's Compensation**
- **Pay**
- **Safety** - *As an employer you are responsible for providing a safe work environment under OSHA.*
- **Disciplinary Process** – *Make sure to contact an employment attorney or Human Resources manager to ensure that your firm has a thorough and well-planned disciplinary procedure in place.*
- **Use of Company Property** - *Address use of company property including PCs, copy machines, telephones, supplies, etc.*
- **Military leave** - *It is important to know the basic legal issues associated with employees on military duty. The main law governing the employment rights of employees on military duty is the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), found in Title 38 of the United States Code starting at Section .4301.*
- **Vacation/Holidays** - *Small firms usually start out with unpaid time off for holidays and gradually add paid holidays*
- **Sick Leave** - *As your firm grows you will probably provide some form of sick leave, but be sure you define your "carryover" rules.*
- **Group Insurance Benefits** - *Make a summary reference to your insurance benefits and eligibility, then refer the employee to the detail in a separate benefits handbook. If you've grown to 20 or more employees, the law requires that you provide continuation of health and medical benefits to employees that leave the company in most circumstances.*

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes how you are to pay employees. For all practical purposes every employer is subject to the FLSA. Most employees are “nonexempt.” This means they are not exempt from the regulations of the FLSA regarding the entitlement to a minimum hourly wage and overtime pay at a rate of one and one-half times the regular rate of pay after 40 hours of work in a workweek.

The FLSA contains some narrowly defined exemptions from these basic standards. An employer should carefully check the exact terms and conditions for each or contact the local Wage-Hour Offices for detailed information. The most relevant exemption to law firms would be the one for executives and professional employees. So your attorneys could be paid on a salaried basis but your secretary/receptionist and most paralegals would likely not be salaried.

While the FLSA does set basic minimum wage and over time pay standards and regulates the employment of minors, there is a number of employment practices that FLSA does not regulate. For example, FLSA does not require:

- Vacation, holiday, severance, or sick pay;
- Meal or rest periods, holidays off, or vacations;
- Premium pay for weekend or holiday work;
- Pay raises or fringe benefits; and
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

Also, FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old. ***More detailed information on FLSA and other laws administered by Wage-Hour is available from local Wage-Hour offices, which are listed in most telephone directories under U.S. Government, Department of Labor, Wage and Hour Division Further information may also be obtained on the Wage and Hour Division Internet Home Page, which can be located at the following address: www.wagehour.dol.gov***

Supervising Your Staff

If you employ attorneys, proper monitoring and supervision may include periodic reviews of bank accounts and trust funds and scheduled progress reports on matters assigned to junior lawyers. Keep informed about and show interest in the work of junior lawyers. This will create an atmosphere of seriousness and dedication in which junior lawyers work up to expectations, and violations of the disciplinary rules are unlikely to occur. The duty to supervise is located in state ethical rules governing attorneys.

The Unauthorized Practice of Law

As the attorney, one of the most serious staff behaviors you must watch for is the unauthorized practice of law. You should check your state law as to what constitutes the unauthorized practice of law. Should you notice or be notified that someone on your staff is unlawfully practicing law, you need to immediately address this with the person, document the discussion and place him or her on a final warning. The violation may be so egregious that immediate termination of employment may be warranted to protect you from further liability.

Employee Discipline

Discipline in the office is essential for the efficient operation of any business. Having a handbook that prescribes the firm's rules of conduct is extremely helpful if you ever need to correct someone. More specifically, a description of prohibited actions or behavior and the resulting disciplinary action should be outlined and should be consistently applied to all employees.

Should the need arise to confront an employee:

1. Find a time and place where the two of you can speak alone.
2. Concentrate on the behavior and be specific. Otherwise, people can feel threatened and emotions escalate. For example, "you came in at 8:30 and your start time is 8:00" as opposed to "you are always late—what's wrong with you?"
3. Advise the person that the disciplinary action will be documented in writing by you and placed in the employee's personnel files.
4. Make it mandatory that both the employee and you sign the counseling documentation.
5. Always allow employees to document their own versions of any counseling session or incidents. Include them in personnel files. It builds confidence in the disciplinary procedure and helps reduce the appearance of "building a case" against employees, and it preserves an account of the facts of the incident and minimizes the chances of employees changing their factual accounts later.

The Dos and Don'ts of Documenting

- Don't delay! Make a record immediately following the incident.
- Do document everything. When in doubt, write it out!
- Don't get bogged down with petty details. Stick to the main points. Do not cloud the issues.
- Do relate the incident to the company manual, policies and procedures.
- Don't be vindictive or retaliatory. Disciplinary action should not be a character assassination. Keep the issue focused on work-related matters.
- Do get the employee's side of the story in writing

Conducting Investigations and Handling Complaints

Many laws in the area of employee relations effectively require you to conduct investigations. It is the general duty of any employer who either knows or should know about a discrimination, harassment, threat, or safety problem faced by an employee to take prompt and effective remedial action to put an end to the problem. In order to know what action to take, or to find out whether action is even necessary, you have to investigate the situation and ascertain the facts. If you fail to investigate such situations, you will usually lose any claims or lawsuits brought by the employee in response to the problem. Additionally, a failure to act will undermine your staff's confidence in you as well as potentially trigger various kinds of liability and penalties for your firm and you personally.

Naturally, each type of problem demands its own methods of investigation. Nevertheless, there are some basic rules for investigations:

- Select appropriate investigators
- Identify potential witnesses and documents for review
- Plan the investigation (best to have a written plan)
- Organize a list of questions to be asked of witnesses
- Establish security for files and records
- Be prepared to modify and update the plan as needed based on new information that might come in as the investigation progresses
- Document the results
- Maintain confidentiality so that only those with a need to know are told information.

Employee Privacy

In general, your employees have a reasonable expectation of privacy in areas where they work, unless you give them reasonable notice that no such expectation exists and that they may expect such areas to be viewed, inspected, or monitored in some way. The same principle applies in monitoring employees' use of company computers, e-mail, telephone and the Internet. Bottom line: you have to let employees know that as far as work is concerned, they have no expectation of privacy in their use of company premises, facilities, or resources, and they are subject to monitoring at all times.

The policy needs to be written, detailed and widely disseminated. It must address the use of company computers and resources accessed with computers, such as e-mail, Internet, and the company intranet, if one exists. Each employee must sign the policy—it can be made a condition of continued employment. The policy should cover certain things:

- Define computers, e-mail, Internet, and so on as broadly as possible.
- Define the prohibited actions as broadly as possible, with specifics given but not limited.
- Reserve the right to monitor all computer usage at all times for compliance with the policy
- Reserve the right to inspect an employee's computer, HD, floppy disk and other media
- Reserve the right to withdraw access to computers, Internet and e-mail - if needed

- Make sure employees know they have no reasonable expectation of privacy in their use of the company's electronic resources, since it is all company property and to be used only for job-related purposes

Timekeeping, Billing and Other Considerations

Many lawyers will tell you that preparing a bill can be one of the most difficult tasks in the practice of law. Lawyers are lawyers — not business people, bookkeepers or accountants. However, if you start your own practice you can no longer think like a lawyer; you must think like a businessperson who is in the business of providing legal services. You went to law school, passed the bar exam, trained under some good lawyers and now you are on your own. The work you can do — but can you generate cash flow?

Good client communication is the key element in getting paid. As stated in the previous chapter, it is important that you prepare an engagement letter or a fee contract with the client. It is imperative that the client understands and knows what to expect regarding the costs of the case. During the initial interview convey to the client realistic costs of the case. Often it is hard to tell during the initial interview how much a case is going to cost; however, from experience an attorney should be able to develop a range for the client to understand. This will also enable the client to make an informed decision about how hard the client wants to pursue his or her case. This information should be included in the engagement letter to avoid any misunderstanding between you and the client. Again, be sure to familiarize yourself with state and local rules regarding client engagement letters.

Keeping and Billing Time

Every law firm should adopt a system to account for time spent on each case, primarily to generate accurate billing. There are other benefits, too. Complete and accurate time records, reflected in detailed statements to clients, improve potential income. And, if you keep track of all the time spent on matters not billed hourly, you can use the records to help you organize your workflow, and check office efficiency and profitability. To have complete records, though, you must write down all the time you spend on each client matter, including non-billable as well as billable hours.

The most important aspect of timekeeping is discipline, logging promptly every bit of time you spend on your clients. Some attorneys, particularly those just starting to practice, find that a good way to develop sound timekeeping habits is to record everything each day including non-chargeable time such as firm meetings, reading legal newspapers or dictating client bills. You can use these all-inclusive time records to see if there is a reasonable relationship between times for which you bill and collect and time spent on other things.

To have an accurate record of time spent each day, you must enter each thing you do immediately. Log every phone call as it occurs, and note total time out of the office on client matters, portal to portal. You can easily forget the minutes that pass while reviewing documents, or opening a file after an initial client interview, if you do not record them promptly. You may decide later not to charge for certain tasks, or to charge off excessive time. However, the decision whether to bill for each item should be made when the client's statement is prepared. When you dictate the bill, you can consider the total time spent on the matter in light of the complexity of the case, your experience and, where appropriate, the amount of money at stake. You can then make a logical decision as to how much, if any, the fee should be reduced. Without accurate time records, such a decision is a guess rather than a reasoned conclusion.

Timekeeping Systems

Almost any sort of time-recording system can be used in your office, since there is nothing inherently complicated about the process. Essential data include the client's name, the matter, the file number, the task performed, and the amount of time spent. Most attorneys log time either by the tenth or quarter hour. Either method will work well so long as everyone in the office uses the same one.

There are many commercial time-recording systems and aids on the market; many are advertised in bar journals, computer magazines, and legal newspapers. All the systems provide space for the essential data noted above, and some can record "time started" and "time stopped" for each task. Some have codes for the type of work done, and many produce time slips that can be organized by client and matter, as well as duplicate master sheets that record all logged time chronologically. Some systems are more portable than others.

Some suppliers will send free samples of their systems, enabling you to try out several before choosing one. In choosing a system, you should consider cost, ease of use, and ability to record client costs, such as long distance telephone charges and photocopying charges.

Billing Systems

A bill that a client does not understand will not be paid. Clear and quick billing has two advantages. First, the client is more likely to promptly pay a timely detailed bill, than a late vague one. Second, even if the late, unclear bill is paid, the client may be dissatisfied and decide not to return for further services.

In addition to sending a detailed statement, some attorneys call their clients before sending large or otherwise significant bills. You can then tell the client that you are preparing the bill and give warning of the approximate amount. This will allow you to discuss the issues with the client directly and respond to any concerns the client may have prior to receiving the bill.

Time and billing programs can be very helpful tools for your practice. Attorneys who do not purchase time and billing software may have difficulty getting bills out consistently and may lose billable time. Time and billing software is worth the investment. More than likely it will pay for itself within a month or two. Invest in time and billing software from the beginning. PC Law, Timeslips and Tabs are some of the more common time and billing programs. Talk to local practitioners to find out which ones work for them.

Retainer Fees

A common practice among lawyers is to obtain a fee agreement with the understanding that the lawyer will bill against, or more accurately, draw against a retainer deposited in advance by the client as the work is performed. In deciding whether to take fees in advance, you should take into account the nature of the work, the estimated time involved, the estimated fee, and the likelihood of ultimate payment. In some matters, such as retained criminal defense, the entire fee should be paid up front as soon as possible. In personal injury litigation, on the other hand, the fee generally is paid out of the recovery. In other types of matters, you should insist on a fee advancement of at least one-half the first month's estimated billing. It is better to decline a case and not get paid than to accept the case and do the work and then not get paid.

Being retained to represent a client is much more than being hired; it is being placed in an important position of trust and counsel to assist your client with his or her problems. Retainers go along with being retained. Charge a retainer when appropriate to the case. If a client cannot afford to pay an up front retainer, chances are that client cannot pay your bill at the end of the month either. Do not be hesitant in asking for a retainer to handle a case. Clients expect to pay retainers. With retainers comes responsibility. Be sure to put the retainer in your trust account and utilize those funds appropriately.

In cases where you obtain a retainer, you must first deposit it into your client trust account and not into your general account. You should use no part of the fees until you have earned it. When you have earned the fees, you should withdraw the amount earned. The safe procedure is to withdraw such funds promptly when fees are accrued against the retainer, but only with the prior written authority of the client. The billing statement should show the nature and amount of any withdrawals, as well as the status of the client's account. Be sure to familiarize yourself with the applicable professional conduct rules regarding retainer agreements and client funds.

Regardless of your fee arrangement, you must produce a bill for the client either periodically or when the matter is completed. If you have taken up-front fees, your bill should reflect the retainer and indicate a balance due or a refund due to the client. If a refund is due, your check should accompany the bill.

Types of Fees

Many lawyers do most of their billing on an hourly basis. However, no matter what method you use to set the fee, we cannot stress the importance of keeping careful time records. Faithful use of a timekeeping system will increase income if you bill hourly. In addition, there are numerous instances in which a lawyer must prove the reasonableness of the fees he or she has charged or requested. Such proof is commonly required in domestic cases or contract cases where court awarded attorney fees are provided by statute or case law. In these instances, an attorney's descriptive time records are invaluable in justifying a requested fee. Below we will discuss the three types of fees that you need to consider and be able to explain to your clients: contingency fees, flat fees, and hourly fees.

Contingency Fees

Contingency fees are closely watched. Be sure to review the ethics rules regarding contingency fees because they are not appropriate or ethical in many situations. Contingency fees are generally used in the personal injury field. The biggest question regarding contingency fee arrangements involves the costs. Does the fee come off the top (before expenses are deducted), off the bottom (after expenses are deducted) or will the attorney and client pay a pro-rata share of the expenses? Whatever the arrangement, make sure it is explained in a fee agreement or engagement letter and signed by the client prior to starting the case.

Flat Fees

Flat fees are arranged so that the case will cost a set number of dollars. Clients like flat fees because they know going into the case that no matter what happens, the fee is the agreed upon fee. The danger with flat fees is that if the case becomes more complex and requires more time than originally estimated in the flat fee, the case will lose money for the practice. To avoid this flat fee dilemma, many lawyers utilize a flat fee with a detailed schedule for each aspect of the case. *See Exhibit 9.1 for an example of such a schedule.*

Exhibit 9.1 – Example of a Flat Fee Schedule

| | | |
|----|--|----------------------|
| 1. | Investigation & research; Preparation of Petition | \$1,500 |
| 2. | Conduct one round of written discovery | \$1,000 |
| 3. | Depositions | \$750 per Deposition |
| 4. | Mediation | \$750 per day |
| 5. | Detailed Discovery; Discovery disputes | \$2,000 |
| 6. | Trial | \$2,500 |

Other lawyers who use the flat fee schedule charge, for example, \$2,500 for the initial phase of the case, \$5,000 for the pre-trial phase of the case, and \$10,000 for trial. Criminal defense attorneys are excellent at setting flat fees. The seasoned criminal defense attorney knows how much a felony DWI takes to try and what chances he has at pre-trial resolution. Also, the criminal defense bar knows that they usually have one chance at getting the majority of their money which is obviously when the client needs you most. If you are considering this option, then you should discuss it with other practitioners in your area doing the same specialty and learn from their experiences.

Hourly Fees

Hourly billing forces the attorney to keep close track of his or her day. Also, clients like receiving a detailed bill. From the client's perspective, the more detail on the bill the better. A client that sees what you are doing for him or her on a detailed bill is much less likely to dispute your fees and the way that you are

handling the case. The bill can serve as a status report to the client. It is imperative that you bill your time daily. If you have an active practice, it is very easy to lose time. At the end of a hectic day, if you have not made your time entries, do you really remember whose case you worked on and how much time you spent on each individual case? Also, make sure bills go out at the end of each month. Your clients like to be able to pay on a monthly basis, and chances are your secretary likes to get paid on a monthly basis. Sending monthly bills is also a good way to track which clients are paying and which clients are not.

Tips for Successful Billing

The key to billing and getting paid is to make sure the client understands from the beginning of the attorney-client relationship what the fees are likely to be and how the client is to pay those fees. If you know a client owes you money or you are not getting paid what you are due, are you really doing your best work? In that regard, we have an ethical obligation to ourselves and to our clients to stay on top of billing and make sure clients are paying. The bottom line: communicate billing issues to the client and send a detailed bill on a regular basis. This will provide the basis for better attorney-client relationships, happier lawyers, happier staff and happier clients.

Other Considerations: Ethics

When an attorney decides to withdraw from a law firm, it is essential that both the departing lawyer and the responsible members of the law firm be aware of, and familiar with, the ethical obligations that are owed to the departing attorney's current clients. This chapter provides a brief overview of the issues surrounding an attorney's withdrawal from a law firm. If you have specific legal questions about withdrawing from a law firm, you should contact an attorney specializing in ethics or legal malpractice.

Notice to Clients

Both the departing lawyer and the departing lawyer's law firm have an ethical duty to ensure that the departing lawyer's clients have prompt notice that the attorney is leaving the law firm. Notice to clients can be provided by the departing lawyer, the departing lawyer's law firm, or both parties jointly. Timely notice provides the client with an opportunity to determine which counsel will be providing future legal services. ABA Formal Ethics Opinion 99-414.

A departing lawyer should also keep in mind the issue of liability for the law firm's conduct after his or her withdrawal from the firm. To protect himself or herself from this potential liability; it is imperative that the client be informed that the lawyer is no longer with the firm. Traditionally, courts refuse to release a lawyer from liability if any question exists that the client was not informed that the attorney had departed from the firm. Conversely, if the former law firm seeks to avoid liability for any potential malpractice committed by a former member of the firm, it is important that the client be informed.

Continuing Duty to Clients

The primary consideration for both the departing lawyer and the departing lawyer's law firm is that the interests of the departing lawyer's current clients must be protected. It is also important to recognize that it is the client's right to choose whether he or she will continue to be represented by the departing attorney; whether the client will remain with the law firm, or whether the client would prefer to employ a new attorney. Additionally, it is the responsibility of the departing lawyer and the law firm to take reasonable steps to accomplish the withdrawal "without material adverse effect on the interests of clients." ABA Formal Ethics Opinion 99-414. Check your state's ethical rules regarding continuing duties to clients.

Potential Conflicts of Interest

A departing attorney should attempt to obtain a client list when leaving a law firm for future checks on potential conflicts of interest. If the client decides that his or her file will be transferred to the departing attorney's new law firm, the attorney must ensure that the client matter does not create a conflict of interest with the new firm and that the matter can competently be handled at the new firm. It is the departing lawyer's responsibility to avoid conflicts of interest respecting client matters that remain with the old law firm.

Communication With Clients

A departing attorney must use utmost caution when contacting the former firm's clients. The departing attorney should review employment contracts and pleadings to determine whether the law firm or the departing attorney is representing the client. The lawyer should also determine whether he/she had appeared as co-counsel in any prior matters. Failure to use caution about these matters could result in the departing attorney being accused of interference with a contractual relationship, or tortious interference with a contract.

Restrictions on the Right to Practice

A law firm cannot place restrictions on the departing attorney's right to practice law, such as a covenant not to compete. This protects the client's right to choose a lawyer as well as the lawyer's professional autonomy.

Client Property

A lawyer is required to hold funds and other property belonging to clients or third persons in a separate account, designated as a "trust" or "escrow" account. Complete records of such accounts and other property must be kept by the lawyer for five years after termination of the representation.

If a client makes the decision to hire an attorney who is departing from a firm, it is the duty of the former law firm to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a

full accounting regarding such property. If the law firm fails or refuses to deliver the funds or property the departing attorney should make written demand upon the law firm.

When the former law firm provides client files to the departing attorney, it is permissible for the law firm to retain attorney work product. The departing attorney should discuss with the former law firm making copies of the files on the former law firm's copiers to avoid issues of possible theft.

Rules of Professional Conduct

When opening a law practice, a lawyer should consider this and the fact that certain areas of law are more prone to producing client dissatisfaction and grievances than others. The three practice areas that generate the most grievances are criminal defense, family law, and personal injury law. The rule violations most frequently alleged involve neglect of a client's legal matter, failure to adequately communicate with the client, failure to safe guard client property and failure to return the client's file and other property upon termination of representation.

Before you open a law practice, we recommend the following:

- Review state ethical rules regarding grievances against attorneys.
- Set up a separate operating account for business expenses and an trust account for clients.
- Prepare employment contracts or employment agreement letters.
- Decide what type of business entity best suits the lawyer's needs.
- File a change of address with the appropriate state and federal agencies and courts. Former clients should be contacted and given the opportunity to obtain their files.
- Set up tax accounts.
- Obtain a copy of all local court rules.
- Develop a business plan and budget, which includes marketing, production, personnel, systems and technology communications, finance and budget.
- Attend a seminar on law office management issues that are particularly directed to solo and small firm practitioners.

Other Considerations: Research

Your new office looks great! You have the chair and the desk you always wanted. You are free! Well, you're not exactly free, but at least you can do what you want. That was the original idea, anyway. Being part of a small business makes the phrase "nothing in life is free" take on new meaning. Nowhere does this hit home more quickly than the first time you are asked a question you cannot easily answer. You miss the extensive resources of your law school or your old firm, and you need a law library. As a solo or small firm lawyer, you have to do so much more than practice law. Office administration, managing personnel, paying bills, and even maintaining your computers can drain your day away. Thus, the need for efficient, cost-effective legal research takes on new significance.

Printed Materials

Not very long ago, most attorneys relied upon printed materials for their research libraries. You always can make use of public law libraries, law schools, and the generosity of other lawyers. As your cash flow increases, you can buy your own books. However, you will likely pay a lot for the convenience of having everything at your office. Books are only as up-to-date as their most recent printing. Reporters, digests, and codes can be expensive to buy and expensive and time consuming to maintain. Moreover, books take up valuable office space. You have to pay rent on the space that the books take up, even though they mostly sit on a shelf: The more complete the library the more space you must devote to storing the materials. Why use all that space for books when you could use the saved space to make your private office larger? The books will not know the difference.

Electronic Materials

One solution is to make use of research materials on CD ROM. Many legal materials are available in CD-ROM format. While they are often less expensive than books, due to the lower costs of production and distribution, less expensive is not synonymous with inexpensive. Moreover, they are only as up-to-date as the most recent CD. While they offer quick searches and the convenience of toting an entire library to court, it is important to consider that CDs may not be the best solution for savvy lawyers on a budget.

Research

Internet

The Internet revolution is real, and the best way to conduct legal research is online. Internet access is cheap; the monthly cost can be about the same as a few fast-food combo meals. You can spend more, but in return you get speed. From traditional dialup services over telephone lines to high-speed broadband access to wireless access on PDA's to Internet capable mobile phones, Internet databases and libraries can be available everywhere. With minimum technical understanding, your library can follow you anywhere.

The smart lawyer can stay ahead of the game by taking advantage of the wealth of information, both subscription-based and free, that is online. Online legal research offers nearly instantaneous access to information at a price most lawyers can afford without taking up any room in your office. Beyond case law, statutes, and other legal materials, numerous resources assist lawyers with witnesses, parties, and assets. This chapter addresses a few of the options available to the solo and small firm lawyer, and helps you find a place to start. There are thousands of useful websites on the Internet, and the number is growing all the time. Do not waste time reinventing the wheel.

Free legal resources on the World Wide Web

So much information is now available online that many people do not know where to start. From Google to AltaVista to WebCrawler to Ask Jeeves there are numerous resources for searching the Internet. The easiest way to find what you want online is to use a site that organizes links to other websites. Many sites

do not contain any information in and of themselves. Rather, they provide links to online databases and other useful sites. By far, the largest free legal site is FindLaw. FindLaw offers more than links to legal resources; it also contains news, career resources (if you change your mind about being a solo practitioner) and discussion boards. Another excellent link site is Piper Resources' State and Local Government on the Net page. This site attempts to organize all government links by state. For instance, by clicking on "Texas," you are presented with links to Texas' executive, judicial, and legislative resources, as well as links to county and city websites.

These are just a few of the sites that are available to assist you in finding information. Taking just a few minutes to scan these sites will pay you dividends in the future. When your time is scarce, you are always going to have an easier time finding the information you want if you know that it is out there in the first place.

Fee-based Legal research

Spend what you can afford, but only what you can afford. Rent, utilities, insurance, and taxes add up. Subscription services can easily become one of the largest expenses in the small office budget. However, they can be a very intelligent solution when carefully purchased.

Several excellent subscription legal research services are available. The two largest and best known are Westlaw and LexisNexis (and most lawyers are already familiar with these services). They both offer several advantages over the small services: extensive databases of state and federal case law, statutes, court rules, administrative rules; the ability to check citations; case law summaries; and practice guides.

There is a reason why many law schools do not provide legal research and writing students with access to Westlaw or Lexis until they have learned to research using books: The online services are so easy to use, so fast, and so complete, that most students would never take the time to learn traditional legal research techniques if they could find the information online.

Originally, the cost of both services was based on the amount of time they were used, which made them cost effective for only the larger firms. Both services now offer flat-rate pricing. Both services can be accessed either through software applications installed on a computer or through a web-browser. It is important that both can be accessed over the web because they do not tie you to one computer. In addition, both companies offer specialized software to aid in the preparation of legal documents and citation checking.

While both Westlaw and LexisNexis offer fiat-rate pricing for the smaller law office, even this pricing structure may prove to be too costly for some attorneys. Satisfying the demand for more affordable legal research are several web-based search alternatives. The best known of these alternatives is Loislaw. Loislaw offers flat rate pricing, a full database of all 50 states and the federal government, and toll-free technical support. Also, Loislaw allows multiple attorneys to use the same password. If you are not practicing alone, this eliminates the need to purchase a separate password for each attorney in the office. Some of the other services that are available include Quicklaw America, VersusLaw and Fastcase. Of these three, VersusLaw offers a very inexpensive flat rate billing for state court databases.

Subscription search services

Subscription search services are easy to find. While these services can be very expensive, they offer access to records that are not otherwise publicly available. There is no best site that provides one-stop shopping for all of your needs, so try out more than one.

Other electronic resources

The above serve only as a brief introduction to the electronic resources available to the solo or small firm lawyer. This list would not be complete without mention of e-mail based information. There are numerous organizations that maintain email lists to communicate with other lawyers. These can be invaluable, especially when you have a practice or procedure question that cannot be easily answered. If you are a member of a practice-specific organization, it is very likely that you can subscribe to such a list for free.

There is no easier way to make an impression on judges and your peers than by being prepared and well-informed about the law, and there is no better way to keep your clients happy than to appear smarter than the other lawyers. The Internet is a tool, nothing else. The smart lawyer uses all of the tools available. Saving money, saving space, and saving time, that is just icing on the cake.

Business Insurance

Some lawyers argue that having insurance just makes you a target for lawsuits. Not having insurance does not prevent claims, as is demonstrated by one recent case resulting in a multimillion-dollar judgment against an attorney without insurance. Consider the following in determining whether you should have an insurance policy in place:

Personal Asset Protection. You may not have a lot of assets as a starting attorney; but what if you become prosperous? The underwriting practices of most malpractice insurers do not allow you to purchase coverage today for what you did before you first obtained and maintained continuous insurance coverage.

Expenses of litigation. Some attorneys argue that if a judgment is rendered against them, they know how to be judgment proof. Of course, such a strategy is risky and unpleasant if taken to its fullest extent. What is often unappreciated is how expensive it may be to get to the point of getting a determination of liability. Historically, about 35% of insurance payments in professional liability are for litigation expenses. Do you want to risk bankruptcy if you really did not do anything wrong but the litigation to prove it is expensive?

Client and reputation protection. Anyone can make a costly mistake. The list of well-known lawyers who have suffered malpractice claims is long. It is professional and responsible to buy insurance to protect your clients against mistakes. If you can pay a claim that is truly your fault, it may be possible to settle the claim privately rather than to have the error become generally known in the legal community.

Referral Services. A number of referral services require insurance. These services often provide significant income to attorneys.

Client required insurance. More and more sophisticated clients are requiring proof of insurance. If you have a business practice, you may find yourself shut out of certain kinds of representation without insurance.

Selecting the Right Insurance Policy

In determining appropriate limits, consider the following factors:

- Include defense costs and possible losses in your evaluation. If you have a high volume of cases, you may wish to consider a lower per claim amount and a higher aggregate limit.
- The dollar value of matters in which you are typically involved should also be considered.
- What policy provisions differ from insurer to insurer?

Important provisions that can vary from policy to policy include:

Coverage for punitive and exemplary damages. Policies rarely cover punitive and exemplary damages. No policy covers criminal, malicious or fraudulent acts, but punitive damages can be assessed on grounds short of such allegations.

Innocent partner protection. Clauses in some insurance policies waive exclusions as to partners who did not participate or acquiesce in culpable conduct. The extent of such “innocent partner” protection varies from company to company.

Per claim deductibles vs. aggregate deductibles. Deductibles may be stated to be either per claim or aggregate. With a per claim deductible, if you have two claims in a policy year you could have to pay your deductible twice.

Other exclusions. Some companies are beginning to exclude certain areas they deem high risk. One carrier has begun excluding coverage for intellectual property matters, even relatively simple ones. Others are excluding or limiting coverage for mass tort and class action litigation.

Claims Made Coverage

Almost all attorneys’ professional liability insurance is now written on a claims made basis. “Claims made” means that, unlike your auto policy, the policy in effect when the claim is made to you and reported to your carrier is the operative policy. If the policy expires before you report the claim, you have no coverage under that policy. In addition, most policies also exclude claims of which you knew or should have known at the time you purchased insurance.

Prior Acts Restrictions

Prior acts restrictions exclude coverage for acts that occurred before a certain date or on behalf of a certain firm. Look for a “retroactive date” in proposed policy terms. A policy with a retroactive date does not cover acts occurring before the retroactive date.

Insurers may not cover your prior acts due to your claims history or the history of your former firm. In general, if you have left a large firm that is likely to maintain insurance, you do not need prior acts coverage. Most policies cover former members of the firm for their acts on behalf of the firm. If the prior firm has dissolved, then you may want to try to obtain prior acts coverage. The statute of limitations for legal malpractice is, in many situations, two years from the date of discovery of the error by the client.

We recently saw a situation where an attorney had maintained continuous insurance for many years, but one year his agent allowed a new insurer to offer a retroactive date, which was the date that policy went into effect. Carefully review the retroactive date provisions to assure you do not lose years of prior acts coverage.

Claims Handling

You want to know how your carrier will treat you when you have a claim in the event you are sued. Some carriers may dictate choice of counsel without asking for your input. Similarly, some carriers have provisions in their policy that put significant conditions on your decision as to whether or not a claim should be settled. Consent to settle provisions, or “hammer clauses,” provide that if the carrier wishes to settle a claim but the insured withholds consent, the insured will only receive benefits under the policy equal to the amount for which the carrier could have settled the claim.

At first analysis, this may appear to be to your benefit as you can prevent the insurer from settling a frivolous claim. However, your limits of coverage for the claim will be reduced to the amount for which your matter could have been settled. If you truly believe a settlement is unjustified, you have almost no ability to seek a just result under such clauses. Other carriers have a peer review process that provides an avenue for determining if a proposed settlement makes sense.

Insurance Carriers

Over the past several years, a number of lawyers’ professional liability insurance carriers have entered and left the market. Frequent changing of carriers entails a number of risks. Attorneys can be left holding the bag. When carriers change, there is no guarantee that policy terms will remain the same. In some situations, carriers have left the market, and the new carrier supporting the insurance agent has decided not to take certain kinds of insureds. Recently, we have noted agents having difficulty placing coverage for plaintiff personal injury attorneys, intellectual property practices, and attorneys with recent claims, even if relatively small.

Some insurers work on a direct basis, not through agents. While direct writers may decide to get into the business or pull out just as insurers who work through agents, some direct writers write only lawyers’ professional liability. Regardless of whether you are talking to a direct writer or using an agent, make sure to ask how long the insurer has provided insurance in the state.

Financial Stability

There is no guarantee of financial stability, but you can look for several things. Look for insurers rated highly by financial rating services such as Best. You can check Best ratings online at www.ambest.com. Be wary of insurers offering low rates that have just entered the professional liability market for the first time.

Premiums

The cost of legal malpractice insurance has risen significantly. The reasons are complex. As you gain experience, your premium actually increases because of prior acts coverage. If you have a claim, your premium is likely to increase. Some types of legal practice have experienced larger increases than others due to their specific overall claims experience. The general insurance market has tightened in part due to the impact of September 11 related claims. Other lines of insurance, such as workers' compensation, medical malpractice, and corporate officials insurance, have had poor results from insurance written several years ago. Insurers now cannot make as much on investments as they did when equity markets were soaring. All of these factors influence the price of all lines of insurance, as risk is spread between lines of insurance and within lines of insurance.

Additional Information

The ABA Standing Committee on Lawyer's Professional Liability offers a number of useful guides for legal malpractice insurance. Also, you may wish to review the [Legal Malpractice: The Law Office Guide to Purchasing Legal Malpractice Insurance](#), published by Thomson West.

Law Firm Insurance Considerations

Like it or not, practicing law is a business. Things that can happen to other businesses can happen to lawyers. Your building, equipment, and important papers can be damaged or destroyed. People visiting your office can be injured at your office or by your employees while acting at your request. Your employees can be injured while working. To get and retain qualified employees, you may need to help them obtain health, disability and life insurance, and your own financial picture is at risk if you do not get such coverage for yourself.

Commercial Insurance

Law firms generally need a property casualty package of insurance. The sophistication of the package needed varies depending upon the nature of the lawyer or the firm and the assets actually owned by the firm. Such coverage is often provided on a single form called a Business Owners Policy (BOP), but if the needs are more sophisticated the package will include several forms combined in a Commercial Package Policy (CPP).

Property coverage

Everyone is familiar with basic property coverage. If you or your firm owns a building, coverage for damage to the building is important. The equipment in your office should also be protected, whether in the office or outside the office. Mobile equipment may have to be addressed through optional coverage. There are several other additional coverages that can be very important for lawyers.

The consequences of loss of use of property are often under appreciated. If you cannot use your office or equipment while it is being repaired or replaced, you may incur substantial costs to relocate temporarily. You may lose income while you are dealing with the consequences of a loss. You may need to continue to pay certain expenses, even though you are unable to generate income for a while. These risks are addressed by property coverages in a typical commercial package.

Several very specific coverages should draw the attention of a lawyer or law firm. Ideally, your package should cover all causes of loss rather than specified perils. However, this may not be possible in your particular situation. It is important to address the specific needs that are critical for law firms and to understand how they are covered under your policy.

Crime Coverages

Crime coverages can be very confusing. Coverage for burglary and robbery requires very specific acts to occur, such as breaking and entering or use of force, while coverage for theft encompasses a taking by someone who was invited to your office. Employee dishonesty coverage, which is not part of theft coverage, includes coverage for loss of property money, or securities due to dishonest acts by employees if the employee had a manifest intent to cause the insured harm and to obtain a financial benefit.

This coverage essentially protects against embezzlement. Money and securities coverage reimburses the insured for loss of money or securities due to theft, disappearance, or destruction, and is usually a separate option that must be chosen. Optional forgery or alteration coverage covers losses due to forgery or alteration of checks, drafts, promissory notes, and other certain documents. Due to the nature of a law practice, obtaining proper crime coverage is critical.

Valuable Papers Insurance

Valuable papers insurance is critical for lawyers and law firms. A fire or other catastrophic event could destroy firm files. Most commercial packages have some level of valuable papers coverage, but lawyers should consider increasing standard coverages. Valuable papers coverage pays for reconstruction of vital records. As one can imagine, such expenses could be very high for a lawyer or law firm with many files.

General Liability Coverages

Liability coverages pay for damages you or the people working for you cause other people. General liability coverages in commercial packages address such risks. Professional liability coverage is generally excluded from general liability coverage, as is a number of other liability risks noted below. The remaining exposure is from incidents such as guests being injured at the office and damage caused to property of

others. Even if a lawyer or law firm owns little property, the lawyer or firm can be liable for damage caused to buildings or equipment rented from others. Leases often require maintenance of liability insurance. If a client entrusts a valuable item to the lawyer to use as evidence in a trial, and the item is lost, general liability coverage might come into play with regard to the client's claim for the value of the item. Professional liability insurance might address losses to the client due to inability to introduce the item as evidence.

Business Auto Coverage

The commercial package forms generally do not cover property damage to automobiles owned or used by a lawyer or law firm, nor do they cover liability incurred when automobiles owned or used by a firm are involved in an accident. If a law firm does not own any automobiles, business auto coverage is still important. If an employee is running an errand for the firm, the firm could be liable for the negligence of the employee while on company business.

Worker's Compensation

State law may require employers to notify a state agency if they do not have workers' compensation coverage. A business that does not have workers' compensation coverage loses common law defenses in a suit by employees. The defenses lost include the fellow servant rule and contributory negligence. Given the potential liability that could be involved in the death of an employee, it is advisable to obtain workers' compensation insurance. Workers' compensation is excluded from package commercial general liability.

Workers' compensation insurance policies also include employer's liability insurance. This coverage insures the employer against suits by employees injured in the course of employment whose injuries or disease are not compensable under the workers' compensation law. This coverage is necessary because an injury may not be considered work-related under workers' compensation law. Nevertheless, the employer could still be at fault in causing the injury.

Employment Practices Coverage

Employment practices coverage addresses risks associated with hiring, firing and promotion decisions, and claims of discrimination and harassment. As the number of employees of a law firm grows, the risk of claims arising out of these matters increases significantly. Employment practices are generally excluded from the package general liability coverages. A few lawyers' professional liability policies include employment practices coverage. Directors and officers policies may also include employment practices coverage.

Employment Benefits

Three types of insurance are frequently provided to employees: life, health and disability. Dental insurance is provided less often. Dental insurance generally requires very high out-of-pocket contributions for services other than routine cleaning.

Of the employee benefits insurance types, health insurance is by far the most important. Employees see high medical costs on a frequent basis and appreciate having the cost of insurance paid for them. Life and disability insurance is a less of an issue, and employees most concerned about such coverages need term life and comprehensive disability policies that can be carried between jobs. The level of benefits under group life and disability policies is generally much too low to address employee needs adequately. While employers are not required to provide health insurance to employees, as a practical matter an employer may not be able to hire and retain qualified employees without providing health insurance in some way.

Health Insurance

Health insurance costs are very high. Rate increases over the past few years have been staggering, and there are fewer plans available. The increase in costs has forced most employers to consider restructuring their insurance in a number of ways.

For quite some time, it was generally less expensive for an employer to choose a Health Maintenance Organization (HMO) plan, which relied on doctors employed by or under contract with the insurer, rather than a Preferred Provider Organization (PPO) plan that provided employees more flexibility in choice of doctors. Under HMO plans, employees pay less out of pocket than they do under PPO plans. The economics of HMOs have not worked, and far fewer HMOs are functioning. Traditional indemnity plans, which reimburse a portion of medical expenses, are still available. Employee out-of-pocket costs are almost uniformly higher under such plans, but the employee has maximum freedom of choice. High deductible indemnity plans combined with a tax advantaged Medical Savings Account (MSA) can be attractive for some law firms.

The exact method of funding employee health insurance deserves careful attention. Some employers only pay for the employee's coverage and not that of the employee's family, and even then may require the employee to contribute some of the cost. Some employers have adopted cafeteria plans. These allow employees to choose the coverages and other benefits they want. The employees receive a set amount of money, and pay the difference between what the employer provides and the full cost. The tax laws provide a number of options that should be considered to reduce employee's costs for covering their family members or themselves. Under Section 125 plans, an employer can, with the employee's approval, transfer pre-tax wages to pay for insurance coverage and other benefits, including child care and unreimbursed medical expenses. Neither the employer nor the employee pays social security or income taxes on earnings transferred to Section 125 plans. Employees with relatively healthy children may be able to pay less buying an individual policy for their child, rather than putting them on their employer's group plan.

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Conclusion

Opening a law office is a risky venture. It requires a lot more than the everyday duties of a practicing attorney because the solo practitioner must also have knowledge of common business practices necessary to run his or her own office. In this book we attempt to highlight many of these risks for you to consider before venturing out on your own. It is not meant to dissuade you from solo practice. Rather, our goal is to identify these issues for you to ensure that you have thoroughly considered all of the issues prior to opening the doors to your own business. Where applicable, we have tried to provide you with useful tips to make the process a successful one.

These materials were compiled to help and encourage you in developing your solo practice. However, these materials alone are not enough. For a successful practice, it is important that you become part of your legal community. We recommend that you talk to other solo practitioners about their experiences. These attorneys, and others, can provide you with invaluable advice and contacts in your local area. Many bar associations have programs designed to help young lawyers receive mentoring from more senior practitioners. If such a program is available in your state, then we strongly encourage you to explore this option.

Although the focus for this year will be to assist young lawyers in a transition to solo practice, resources and programming will be available for those young lawyers who are interested in pursuing other career paths. In addition to a variety of career programming at every meeting, the Division will be highlighting a different career-related topic on its website each month. Each topic will contain information and additional resources on the particular area. Moreover, at each meeting, the *Unlock Your Potential* team will highlight career related programs of interest to young lawyers.

Finally, we encourage you to take advantage of resources such as those offered by the American Bar Association Career Counsel. To assist you in finding career related information, the ABA YLD website (www.abanet.org/yld) will feature links to other resources designed to assist you in developing a career that is right for you.

