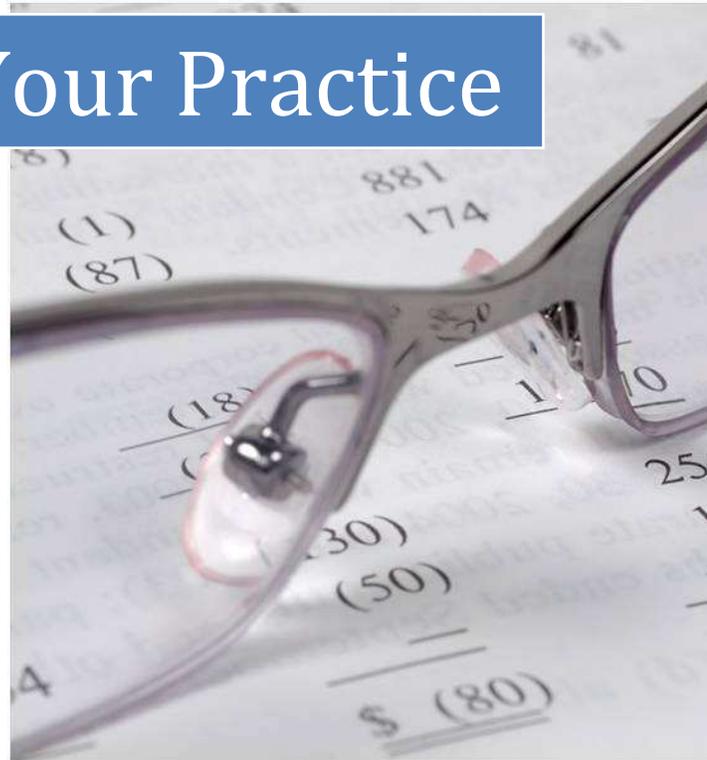


2012

# Managing Your Practice

*Practical resources and tools to accelerate your success from the start!*

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## Managing Your Practice

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### What are the top 15 tips for setting up a law practice?

1. Plan now to create networking opportunities on a regular basis that will enable you to avoid isolation, obtain guidance on cases, and provide referral sources for new business.
2. Find a "buddy" who will provide emergency assistance to your clients if you become unexpectedly unavailable because of work schedule, illness, injury, etc. Include in your fee agreement a clause to obtain authorization from your clients, if needed, for the named attorney to review the file, obtain continuances or take other emergency action until the client can determine how he wants to dispose of the matter. Buddy arrangements are usually reciprocal. Your malpractice insurance carrier likely requires a back-up lawyer.
3. Assess your ability to get the legal work accomplished. Create the systems and procedures that you will need to provide superior legal work and attentive client service.
4. Contact WSBA's Law Office Management Assistance Program at [www.LOMAP.org](http://www.LOMAP.org) for help and resources.
5. Develop a well-thought-out business plan with clearly realistic goals so that you can establish adequate financing or line of credit with your bank. A business plan should include your anticipated expenses as well as your marketing and client development plans.
6. Get good accounting and time & billing software. Seriously consider case management software. Can it handle trust accounts? Talk to LOMAP before talking to a bookkeeper.
7. Be clear about your preferred practice areas. Steer away from those that are not. It is much harder to be a "jack of all trades" than a "master" of one or two.
8. Determine your entity status. Liability, tax and other issues follow from this decision.
9. If going solo, obtain a Federal Employer Identification Number (EIN) and business license. Many banks will not allow you to open a business checking account without an EIN and business license.
10. Do not expect the revenue from a new practice to support you adequately during the first 6 to 12 months. What are your other resources?
11. Make sure you have a copy of and read the ethics rules, especially the rules pertaining to client property, fees, trust accounts (including IOLTA requirements), and communicating about your services (e.g., advertising and letterhead issues).
12. Be sure to use a system to screen clients for conflicts of interest.
13. Your life will consist of four phases: getting clients, doing the work, billing the clients/admin stuff, and...a personal life out of the office. Do not neglect the personal: if you do not take care of yourself, you will not be able to take care of anyone else--clients or loved ones.



14. Make sure you have good childcare, back-up childcare, and a housekeeper.
15. Get the support of your spouse or significant other. Let that person know that things are going to change and may be stressful and you will be counting on him or her to pick up more of the pieces since you will be concentrating on making the business a success.

Courtesy of various sources.

## Learn More

In this program...	See other topics in this section: "How do you manage financial arrangements with clients?"; "What are good billing and collection practices?"; "How do you manage a trust account?"
At the Bar...	The <a href="#">Law Office Management Assistance Program (LOMAP)</a> is a resource for all members of the WSBA. It offers low-cost and confidential professional assistance with office administration, as well as print and web resources to assist with opening, closing, and managing your practice. LOMAP services are especially recommended for solo and small firm practitioners, those opening a practice, and those closing a practice.  <b>View a variety of videos at <a href="http://wsba.org">wsba.org</a> under Resources and Services &gt; LOMAP</b>
On the web...	Practice Development, LOMAP, Preadmission, Insurance, Ethics Rules of Professionalism,



## Managing Your Practice

### How do you develop good relations with staff and colleagues?

The way you treat your staff is vital to the health of your law office. Law office staff are invaluable resources. Here are some tips for a friendly and supportive work environment:

#### **Show your appreciation**

Pay attention to the little ways people extend themselves and offer a simple word of thanks. Keep in mind that colleagues need to hear words of encouragement as well as staff.

#### **Resolve conflict early**

Conflicts are bound to arise between people. Most occur due to misunderstandings or unspoken expectations. Many conflicts resolve themselves. Others create tension among staff members and can fester rapidly. If you feel tension, chances are that others do as well. Take the lead in bringing people together and clearing the air.

#### **Acknowledge mistakes, yours and others, and move on.**

Address errors rapidly to avoid damage to a client's case, not to mention your career. If a staff member errs, you, the lawyer, are responsible. Fix the problem without causing further damage to the staff member who is likely already upset. Provide support and guidance to the staff member privately. Once resolved, do not dwell on it. Make sure procedures are in place to prevent a recurrence. Provide additional training if needed to remedy any deficiency. If the error is yours, be honest. Get training if you need it.

#### **Be a good listener.**

Often listening is more important than giving orders or directions. When others trust you, they will be more comfortable discussing their concerns with you. Take the time to be a friend to staff and colleagues. There will be fewer surprises with negative impact.

#### **Know the outside interests of people with whom you work.**

Atmosphere, character, mood – there are a number of words that express the feeling in an office. Office environments take on the characteristics of the people that work in them. Think of some ways you can contribute to a pleasant office environment. Since you spend one-third of your life at work, it makes sense to learn about the interests of your colleagues and staff. Let your staff know you value the quality of their lives by being flexible with scheduling to accommodate their other interests.

A lawyer must not permit a non-lawyer to give advice to the firm's client. If you instruct an assistant to obtain the client's signature on a legal document, ensure that your assistant does not advise the client concerning the terms of the document.

Some things you can do to supervise law office staff to ensure their familiarity with the professional obligations of attorneys are:

*Provide periodic training to staff regarding a lawyer's general ethical obligations.*

*Establish written policies and procedures to assure that staff understand how to comply.*

*Take remedial action immediately if you learn of a violation by staff.*

*Be open to questions from staff.*

Remember, delegating work to staff will not relieve you of responsibility for the actions of others. You remain ultimately responsible for violations of ethical conduct by staff and might need to intervene to make sure that staff members comply with the ethical duties imposed by the Rules of Professional Conduct. *For more information, see RPC Title 5.*



## Learn More

In this program...	See other topics in this section. Would you like more information or continuing legal education (CLE) on this topic? Let us know! <a href="mailto:nle@wsba.org">nle@wsba.org</a>
At the Bar...	See Law Office Management Assistance Program (LOMAP) Practice Tips on <b>Client Relations</b> at <a href="http://wsba.org">wsba.org</a> under <b>Resources and Services &gt; LOMAP &gt; Practice Tips</b> <ul style="list-style-type: none"><li>○ Monthly Computer Clinics</li><li>○ Lending Library</li><li>○ Lawyer Consultation</li><li>○ LOMAP Speakaers</li><li>○ Casemaker – free online legal research, <a href="http://pro.wsba.org/Casemaker/">pro.wsba.org/Casemaker/</a></li></ul> <p><a href="#">Ethics/Professional Responsibility Program</a> or on <a href="http://wsba.org">wsba.org</a> under <b>Resources and Services &gt; Ethics</b></p> <ul style="list-style-type: none"><li>○ Ethics Line (206-727-8284 or 800-945-WSBA, ext. 8284)</li><li>○ Informal Opinions- Formal and Published Informal Opinions</li><li>○ Rules of Professional Conduct (RPC)</li><li>○ Ethics Opinions searchable database</li></ul>
On the web...	Practice Development, LOMAP, Supervise, Staff, RPC 5, Preadmission



## Managing Your Practice

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### How do you effectively handle administrative tasks?

As you begin your law practice, it is helpful to be familiar with a variety of resources to develop and manage your practice. Many disciplinary matters result from neglecting or mishandling of these administrative details:

- Time and billing systems
- Calendar and docketing systems
- Trust accounts

In order to address these matters and supervise the work of others, you need to know how to do it yourself. Remember, regardless of the structure of your law office (solo, small firm, large firm), you bear the responsibility for these administrative details of your practice; you can delegate the tasks, but not the responsibility.

The Washington State Bar Association and local jurisdictions provide a number of resources for lawyers in all areas of law office management.

### Learn More

In this program...	See other topics in this section. Would you like more information or continuing legal education (CLE) on this topic? Let us know! <a href="mailto:nle@wsba.org">nle@wsba.org</a>
At the Bar...	See LOMAP's "Opening a Practice" information online at <a href="http://wsba.org">wsba.org</a> under <b>Resources and Services &gt; LOMAP &gt; Opening a Practice</b>
On the web...	Practice Development, LOMAP, Supervise, Staff, RPC 5, Preadmission



## What are the components of a basic business plan?

A law office is a business and basic business principles apply. Think about developing a business plan, a budget, and a marketing plan. The basic components of a business plan include:

- a current and *pro forma* balance sheet
- an income statement
- a cash flow analysis

The Small Business Administration recommends that you consider these questions before you begin writing your business plan<sup>1</sup>:

- What service or product does your business provide and what needs does it fill?
- Who are the potential customers for your product or service? why will they purchase it from you?
- How will you reach your potential customers?
- Where will you get the financial resources to start your business?

### What is the survival rate for new businesses?

According to a recent study, two out of three new employer establishments survive at least two years and 44 percent survive at least four years<sup>2</sup>.

### How do I determine my entity status?

Determining your business structure may depend on a number of variables.

## Learn More

In this program...	See other topics in this section. Would you like more information or continuing legal education (CLE) on this topic? Let us know! <a href="mailto:nle@wsba.org">nle@wsba.org</a>
At the Bar...	Law Office Management Assistance Program (LOMAP)
On the web...	U.S. Small Business Administration: <a href="http://www.sba.gov/">http://www.sba.gov/</a> Washington’s Business Licensing Service: <a href="http://bls.dor.wa.gov/startbusiness.aspx">http://bls.dor.wa.gov/startbusiness.aspx</a> Internal Revenue Service: <a href="http://www.irs.gov/">http://www.irs.gov/</a> Practice Development, LOMAP, Supervise, Business Plan, Preadmission

<sup>1</sup> Retrieved September 6, 2007 from [http://www.sba.gov/smallbusinessplanner/plan/writeabusinessplan/SERV\\_BUSPLANBASICS.html](http://www.sba.gov/smallbusinessplanner/plan/writeabusinessplan/SERV_BUSPLANBASICS.html)

<sup>2</sup> Small Business Administration, frequently asked questions, retrieved September 6, 2007, <http://www.sba.gov/advo/stats/sbfaq.pdf>.



## Managing Your Practice

### How do you manage your licensing requirements?

Newly admitted members are exempt from MCLE compliance for the year of admission and the following calendar year. After that exemption period, the first three-year reporting period begins.

#### Summary of MCLE requirements

You must earn 45 CLE credits on or before the end of your three-year reporting period. You can count all credits earned since the day of WSBA admission for your first reporting period. At least six credits must be ethics, and at least 22.5 credits must be live (as opposed to pre-recorded). A course is live if you are able to ask questions of the instructor in real time and hear the questions from and responses to other attendees in real time. If you earn more than 45 credits in a reporting period, 15 credits can be carried to the next reporting period; of which a maximum of two (2) can be ethics and five (5) can be audio/visual credits.

Approved ethics credits include topics specifically covering attorney ethics, professional conduct standards for lawyers representing clients and the public interest, risks to ethical practice associated with diagnosable conditions of stress, anxiety, depression, and addictive behavior, as well as courses related to attorneys and law firms increasing skills in facilitating diversity and anti-bias behavior.

To review or submit MCLE credits:

1. go to the “mywsba” web site at [www.mywsba.org](http://www.mywsba.org),
2. Click “Login” in the top right corner of the screen, and log in.
3. Click on the “MCLE” link on the left side on your My Profile page

### Learn More

In this program...	See other topics in this section. Would you like more information on this topic? Let us know! <a href="mailto:nle@wsba.org">nle@wsba.org</a>
At the Bar...	<a href="http://mywsba.org">mywsba.org</a>  <a href="#">Mandatory Continuing Legal Education</a> provides help and answers questions. See <a href="http://wsba.org">wsba.org</a> under <b>Licensing &amp; Lawyer Conduct &gt; MCLE</b> for more about: <ul style="list-style-type: none"> <li>• Attendance Reporting</li> <li>• CLE Accreditation</li> <li>• Credit Compliance Certification</li> </ul> There is online help available at <a href="http://www.wsba.org/mcle">www.wsba.org/mcle</a> and you may contact the <a href="#">WSBA Service Center</a> at (206) 443-9722, (800) 945-9722 or <a href="mailto:questions@wsba.org">questions@wsba.org</a> .
On the web...	LAP, Legal Career Development, Balance and Lifestyle, Career Options, Preadmission



## How do you manage financial arrangements with clients?

A written fee agreement reduces misunderstandings between you and your client. Assuring that your client clearly understands your fee arrangements is even more significant when you note that a large percentage of the approximately 6,140 grievances that the Washington State Bar Association’s Office of Disciplinary Counsel (ODC) receives each year relate, in part, to a fee charged by the lawyer. Half of all fee collection lawsuits result in a counterclaim against the lawyer for malpractice <sup>3</sup>.

The Rules of Professional Conduct do not require a written fee agreement with every client, but do state a **preference** for it. See RPC 1.5(b).

A **contingent fee agreement**, on the other hand, must be in writing, signed by the client, and should state how to calculate the fee, including the percentage due to the lawyer and application of any costs or expenses. See RPC 1.5(c).

Remember these main points about fee arrangements:

- You must have an **agreement** with your client.
- It is **preferred** that the agreement be **in writing; some are required to be in writing**.
- The client must **understand** the fee arrangements.
- The fee charged must be **reasonable**.

### Content of the fee agreement

A fee agreement is the contract formalizing the lawyer-client relationship. The agreement addresses more than just the legal costs of the client matter and you will want to include details about the legal services you are to provide your client. Clearly explain the parameters of those services, your specific charges for those services, an outline of costs expected, and the client's financial responsibility for those fees and costs. You may wish to include an explanation of your billing procedures and collections policies. Be clear about what your client should expect from you if timely payment is not made.

To avoid putting yourself into a conflict of interest situation with your client, be sure that your fee arrangements address the matter of costs and expenses incurred on behalf of your client. You are not allowed to provide financial assistance to a client in connection with his/her case, except you may advance fees and expenses.

If you advance costs and expenses on behalf of your client, the RPCs contemplate that such advances are loans that a client will repay although repayment may be contingent on the outcome. A lawyer may advance court costs and litigation expenses to indigent clients without any expectation of reimbursement. See RPC 1.8(e) and comment 10. Where reimbursement is expected the fee agreement must address the method for reimbursement of those expenses. See RPC 1.5(b) “The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client preferably in writing...” and RPC 1.5(c)(2) “A contingent fee agreement...must clearly notify the client of any expenses for which the client will be liable...”

<sup>3</sup> M. Hendersen, *Fees and Billing*, Wash. State Bar Assoc. CLE on Malpractice Prevention (1993).



## Managing Your Practice

When drafting a fee agreement, remember these tips:

- you owe fiduciary duties to the client
- the agreement will be construed against you
- any lawyer-client business transaction that gives you an advantage over the client is presumed fraudulent, and
- the burden is on you to prove the fee reasonable

Give a copy of the fee agreement to the client before you perform any work on behalf of the client. Be sure your client has an opportunity to review it thoroughly. Encourage your client to seek independent counsel before signing it. Maintain a signed copy of the agreement in your permanent client file.

### Considerations in setting a reasonable fee

How will you decide how to set the fees you will charge your clients? There are various types of fee arrangements, ranging from the flat fee (also known as fixed fee), hourly fee, contingent fee, and a number of complex fee arrangements. You can choose any of these, or a variety of them.

In determining whether a fee is reasonable, consider the factors addressed in RPC 1.5(a):

- Time and labor required
- The novelty and difficulty of the questions involved
- The legal skill required to perform the legal service properly
- Whether taking the case will preclude other employment by the lawyer
- The fee customarily charged in the locality for similar legal services
- The seriousness of the legal matter presented by the client and the results expected
- The time limitations imposed by the client or by the circumstances
- The nature and length of the professional relationship with the client
- The experience, reputation, and ability of the lawyer or lawyers performing the services
- Whether the client understands the material elements of the fee agreement and of the lawyer's billing practices

### Learn More

In this program...	See other topics in this section. Would you like more information or continuing legal education (CLE) on this topic? Let us know! <a href="mailto:nle@wsba.org">nle@wsba.org</a>
At the Bar...	Law Office Management Assistance Program (LOMAP) <ul style="list-style-type: none"> <li>• <a href="#">Lending Library</a> provides resources on fee agreements</li> </ul>
On the web...	Practice Development, LOMAP, Supervise, Staff, RPC 1.5, RPC 1.8, Preadmission



### What are good billing and collection practices?

The true measure of the financial health of a law firm is in its receipts. Billable hours, or receivables, without receipts are meaningless. A high collection rate (not necessarily a high dollar amount) is impressive. If you ever find yourself borrowing money to meet general operating expenses (including payroll), it is likely that your rate of collections is low – this will put your practice in serious trouble.

Reviewing your budget, billings and receivables periodically will help you build a sound law practice. You can take steps to improve your percentage of receipts and balance your budget.

#### **Detail your billing and collection practices in your written fee agreement.**

Establish your expectations for payment in your written fee agreement and in the initial consultation. Make sure your client is clear on how you bill, when you bill, what they are to do with the bill, and what will happen if they do not pay you for your services.

Be clear with your client from the outset, both in person and in writing, that if the account becomes overdue, you will withdraw from representation. Let him know that you can and will stop working for him if you are unpaid. Alert your client if you have a policy of pursuing past-due accounts through a collection agency or a court of law, as necessary. [Before deciding on a collection policy, see the pros and cons of trying to collect an unpaid fee, below.]

#### **Send prompt and regular monthly bills for fees and expenses.**

The office administrator or billing clerk cannot reconstruct your billable time for you. Keep accurate time logs. Record your time contemporaneously and refrain from editing your time at this point. You can always write down or write off time before sending the bill, but you cannot charge for time you did not record.

#### **Monitor accounts receivable on a regular basis and address past-due accounts promptly**

Follow up with the client who does not pay or is late in making payment. Do not allow a client to go more than 30 days past due without making a personal call. Make another, follow-up, phone call at 45 days. If the account remains unpaid, send a firm letter at 60 days reiterating the terms of the fee agreement.

When your client's account becomes past due and your chief concern becomes collecting what your client owes to you, then a conflict of interest has arisen. Consider stopping work for your client and withdraw, if litigation is pending. Of course, follow applicable RPCs to avoid harm to your client's case.

#### **Choose when to collect an unpaid fee**

You have choices in resolving past-due accounts. You can pursue the delinquent client through debt collection efforts, or cut your losses and just move on.



## Managing Your Practice

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If you choose to pursue the debt, you could use an outside collection agency, file a lawsuit against your client or seek alternative dispute resolution services.

If you pursue collection, be aware that the Office of Disciplinary Counsel frequently receives grievances when the client's bill is referred to a collection agency or when a collection lawsuit has been commenced against the client. As a practical matter, to avoid being in the collection business (with attendant vulnerabilities), lawyers on an hourly or flat fee basis might consider withdrawing from representation as soon as the client fails to make an advanced deposit or scheduled payment, as long as withdrawal does not prejudice the client.

### **Advance and recover client expenses**

The attorney-client fee agreement must address client responsibility for expenses incurred on his/her behalf. Expenses will include your office out-of-pocket expenses, such as telephone charges, copies, postage and shipping and other expenses incurred through services or activities outside of your office, such as expert fees and court costs. Be sure the written fee agreement clearly explains billing policies for expenses.

### **Learn More**

In this program...	See other topics in this section. Would you like more information or continuing legal education (CLE) on this topic? Let us know! <a href="mailto:nle@wsba.org">nle@wsba.org</a>
At the Bar...	<a href="#">WSBA Alternative Dispute Resolution</a>
On the web...	Practice Development, Billing, Collection, Expenses, Preadmission



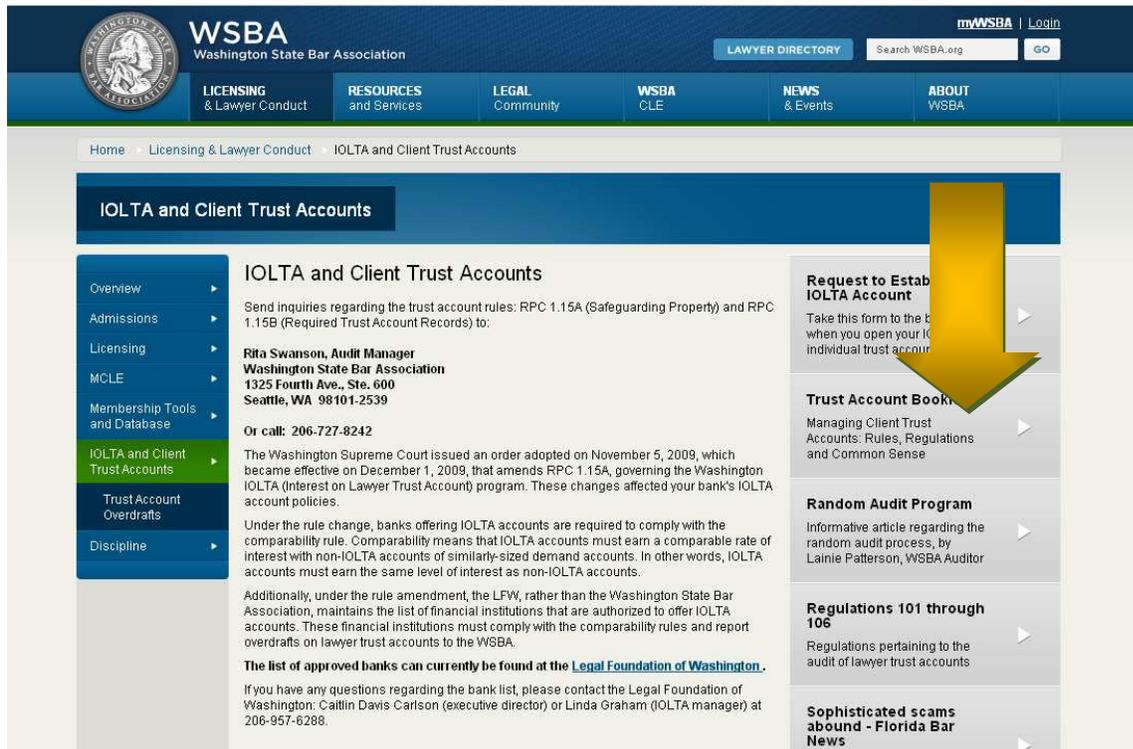
## How do you manage a trust account?

Trust accounts protect client funds from an attorney’s creditors. If you take client funds in advance of doing work, you must put those funds into a trust account. Choose a financial institution authorized by the Legal Foundation of Washington in order to open an account or learn the process by which your firm takes in client funds.

The rules governing lawyer trust accounts: general rule, RPC 1.15A and the rule regarding required record-keeping, RPC 1.15B.

**Recommended Reading:** Managing Client Trust Accounts booklet published by the WSBA

A text searchable copy of this booklet exists on the wsba.org web site as shown below. Go to: **wsba.org > Licensing & Lawyer Conduct > IOLTA and Client Trust Accounts > Trust Account Booklet**



This booklet has been prepared by the Washington State Bar Association as a guide for both new and experienced lawyers in dealing with trust accounting questions. The purpose is to provide you with the basic rules, highlight the areas that will always require your best judgment because there are no absolute rules, and dispense some practical experience provided by years of answering lawyers' questions.



## Managing Your Practice

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### Learn More

In this program...	Managing Client Trust Accounts (Online Version) can be read at <b><a href="http://wsba.org">wsba.org</a> &gt; Licensing &amp; Lawyer Conduct &gt; IOLTA and Client Trust Accounts &gt; Trust Account Booklet</b>
At the Bar...	<p><b><a href="#">IOLTA and Client Trust Accounts</a></b> at <a href="http://wsba.org">wsba.org</a> under <b>Licensing &amp; Lawyer Conduct &gt; IOLTA and Client Trust Accounts</b></p> <p>Whenever you are dealing with trust accounts and questions arise, please do not hesitate to call a WSBA Audit Manager at 206-443-9722 or 800-945-9722 or e-mail at <a href="mailto:questions@wsba.org">questions@wsba.org</a>.</p> <ul style="list-style-type: none"><li>• Watch the CLE CD on Demand series on “Trust Accounts” (1.5 Ethics/\$79, 2.0 General/\$99, 4.0 Ethics/\$160)</li><li>• Rita Swanson, WSBA Audit Manager, 206-727-2539</li><li>• Legal Foundation of Washington</li></ul>
On the web...	WA RPC 1.15A, 1.15B, Practice Development, Trust Accounts, Preadmission



### What We Never Learned in Law School

By Harper J. Dimmerman and Michael E. Adler<sup>7</sup>

Getting a solo or small firm practice off the ground presents a host of obvious obstacles and traps for the unwary businessperson: excessive spending, albeit with the best intentions; overly well appointed digs; liberal policies for case acceptance and contingent-fee commitments (because 98 percent of the cases settle anyway).

But what of the obstacles that are less well known? In this article, we offer ten suggestions that we hope will give some insight into the daily facets of practice we were never told about in law school, particularly concerning ethics, civility, and professionalism. Our experience in the legal field, and within the Philadelphia Bar Association, reflects our two different practice settings: one at a large firm, one as a solo. This article has given us an opportunity to share our experiences and to compare our legal careers so far. We also sought stories from colleagues. We were surprised that despite some obvious differences, we had many common observations.

**Get involved in bar associations and pro bono activities.** Bar association and pro bono involvement tend to improve relationships between lawyers and judges. The authors became acquainted during local bar association functions. When lawyers connect in both social and professional activities, we tend to get along when we are adversaries—it's human nature that we treat people we know better than we do strangers. Moreover, active involvement in the bar association has helped us sharpen our practice skills, increase our expertise, keep up with changes in the law, and have fun doing it.

**Be prompt and responsive.** Keep your clients advised, and return phone calls and e-mails promptly. We both try to maintain a rule that the sun does not set before a call is left unreturned (obviously, this is much easier during the summer than the winter). We both carry Blackberries and use them, even if just to say that a full response will arrive once the present meeting or hearing is done. If you can't personally return the message, have someone else do it. Lack of client communications is often cited as the most aggravating complaint by clients; keeping clients in the loop keeps them invested in their case.

**Zealous representation does not mean scorched-earth tactics.** We didn't learn in law school that there is an extremely fine line between zealous advocacy and deceptive or manipulative techniques. Silence from the experienced lawyer in the face of a greener attorney's misinterpretation is a dilemma we never anticipated. During law school's Socratic debates, all of us were forever together, presenting a unified front. Not so in the real world. Do not rely upon your confidence in the human family of attorneys collaborating to achieve a common good. With the goal of pleasing that well-funded client, a more

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<sup>7</sup> Harper J. Dimmerman and Michael E. Adler, *What We Never Learned in Law School*, GPSolo, Volume 22, No. 7 (October/November 2005). Copyright © 2005 by the American Bar Association. Reprinted with permission.



## Managing Your Practice

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seasoned practitioner might seize upon every opportunity to succeed, at times treading some very delicate ethical lines in order to do this.

But don't react to such unfortunate experiences by repeating the questionable behavior yourself. Neither of us refuses opposing counsel a favor when we have the ability to grant it; it costs nothing and builds trust and credibility with other lawyers.

**Be professional in your communications with the court.** Each court has its own procedures, but you will find that some rules of professional conduct are universal.

When addressing or writing to the court, identify who you are and whom you represent. Although this case might be the most important matter in your mind, we have learned it is likely only one of many matters being addressed by the court during that hour.

When in court before a judge, do not address opposing counsel, but speak directly to the judge. After all, it is the judge who must decide the issues, not your adversary. Address the court as "Your Honor" or "Judge." Remind yourself to speak slowly and don't be afraid to pause and think before answering questions.

Misrepresentations to the court are always unacceptable, even over such seemingly trivial matters as calendar conflicts or joint stipulation for extension of time to respond to a filing. We are constantly amazed how opposing counsel misrepresent agreements to the court.

Facts that are not properly introduced in the case or part of the record should not be used in written briefs or memoranda of points and authorities.

Always carry an extra copy of the motion or brief, in case the court cannot locate the copy that you filed.

Court staff should be treated as an extension of the court. Anyone who thinks that the judge will never hear how rudely his or her staff was treated has plainly never worked or clerked for a judge.

Show up on time for all court appearances. Character, integrity, and reputation are our most valuable assets; they are not worth trading for any client.

**High volume does not equal high quality—or even high profits.** Our law school experience did not prepare us for issues that can threaten the profitability of practice. Lawyers who approach specialties in volume are generally seeking economies of scale. The combination of special knowledge and volume might translate into profitability. Remember, however, that high-volume work requires significant administrative and legal support, especially in practice areas such as bankruptcy law. Because of such infrastructure costs, high revenues might not go hand in hand with high operating incomes.

Additionally, despite the degree of knowledge and focus that can accompany specialization, high-volume practice might actually dilute the quality of representation. Paralegals may be taking on work not necessarily in their area of ability or expertise, and more efficient yet less tailored representation



may become necessary to generate a net profit. These survival tactics might potentially lead highly personable and even hands-on lawyers astray from the origin of their original success.

**Choose your clients carefully.** The practice of law is much easier if you can avoid difficult clients. Beware of a client who moves from firm to firm. Watch out for clients who make legal fees and costs a major issue. Such concerns may seem paranoid at first blush. Yet, they have been borne out by our experience and have become part of our analysis in accepting new clientele. Consider, for example, the overly savvy client who comes bearing handsome retainers and uttering convincing representations. Although we'd like to believe that such clients come because of our own brand or quality of representation, our guard is up.

A wise lawyer also once taught us that when evaluating a case, don't become so focused on liability that you forget about damages. The most compelling case of fault without any damages is worth . . . nothing. Similarly, when evaluating a case, if you are so focused on the damages, but there is no liability, that case is worth . . . nothing.

**Always be professional in marketing.** The Rules of Professional Conduct govern the outer limits of the advertising and claims that lawyers may make to entice clients. If you are in a small firm or you are a solo, consider limiting the type of clients and business that you take. This will allow you to focus your efforts more effectively. One of the best ways to develop business is to establish a referral network to exchange business with other attorneys. The local bar association is the best way to learn about the practices of other attorneys. Write articles and participate in seminars to get your name out there. Don't oversell yourself.

In small practice, owing to the intensity of the competition in the marketplace, some practitioners employ dubious techniques to acquire more clients and more money. For example, in the area of simple divorce, attorneys in a more expensive filing county might lowball potential clients with figures from less expensive filing counties. Remember: Potential clients using the Internet or even being referred to a particular attorney will ordinarily shop quotes.

**Be professional during discovery.** Much has been written about the effectiveness or costs of discovery in litigation. We merely note below some of our observations about the unprofessionalism we have experienced. Lawyers routinely delay producing documents to prevent opposing counsel from inspecting them prior to scheduled depositions or for other tactical reasons. Document demands and interrogatories are routinely propounded to harass or impose undue burden or expense on the other party. Responses with boilerplate objections to the discovery requests are presented.

In scheduling depositions, rather than unilaterally scheduling dates for depositions, lawyers should cooperate to accommodate the schedules of opposing counsel and the deponent. Objections during depositions should be limited to those that are well founded and necessary for the client's interest (such as preserving privilege). When making objections during a deposition, the attorney must refrain from



## Managing Your Practice

coaching the deponent or suggesting answers or making self-serving speeches. It is amazing how often we see this happening, particularly by older lawyers trying to intimidate younger lawyers.

**Be prepared.** Thorough preparation can level the playing field—or even tilt it in your favor. Attention to detail is probably the most important trait of a good lawyer. Nothing is more glaring in written work product or letters than a typo. Proofread, proofread, proofread. Know your case better than the other side does. Anticipate the questions from the judge or opposing counsel.

**Appreciate the practice of law.** When we were awarded a license to practice law, we were granted a tremendous opportunity to make a difference for ourselves and our clients. Appreciate challenges, for they make us stronger and better as lawyers, with new ways to argue or represent our clients. Appreciate losses, for they make us wiser, and vow never to make the same mistake(s) again. Appreciate (and savor) victories. Keep a “good job” file and make copies of all the winning court decisions or even the congratulations or thank-you letters you have received. Even on a very bad day (and we all have them), opening the “good job” file will remind us why we went to law school, and why, even though law school did not prepare us for all we have witnessed in terms of ethics, civility, and professionalism, we are lucky to be young attorneys, looking forward to the rest of our careers.

### Learn More

In this program...	See other topics in this section. Would you like more information or continuing legal education (CLE) on this topic? Let us know! <a href="mailto:nle@wsba.org">nle@wsba.org</a>
At the Bar...	See LOMAP’s “Self-Help Resources” online at <a href="http://wsba.org">wsba.org</a> under <b>Resources and Services &gt; LOMAP &gt; Self-Help (Practice Management) Resources</b>  And LOMAP’s “Practice Tips” online at <a href="http://wsba.org">wsba.org</a> under <b>Resources and Services &gt; LOMAP &gt; Practice Tips</b>
On the web...	Harper J. Dimmerman operates a solo practice in Philadelphia. He can be reached at <a href="mailto:harper@harperlawgroup.com">harper@harperlawgroup.com</a> . Michael E. Adler is an associate at Blank Rome LLP in Philadelphia. He can be reached at <a href="mailto:adler@blankrome.com">adler@blankrome.com</a>  Local Practice Rules, Community, Citizenship, Preadmission



## Hypothetical Scenarios in Practice Development

Discuss the following hypothetical situations with a colleague or mentor.

- Identify the legal or ethical issues. Are there other issues you should consider?
- What are possible responses for the lawyer in each situation?
- What do you think is the best response and why?
- What is the worst possible response for the lawyer in each situation?

Case #1 - You are an associate with a private law firm. One day while passing through the waiting room on your way to a conference, you overhear an office assistant answer a legal question posed by a potential client who is sitting in the waiting room. Fortunately, the information provided by the office assistant to the potential client is correct.

Case #2 - While working for the public defense office in your county, you receive a call from someone who identifies herself as “a concerned citizen” who asks if it is legal for someone to shoot fireworks in their own front yard on July 4<sup>th</sup>.

Case #3 - Your neighbor just learned that you are a lawyer. While you are working in your yard on Saturday, your neighbor walks over and begins to ask questions about collecting past due child support owed by his ex-spouse.

Case #4 - Your client owes the law firm where you work a \$10,000 fee balance. This particular client has been a loyal client of this firm for over 25 years. Your managing partner entrusted you with this client’s business. The client refuses to pay the \$10,000, explaining that the bill is too high because your hourly fee as a new lawyer is outrageous.

Case #5 - Your secretary informs you the court clerk refused to file pleadings in one of your cases because the filing fee was wrong. Your secretary lets you know it was not her fault because she called the clerk before making out the check and the clerk’s office told her how much the fee would be.

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At the Bar...	<a href="#">Ethics and Advisory Opinions</a> . All ethics opinions are published on-line in the <a href="#">Advisory Opinions database</a> as well as <a href="#">CaseMaker</a> , the legal research tool available to WSBA members. Many opinions are in response to ethical questions posed by WSBA members. These opinions have been issued by the WSBA Rules of Professional Conduct Committee or its predecessors, and are advisory only.
On the web...	Practice Development, Preadmission