

# Up and Running: Operating Instructions for the Small Law Office

## 4th Edition



WSBA

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## Washington State Bar Association Creed of Professionalism

As a proud member of the legal profession practicing in the state of Washington, I endorse the following principles of civil professional conduct, intended to inspire and guide lawyers in the practice of law:

*In my dealings with lawyers, parties, witnesses, members of the bench, and court staff, I will be civil and courteous and guided by fundamental tenets of integrity and fairness.*

*My word is my bond in my dealings with the court, with fellow counsel and with others.*

*I will endeavor to resolve differences through cooperation and negotiation, giving due consideration to alternative dispute resolution.*

*I will honor appointments, commitments and case schedules, and be timely in all my communications.*

*I will design the timing, manner of service, and scheduling of hearings only for proper purposes, and never for the objective of oppressing or inconveniencing my opponent.*

*I will conduct myself professionally during depositions, negotiations and any other interaction with opposing counsel as if I were in the presence of a judge.*

*I will be forthright and honest in my dealings with the court, opposing counsel and others.*

*I will be respectful of the court, the legal profession and the litigation process in my attire and in my demeanor.*

*As an officer of the court, as an advocate and as a lawyer, I will uphold the honor and dignity of the court and of the profession of law. I will strive always to instill and encourage a respectful attitude toward the courts, the litigation process and the legal profession.*

This creed is a statement of professional aspiration adopted by the Washington State Bar Association Board of Governors on July 27, 2001, and does not supplant or modify the Washington Rules of Professional Conduct.

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Checklist for Self-Audit of Existing Law Practice

Checklist for Starting a Law Practice

## Preface

*"But they didn't teach me how to run a  
business in law school!"*

Practicing law and running a law office are two very different things. Law school prepared you for the law. If you are a self-employed lawyer, you are also running a business—a law office—and that fact does not make the law any less of a profession. *Up and Running: Operating Instructions for the Small Law Office* was developed by a group of attorneys specifically to address the business side of your practice. Your office is the vehicle that enables you to practice. A smoothly running office is like a well-tuned engine -- it gets you where you want to go with a minimum of hassle and worry.

This manual was written for Washington State lawyers who currently manage their own small offices and for those who are just beginning to think about going off on their own. It contains practical information about establishing a business plan, choosing facilities, daily operations, financial management, using technology, and ethical considerations pertinent to operating a law practice.

We encourage you to read this entire manual, but not necessarily in chapter order. We strongly recommend that you spend time on Chapter One, the business planning chapter, even if you've been in business for years. Using a business plan is a lot like using a map—without one, you may have an interesting trip, but you're likely to end up somewhere you never intended to be.

And that's what this manual is all about—helping you get where you want to go as a lawyer. The Law Office Management Assistance Program (LOMAP) helps you develop an effective and efficient law office. LOMAP is a program of the Lawyer Services Department of the Washington State Bar Association and our staff and volunteers are eager to assist you in any way possible.

*Let us know what we can do for you!*

## Chapter One: The Business Plan

A law firm may enjoy enormous professional success, but still go “belly up” if it is not managed properly. These fledgling law firms tend to be founded on the belief that an understanding of the law and good technical skills will ensure success. Good legal skills are critical. But, without a solid grasp of how to run a business, even the most talented lawyer can end up with a law firm operating “in the red” (losing money).

Few law schools offer required courses in the basics of law practice administration. Curricula are designed to get an attorney past the bar exam—not into business. Systems and procedures are put into place *after* a problem has occurred, rather than *before*. The law schools teach a lawyer how to be competent, but not how to be successful.

Poor management can lead to malpractice, financial disaster, high turnover, lost revenues, unchecked expenditures, low morale and productivity, to name a few of the causes of losing sleep. Whether you are just starting out, or wonder whether there might be a better way to run your firm, today is exactly the right time to start getting a better handle on your law practice.

**Your first critical step in planning your law practice is to draft a business plan. A well-written and thoughtfully prepared business plan is a guide in formulating both short-term and long-term objectives and in determining the means by which to achieve these goals. The business plan is the “blueprint” for your proposed/existing practice—and provides a reliable reminder of where you wish to go and how you plan to get there.**

The rigor required to actually develop your plan is every bit as important as the plan itself. Plans may change but, after the process of planning, you have experienced the thought process that all good business people experience to minimize being “blindsided” by the unanticipated problem.

Once drafted, the business plan should be reviewed at least annually for the life of the firm. This regular re-evaluation ensures that your goals remain in focus (or maybe the goals have changed) and that your plan for meeting them adapts to changing circumstances. As the practice evolves, the firm’s original objectives probably will change. The periodic review should point out when it is time to update the plan to meet current needs, circumstances, and projections. It is perfectly normal for a business plan to change as the firm grows, changes direction, adds new practice areas, and so forth.

What about the “How to of a business plan?” Read the following questions to help you to set goals and to think through how your business will operate, who your clients will be, and how you will grow the firm. While many other issues are included in a well-constructed business plan, these questions help you to focus on how the firm is to be structured and where you want your practice to go. One more thing: involve your spouse or significant other in this process. The dialog is very helpful—even if you both now disagree on certain points.

**First, let’s take a look at who you are and what you want out of your practice. The following questions are related to your current status, immediate planning for your office, and long and short-term goals. Setting these goals is the primary consideration. They shape and focus both the daily and the long-term decisions that you will make. Therefore, take them seriously, but don’t be afraid to modify them as your personal and professional life changes direction. Feel free to write your answers in the available space.**

## **WHO AM I?**

Why did I become a lawyer?

What courses were especially interesting in law school?

Does my undergraduate training or avocation give me any expertise that I could develop as a lawyer?

What is my current income? What is my current lifestyle?

How many hours am I willing to commit to practicing law, marketing, managing the practice, etc.?

What do I have to pay each month to maintain food and shelter for me and my family?

What are the financial resources (family, spouse, friends) available to me to start an office?

When do I have to begin paying on my student loan? How long can I defer it? How much is the payment going to be?

Do I have any friends or family who need legal help?

Is my spouse/significant other willing to suffer or contribute time and/or money to this enterprise?

What is my net worth?

For what amount can I qualify to borrow from a bank?

How comfortable am I with a significant debt burden?

How many hours can I commit to work, taking into consideration obligations for family, church, volunteer activities, etc.?

What is my budget at the present time?

Your answers will give you an idea of who you are and what resources are available to you.

**Next, you should do a little dreaming. If all goes well, where will you be in ten years? Many variables come into play that may thwart these dreams, but let's forget those for now. These are your goals, so answer as you wish. Please consider the following:**

### **WHAT DO I EXPECT FROM LIFE?**

In ten years, my income will be \_\_\_\_\_

In ten years, the practice will include \_\_\_\_\_ lawyers and \_\_\_\_\_. staff, and the practice will be focused primarily in the area of \_\_\_\_\_.

I will be working \_\_\_\_\_ hours per week between the hours of \_\_\_\_\_ and \_\_\_\_\_.

I will be taking \_\_\_\_\_ weeks of vacation each year.



I will have \_\_\_\_\_ (number of) children, ages \_\_\_\_\_ to \_\_\_\_\_, and will be spending \_\_\_\_\_ hours per week dedicated to family time.

I will have achieved my consuming passion for \_\_\_\_\_, or have taken substantial steps toward getting there.

My children will attend college at

I will be debt free.

I will own the building where my practice is located.

I will drive a

#### **WHO/WHAT RESOURCES ARE AVAILABLE TO ME?**

My mentor(s) are:

Why are these my mentors?

Who is my insurance carrier?

Who is my banker?

What hotline numbers are available for help?

Websites?

What RPCs do I need to be particularly concerned with?

Now it is time to begin putting the pieces of the puzzle together so that you can go from your current status to where you want to be in ten years. One does not become the senior partner of a 50-lawyer firm by committing to working 20 hours a week part-time just out of law school.

Paying your “dues” entails sacrificing certain things in order to achieve the long-term goal you have described. Let’s take a look.

### MY PERSONAL COMMITMENT TO MY PRACTICE

I will work \_\_\_\_\_ hours per week on legal work in my practice.

I will work \_\_\_\_\_ hours per week marketing my practice.

I will work \_\_\_\_\_ hours per week managing my practice.

I will volunteer \_\_\_\_\_ hours per month doing law-related pro bono work.

I will make \_\_\_\_\_ (monthly, quarterly) reviews of the work generated by my practice to maintain the focus of my practice in the area of \_\_\_\_\_.

I am willing to work \_\_\_\_\_ hours each weekend to maintain the above commitment.

I will dedicate \_\_\_\_\_% of my gross/net revenue towards marketing for the first years of my practice.

I will review the effectiveness of my marketing every six months to re-evaluate and correct, as necessary.

I want to purchase the following (machines, software, library, other) [prioritize these] within the next \_\_\_\_\_ (6-12, 12-24, 24-36) months.

I will evaluate my business capital outlays on an annual basis and spend 5% of my net revenue on new equipment after \_\_\_\_\_.

I will spend \_\_\_\_\_ per year on CLE and professional publications/seminars in my practice emphasis areas and \_\_\_\_\_ per year on Section dues and licensing.

I will join the \_\_\_\_\_ Sections of WSBA and (local, county or specialty bar associations) in my area.

I will volunteer or request that I sit on the Executive Committee of the \_\_\_\_\_ Section of WSBA.

I will discuss annually the effect of my practice on the malpractice coverage I purchase and review the same with my broker to evaluate high risk areas and maximize coverage at the lowest cost.

I will hire \_\_\_\_\_ lawyers after two years and \_\_\_\_\_ staff. I will limit growth/expand to a maximum of \_\_\_\_\_ (myself and one other attorney) and staff by the end of five years. (Note: Gross fees should be *at least \$9,000 per month* before hiring anyone fulltime!)

I will establish checklists of procedures for the various legal practice issues that arise, as they arise, and revise these, at a minimum, on an annual basis.

I will schedule the compensation for each position within the office and prepare a personal schedule of wage increases at annual reviews. Limits of pay, vacation time, etc., will be discussed with senior employees after eight years of service so that overhead remains in check.

I will prepare an office procedure manual that will incorporate personnel issues, ordering of supplies, opening and closing files, billing, handling client monies, etc. [NOTE: Do not wince at the seemingly trivial aspects. Your office procedures must be rock solid and understood by you and all in your office. For example, your decisions about incoming mail (sorted; opened by whom; when; date stamped; scanned; copied; information extracted and entered into a calendar; filed; etc.) should be consistent and enforced. Once in place, you need not look back and can practice law knowing your procedures support an efficient practice—not get in the way.]

**Now that you have answered these questions, it is time to start drafting your firm’s business plan**

If you are in partnership with others, it may be best for one person to have the responsibility of preparing the business plan, and then offer it for review to the other partners. Writing a business plan by committee can be a frustrating, tedious, and time-consuming job. It may be appropriate for the partners to jointly develop a mission statement, and then turn the remainder of the project over to one individual. For a solo practitioner, you win the toss of the coin!

The following “prompts” will help you ensure that you’ve thought of all the critical elements of your firm’s business plan. Please consider each one carefully. While you are anxious to get on with the practice of law, a sound business plan is vital to the long-term success of your firm.

**These questions will help you think through many of the various aspects of your business without wasting time and money on false starts and ill-conceived goal-setting. These questions may cause you to think of yet other questions that pertain to your particular situation. Let’s begin.**

## **WHAT?**

What am I selling? [HINT: You are NOT selling quality legal services. Providing quality legal services is the minimum you should be doing. Instead, think “understanding,” “concern,” “care,” “a willingness to help your client to the best of your ability,” “security,” “safety,” “a

shoulder to cry on,” “an ally--someone on his/her side,” and so forth. Every attorney in the state is touting quality legal services—but that’s not what the client is looking for. A lawyer is both lawyer and caregiver.]

What service am I providing? [HINT: Think “a guide through the maze,” “a personal champion,” “a bulldog on client’s behalf,” etc.]

Define your mission statement clearly and succinctly.

What type of business will this be? [Sole proprietorship, corporation, partnership? See a CPA and seek legal counsel for help with choosing legal entity.]

## **WHO? (FIRM)**

Firm’s business manager’s name, background, qualifications?

How many partners? Names, backgrounds, qualifications?

[Describe how they will be paid, benefits package, hours to be worked, job title? A written partnership agreement is important. Be sure to include an understandable departure clause, particularly regarding the money.]

Staff names, backgrounds, qualifications? [Where will you find them, how will they be paid, benefits package, work hours, job title?]

Advisors’ names, backgrounds, qualifications? [Accountant, banker, insurance agent, mentor, etc.]

Suppliers’ names? [Office furniture, supplies, messenger service, courier service, court reporter, florist, interior decorator, etc.]

Investors' names, relationship to you, amount of financial commitment? [Friends, family, "angels," etc.]

## **WHO? (CLIENTS)**

Who will your clients be? [HINT: Be specific as to socio-economic position, geographic location of workplace and/or residence, career choice, e.g., blue-collar/white collar/pink collar workers, etc., income level, recreational activities, organizational memberships, etc.]

Where are your potential clients located?

How do they shop for services?

What do they need?

What aspect of your representation will have the greatest value to your clients?

Who is your competition?

What do they offer? [Divorce mill, flat fee estate planning and wills, low hourly rate, low or no retainer, strong marketing campaign, etc.?]

Where are they located?

Success rate in their work?

Reputation in the community (both legal and public sector)?

How do they market?

Who are their clients?

## **WHERE?**

Where will you locate your office?

Why?

Describe your proposed office:

Convenient to your target market?

Parking available, free, reasonable?

Near other professionals?

Safe?

Easy to find?

On bus line?

Type of environment?

Lobby or meet-and-greet area—professional? Staffed?

## **WHEN?**

Starting date?

Time line leading up to starting date? [Allow time to remodel, furnish, hire staff, purchase and install equipment, design and print stationery and business cards, develop and begin to implement a marketing plan, meet phone book placement deadline, negotiate a lease, etc.]

## **WHY?**

Is there truly a demand for your services?

At your location?

Projected growth of geographic region?

## **HOW?**

Define the image you wish to present

How will you establish that image?

What role will your staff play in this?

How do you plan to promote your business?

## **HOW MUCH?**

What do I have now? [Computer, printer, FAX, modem, office furniture, rudimentary library?]

What do I need?

Define how you will bill your time. [Fixed fee, hourly, contingent fee, value priced, etc.?

Describe your personal financial needs on a monthly basis.

Develop your budget (operating costs, income, and cash-flow) for the first year of business. Project a budget for Year 2. [Be sure to include the often overlooked expenses, such as postage, utilities, reference books/CD-ROM/on-line services, janitorial services, equipment repair and maintenance, installation labor, signs, taxes, withholdings, L & I, etc. Include a sub-budget for marketing expenses, projections for major capital investments, your personal assets and liabilities.]

Define a billable hours goal for yourself, your partner(s), paralegals, staff, etc.?

How will you achieve that goal and help others to achieve their goals?

Define the type of bookkeeping system you will use. Who will be responsible? [Be sure to understand the trust account rules for setting up accounts. See RPC 1.15A & 1.15B.]

Now that you've put your business plan down on paper, refer to it from time to time to make sure you are on track. It tells you where you started, where you are going, and how you are going to get there.

**This business plan will help you stay focused on your goals and provide invaluable guidance in making your business decisions.**



## Notes

## **Chapter Two: Facilities**

There are more choices than ever before in the types and arrangements for office space. Attorneys are practicing in home offices, conventional space, shared offices, executive suites, their cars (yes, it can be true in the case of juvenile or elder law when you must go to the client) or combinations of one or more of these arrangements.

The type of space an attorney chooses is dictated by personal needs, financial resources, clientele, geographical area, and the timing of their decision to establish their own practice. Be sure to keep the cost of your office space to a minimum.

### **Making Your Decision**

First, you must determine your personal criteria:

1. What are your long-term and short-term goals? Are you establishing your own practice to maximize your income potential without having to support the overhead of a large firm? To have more freedom and be able to select your own clients, determine work schedules, and enhance quality of life? [See Chapter One.]
2. How much time do you have to find the right space?
3. Do you hire and maintain your own staff, or utilize independent contractors?
4. Do you want to be in a setting with other lawyers, perhaps because of the possibility of referrals or simply because you enjoy the company and stimulation of fellow professionals?
5. Where should you locate your office to remain accessible to your clients, provide the image you desire, and house the furnishings and equipment necessary to manage your practice? A personal injury attorney may need ramp and elevator access for injured clients.

### **Start-Up Capital and Monthly Overhead**

A determining factor of your space options is the amount of funds available to invest in the venture. Money must be set aside for start-up capital in order to invest in equipment, possibly personnel, and furnishings, etc. See Chapter Six.

In addition, the practitioner must finance his/her monthly overhead at the same time that the practice is being established. The established practitioner with loyal clients who is separating from a larger firm to establish his/her own practice has a greater opportunity to choose more

traditional office arrangements and finances. For the newer practitioner, unless an independent source of funding exists, the choice must be made to balance the cost of the space with the need to minimize overhead until cash flow fully supports the practice.

The following list is not exhaustive. Some of the typical cost factors that one must take into consideration in comparing two options are as follows.

### Sample Cost Comparison (2009)

Factor	Office Sharing	Conventional Office Space
Receptionist	Included	\$27,000-\$32,000 per annum + benefits
Word processing	\$15-\$25/hour	\$30,000-\$40,000 per annum + benefits
Office Manager	Included	\$35,000-\$50,000 per annum + benefits
Furnishings	\$500-\$1,800 or may be included	\$5,000+ depending upon desires
Telephone Systems	\$1,800-\$2,500 or may be included	\$5,000+
Office Equipment	\$1,000-\$5,000 or may be included	\$3,000-\$10,000
Office Space	\$2,400-\$13,000 per annum	35,000+ for 3-5 years

### Clientele

The space selected must meet the client's basic needs for accessibility and confidentiality. It should also enable the client to feel confident of the attorney's ability. The nature of one's practice will determine the exact image the space must project in order to attract and retain certain clientele. Business clientele are more likely to expect traditional office space with traditional amenities such as a secretary, receptionist, etc. Clients who utilize attorneys on an "as-needed" basis, such as persons needing family law-related services or personal injury representation, tend to be less concerned with the physical space and are more focused on their individual ability to relate to the attorney they hire. Hence, in considering which space is best, it is important to

think about the clientele you wish to attract and retain. A general practice with both types of clients requires consideration of both attributes.

## **Geographic Needs**

The space options are more abundant in larger cities where the real estate market is supported by larger numbers of practicing attorneys. Thus, one must consider what is available in the market based on geographical location. You will also want to consider the proximity of the various services you will need to access, such as distance to the courthouse or to the law library or to the local Kinko's, FedEx or UPS when considering office space options.

## **Location and Office Space Options**

Each space and location provides certain amenities and conveniences. In determining which space is best, consider the advantages and disadvantages associated with each of the options. Several of these options are discussed below.

Be sure to examine the written lease for each space option and understand clearly what is being provided as well as what is *not* being provided. Compare various leases to be sure you are getting the most for your money. Most importantly, understand under what circumstances you can terminate the lease. Don't rely simply on the fact that you are a lawyer – talk to your mentors, bank officers, leasing agents or others as necessary to feel comfortable.

Leases of conventional space, for example, are generally for three to five year terms, which is a long-term financial commitment when you are just starting out. Allow sufficient time to negotiate all the terms of a lease or rental agreement that best fits your needs.

***Conventional Space*** Generally, conventional space is leased directly from the building owner. The owner will require a minimum of three to five years commitment to lease the space. The owner generally will retain a brokerage company to market the space and negotiate the lease terms. The space may or may not require tenant improvements to suit your needs.

The benefit of more conventional space is that it establishes a definite firm identity. Usually, the flavor and values of the firm are reflected in the space, location, furnishings, personnel, and ambiance. Traditional space provides sufficient space to house equipment, store files, and accommodate personnel and conference room needs. It allows for flexibility and growth and can be rearranged as desired by the attorney or firm to meet evolving needs.

Depending upon your financial situation, the most important factor in the selection of a conventional space is the cost of investing your own funds in obtaining, developing, and maintaining the space. Usually, a certain amount of tenant improvements are paid for by the lessor (owner or agent), but the majority of the improvements may require the lessee (you) to pay either up front or amortized through the tenancy by an increased rental payment to the lessor. A lease obligates you to a three to five year commitment to payment of the rent and expenses, regardless of the financial success of the business enterprise. Prepare for a significant investment of time for locating the appropriate space, negotiating the lease, coordinating tenant improvements, paying personnel, purchasing equipment, and setting up the independent and personal needs of the office.

***Shared Office Space*** Generally, in a shared office arrangement, the practitioner subleases with other practitioners. The common areas are shared (lobby, kitchen, conference room, etc.) Each practitioner is required to contribute either equally (or proportionately based upon use) for the common space, furnishings, equipment, shared personnel, shared supplies, and shared resource materials (i.e. library, computer research banks, etc.). The benefit of this relationship is that the practitioner can establish a high-profile office while sharing the expenses with other attorneys. There is also a potential referral source to enhance and increase the clientele of the beginning or established practitioner, in addition to the opportunity for mentoring between new and more established lawyers. The management responsibility is frequently shared and it provides flexibility in that many shared office arrangements allow for full-time or part-time use based upon the needs of the individual practitioners.

The primary difficulty with a shared office arrangement is that it requires a good working relationship and cooperation with all of your office mates. Many practitioners have different values in such matters as office appearance, obtaining malpractice insurance, timely payment of bills, and recruitment of personnel. Hence, a successful relationship of this nature requires individuals who have similar values and practicing styles. This may be difficult to find. There are also important ethical considerations such as confidentiality of your client files and security of your trust account that are especially important. [See Chapters Five and Seven.]

Also, to some extent, each practitioner is dependent upon the financial success of the other. If any particular practitioner is unable to meet his or her financial obligations, then the others by default must assume that practitioner's share either temporarily or possibly on a permanent basis. Be sure to clarify cost-sharing for common

personnel, purchase or lease of common equipment and what is to happen to such shared expenses when one of the office mates chooses to leave. What is the manner in which individual expenses, such as copying costs, are tracked and billed? Finally, in office sharing arrangements, the identities of the individual firms are frequently blurred. During an office visit, a client may or may not know whose office or personnel they are encountering. This confusion can result in the loss of clientele, as well as a possible deficiency in the level of client care. There are also ethical implications if signage and/or how the telephone is answered are confusing.

***Sub-Letting in a Large Law Firm*** In larger cities there may be office space available within a large law firm. These arrangements should be in writing and may be month-to-month or co-terminus with the law firm's lease or anything in between. Basic office services may be included and other services may be charged by the hour. The telephone system may permit the receptionist to answer your line with your name. This arrangement is not for everyone. But, it may best suit practitioners who have a client base that is not at risk of being subsumed into the larger firm and there is an above-average chance for referral business from the larger firm.

***Executive Suites*** Usually, these are pre-established offices with basic amenities built into the price of the lease. A management company leases space from the building in a long-term arrangement and then subleases the space out to others on a month-to-month or longer basis. Sometimes certain items, such as conference room space or overflow personnel, can be obtained on an hourly basis. The benefit of this type of arrangement is that it allows practitioners to make a minimal time commitment to the office lease. These companies are generally well-funded and therefore able to pay for a first-class image. The building, furnishings and certain common personnel (not the individual staff for the attorney) are also provided by the management company.

Timing is an advantage in the executive suite. A lawyer who is in need of an office can quickly and easily move and set up within a short period of time. The overhead and start-up contributions are generally significantly less, and there are no daily management needs on your part. The executive suite office manager manages the common personnel, office services, and any problems.

This arrangement allows a practitioner to utilize these services on a full-time or part-time basis. Many practitioners simply utilize one or more of the services such as the receptionist, mail service, and conference room services, while also maintaining a home office, thereby maximizing image in the shared space while minimizing the investment in the space. Most of the suites are equipped with the

technological services needed by many practitioners, so a larger investment in office equipment is not necessary.

Be aware that for the convenience of having available word processing, secretarial, and accounting services, you likely pay a premium hourly price for their use. Despite the flexibility in making the service available, the costs are often very high for the beginning practitioner until he or she becomes more established. Sometimes these costs can be directly passed on to the client, but the client may balk at being charged for ordinary services usually included as overhead in the more-established practitioner's hourly rate. In addition, the practitioner is unable to establish a set identity and may find himself/herself in a situation where there is little or nothing in common with the other persons sharing the suite arrangements. There tends to be a higher turnover in personnel, occasional difficulties in scheduling the use of common amenities (such as conference rooms, video conferencing, and other equipment shared by the tenants), and a limited use of common services without a premium additional price. Those who utilize these arrangements must also plan ahead for concerns unique to lawyers who practice in a space shared by non-lawyers, such as confidentiality of records and client files and security of client trust funds. [See Chapters Five and Seven.]

***Home Office***<sup>1</sup> Many practitioners today are electing to establish offices in their residences. Home offices should be designated working spaces within a portion of the home. Computers, the Internet and other technology have had a significant impact on allowing the practitioner to work at home while maintaining accessibility, competitive edge, and cost effectiveness.

Does walking a few feet to the office instead of a hectic commute, flexible hours, and working in your sweats or jeans appeal to you? A home-based law practice may indeed be a longer-term direction for you. Sometimes a home office is a necessity due to downsizing or changes in family obligations or disappointing job searches or you may lack the capital to set up a practice in a more traditional setting. A home-based practice may also be an opportunity to wind down to retirement and to practice part-time while pursuing personal interests.

Some practices may lend themselves to practicing from home better than others. For example, you might hesitate to meet criminal law clients or domestic relations clients in your home office for security reasons. Practices involving small businesses, estate planning and probate, elder law, taxation, intellectual property, alternative dispute

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<sup>1</sup> We are grateful to Linda Oligschlaeger, Missouri Bar, for contributing to this section.

resolution, brief writing and research services, and others generally adapt well to a home office perhaps with a part-time rental of a suite.

A home-based practice does not work well for everyone. If you are easily distracted at home and find yourself doing laundry, watching television, raiding the refrigerator, or if you have children, spouses, or housemates who create too many interruptions, then a home-based practice may not be for you. Those who have enough self-discipline are doing it successfully and have learned to regulate their work life with their home life. Home-based lawyers can help discipline themselves by keeping regular work hours. Others may dress for the day, put on makeup or shave as a means of self-discipline before they go to their home office to begin work.

You must love your work to be successful in a home-based practice. If work is drudgery for you, then you will likely allow any possible distraction to take you away from your work.

It helps to have an independent personality to be successful in a home-based practice. If you need to be constantly part of a team for work stimulation, a home-based practice may not be satisfying for you. If you expect to handle large, complex cases that require the resources of a law firm environment, a home-based practice is likely not for you.

The use of technology is essential for a successful home-based practice to be competitive. Lawyers who have not developed at least a medium level of familiarity with the use of technology may find it very difficult to practice competitively in a home-based office.

Newly admitted lawyers are recommended, if possible, to gain experience by working with more experienced lawyers for a few years before going it alone at home.

### **Consider the Advantages:**

- √ Better family relationships. A less stressful life can make you a better spouse or parent, or leave time for you to pursue other interests. For others, working at home is a way to cope with changing family circumstances, such as the birth of a baby or caring for an aging parent.
- √ Less overhead and increased profitability. Two of the most expensive components of overhead are staff and office space. The use of technology in a home-based practice can reduce the need for staff and can produce a considerable cost savings in overhead. Working from home may eliminate the need to work extra hours that would have been earmarked to pay your overhead. You also gain extra time without a commute to an office each day.



- √ Be more competitive by offering reduced fees. Because of significantly reduced overhead, lawyers who practice from home may offer more attractive fee structures to their clients than other lawyers with similar qualifications and experience.
- √ Avoiding the stress of daily commutes. Without the daily commute to and from a downtown office, lawyers practicing at home have more free hours to use as they like. They also have more money because their cars don't wear out as fast and do not need to fill up the tank as often.
- √ Flexible hours and working environment. If raising a latchkey child is a concern for you, a home-based law practice can make it possible for you to be home when your child returns from school. Setting your own hours allows you to get more involved with your child's school activities. It can also be appealing to take telephone calls or make appointments with clients in the evenings or on weekends, without having to leave home and drive to the office. You might prefer to work on your own time clock. If you're working at home, no one is looking for you at the office if you don't come in until noon, and you don't have to worry about safety if you work well into the night. You can also design or set up your office exactly the way you like it.
- √ Being able to work more efficiently. Distractions by coworkers and demands of staff can rob you of time needed to practice law. You may be able to do writing projects more efficiently from the seclusion of your office at home.
- √ Tax advantages of a home-based practice. Having your primary workplace in your home will likely offer you some tax advantages with a home office deduction.

**Consider the Disadvantages:**

- √ Potential for Distractions. Family members, children and pets can distract a home-based lawyer to the point that it is difficult to get work done. (However, remember that office chitchat in a law firm can equally steal your productive time.)
- √ Isolation at home can raise the opposite concern. Some lawyers miss the ability to go down the hall to another lawyer's office to kick around issues on a case. There are ways to fill that void. The WSBA provides many online discussion groups when you join the Solo and Small Practice Section and/or the Solo and Small Firm Section of the King County Bar Association. Listserves such as ABA's Solosez are also excellent for feeling part of a community. These groups can fill that need to kick around your case (confidentially, of course) or simply to share a

victory or to raise a concern with other lawyers without interrupting you or them. Lawyers with a home-based practice may offer to meet clients at their homes or businesses. This not only helps to eliminate the isolation of a home practice, but also provides an excellent service to clients. The feelings of isolation can also be avoided by scheduling breakfast or lunch appointments with clients or other lawyers, attending bar association meetings, civic club meetings, and running necessary errands. All this can provide a good mix of human interaction with the seclusion needed to get your work done.

- √ Image. One concern is the erroneous stigma given to a home-based practice that you are not successful. Some lawyers have a mindset that unless you practice from an office in the high rent district, you don't look successful and that you will not be successful. Those who do base their practice from their homes see no reason to hide the truth and are proud of the fact. The best indicator of professionalism (and the success it implies) is evident in how you furnish your home office, manage your practice, and demonstrate your professionalism. What clients really want is a competent lawyer who provides excellent service for a reasonable fee. Although office buildings are a permanent part of our landscape, the home office is enjoying more acceptance. You can also use your website to project a professional image.
- √ Doing it all. Home-based practitioners, particularly if they do not have support staff, find themselves in a position of doing it all—from running errands to secretarial duties to litigating a case. Handling all of these details can be overwhelming. Alternatives are available for contract secretarial support as well as other support systems that may be worth the extra expense.
- √ If you have small children at home, it may be necessary to consider hiring at least a part-time sitter or use a day care provider outside of your home. Working late at night or early in the morning are other options but working parents need their rest, so this may not be the best option.
- √ A Caution About Meeting Clients in your Home: Local zoning ordinances or subdivision restrictions may prohibit you from a home-based practice. A home-based business license may be necessary. Meeting clients in your home may lead to increased traffic and parking problems that bother your neighbors. These issues should be thoroughly explored before setting up your practice from home.

- √ Reconsider meeting with clients in your home if you live in a maze of subdivision streets that may make your home office difficult to find, or if you have only one parking space available.
- √ You may face concerns under the Americans with Disabilities Act (ADA), regarding accessibility. If clients need to go up a flight of stairs to see you, your home may not be the best choice for meeting clients. Accessibility is a particularly important consideration for elderly and personal injury clients.
- √ Children or children's toys should not be present when meeting with clients. Your full attention should be given to your clients. Any noisy distractions in the home should be minimized as well.
- √ Space Requirements and Other Essentials. You must have adequate working space, an appropriate place to meet clients and storage that can be separated from your living area. A separate outside entrance is also very desirable.
- √ You Consider Your Home Sacred Territory. If you consider your home to be an escape from work, a place of refuge or a sanctuary and you consider your workplace as a place of productivity and performance, you may want to rethink setting up a home-based practice. However, you might be able to work out a compromise with an office in an outbuilding or location in your home that could be separated from your living area such as in the basement or over a garage.
- √ Unless you have a sufficient client base to support the income that you need, you must market your home-based practice (which is actually marketing yourself). Being able to offer attractive rates due to your lower overhead and your willingness to meet clients at their place of business or in their homes are marketing advantages.

## **Conclusion**

Lawyers who decide to practice out of their homes are part of a growing wave of home-based businesses in this country. Lawyers are part of the "nomad generation" and practice from hotel rooms, airplanes, automobiles, and their homes while outside their traditional offices. The advantages of working from a home-based practice may fit some lawyers well and outweigh any disadvantages. It can be done on a shoestring budget, which can make it economically viable for the lawyer and affordable for more clients. Home-based practitioners may lead less stressful lives and enjoy the benefits of marching to their own drum from the comfort of their own home.

## Resources for Selecting the Right Location

A non-exhaustive list of resources for practitioners to explore includes:

*American Bar Association* The ABA has a wide variety of materials to assist you. The General Practice, Solo & Small Firm Section can be especially helpful.

*Book of Lists* The Puget Sound Business Journal publishes this summary of business office locations each year. It is available in any public library or LOMAP. Many office buildings are listed with contact information.

*Chamber of Commerce* Depending upon the size of the geographic location in which you wish to practice, this may be a useful source of information.

*Commercial Real Estate Brokers* This is an obvious resource which will decrease the amount of time you spend researching possibilities. Keep in mind that their commissions are paid by increasing the cost of the rental.

*County Law Library* Other attorneys frequently post notices listing space available on library bulletin boards.

*Internet* A growing number of listings for space appear electronically. Certain organizations may permit members or the general public to list available options for space. Use any listserves you may have access to. See also [www.officespace.com](http://www.officespace.com)

*Law Firms* Call and ask to speak with the legal administrator or facilities manager. Then ask about possible office space available (or coming available) for subletting. These opportunities often are not advertised.

*Legal Periodicals, Newspapers and Newsletters* These print resources contain listings of space that are available. Watch the WSBA *Bar News* for regular notices of available office space.

*LOMAP* Call the WSBA Law Office Management Assistance Program (206-727-8237) for sources of unadvertised office space.

*Newspaper* These may contain listings that are targeted to lawyers. At least a general knowledge of space costs in your geographic area can be obtained.

*Peer Groups* The Washington State Bar Association sections and committees provide peer contacts, as does the Lawyer to Lawyer Program and Lawyers Assistance Program of the WSBA. You may contact other attorneys individually or through county, specialty and minority bar associations.

Trade Journals Aside from those sent to lawyers, trade journals of other professional organizations can be of assistance to the practitioner who wishes to locate his/her office with other professionals.

Yellow Pages A listing of the office buildings and/or office management and leasing companies can be found here. See also the heading, “Executive Suites.”

Craig’s List A listing of the local options can be found here. See the heading, “housing—office / commercial.”

[www.officespace.com](http://www.officespace.com)

## Chapter Three: Operations

Your business plan from Chapter One describes your practice and identifies your goals. The plan maintains a balance in your life and provides the peace of mind that comes from knowing that you are making progress toward your goals.

As your practice becomes established, the demands on your time and resources cause you to make choices about whom you represent, how you prioritize your time, and how you accomplish the administrative tasks essential to a successful practice. Having many happy clients who refer other prospects to you is the best measure of your success. Keeping them happy demands careful allocation of your limited resources or you risk being overwhelmed.

Malpractice arises not always from poor legal skills but, more often, from poor administrative skills. Missed dates and poor communication with clients top the list. Be familiar with the Rules of Professional Conduct (RPC)<sup>2</sup>. If you have staff, you are responsible for monitoring their compliance with the relevant RPC sections. See in particular RPC 5.3.

You may not now have staff. Not having staff makes it all the more important that you be aware of the necessary skills that you must have that are required to support a successful practice. These skills may not have been imparted in law school yet they are absolutely necessary to your success and to your peace of mind. The Law Office Management Assistance Program (LOMAP) of the Washington State Bar Association wants to help you with these skills and keep you “up and running!” The pages that follow describe several of the most important business and administrative categories of concern to practicing attorneys, among them: time management, staffing, retaining clients, calendaring and docketing, records management, the library, office manuals and disaster recovery planning.

LOMAP provides further resources for each of these topics. Talk with a LOMAP advisor about your specific needs. When you want your question resolved right away, LOMAP can quickly connect you with the answer. The WSBA Solo and Small Practice Section, the Association of Legal Administrators, and the American Bar Association are also available for further resources. Networking with other practitioners is extremely valuable as well.

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<sup>2</sup> The Washington Rules of Professional Conduct were republished in their entirety with official comments on September 1, 2006. The reader is urged to become acquainted with this major update.

## Time Management

Once you have your business license, tax identification number, checking account, trust account, business card, and stationery, stop to think about time management. Candidly assess how organized you are. Establish good habits for using your time and energy. Being productive means to allocate billable time, non-billable time, and leisure time. Allocate time very deliberately and maintain a balance. Allocate time for the telephone, producing documents, calendaring, building your caseload, and filing. Discipline yourself early to segregate your time and to balance your life. This will enable you to limit stress and it will also make you a better lawyer.

Use a prioritized “to do list” and other checklists for the routine handling of cases. Record your commitments in your calendar along with reminders. Plan “quiet time” into your schedule by scheduling the larger to-dos on your calendar and telling people when it is best to call you. Use your voicemail message to inform callers of your schedule and preferred time for calls.

Practice management software can postpone the need for staff. As your practice grows, a staff person (at least part-time), to whom you can delegate, can be a real asset. They assist with office matters and are a helping hand for communicating with your clients when you are not available to do so timely.

## Resources

Franklin/Covey Seminars and Materials

*The Time Trap* by Mackenzie

*Computerized Case Management Systems* by Adkins

## A Word About Staff

Be sure to see Chapter Eight for more information about staff. The administrative details necessary to a law practice may require you to hire some help. Talk with other practitioners about their experience integrating a staff person into their practice before you hire anyone. At the minimum, your staff person must be organized. Prior legal experience comes at a premium but can be well worth it. Check references! **Your gross fees each month should be at least \$9,000 before hiring fulltime staff.**

A staff is expensive so it pays to invest the time to train and motivate. Describe your expectations. Train the person to answer the phone properly, to be helpful to your clients and prospects in your absence (without practicing law!), and to follow the established procedures for

your office. Offer training resources outside the office. Today's staff person values a challenge and the opportunity to build on his or her skills. Motivate your staff person by describing your cases and what you hope to achieve on behalf of the client. *Always, always* stress confidentiality. The case that makes the local news still is not the subject of discussion with outside parties—ever! Meet regularly with your staff person to review the recent week's events and plan the week ahead. Encourage questions!

An experienced staff person can wear several hats (and, as a paralegal, be billable) such as secretary, paralegal, bookkeeper and receptionist. A paralegal can do factual research, interview witnesses, identify experts, assist with discovery, and keep larger cases organized.

Treat staff people with care by providing training opportunities and recognition. Praise publicly and always counsel mistakes privately. Never lose your temper or cast blame. Mistakes made by your staff are your responsibility. *Never*, criticize your staff person in front of a client—or anyone else!

Having an employee subjects you to requirements concerning pay, record keeping, working conditions, and procedures that are governed by federal, state, county, and city mandates. Above all, query your accountant about these matters. Common sense and the golden rule really do help you to avoid many problems. The other side of the coin is to be alert to embezzlement. A staff person who refuses to take a vacation or encourages you to be hands-off the books of account can mean trouble. Transparency is essential.

Here is a non-exhaustive description of the issues that arise with having an employee.

1. Avoid certain questions when recruiting; examples include age, marital status, and arrests.
2. You may investigate the background of an applicant but include proper disclosure language on your application form.
3. Your offer should be in writing and include an "at will" statement.
4. Use the Immigration and Naturalization Service Form I-9 to have your new employee certify that they can work in the United States.
5. Do not treat your employee as an independent contractor to simplify record keeping. This practice may not withstand IRS scrutiny. You may hire a long-term temporary from an agency where the person is an employee of that agency and is paid by that agency.



6. Have a standard orientation process. Turnover is inevitable so you will be using that process on repeated occasions. Start a written procedures guide to facilitate training for new employees.

7. Remember that there is a state and federal minimum hourly wage (\$8.55 in Washington as of January 1, 2009) that must be paid. See <http://www.lni.wa.gov/WorkplaceRights/Wages/Minimum/History/default.asp> for the history of the Washington minimum wage.

8. “Exempt” and “non-exempt” (from the Federal Wage and Hour Law) employees are not paid overtime or are paid overtime, respectively. Your staff person is likely non-exempt so you must pay overtime at 1 ½ times the hourly rate for hours worked over 40 per week. An exempt employee generally is a management person with independent authority and discretion to act. The IRS has very specific guidelines that define an exempt employee. See [www.irs.gov](http://www.irs.gov) Publication 15.

9. Employee records and timesheets must include:

Employee’s full name

Address

Date of birth

Gender

Occupation

Day and time work week begins

Regular hours worked each day

Rate of pay

Total daily or weekly straight-time earnings

Total overtime earnings for the workweek

All additions to and deductions from wages

Total taxes paid each period; see your accountant about IRS reporting schedules

Dates of payment and the pay period covered by each payment; and

Copies of any deductions authorized by the employee.

10 Use care when documenting, counseling, and terminating an employee’s employment.

Staff are an added responsibility, but there are many resources available to help you with questions that arise with administering a staff person.

## Resources

[www.dol.gov](http://www.dol.gov)

[www.lni.wa.gov](http://www.lni.wa.gov)

RPC 5.3

Chapter Eight

## Retaining Clients

The Reception Area Your prospects and clients expect to meet you in a suitable environment. Ensure comfort and privacy. Furniture should be of good quality. A staff person's greeting can set the tone for the meeting with you and helps calm a likely nervous visitor. Good quality reading materials, flowers on display, and a beverage help your visitor have a sense that you care about their state of mind as well as their legal matter. If you need to keep a visitor waiting for more than five minutes, greet them and explain your delay before returning to the matter that is causing the delay.

Caution your staff against any conversation in the reception area and always stress the importance of confidentiality.

Have a separate telephone line nearby for your client to use privately. Do not take telephone calls when meeting with your client. Keep your desk clean except for your client's file. Be attentive and help your client provide important details of the matter by asking good questions. Show genuine interest. One member we know has had some success establishing rapport by saying, "I figure that there is someplace else you would rather be right now."

If you proceed with representing the client, inform them of the engagement letter and follow up by sending it to the client with a cover letter thanking them for their time.<sup>3</sup> This is an important first step toward maintaining good client communication. Be specific about retainers, cost estimates, and rates per hour or per task. Be sure clients understand their responsibilities in the matter. Full disclosure of the facts and respect for attorney-client privilege top the list. Be alert to discovering waning client interest in the matter by maintaining good communication.

Avoid the temptation to start work without a signed fee agreement or engagement letter. If you must commence work immediately, obtain a retainer and accept a credit card if necessary. The Rules of Professional Conduct require an engagement letter for a contingent fee matter.

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<sup>3</sup> See **Bohn v. Cody**, 119 Wash.2d 357, 363, 832 P.2d 71 (1992) This case governs when a client-lawyer relationship is formed.

Remember to perform a search for potential conflicts of interest for all your matters. Remind each potential client to provide all parties, addresses, and the existence of other matters with other lawyers. Remember to check for conflicts with subsequent parties to a matter.

## **Resources**

*How to Start and Build a Law Practice* (5<sup>th</sup> Edition) by Jay Foonberg

*Flying Solo: A Survival Guide for Solo Lawyers*, from the ABA

*Getting Started: Basics of a Successful Law Firm*, from the ABA

*Legal Fees and Representation Agreements*, from the ABA

Ask LOMAP about many other client relations resources!

## **Calendaring and Docketing Systems**

Scenario: The mail arrives. It includes a requested document and a notice from court with a trial date. What do you do with these items? Do this: put the document in the file and note in the case chronology that you received the document on this date. Enter the court date on the master calendar, your own calendar and on the case chronology. What is a “case chronology?” On the left inside or outside cover of the correspondence file is a lined sheet of paper where you mark actions, requests, events, etc. to provide an immediate picture of the status of the matter and the flow of events.

Buy a good computer and invest the time to learn how to use it. It is a doorway to resources, communication, financial control, and work product that is not only valuable but also can be amazing. LOMAP and the Solo and Small Practice Section can provide suggestions.

Malpractice insurance carriers expect you to have at least two calendars. The first is a manual calendar and the second is usually on a computer.

Enter your own diary event entries and reminders. If your staff person maintains your calendar/docket, be certain that you have a dependable way to communicate changes and additions. Court rules specify the rules for counting days between case events so be familiar with these rules.

Review the calendar on a regular basis with your staff person. Analyze your own work style and include reminders to complement your respective need for time to do certain tasks. Always print out a hard copy in case you are faced with no electricity, a malfunctioning computer, or an unavailable staff person. Docket systems allow you to

sort the entries by client, by task, by date, and by attorney. Use these features! Outlook® has these features and more.

Remember to include dates relating to quarterly taxes, payroll, licenses, statute of limitations, and even events of significance for your clients as a client relations tool. Use tickler systems and incoming mail as sources of key dates (and do not forget reminders!) to include on your calendars. Commit to writing the important points in telephone conversations and meetings and transfer mentioned dates to your calendars. Outlook® is very good for these tasks.

Talk with colleagues about the way they use calendar and docket systems. Remember that being in control of your calendar yields important peace of mind.

## **Resources**

LOMAP Software Information

WSBA Solo and Small Practice Section

Association of Legal Administrators

American Bar Association Law Practice Management Section and General Practice, Solo and Small Firm Section

## **Records Management**

Calendaring and docketing help you to keep track of time. Records management helps you to keep track of paper. There are often negative audit findings, according to the WSBA, so a system is essential.

Many lawyers use a sequential numbering system such as 1234-100 where 1234 is the client and 100 is the matter. The next client is 1235, etc. Matter numbers should mean similar things. A number such as 100 can mean “general matters” or “will” depending on your preference. The number 200 can mean a property closing, etc. Be consistent. As your client base grows, you will find it helpful to retrieve this data and easily see the diversity of your practice and your emerging specializations. Use a master log of all new matters. List each new matter by date opened and include a column for date, client, type of matter and closed dated (four columns). This form is an important tool for knowing which matters are lagging action.

Within the matter file, it is useful to have subfiles for correspondence, research, drafts, etc. It is a good idea to include a “file journal” for each client file. In one place, it records the events of the file such as requests for records, receipt of same, witness contacts, meetings with the client...indeed *anything* that can quickly provide you with the

status of the file when you receive that unexpected telephone call from the client asking what is happening on their file! Color-code these by tab or folder to access them easily.

In Washington it is possible for the lawyer to assert ownership of the file.<sup>4</sup> Otherwise, the WSBA imputes ownership of the file to the client.

Records include client files, business administrative information, financial records, calendars, disks, tapes and fiche. Use logical systems to support the life cycle of the information and to prevent disaster in case of an emergency.

The financial records include the trust account activity for the client. The Rules of Professional Conduct describe what records and for how long they must be kept.

Consider using electronic media for the storage of a client file. The advantages are more ready access and fewer square feet devoted to storage.

A typical life cycle of a file is outlined below coupled with suggested actions:

- √ Engagement Letter Signed by Client
- √ Engagement Letter Describes the File Retention Policy of the Lawyer
- √ Engagement Letter States the Guidelines Agreed to by the Client for the Lawyer to Appropriately Dispose of the File
- √ List the New Matter in the Master Log of New Matters
- √ Assign File Number
- √ Open File on the Computer System
- √ Create Physical File Folder
- √ Create Duplicate Physical File for Client to Use for Copies of Documents Sent by the Lawyer
- √ File Active While Representation Continues
- √ Only Employees of Law Practice Have Access to Client Files
- √ File Returned to Locked Cabinet Each Day
- √ File check out card describes who has current possession of file
- √ File new items for 15 uninterrupted minutes per day
- √ Representation Ends
- √ Send a Closing Letter to Client

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<sup>4</sup> See Formal Opinion 181.

- √ File Closed Physically and closed in accounting system
- √ File Culled for Unnecessary Items
- √ File Indexed
- √ File Stored On Site for Initial Period of Time
- √ Contents of File Reviewed by Lawyer
- √ File Returned to Client in Exchange for Signed Receipt from Client or
- √ File Stored Off Site for Remaining Time Based on Agreement with Client
- √ Written Notice Sent to Client's Last Address Describing Impending Disposition
- √ File Returned to Client in Exchange for Signed Receipt from Client or
- √ File Destroyed (Return intrinsically valuable records.)

Washington passed RCW 19.215, Disposal of Personal Information. In part:

*Destruction of information -- Liability -- Exception -- Civil action.*

*(1) An entity must take all reasonable steps to destroy, or arrange for the destruction of, personal financial and health information and personal identification numbers issued by government entities in an individual's records within its custody or control when the entity is disposing of records that it will no longer retain.*

*(2) An entity is not liable under this section for records it has relinquished to the custody and control of the individual to whom the records pertain.*

*(3) This subsection [section] does not apply to the disposal of records by a transfer of the records, not otherwise prohibited by law, to another entity, including a transfer to archive or otherwise preserve public records as required by law.*

*(4) An individual injured by the failure of an entity to comply with subsection (1) of this section may bring a civil action in a court of competent jurisdiction. The court may:*

*(a) If the failure to comply is due to negligence, award a penalty of two hundred dollars or actual damages, whichever is greater, and costs and reasonable attorneys' fees; and*

*(b) If the failure to comply is willful, award a penalty of six hundred dollars or damages equal to three times actual damages, whichever is*

*greater, and costs and reasonable attorneys' fees. However, treble damages may not exceed ten thousand dollars.*

*(5) An individual having reason to believe that he or she may be injured by an act or failure to act that does not comply with subsection (1) of this section may apply to a court of competent jurisdiction to enjoin the act or failure to act. The court may grant an injunction with terms and conditions as the court may deem equitable.*

*(6) The attorney general may bring a civil action in the name of the state for damages, injunctive relief, or both, against an entity that fails to comply with subsection (1) of this section. The court may award damages that are the same as those awarded to individual plaintiffs under subsection (4) of this section.*

*(7) The rights and remedies provided under this section are in addition to any other rights or remedies provided by law.*

*[2002 c 90 § 3.]*

Keep all files in a central place near a work table. File new materials each day. Allocate 15 minutes a day, no more, no less, so that the task remains manageable in your schedule. Instruct staff exactly how you want things set up and identify on the back of the documents in which sub file they should be placed. There are archiving services that assist with storage of closed files if storage space is restricted. These are secure and provide ready access but you must index the contents of each box and file before releasing them to offsite storage.

## **Dates of Retention**

RPC 1.15B mandates retention for seven years of trust account and related records. The following information includes minimum periods for retaining the client files that pertain to certain practice areas, exclusive of trust account records. These are suggested standards. **Lawyers are free to choose a longer or shorter term of retention of client files.** As already mentioned, a permanent record will be maintained that describes the file and the disposition of the file. Include any releases and receipts for files that are no longer under your control.

Special considerations, such as long-term client relationships, may require longer retention of client files. For example, those files may contain information that is useful for other matters for that client. At the conclusion of the matter, you may choose to label the file with the actual date implied by these guidelines.

### **Probate Claims & Estates (Excluding tax)**

10 years after final judgment; tax basis information – permanently

**Tort Claims (Plaintiff)**

6 years after final judgment or dismissal, except when minor involved;  
then when minor attains majority plus six years

**Tort Claims (Defense)**

6 years after final judgment or dismissal.

**Contract Action**

3 years after satisfaction of judgment, dismissal, or settlement.

**Bankruptcy Claims & Filings**

6 years after discharge of debtor, payment of claim, or discharge of  
trustee or receiver

**Dissolutions**

6 years after entry of final judgment or dismissal of action, or date at  
which settlement agreement is no longer effective, except when minor  
children are involved and then at the minor(s) attaining majority plus  
three years

**Real Estate Transactions**

Subject to guidelines and tax needs; otherwise 6 years after settlement  
date, judgment, termination of sale, foreclosure, or other completion of  
matter; Retain surveys and legal descriptions not of record

**Leases**

6 years after termination of lease

**Original Wills**

Return to client after signing and conclusion of matter or file with local  
court of jurisdiction

**Criminal Cases**

6 years after date of acquittal or length of incarceration

*Do not treat filing as a low priority. Recognize that it is a high priority  
and treat it as such. Current filing can be a lifesaver and it also  
contributes greatly to your reduced stress when handled properly.*

**Resources**

LOMAP

<http://www.wsba.org/lawyers/services/fileretentionguide.pdf>

“Records Retention in the Private Legal Environment: Annotated  
Bibliography and Program Implementation Tools” at 93 Law Lib. Jour.  
7 (2001). An excellent overall resource for the law office.

*The Lawyer’s Guide to Records Management and Retention*, 2006,  
ABA Law Practice Management Section



## Library

Consult with colleagues about the resources that they have found most useful for your practice area(s). Use the courthouse library and explore a sharing arrangement of library resources with a colleague. It is very easy to waste a great deal of time on the Internet on your own. A consultant can save you time and turn up resources you may not otherwise find. See the WSBA's web site [www.wsba.org](http://www.wsba.org) for many useful links for lawyers. See also [www.batesinfo.com](http://www.batesinfo.com)

CD-ROM resources can be a valuable part of your library. You may also want loose-leaf services depending on your practice area. Subscription research resources are very costly so a thorough knowledge of Internet resources pays dividends every day. The RCWs and WACs are on the Internet. Have on hand only what you consult on a daily basis. The resources in your library will grow and change. Be flexible yet conservative in your thinking about how to use or purchase resources. The WSBA also offers Casemaker as a research service for members. Access Casemaker at [www.wsba.org](http://www.wsba.org)

## Resources

Associations of Law Librarians

*Lawyer's Guide to Fact Finding on the Internet* by ABA

<http://www.wsba.org/lawyers/groups/lpmt/lpmtlinks.htm>

## Office Manuals

The two essential kinds of manuals are a policy manual and a procedure manual. Policies describe overall matters such as ethics/confidentiality and personnel policies. Procedures describe specific tasks such as checklists for the intake of a new client, style formats, or how to unjam the copier.

One manual can include both topic areas. Include checklists for new employees; a conflict checking procedure; steps for opening new files; office equipment service phone numbers; and similar subjects. Format is less important than content.

A sample table of contents for your office manual might include:

About the Office

Description of Practice

Confidential Nature of Work

Equal Opportunity Employer

Sexual Harassment

Medical & Life Insurance  
Parking  
Termination of Employment  
For cause  
Notice Before Terminating Employment  
Vacation Payment  
Severance Pay  
Letters of Recommendation  
Master Docket Calendar  
Library  
Form Files  
Office Security and Emergency Procedures  
Accounting for Client Costs  
Accounting for Firm Costs  
Accounting for Petty Cash  
Reimbursement of Expenses

The topics will expand as your practice grows and the manual should be updated accordingly. Contact LOMAP for more information about additional topics.

A manual sounds ponderous but need not be so. Keep it on your computer system where you and your staff person can access and update it easily. Also have printed copies available. The manuals are important training tools for your staff. Always emphasize confidentiality with your employees and assume that they have no prior knowledge of any of the points in your manual when you train them. That way, you will be certain not to overlook anything of importance.

## **Resources**

*Law Office Staff Manual for Solos and Small Firms*, from the ABA

*Law Office Staff Manual: Model Policies and Procedures for Law Office Personnel*, from the ABA

Chapter Eight

## Disaster Recovery Planning

A “disaster” means you are not able to practice because of your health, damage to resources, or lack of access to intact resources. Here are some examples:

- you have a biking accident that requires hospitalization;
- a sick family member requires your help;
- your plane is delayed overnight and you have a trial date the next day;
- a power outage;
- computer problems;
- a stolen laptop;
- fire; and/or
- earthquake.

The list can go on but the key is to think ahead about circumstances that may prevent you from being responsive to your practice and to consider alternatives for overcoming these obstacles. Always keep your clients informed of your status during your recovery from the event. Having your client telephone numbers with you at all times and a printout of your calendar are good ideas.

Keep your laptop under your control at all times, especially at airports. Back up important files such as accounts receivable, trust accounts, and calendar/docket. Store backups away from your office in a secure place. These must be treated with the same attention to confidentiality as the original records. Consider also using an online back-up service.

Have a family disaster plan to facilitate getting things under control. This will enable you to focus on your practice recovery efforts as soon as possible. Talk over with your insurance agent the best insurance alternatives for your needs. There is insurance for lost business income, restoration of files, premises liability, and ongoing expenses as well as the usual coverages for fire and other losses.

## Resources

*When Disaster Strikes: How to Handle Law Office Emergencies*, from the ABA

*Emergency Management Guide for Business & Industry*, American Red Cross

## Chapter Four: Client Relations

Please also see Chapter Nine, “Building Your Practice in Today’s Marketplace.” Client relations means both the communication and the “amenities” in the client-lawyer relationship. It is hard to overcommunicate. Clients are concerned with their matters and welcome contact from you. Your listening skills are equally important as is your “bedside manner.”

What makes clients satisfied with your work? What makes clients want to pay their bills? What can you do to keep clients coming back?

Relationships with clients make or break a law practice. Happy and successful lawyers know how to treat their clients well—in addition to providing competent legal work.

Most client relations problems fall into two broad categories: communication and money. The following discussion is based on the writings and presentations of D. Bruce Gardiner, a Washington lawyer with 28 years of experience in private practice (used with permission). For a more complete discussion, see Jay Foonberg’s *How to Start and Build a Law Practice*, 5<sup>th</sup> edition.

### Communication

Imagine yourself facing an unexpected medical crisis. You make an appointment with your physician and explain the problem. After a lengthy, technical explanation of the issues at hand, she assures you that the situation is under control and that she will get back to you with further instructions. You go home and take your medicine but the problem doesn’t go away. The doctor doesn’t answer your phone calls. You don’t have the time or money to start over with a new doctor. How does it feel?

Many of us have experienced insensitive treatment by another professional, such as the physician above. We come away from the experience feeling uncared for or disrespected or angry—even if the professional performed competent work. Likewise, your clients will form an impression of you based on how you treat them. They may also share this impression with everyone they know, directly influencing your success as an attorney.

Here are some suggestions for developing an effective “bedside manner” with clients.<sup>5</sup> Follow these guidelines and you will convey your concern and respect for your clients. These are the “amenities” of the relationship.

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<sup>5</sup> Thanks to Bruce Gardiner, Kirkland, for these important pointers.

**LISTEN.** Give your full attention to the client, especially during telephone conversations. Make sure you understand the client's problem or complaint as he or she understands it. Know what the expectations are.

**REPEAT** important information several times over several occasions. Clients generally are in distress. Distressed people don't process information as efficiently as they normally would. The mere fact of being in your office may cause extreme anxiety.

**RETURN** all telephone calls the same day or within 24 hours at the longest.

**COMMUNICATE** simply, directly, and honestly with your client—especially when a case is lost.

**CLEAR** your desk of everything but the client's file when he or she comes to see you. This communicates that the client is the focus of your attention, which promotes a feeling of being cared for and being important. Use a conference room if your office is not orderly.

**RECOGNIZE** your clients as real human beings; the problems they bring you are just one aspect of their lives.

**GIVE** new clients a "Bill of Rights" that explains their rights and responsibilities – and yours.

**SUSTAIN** regular contact with your clients. If a case is in a period of inactivity, send the client a letter saying so. This says two things: 1. "Nothing is new." 2. "I have not forgotten you."

**SEND** your clients copies of everything pertaining to their case or matter.

**KEEP** all promises to your clients. This means setting realistic deadlines to complete their work. "Realistic" means allowing for unanticipated delays.

**AFTER** a matter is concluded, send a letter to your client telling her of the conclusion and thanking her for the opportunity to serve her. Take this opportunity to tell the client what other kinds of service your law firm can provide and not to hesitate to recommend you to others.

**VISIT** your client on his or her own turf. Clients will appreciate it and you will learn a lot about them. Avoid billing this time unless the need is frequent.

**WATCH** for articles, recent court decisions, or other information of interest to your clients and send them copies.

**KNOW** why people recommend you so you can do more of whatever you are doing right.

ASK clients about their satisfaction with your services. Questionnaires can be useful data collection devices.

DEVELOP a list of referral attorneys. You can't handle everything. However, if you promptly refer your client to an appropriate specialist, your client will think of you first the next time.

FOLLOW UP with your client after you make a referral. Did she get the help she needed?

SEND handwritten thank you notes for every referral you receive whether or not you take the matter.

BE ACCESSIBLE and answer your own phone when you can.

MONITOR the quality of your telephone answering machine or person. Monitor the legibility of your faxes and stationery, ensuring your address is clearly legible. Call your own office to see how the call is handled.

ALWAYS carry high-quality professional business cards.

PREPARE a concise but comprehensive answer to the question, "What kind of law do you practice?"

EXPLAIN the law in brief conversations with new callers who have questions. These callers are potential clients, and the call is a marketing opportunity.

BEWARE of prospective clients who have lots of complaints about their former attorneys. Find out what went wrong and listen to instincts warning you away from this prospective client.

## **Money Matters**

DISCUSS fees and costs in the first meeting with a client. Surprises later on either side are not conducive to good working relationships.

USE written fee agreements in plain English.

DON'T let your clients decide whether your work for them is pro bono.

WHEN estimating a fee, give the client a "will not exceed" quote rather than a range. They will remember only the lower number if given a range.

SEND monthly, detailed bills.

INCLUDE in your bills items for which you are not charging.

KEEP billing current. Clients are more likely to pay before a matter is settled than after.

REFRAIN from billing every phone call. This is a common complaint about lawyers.

SEND one more bill after their last payment; clients like to get bills that say nothing is owing.

KEEP a photo handy of your family, significant other(s), or yourself to remind you for whom you are working. Look at it before you quote a reduced fee.

LIMIT the scope of representation and charge a fixed fee to allow the client to decide whether more work is warranted.

Lawyers are caregivers. The amenities described above contribute to “client satisfaction” and that means more than a good result. Clients need to be handled well by your office throughout the representation.

## Chapter Five: Financial Management

Successful financial management requires your active participation and provides the following benefits:

- Maximizes net income;
- Frees up time to practice law; and
- Lets you sleep at night.

Before you say, “I can’t handle financial management, I can’t even balance my checkbook,” stop and look at the term financial management again. “Financial” means those day to day items which have dollar signs attached to them. “Management” means planning, directing and controlling activity. So “financial management” simply means learning to control the activity related to the money generated by your law practice.

Successful financial management will not cause you to be rich (but helps!), will not guarantee the rent will be paid on time (but helps!), and will not make all clients pay their bills immediately (but helps!). Successful financial management puts you in control. You know where the money comes from and where the money goes. No one is asking you to become an accountant. You can hire those skills. We are asking you to understand the concepts and to stay involved in the process. This responsibility remains with the lawyer.

### Income versus Cash Flow

Keep in mind that there are two different approaches to accounting for revenues and expenses. The traditional “accrual basis” income statement reports income as it is earned (billed) and expenses as they are incurred (committed to but pro-rated over the year). The resulting difference between income and expenses is referred to as net income. “Cash basis” statements report cash receipts when income is collected and other money is received. Cash disbursements are reported when expenses and other items are paid. The difference between cash receipts and cash disbursements results in an increase or decrease in cash. “Modified cash basis” recognizes depreciation and amortization.

For example, assume you are working on a billable-hours basis using accrual basis accounting. In the month of May, you bill 100 hours at \$125 per hour, so your income is \$12,500. A cash basis statement would report only the portion of the \$12,500 you actually collected in the month of May plus any collections from prior months’ billings as cash receipts for the month. On the expense side, your insurance policy might require quarterly payments of \$600. Your accrual basis



income statement would recognize 1/3 of \$600 (one month's worth), or \$200, as insurance expense for each month in the quarter. Your cash basis statement would record the whole \$600 in the month it was paid as a disbursement and zero in the other two months of the quarter. Most practices use the "cash" or "modified cash" basis of accounting.

## Cash Flow Projections

As part of your business plan, you prepared a budget for your law practice and a budget for your personal expenses. The personal budget determines how much money your law practice must generate to support you. The bottom line from this budget went to your law firm budget as owner's/partners' draw or shareholder salaries. From the law firm budget, you see when the firm generates excess cash and when the firm needs external infusions of cash.

Preparing well-reasoned cash flow projections is an important step in your financial management process. You must be able to determine how much cash you need to operate your practice and when you will need the cash. There are four sources for financing short term cash needs:

Cash reserves accumulated from prior months' operations

Loan or line of credit

Personal savings

Vendor credit

The sample cash flow projection in this chapter at Figure 1 portrays a small practice that uses borrowings in the months that are short and repays the line in months where there is a surplus. The lawyer can pay bills on time and provides a smooth stream of cash for personal expenses. If the lawyer had other sources of funds from which to pay personal expenses, the same objective is reached by downward adjusting the withdrawals. A third possibility is to defer the equipment purchases shown as cash paid out until later in the year—when sufficient cash from operations had accumulated to pay for them or consider vendor credit by leasing the equipment. Your law practice will likely use a combination of these methods to finance operations. Note this word of caution regarding clients' advance fee deposits:

**When you balance your budget, do not deposit fee advances to your general office account or remove them from the client trust account in advance of being earned. Likewise, do not allow earned fees to accumulate in the client trust account as a method of accumulating a reserve fund.**

You may not want to use excess cash to upgrade your computer system this month if you know that next month's cash projection shows a \$5,000 shortage. Conversely, you may want to invest excess cash in a better copier now if your projections show that your law firm will be generating sufficient cash to support operations for the next year. Other methods of accumulating cash reserves in addition to retaining prior months' excess cash flow is to reduce expenses, to speed up collections, and to negotiate extended payments to vendors.

Loans may come from banks, credit cards, relatives, or friends. Loans can be the most expensive form of financing, but few businesses can exist without them. Having advance notice of the need to borrow money will allow you time to research the best source of funds and negotiate the amount, terms and interest rate best suited to your practice. Such good cash-flow planning and your business plan will impress your banker and bankers can refer clients!

There may be times when operating funds are not available from any other source and you will have to use your personal savings. Personal savings are a nest egg and used as a last resort. Use this source only when firm cash reserves and borrowed funds are not available. Personal savings are limited and very hard to replace

Your cash-flow projections give you time to plan. Having advance warning of cash needs will allow you to avoid crisis situations. When you are preparing for trial, you need not stop what you are doing and figure out how to come up with the cash to meet tomorrow's payroll. The first projection you prepare will probably be an accumulation of educated guesses. As you continue to revise and refine your projections with experience, they will become one of the most valuable management tools you have as they become easier to prepare and more accurate!

### **Additional Reading**

*Flying Solo, 4<sup>th</sup> edition*, Chapter 15, "The Capital and Capitalization of the Solo Law Practice" from the ABA

ABA Section of Law Practice Management

SBA Business Plan, Cash Flow Template

## Timekeeping

We often hear that all a lawyer has to sell is time. It is more accurate to say a lawyer sells knowledge and experience. Time is the method of keeping track of who are the customers. Recording your time and subsequently billing the client for your time are the financial management steps that generate the revenues to support your practice.

Almost every article you read about billing will state that lawyers who (regardless of their billing method) keep contemporaneous time records will make more money than lawyers who do not keep contemporaneous time records. The interesting conclusion is that these lawyers make more money, not because they are billing every tenth of an hour possible, but because they use contemporaneous time records that:

*Are more likely to be complete and accurate than time sheets completed at the end of the day or the week;*

*Allow the lawyer to calculate the actual cost of time and avoid unprofitable work;*

*Pinpoint inefficient use of time or lack of delegation of non-legal work; and*

*Make the lawyer aware of how much time must be spent in administrative, marketing and other non-billable activities.*

No matter what type of fees you charge (hourly, fixed, contingent or some variable), please implement a timekeeping system. Train yourself to enter the time for each task you perform during the day regardless of whether it is billable or non-billable time. There are low cost manual and computerized systems available for this purpose.

A standard task coding system for lawyers exists. The Uniform Task Based Management System (UTBMS) was co-developed in 1995 by the American Bar Association and PriceWaterhouseCoopers in an effort to standardize billing practices by America's top law firms. This method of work product classification provides unique billing codes and matching descriptions that are intended for use in detailed client billings.

Choose the system most compatible with your working style and make a habit of using it!

Next, determine your cost per hour. A simple method of computing this cost is:

**Cost:**

Fixed operating costs - per budgeted income statement:

(rent, utilities, supplies, contract services, etc)	\$81,700
Lawyer's required draw <sup>6</sup> , including taxes	<u>68,000</u>
Total cost to recover	<u>\$149,700</u>

#### Billable hours:

#### *Total hours available for work*

52 weeks per year @ 40 hours per week 2,080

#### Less:

Office administration - 1 hour per day	-260
Marketing time - 2 hours per week	-104
Professional activities - 2 hours per month	-24
Pro Bono commitment – 4 hours per month	-48
Mandatory CLE attendance	-15
Vacation - 2 weeks per year	-80
Holidays - 8 days per year	-64
Sick days - 5 days per year	<u>-40</u>

Net billable hours 1,445

**Cost per hour = Cost to recover / Net billable hours \$103.60**

All of the numbers in this computation are variable (except for 52 weeks in the year). Be careful not to underestimate any of these factors. For example, if you decide to commit 80 hours per week to your practice and eliminate vacation and holiday hours, your draw may substantially increase, but your spouse and children may leave and you will support two households instead of one.

Remember that you may not collect all hours that you bill. Factor in at least 10% as an additional "cost." (1,445 hours -144 = 1,301; \$149,700/1,301 = \$115.06 cost per hour)

Review your business plan periodically to remind yourself of your goals and values in practicing law. You may want to increase the hours for professional activities if you have a personal commitment to providing pro bono services, for example. If you are starting your practice, you may need to increase your marketing hours. When you do this computation, use estimates of costs and hours. As your recordkeeping system improves, you will be able to refine the numbers.

If your fee structure is entirely based on hourly billings, the cost per hour you compute may be a consideration in setting your billing rates.

<sup>6</sup> Draw includes compensation, fringe benefits, and contributions to a retirement plan.

Using the above sample cost of \$115 per hour, a billing rate of only \$90 per hour will require you to make serious adjustments to your firm to bring your cost down to \$90. Obviously, if your billing rate is \$200 per hour and your cost is only \$115 per hour, you can start considering methods of investing the profit.

Profit is your income. You receive what is left after paying the overhead costs of the practice. Surveys<sup>7</sup> show that you can expect to keep about 55% to 70% of every dollar of fees. This percentage includes disposal income, fringe benefits, and retirement plan contributions.

If your practice operates solely on fixed fees, your cost per hour may be used in setting the fixed fee. Fixed fee work assumes an “average” number of hours needed to produce the results requested by the client. From your timekeeping system, summarize the time spent on different kinds of cases, i.e. wills, criminal cases, divorces, bankruptcies, etc., and calculate the average hours per matter. This average is multiplied by your cost per hour to determine what the preliminary fixed fee should be. We suggest that you add a “premium” to this total because you are taking the cost risk away from the client and thereby adding value. The client should welcome that fact and be willing to pay for it.

It is likely that your fixed fee is a factor of the “market rate.” For example, if you can prepare a bankruptcy filing in 10 hours and your cost per hour is \$100 per hour, you would want to set your fixed fee at \$1,000 plus a premium (10 hours times \$100 per hour). If other lawyers in your area charge \$750 for the same work, you either need some special expertise to attract clients at the higher rate or you might want to leave that segment of the legal market to others. The opposite situation could occur where your lower cost per hour allows you to reduce your fixed fee to attract additional clients.

Even with a contingent fee practice, keep a record of your hours on each matter. As the work progresses, monitor your cost relative to your estimate of the expected fee. You may find that the hours required to handle a matter that generates a \$3,000 fee are the same as the hours required for a case that generates a \$7,000 fee. Such an analysis might lead you to be more selective in your choice of cases.

Most lawyers use a combination of billing methods. Some matters are billed hourly, some on a fixed fee, and some on a contingent fee basis. In reviewing the profitability of your whole practice, a review of hourly cost versus actual fee income may help to determine where to concentrate efforts for new business or to revise fee agreements.

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<sup>7</sup> See Altman-Weil “The Small Law Firm Economic Survey 2006 Edition”

RPC 1.5 states “a lawyer’s fee shall not be unreasonable.” One of the criteria for determining reasonableness is “the time and labor required.” Should a client or the Court question your fee, your time records are essential for building a credible basis for your fee. We recommend that you read RPC 1.5 and note the nine informative fee factors that are listed. The fee factors are also helpful for a client to better understand why your fee is what it is.

### **Additional Reading:**

*How to Start and Build a Law Practice*, 5th Edition, “How to Set Your Fees” at p 269, Jay Foonberg

*How to Draft Bills Clients Rush to Pay*, J. Harris Morgan

LOMAP Lending Library

ABA Law Practice Management Section Publications

### **Fees and Collections**

Base your fees charged on a clearly communicated fee agreement negotiated at the beginning of your representation. We recommend that *all* fee agreements be in writing even though RPC 1.5 requires a written agreement for only contingent fee agreements or if a fee agreement is requested by the client,. The fee agreement should, at a minimum, include:

*the scope of your representation (and what you are not going to do)*

*the rights and responsibilities of both you and your client*

*discussion of fees and costs and the required method of payment*

*no guarantee of a specific result.*

Your written agreement signed by both you and your client makes the client an active participant in the matter. Should questions arise in the future about the fees charged, the fee agreement is a basis for resolving disputes. The alternative of “your word against the word of the client” is not good business practice.

There is much written about alternative billing methods. This is in response to both lawyers’ and clients’ dissatisfaction with traditional hourly billing. The argument against hourly billings is that it rewards inefficiency and gives no credit to lawyers who have implemented time savings through upgraded technology. Clients want some control over how much they are paying in legal fees and lawyers want to feel that the value of the work they do is recognized by the client.

The most common alternative billing methods are:

**Fixed or flat fee:** A fee set in advance is charged for a defined service. Remember to include a premium.

**Contingent fee:** A fee which represents a percentage of the results achieved. Consider using contingent fees in a broader context than only for personal injury matters.<sup>8</sup>

**Blended hourly rate:** One rate is charged for all hours billed, instead of specific hourly rates for individual fee charges.

**Fixed or flat fee plus hourly rate:** A fixed fee is charged for defined portions of the work and an hourly fee is charged for the portions of the work which cannot be defined because of variables or uncertainties.

**Hourly rate plus contingency:** An hourly fee is charged for portions of the work and a contingency fee is established based on results related to some other portion of the work.

Many lawyers use some mix of these billing methods. Find a fee basis which meets your client's needs and expectations and also adequately compensates you for your expertise.

Consider the use of language in your fee agreement that describes an "evergreen advance fee deposit." This means that you send a bill to replenish the fees on deposit **before** they are exhausted. Sample language might be:

*This letter acknowledges receipt of your advance fee deposit for fees and costs in the amount of \$5,000. Payment for our services and costs will be drawn against this amount and reported to you. We will bill you for an additional advanced fee and cost deposit, if necessary, before the current balance is exhausted. Our efforts on your matter may cease if an advanced fee and cost deposit is not remitted. We thank you in advance for your timely remittance.*

Once you have billed a client, the next step is to collect the money for the billing. As you worked on your cash flow projections, it should have been clear that collections, not billings, are what pay your expenses. Your collection process starts on the first day of your representation and continues over the length of your engagement with:

A clearly worded fee agreement that states the basis for the fee and how it is to be paid.

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<sup>8</sup> From RPC 1.5: A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution or annulment of marriage or upon the amount of maintenance or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

An advance fee or cost deposit that shows the client's willingness to invest in the legal matter.

Billing statements prepared and mailed promptly at agreed upon intervals.

Detailed descriptions of the work performed and effort expended should be included in each client billing.

Call clients who have not met their payment obligations.

Work out deferred payment schedules and insist clients stick to them

Consider accepting credit cards for payment of fees

Consider an "evergreen" advance fee deposit agreement where the client replenishes the deposit before your billings exhaust the balance.

Should all else fail, you may have to withdraw from representation due to nonpayment of fees. Withdrawal must be accomplished carefully so as not to jeopardize the client's case. It is far better than continuing to work for free—unless you choose to do so.

### **Additional Reading**

*Win-Win Billing Strategies*, "Legal Representation Agreements and Win-Win Billing Methods," ABA Section of Law Practice Management.

*Flying Solo*, 4<sup>th</sup> edition, Chapter 22, "The Solo's Guide to Collecting Fees," from the ABA

*Professional's Guide to Value Pricing*, Baker

### **Accounting Systems**

The method of accumulating all of your income and all of your expenses into one place is your accounting system. This can be as simple as a check register summarized monthly by income and expense category or as complex as a custom computer program. The principles of maintaining either system are the same:

*Maintain numerical control over all cash receipts and cash disbursements to insure that all items are recorded*

*Identify all transactions by source and purpose*

*Reconcile accounts at the end of the month*

Whether you do your own bookkeeping or hire someone to do it, know the concepts to control how well the system performs. You need to understand the results disclosed in the standard financial reports.



Cash received should be identified by client and by purpose. This allows for the proper classification of income, cost reimbursements and other income. This also provides a record of client payments so that subsequent billings will be prepared correctly. This information is best kept by deposit, either by keeping copies of all deposit items attached to the deposit slip or by maintaining a journal which records each item deposited. Be particularly careful with cash received from clients, since cash “loses its identity” once it is deposited to the bank account. Clients sometimes send a check for an amount that is not related to any existing balance due. Contact the client about the purpose of the payment, document the explanation and process the payment. An alternative action is to call the client and say that you prefer to return the check and ask for a check with a correct amount due.

Make all payments by check so that you will have a canceled check to verify that payment was made. Checks are issued in numerical order to facilitate control over their issuance. Each check is recorded immediately upon issuance in your check register so that a running balance of your account is maintained. Checks returned for insufficient funds do major damage to your credibility with clients and vendors. Show client identity for checks issued to pay expenses on behalf of clients so that they can be billed to the client. Separate in different accounts your law firm and personal checking transactions.

The registers for both cash receipts and checks should allow for each transaction to be accumulated by income or expense category. A manual accounting system uses a journal or register with a separate column for each category of income and expense. Computer accounting systems require the category designation as each transaction is recorded. Either method provides a monthly total for each category of income and expense. For cash basis reporting, the difference between total income and total expenses will be the profit or loss for the month. Accrual basis reporting requires adjustment for non-cash items to determine the monthly income. Many law firms use a “modified cash basis” of accounting that includes elements of accrual and cash basis accounting. Talk with your bookkeeper or CPA about these details.

The monthly totals for each income and expense account are accumulated by category over time to provide year-to-date financial statements. The standard financial statements are the balance sheet and the income statement.

The balance sheet is a report of the value of assets, liabilities, and equity at a specified time. It is frequently referred to as a “snapshot” in that it represents your financial position taken on a given date. The term “balance sheet” comes from the underlying balancing equation used in its preparation, i.e. total assets always equals liabilities plus

equity. A typical balance sheet for a small law firm might look like this:

**My Law Firm  
Balance Sheet  
June 30, 2008**

<b>ASSETS</b>		<b>LIABILITIES</b>	
Cash	\$ 7,500	Accounts payable	\$12,000
Accounts receivable	34,000	Taxes payable	3,400
Furniture and office equipment	<u>8,200</u>	Total liabilities	15,400
		<b>OWNER'S EQUITY</b>	<u>34,300</u>
<b>Total Assets</b>	<b><u>\$49,700</u></b>	<b>Total Liabilities and Equity</b>	<b><u>\$49,700</u></b>

In theory, if the assets were liquidated at full value and the cash received was used to pay off the liabilities, there would be \$34,300 left for the owner to keep. If you need to borrow money for your firm, lenders will frequently look at your balance sheet to determine if the equity in the firm is sufficient to support the loan. Since assets can rarely be liquidated for full value, the lender wants to be sure there is a large enough difference between the assets and liabilities to pay off the loan at liquidated values, if necessary.

The income statement is a report of the accumulated totals of income and expense items over a stated period of time, i.e. one month, one quarter, or one year. The difference between total income and total expense represents the firm's profit or loss for the time period. A typical small firm's income statement might look like this:

**My Law Firm**  
**Income Statement**  
**For the Six Months Ended June 30, 2008**

<b>FEES EARNED</b>	\$70,000
<b>EXPENSES:</b>	
Payroll (except the lawyer's)	18,000
Rent and utilities	7,400
Telephone	4,000
Office supplies	3,600
Insurance	3,200
Taxes, including payroll	2,800
Miscellaneous	500
Total Expenses	<u>39,500</u>
<b>NET INCOME</b>	<b><u>\$30,500</u></b>

Assuming this income statement is for a sole practitioner, the net income represents the lawyer's salary for the six month period covered by the statement. The relationship between the balance sheet and the income statement results from the double entry bookkeeping required for every transaction also giving rise to the "balancing" concept. For example, to increase the balance of an asset, such as cash, you must either reduce a different asset (collect an account receivable), increase a liability (borrow money), increase income (generate fee income), or reduce an expense (get a refund on your telephone bill). If you bought office furniture on credit, you would increase an asset (furniture and equipment) by the cost of the equipment and increase a liability (loans payable) by the same amount.

Assuming the consistency of the double entry method is maintained in recording your financial transactions, a monthly reconciliation of key balance sheet accounts should give you assurance that all transactions are recorded. For example, the balance shown as cash should be reconciled with the ending balance on your bank statement. If the reconciliation is prepared properly, the end result will prove that all deposits and all cash disbursements have been recorded. The balance in accounts receivable should agree with a listing of individual receivable balances by client. Likewise, accounts payable on the balance sheet should agree with a listing of individual vendor balances. The person performing your bookkeeping function can provide you with these reconciliations in conjunction with the preparation of your financial statements.

The relationship between balance sheet and income statement accounts should be kept in mind as you review your financial statements. Any significant change in your law practice should be reflected in changes in your financial statements. If you settled a large personal injury case, resulting in a substantial fee to your firm, your month-end financial statements would show a higher than average fee income and either an increased cash balance or a reduction in accounts payable. If you used the fee to promptly pay yourself a bonus, then you would see a significant increase in owner's draw rather than an increase in cash or reduction in accounts payable. Whenever you have questions about items on your financial reports, take the time to find out the answer. There is no magic in bookkeeping and unexplainable changes in account balances are usually an indication of human error.

## **Trust Accounting**

Lawyers are subject to special ethical rules with respect to handling client funds. These rules are outlined in RPC 1.15A "Safeguarding Property" and 1.15B, "Required Trust Fund Records." The rules require all client funds to be maintained in an interest-bearing trust account while in the lawyer's possession. Client funds are those in which the client still has an ownership interest.

The most frequently expressed reason for complying with the trust accounting rules is to maintain a record of good standing with the Bar. Other reasons related to the long-term viability of your practice include:

*Improved relations with clients through knowledge that their funds are safe and available when required;*

*Improved legal practice through streamlined cash flow when the trust account is used for advance fee deposits and increased professionalism displayed by proper handling of trust funds; and*

*Improved personal well-being through elimination of stress caused by worrying about trust accounts.*

The accounting for your client trust account requires that all deposits and disbursements are identified by client. Deposits should be recorded in a journal or register. All disbursements must be in a register or "client ledger" as well. Instead of having categories assigned to transactions as you do with your own funds, trust monies need to be accounted for by client. The bank account must be reconciled promptly each month to assure that all deposits and disbursements are recorded and the client records must be reconciled with the bank balance to assure that all transactions are properly recorded by client.

Handling client funds imposes a fiduciary responsibility on the lawyer to safeguard the funds and properly account for all transactions. While you may delegate the tasks involved in performing this duty, you cannot delegate the responsibility for performing the tasks properly. It is essential that you review and familiarize yourself with your trust account records.

## **Resources**

*Managing Client Trust Accounts: Rules, Regulations and Common Sense*, Washington State Bar Association at <http://www.wsba.org/media/publications/pamphlets/managing.htm> .

## **Taxes**

There are Federal, state and perhaps local tax reporting requirements for your law firm. If you have employees, you are subject to Federal and state payroll tax reporting. Be sure to familiarize yourself with the reporting and payment schedules applicable to your firm. The penalties for late payment of tax deposits make missed payment deadlines very expensive. Be aware that the IRS has rules for “contract employees” due to possible payroll tax evasion.

## **Insurance**

As a business, you need to evaluate your risk and have property, liability and malpractice insurance in place to protect your investment. The amount of coverage you purchase in each of these areas will depend on your individual practice. Seek the advice of a reputable insurance agent in determining your particular needs.

## **Banking**

Your law firm will probably need to borrow funds for equipment purchases or operating capital. Take the time to develop a banking relationship with a financial institution that meets your needs. Contrary to popular opinion, banks are *not* all the same. Each bank has its own target market and will respond best to customers who meet the criteria for the market they are trying to reach.

As a customer, you could bring business to the bank for these needs:

1. Car loan
2. Mortgage
3. Line of credit
4. Tuition loan consolidation

5. General account
6. Trust account
7. IOLTA account
8. Personal account
9. Credit card
10. Merchant account
11. Wire transfers
12. Private banking services

Remind your banker that as a lawyer you may have several or more of these needs and can refer clients or other lawyers with similar needs.

You should go about finding a bank the same way you would advise someone to find a lawyer. You may wish to:

Ask other lawyers which banks they have used and how responsive each bank was to their needs;

Interview different bank loan officers as to what type and size of loans they are interested in making; and

Determine which bank you feel most comfortable discussing your firm's financial condition with and whether or not they will make a commitment to your future growth.

If possible, do your homework *before* you need to borrow money. The time involved may be critical when you have short term capital needs. Your business plan, budgets, and cash flow projection will serve you well with your banker.

LOMAP suggests that you use a local or community bank because of possibly more willingness to assist a start-up law practice and such a bank may provide better service. See <http://www.wsba.org/info/operations/finance/iolta.htm> for a list of approved institutions for trust and IOLTA accounts.

### **Additional Reading**

*Flying Solo*, 4<sup>th</sup> edition, Chapter 16, "Bankers and Lawyers: The Odd Couple, or How to Get a Loan," from the ABA

*How to Choose the Best Bank for Your Business*, Small Business Administration.

### **Summary**

The range of knowledge required for the financial management of your firm may seem overwhelming at first. But no one knows everything

when they first start. Your investment of time in learning the basic skills is rewarded through a smoothly run and profitable law firm. Since few areas of the law are untouched by financial concerns, the concepts you learn will be of value in formulating advice for your clients.

Lawyers do not like “surprises.” Eliminate financial surprises by establishing, using and enforcing good financial practices. Above all, contact LOMAP to assist you with any of these financial issues and concepts.

## Notes



## Chapter Six: Technology

(Terminology is defined at the end of this chapter.)

*A lawyer needs to understand relevant technological issues in a representation, whether it be medical malpractice cases, patent applications, intellectual property transfers, consumer product safety issues, drafting contracts, or undertaking litigation discovery. The lawyer also needs to know enough about everyday technology such as computers, cordless phones, fax machines, cell phones, email, encryption, Internet, and so on, to be able to understand and properly advise a client about their use and possible risks to confidentiality.*

*Technology also makes it easier for a lawyer to limit the scope of his or her representation. A lawyer undertaking unbundled legal services, for example, will need to more carefully define and document what he or she will do, and will not do, for a client than a lawyer who undertakes a full service representation. Use of a computer permits the lawyer to quickly create individually crafted engagement letters that inform the client, remind the lawyer, and document the limitations. Similarly, where a lawyer's practice involves repetitive pleadings or contract or will or trust provisions, the lawyer can easily maintain a computer file of boilerplate paragraphs and, in very little time, create specially crafted documents appropriate for the client's particular needs. Technology has thus made it possible for the lawyer to specialize and provide specialized legal services in less time and at less cost.*

*MRPC 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. MRPC 3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client. Technology has made far greater speed in document creation, document production, communication, and in requesting and complying with discovery obligations, not only possible, but expected. A lawyer cannot easily meet current diligence standards without use of technology and that very technology has increasingly helped to define what it means to be diligent.*

On September 1, 2006, the Washington Supreme Court published the revised Rules of Professional Conduct. For the first time, there is a specific reference to the use of technology.<sup>9</sup> As implied by Barrie Althoff above, consider that the definition of competence for an attorney includes knowledge and skill with technology.

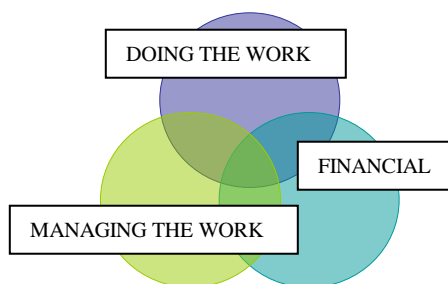
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<sup>9</sup> See RPC 1.15B, Comment [2]. "Back-up"

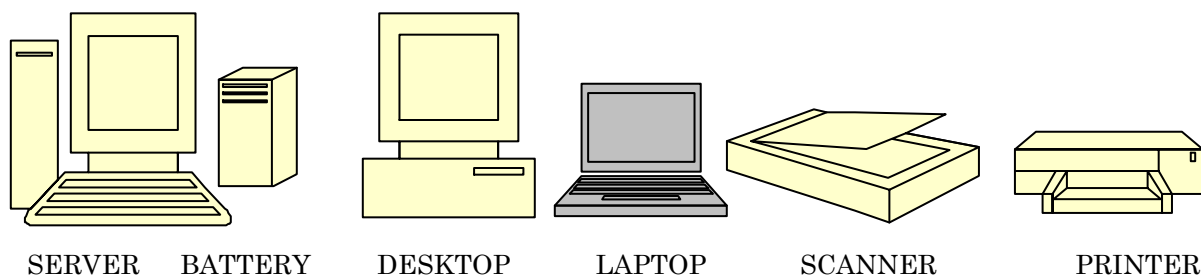
## What is the first step?

*Above all else, take the time to educate yourself.*

The diagram illustrates the three spheres of possible technology use. “Doing the Work” is a mandatory use of a word processor and similar application programs. You may choose to use technology for timekeeping, billing, and accounting. You may choose to use practice management software.



LOMAP recommends a networked system:



Technology must serve you. Ultimately, legal service is human service. The more thoroughly you understand this relationship, the happier you will be and the more satisfied your clients will be.

Learn enough about computers to discuss your needs clearly or take someone with you who is knowledgeable. Local resources include the WSBA Law Office Management Assistance Program at [www.lomap.org](http://www.lomap.org) and the WSBA Solo and Small Practice Section. Be sure to check the ABA’s Legal Technology Resource Center at <http://www.abanet.org/tech/ltrc/services.html> particularly the “FYIs.”

## How can “user groups” and consultants help?

User groups are made up of people who share a common interest in special interest areas of computers or software. You will find lists of computer user groups in some local computer magazines and newspapers. Vendors may also be able to point you toward one of these groups. Attending user group meetings *before* you buy is a good way to educate yourself about software or hardware.

If you need to use consultants, ask colleagues to recommend an appropriate and well-reputed one. Always check their references. To use a consultant effectively, you must be able to trust them. Someone who has experience working with attorneys and is sensitive to your particular restrictions or requirements is much more likely to provide responsible solutions to your problems than someone who does not. Being able to clearly define your needs will assist the consultant to respond more appropriately and will also provide you a means to better assess their work upon completion. A consultant who can work with many competing products can provide solutions that more closely match your needs, as opposed to forcing your needs to fit into their particular product of choice.

### **Based on your software, what hardware do you need?**

Programs such as those used for graphic design, time and billing, accounting, voice recognition and web-based multimedia require more hard drive space and Random Access Memory (RAM) than programs such as word processing and spreadsheets. Be sure to have at least 1 GB of RAM. Any new computer will have enough hard drive space (expressed in gigabytes - GB).

On the box of software are listed the specific system requirements to run the software. Remember, these are the *minimum* requirements that must be met in order to run the program. This does not necessarily mean that the program will run well if only the minimum requirements are met. Therefore, always consider having more RAM than what is listed as the minimum amount required. Be sure to note which operating systems are compatible.

Consider also the following when evaluating hardware vendors:

- Available warranties;

- Extended service agreements for on-site maintenance;

- Loaner equipment during servicing; and

- Leasing vs. purchasing.

Leasing may not always save you money, but it might be a good way to get into the computer market and see what works for you and what doesn't. Like leasing a car and then deciding you do not like it, the benefit is that at least you do not own it. The difference in selling a car that you own vs. computer equipment that you own is that there really is no market for used computer equipment.<sup>10</sup>

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<sup>10</sup> If you sell or dispose of your computer, first remove the hard drive and store it or physically break the disks to safeguard client information.

Do not discount the possibility of leasing some equipment in addition to purchasing some, so long as all parts interact well with each other.

### **What is “Ergonomics”?**

Ergonomics is the physical relationship of humans to equipment and the adaptation of the environment to suit the worker. Important areas to check include:

Are the keyboard, monitor and chair comfortable for those using them? Consider ergonomic keyboards that can reduce the strain placed on the hands and arms during long periods of typing. Position the keyboard at such a height and angle as to reduce the risk of carpal tunnel syndrome.

The chair and monitor should be positioned at a height and angle which will minimize back and neck strain. The monitor’s resolution should be clear and sharp using background colors that will reduce eye strain.

Position the chair at such a height and angle so as to minimize back and neck strains.

### **What about purchasing equipment from mail order or Internet companies?**

The advantage to purchasing all software and hardware locally is that *generally*, assistance is also local and accessible. However, you should ask relevant questions and not assume that to be the case.

Mail or Internet order is a popular way to select hardware. If you are in a remote area, this is an added convenience, especially if you are certain of what you need. Obtaining equipment this way comes with risks and hazards which you will want to keep in mind. Here are some suggestions to maximize the pluses and minimize the minuses:

- ✓ You need to know exactly what you want or need before purchasing. Contact independent sources to clarify any advertising claims or to clarify machine specifications. Make sure your need or problem can be addressed by this product and look for any other enhancements to your operating system or hardware that may also be required in a peripheral way to support your entire system.
- ✓ Read the whole advertisement, including the fine print. Read all of the boxes and the order form (even if you are ordering by telephone). Know what is there and what is not there. **Keep the box and all internal packaging in which you received your equipment.**

- ✓ Note warranties or lack of warranties. Some companies provide a three-year warranty on parts and labor with the purchase of the equipment, with the first year including on-site service. Others will do that only with an extended warranty.
- ✓ Note where the closest service center is and how service would be handled, if necessary. If you get an extended warranty, it should provide for both service and support at your office to repair the equipment that you would otherwise need to ship to them. This involves a relatively small additional cost per machine. Though many extended warranties are just marketing ploys to bring in additional monies, this is one area in which the use of a legitimate extended warranty is strongly encouraged, especially if you do not have other technical support readily available to maintain or repair your equipment. If you choose not to purchase this type of extended warranty, you will be responsible for packing, shipping and paying for your equipment to be sent back to the repair center, which may be on the other side of the country.
- ✓ Ask about telephone technical support, especially about the hours during which the support staff is available, where the support center is located (to allow for time differences), and whether there are any additional costs for using it.
- ✓ **Keep all correspondence, in addition to written notes about all telephone calls.**

## Documentation

Many companies, both hardware and software, no longer include documentation or manuals with their products. They rely on the “Help” features in their software or other on-line assistance (either on CDs or the Internet).

Check local bookstores for books on your software and hardware that offer solutions to your questions in words you understand.

Make documentation yours by annotating it with your own notes to highlight those features that are most important to you, making them easier to find for future reference.

Do not rely on one source of documentation. Use all sources of documentation. An example is using Google® for issues and error messages. Google® will refer you to further information. Hours of frustration can be avoided by using the tech support numbers or an Internet site as an additional source of information and assistance.

## Installation

Referring to your business plan and your critical success factors, prioritize your needs and install your equipment and software to support the most important needs in your office first. Do not overlook using anti-virus software or data backup and recovery software.

Be careful in moving to new products before they have been tested. Consider upgrading periodically as is reasonable for your practice. Unless you desperately need some hardware that has just been released, wait for it to mature and, in some cases, for standards to emerge.

## Operation

The time you or your staff saves in efficiently using your software will pay for the training. It is very important that you are as efficient as possible with your equipment. Develop strong typing skills. Locate some keyboarding classes if necessary. Many community colleges offer keyboard and computing classes. Do not hesitate to invest time and money in training for maximum return on your technology investment. There are several opportunities for ongoing training and many of the choices are reasonably priced. They include:

**Books and videotapes:** Consult your bookstore, library and mailbox for recent titles that explain features and outline the best ways to use your hardware and software.

**Bulletin-board systems and the Internet:** These are sources of continuing information and assistance.

**Classes:** Take advantage of relevant classes offered by community colleges and other training organizations.

**Seminars:** Specialized training seminars aimed at law offices and at generic law office problems.

**Tutorials:** Most software packages include tutorials. You paid for them when you bought the package. Also see the online tutorials at [www.microsoft.com](http://www.microsoft.com) and invest the time to go through them completely.

**User groups:** They can give you insight into opportunities and problems with your system both before and after you buy.

## Backup and Disaster Recovery

Have a backup system in place along with a disaster recovery plan. If you use a laptop or handheld device, the risk of loss or damage increases because of its mobility.

With some thought, one can usually foresee where unfortunate happenings might occur. The following are some areas to consider:

Clean up your system: Go through your electronic mail and other files and delete what you do not need. There is no need to keep old files that you will never revisit.

Dealing with deleted items: Depending on your system, retrieval of that deleted item might be as simple as using the “undelete” or “undo” feature of many current programs. Deleting a file does not erase it from the hard disk. Each file has a status flag. By deleting a file, you simply change the status of the flag. Now that the system interprets the area allocated to that file as vacant, it is likely to lay another file on top of it.

File naming conventions: Files can be difficult to find, which causes problems in timely retrieval and efficient processing. Early on, you should establish a naming convention and storage procedure which are related by case. Types of documents should have some like extension (file name.3-digit extension) or name to identify what the document is by looking at the name. Example: 20070220ltrsmith.doc means “Letter to Smith finalized on February 20, 2007.” This format permits sorting documents by date.

Backup: If you have backup disks, tapes, or flash drives, you can retrieve the needed information from them. Consider compact disks, or tape backup systems. With all of these types of media, always store them in a secured area that offers protection from heat and fire.<sup>11</sup> Backing up encrypted files to an Internet service provider such as Iron Mountain is gaining popularity since Hurricane Katrina’s terrible effects on the legal profession in the Gulf States.

If confidentiality rules or other considerations require you to erase data utterly and completely so that it cannot be retrieved again by anyone, you may need software that erases data to U.S. Defense Department specifications (which means that the data are erased and dummy data are recorded over the erased-data area many times).

System, File and Document Corruption: Save documents to disk frequently (every few minutes) when you are working. As you are typing, the information you have not yet saved is held in a volatile computer memory. If there is a power surge or a power interruption, if your PC “freezes up” because of static electricity or, if the program just stops working, the unsaved portion of the document will be lost. Once a document is saved to disk, it is relatively safe from electricity-related disasters.

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<sup>11</sup> See RPC 1.15B Comment [2].

Word processors allow you to select an option that does a full backup of your file when it is closed. You can usually control where those are saved and select a different directory or drive to automatically collect your backups.

Back up your whole system regularly. It seems to be a cruel and unexplained law of nature that your system(s) will crash unexpectedly at the worst possible time.

Keep separate backup boot disks for your computer(s).

Keep the disks or CDs with your system software and all applications available. Restoring from backups in the course of recovering a system often requires a re-installation of some applications. Having these available will expedite your recovery.

You will want to go into the CMOS (Complimentary Metal Oxide Semiconductor) information and record all of the main system setup screen information. This may be essential to recover data from your hard disk. With some systems, you can print or save this information out to a printer or a file. This information should also be kept in a safe but accessible location.

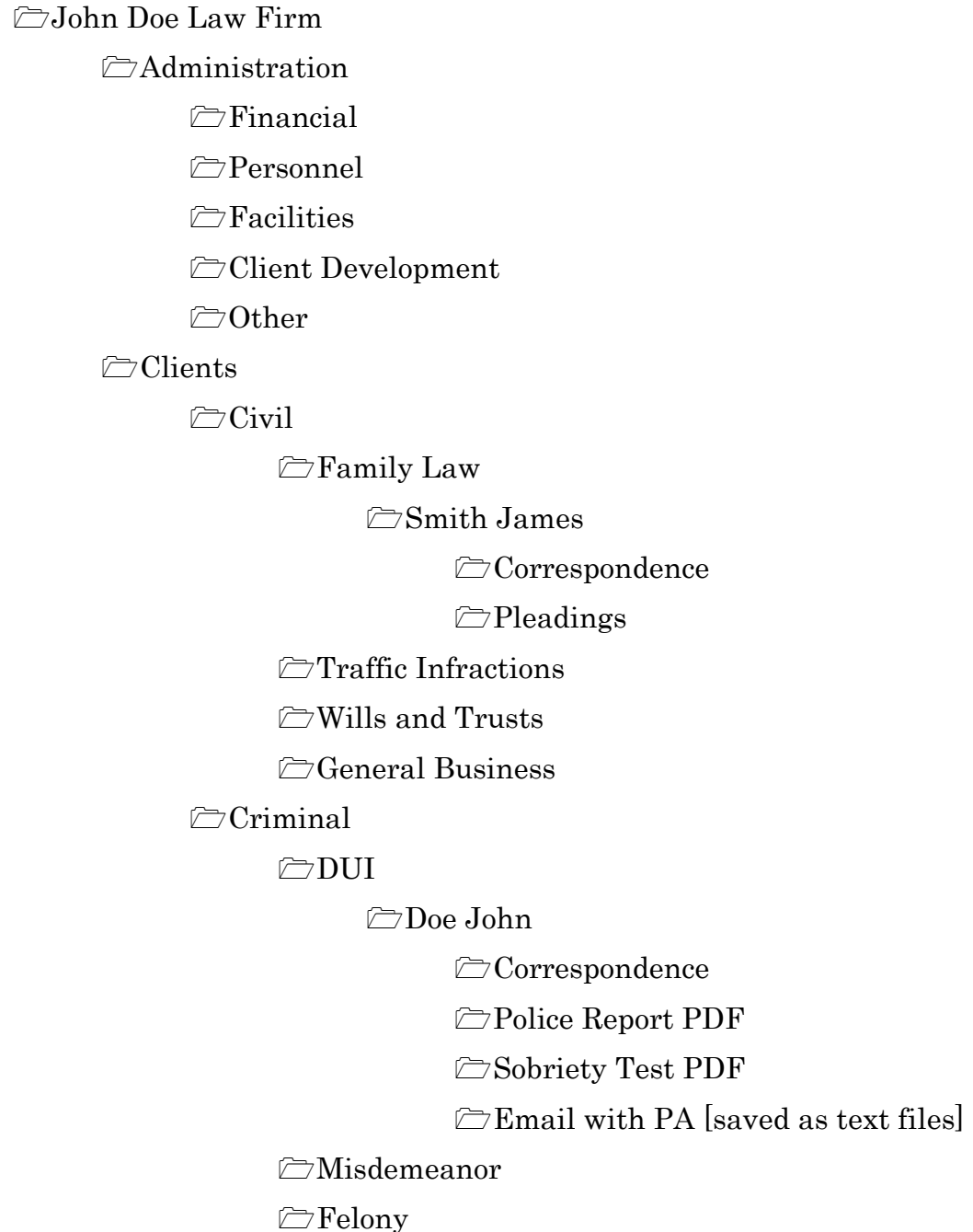
Power Surges and Power Supplies: Every system needs to have surge protectors. Larger systems, such as file servers, need an uninterruptible power supply (UPS)/(battery) to minimize power problems. If you can, unplug your computer system and surge protector from outlets when there are storms or other conditions likely to cause power spikes.

Software Utilities: Consider acquiring utility programs that can analyze your system, act as a firewall, and find and contain computer viruses, spy ware, and other compromising software. Other utilities can be used both to maintain the hardware and help with hardware settings or conflicts.



## Finding Electronic Files

Many lawyers use a folder “hierarchy” to help locate files. Here is an example of a hierarchy:



The Search function in Windows is also a good way to locate a document. Use the Web toolbar to see the path to any document that you are working on.

## Appendix A: Software

Resources include the WSBA Law Office Management Assistance Program and/or the Solo and Small Practice Section, and the Legal Technology Resource Center of the ABA. See also [www.smartcomputing.com](http://www.smartcomputing.com)

The products identified here are suggestions and do not represent an exhaustive list. They are products that have been recommended to LOMAP and their inclusion in no way represents an endorsement.

### Word Processing

Word processing is used to generate letters, contracts, briefs, forms and other documents. Current programs can easily be used for desktop publishing as well.

Try to get an integrated group of programs including legal-specific enhancements to business productivity applications.

In addition to basic programs, seek case-management capabilities, scheduling capabilities and presentation graphics for the boardroom and courtroom.

To make formal document creation easier, consider obtaining forms in a computerized format. You can open them in your word processor and then add the variable information that customizes the document for your needs. You can download some template-type forms from the Internet or you can obtain packages of forms for particular practice areas. One such series of form packages is the CD version of the Washington Lawyer Practice Manual. It includes the full text of relevant chapters from the Washington Lawyers Practice Manual. You may obtain a complete listing of chapters, an order form and price by calling the King County Bar Association at (206) 267-7100.

*Examples: WordPerfect for Windows (Corel)*  
*Microsoft Word for Windows (Microsoft)*  
*[www.OpenOffice.com](http://www.OpenOffice.com)*  
*[www.StarOffice.com](http://www.StarOffice.com)*

## **Voice Recognition**

Some of these programs will read documents back to the user. This software could both speed your document creation and support your dictation needs.

Note: This software requires a sound card and a digital microphone and may conflict with other software such as RealAudio.

*Example: Dragon Systems Naturally Speaking  
Windows Voice Recognition*

## **Case Management Software**

This software helps you manage cases and office practices associated with cases, such as case/matter, financial, administrative and several now include time and billing functions.

Take the necessary time to study the products and, if applicable, involve your staff every step of the way. Contact LOMAP for materials and software demonstrations. Choose a product that integrates (“links”) with other software such as Microsoft Word, WordPerfect, GroupWise, Microsoft Outlook, etc.

*Examples: Abacus Law (Abacus Data Systems)  
Amicus Attorney (Gavel & Gown)  
Practice Master (Software Technology)  
Time Matters (Lexis)*

## **Docket / Calendaring / Conflicts**

These help you track critical docket dates for each case.

*Examples: Abacus Law (Abacus Data Systems)  
Amicus Attorney (Gavel & Gown)  
CompuLaw (CompuLaw)  
Legalex (West)  
Outlook (Microsoft)  
Practice Master (Software Technology)  
Time Matters (Lexis)*

## **Document and Image Management**

Search for documents or images using key words, dates, document types and other similar criteria.

Look for full-text searching. Note: There are also document management vendors that can scan, index and retrieve documents for you. See the criteria for out-sourcing office functions discussed above.

*Examples: Most case management software  
Worldox (Worldox)  
Windows Search Feature*

## **Electronic Forms**

You can assign an electronic form overlay to any print job, which allows data from database programs, word processors, and accounting programs to complete standard forms.

Choose one that allows for smooth integration with other applications. Look for forms applicable to specialized practices.

*Examples: ImmForms Plus (Clark Boardman Callaghan)  
ImmForms Plus Rights Browser (Clark Boardman Callaghan)  
Nichols Electronic Legal Forms (Clark Boardman Callaghan)*

## **Electronic Mail<sup>12</sup>**

You need to add an Internet service provider and they will often have or can suggest an appropriate software package to support their system.

There are email programs that support both your internal and external needs in one package. For those in an office with a file server, you will need to add a module (gateway) on the file server that will integrate all the users and connect those users with external email services. Browsers are related to, but in addition to email Software. The two most recognized browsers are Netscape and Internet Explorer.

The selection of browsers is, in large part, personal preference. Because the operating system of your computer is Microsoft, the Microsoft browser is more likely to work with fewer conflicts than Netscape. It is not recommended that you have both on the same machine.

In transmitting documents via the Internet, you are increasing the risk of violating obligations to confidentiality and will want to invest in some encryption software. The standard browsers also include security options allowing you to seal and encrypt messages.

*Examples: Firefox  
GroupWise (Novell)  
Internet Explorer (Microsoft)  
Netscape  
Opera*

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<sup>12</sup> Use an email address such as [johndoe@johndoelaw.com](mailto:johndoe@johndoelaw.com) rather than Yahoo, MSN, AOL, Gmail, Hotmail etc. to enhance professionalism and better handling of attachments to email.

## *Outlook (Microsoft)*

### **Telecommunications**

Used for: If you need to use a modem, you also will need some type of telecommunication software. If you are connecting to the Internet, you will need software that supports dial-up to an Internet connection. The Internet service provider you select can help with this selection.

### **Substantive Law Systems**

Comprehensive collections of pre-created documents and forms are available on diskette, CD-ROM and on-line from various sources.

Look for: Choose one that has templates for document production, which will save time and money. Check for current versions and formats that work in your local jurisdiction and conform to the local court rules. You can also use these forms to generate sets of documents; gather and organize key client information; generate overviews and background information on applicable laws; and draft checklists.

There are form packages for practice areas such as bankruptcy, collections, corporation formation and maintenance, estates, wills, trusts, real estate transactions, patents, trademarks, copyrights and personal injury cases.

Look for artificial intelligence applications, which have created “smart forms” that generate sets of documents. In addition, there are forms for gathering and organizing key client information, forms which provide overviews and background information on applicable laws, and forms for drafting checklists.

### **Research**

Contemporary texts on legal research techniques discuss both book and on-line research to put both in perspective.

Look for: Not everything is on-line. What is available may not be cost-effective, given the time and expense to find, access, download and analyze the data.

Materials published on how to do any kind of research on the Internet are usually out of date by the time you receive them. Internet legal research is evolving into a specialty, like tax or litigation. If you do this yourself, periodically download and study all the help-files in any search tool you use.

There are a number of free sites and pay-for-use sites for legal information on the Internet. The major private on-line legal databases

allow Web access to their materials and charge appropriate fees for the indexing and editorial enhancements that are added to the raw decisions, statutes, regulations and other documents. See also WSBA's Casemaker research tool at [www.wsba.org](http://www.wsba.org).

Citator checking and updating is generally available on the private systems and can be accomplished (with some challenge) on the government systems. There are many government websites and bulletin-board systems that allow free or low-cost access to government data.

*Examples: Refer to:* [www.wsba.org/lawyers/links/default.htm](http://www.wsba.org/lawyers/links/default.htm)

### **Timekeeping / Billing / Accounting (AP / AR / GL) Check Writing / Trust Accounting**

These are used to track and generate bills that will provide cash flow for the rest of your operation; produce reports per account; and track your Client's Trust Fund Account.

Look for: Check for ease of use, ability to customize to your office procedures, and management reporting capabilities. A number of timekeeping, billing and accounting packages are available that will integrate these functions. Some packages are available on the Internet. These packages would let you preview them to find one that works best for your practice. Also, some attorneys use spreadsheet programs for this purpose.

*Examples:* CaseLode (Basic Systems)  
Great Plains Accounting (Compulaw, Ltd)  
PCLaw (Lexis)  
TABS 3 (Software Technology)  
Timeslips (Timeslips)  
Trust Accounting (Software Technology)  
Juris (Law Office Management Software)  
QuickBooks (Intuit)  
RTG Bills (RTG Software)  
Amicus Accounting (Gavel & Gown)

## **Document Retention/Destruction**

This can methodically erase files and remove deleted files on a systematic, scheduled basis, which enforces firm retention policies.

Look for: User Intervention to approve of software selected deletions before deleting; filters to select certain documents over others to tag.

## **Database Management**

Used for: This can help you track client contacts and set up follow-up procedures, including tickler settings, files or on-line reminders; document management such as the creation, naming, indexing, storing and accessing of documents; litigation support including the storage, management and retrieval of information for litigation or mailing list management and storage for clients and for marketing.

Look for: Docketing and Calendaring programs are also available.

*Example: Access (Microsoft)*

## **Graphics and Desktop Publishing**

You can create personalized documents that look typeset from your own desktop. There is a competitive advantage in that look, especially in a professional practice where the only evidence of your work-product is a document in the client's hand. These programs can require large amounts of memory in the computer and in the printer because they handle whole pages at a time. Plan for at least 512 megabytes of RAM in the computer and at least 4 megabytes of memory in the printer.

Look for: Ease of use. Because most of your major graphic design needs can be addressed more effectively by out-sourcing, you will want to look for something to handle smaller in-house projects.

*Example: PowerPoint (Microsoft)*

## **Fax/Phone/Faxback**

Your computer can answer your phone and handle faxes on the same telephone line. Many contemporary computer systems have software that can answer your phone, provide a standard greeting or one you record; distinguish between a voice call and an incoming fax transmission; and keep and log both incoming faxes and phone calls for you.

Look for: Check for systems which can keep messages that your clients can retrieve (with password protection); can allow automatic mass-faxing (which you should not use unless you have the recipient's permission); and can allow anyone to request documents that have been pre-loaded on the system to be faxed to that person's fax machine.

## **Spreadsheet**

Used for all calculations, budgeting, and basic database functions.

*Examples: Excel (Microsoft)*  
*QuattroPro (Corel)*

## **Research Resources (LEXIS, WESTLAW, SCOMIS)**

Legal research

SCOMIS is the system the courts use to manage and report Washington's superior court cases. SCOMIS information is filed by county and must be searched for within SCOMIS on a county-by-county basis. When a SCOMIS case number is found in the JIS application, detail level of the case may be viewed within the appropriate SCOMIS court using the display commands. LEXIS and WESTLAW are commercial databases with excellent research aids. The WSBA offers Casemaker to members free of charge at [www.wsba.org](http://www.wsba.org)

## **Demonstration Disks**

These are used to see what a particular type of software looks and feels like before purchasing; usually used with specialty software.

Look for: It is a good idea to look these over to gain a sense of what is possible and what is realistically available. Remember, these productions tend to be highly polished and will make the software appear easier to use than it is. When looking at these demonstrations, remind yourself that it generally takes six months to a year of continuous use of a software package to be completely comfortable with it. Always have the vendor demonstrate the software and be sure to ask questions prior to your purchase. Also, ask about where you might visit to see the software in use.



## Appendix B: Hardware

More information can be found on the Washington State Bar Association and American Bar Association websites: [www.wsba.org](http://www.wsba.org) and other resources include the WSBA Law Office Management Assistance Program and/or the Solo and Small Practice Section. The products identified here are only suggestions and do not represent an exhaustive list. They are products that have been recommended to LOMAP and their inclusion in no way represents an endorsement.

### Computers, Laptops, Hand-Helds

Make sure you get documentation on all the parts they say were installed.

If you are purchasing a brand name computer, there are many reasonably priced systems such as from Dell or IBM. You can take advantage of the manufacturers “shelf cleaning” when they have a new model coming out and they want to reduce their inventories of “older” systems. This happens every three to four months. Check for their “refurbished” systems, which can be excellent values.

Laptops can be very handy for carrying notes and documents with you to reference in meetings or for doing off-site research. Because they are more expensive than regular PCs, you may want to use a docking station in your office. This can vary from a solid frame into which to drop the laptop or a strip to which you hook an external (regular sized) monitor and keyboard. Devices can also be added to provide a network connection in the office through the parallel port.

Palm-held devices are the size of your hand and are used to carry your electronic calendar, address book and notes or tasks with you.

*Look for: Toshiba, IBM, Dell, Palm, Compaq, Blackberry, Apple iPhone*

### Printers

Laser printers are superior to ink jet as a law office printer. The larger the paper supply, the less often you have to add paper. Make sure the printer can print envelopes and labels easily.

*Look for: Brother, Epson, Hewlett Packard, Lexmark*

## Hard Disk Drives/Thumb (Flash) Drives

Where to locate: Check any local computer or technology store. Flash drives have replaced floppy disks.

*Look for: Buy the largest one you can afford. You will always wish for more space on your hard disk and will soon wonder what is taking up so much space.*

## CD and DVD

Where to locate: Check any local computer or technology store.

Look for: CD-ROMs or DVDs make it possible to handle very large amounts of data on small devices. Many legal research sources provide their information on CDs, making it possible to access information that was previously paper-bound. Because the search syntax may be unique to the product, it is recommended that users take time to review documentation and identify the indexing and search requirements for each product; otherwise, valuable information can be overlooked. There are full-text materials, such as case collections and treatises that are now being released on CD-ROM disks.

CD-ROMs can store information. Check with your vendor or other sources to learn what each is able to do before making the best selection for your situation. Storing information on a CD requires a CD “burner” and software. These vary in cost and performance. The advantage is that any other computer can read the data from a CD. DVDs are also available and have higher capacity.

## Scanners and OCR

Where to locate: Check any local computer or technology store.

Look for: Consider this technology if you want to input text into your applications without re-typing all of it. This can be an expensive and higher skill project, and there are not a lot of vendors available from which to choose.

Good intelligent character recognition software will allow you to do either batch data entry or full text optical character recognition (OCR). There is an up-front cost in learning, design and development time to create the forms required for batch data entry. For your staff, data entry will shift to data editing. You can expect about 90% of the materials you scan to be successfully processed, which makes this option more cost-effective for large data projects.

*Look for:     Hardware: Hewlett Packard, Visioneer  
                  Software: Paperport (Nuance); Adobe Acrobat*

## **Paper Shredders**

Where to locate: Check any local computer or technology store. To secure destroyed paper documents, look for confetti-style shredding capability.

Look for: There are no specific technical requirements. There is a difference in how narrow the shredding is across different brands. Certain models can also shred horizontally as well as vertically.

## **Multi-Tasking Machines**

Where to locate: Many office supply stores sell multi-tasking machines. Multi-tasking machines that combine faxing, transmitting, printing, scanning and/or copying in one unit are becoming more common. As a result, they may appear to be more expensive, but when considering the costs of each machine individually, a multi-function solution may make sense. Check to see just how “multi-tasking” such a machine is. Some of the functions are mutually exclusive. For example, when you are copying, you cannot be scanning; when you are faxing you are not able to use your modem. Again, consider your needs and determine how well a one-tool machine will work for you. Do not purchase the least expensive model. LOMAP does not recommend multi-tasking machines.

*Names to look for: Panasonic, Sharp, HP, Brother*

## **Modems**

Where to locate: Just about all new computers have a modem. Check the specifications to be sure.

An “external” modem is less likely to create conflicts with other internal devices in older machines, but it is just one more thing to find room for on your desktop. Having it more accessible makes it easier to watch the connect lights and see what is happening when you are trying to make a connection, especially when you are troubleshooting a function that isn’t working.

## **Networks**

Consider Small Business Server from Microsoft. This software will network your office and enable Outlook to share files with all users.

The office with three to five users can benefit from this arrangement, but would probably need someone to set it up for them and be available for occasional support. An office with more than three people automatically requires higher levels of confidentiality and security. This solution will provide much better print management and security for files and directories.

Security is of primary importance with all networks. You need to assign passwords, control their distribution and change them occasionally. Always have a “back door” security attached to a non-user ID that can be used in the event that those with supervisor security should be locked out. Do not share this identity or password with anyone.

For small businesses, file servers are top line computers that have some additional memory and a higher level processing speed.

When you wish to integrate systems through some type of network, it is always recommended that your workstations be similar in brand and quality.

## **Copiers**

Where to locate: With the growth of small home-based businesses came the ready availability of copiers for small offices.

Look for: Most copier distributors will offer pre-owned copiers and lease or rental equipment for larger machines. See also the information on multi-tasking machines.

*Look for: Sharp, Toshiba, Xerox, Ricoh*

## **Dictation Equipment**

Where to locate: This equipment can vary broadly with respect to your dictation needs and your budget. Dictaphone and Olympus dictation systems are gaining popularity. A “file” can be downloaded to a computer and emailed for that person to play back as a message or for transcription.

Many lawyers use voice recognition software. This technology is not for everyone. LOMAP can give you names of lawyers using this tool successfully. The packages today provide a basic core dictionary to which you can add specialized dictionary packages for specific industries such as the legal or medical professions.

*Names to look for: Dictaphone (Nuance), Olympus, Dragon Naturally Speaking (Nuance)*

## Appendix C: Glossary

### BASIC COMPUTER TERMINOLOGY

#### **Byte:**

A byte is a designated amount of space — a very small amount of space. One byte is roughly equal to one character. On the average a page of information contains *2,500* bytes. A one page file would be approximately 3,000 bytes: *2,500* for the page of text and 500 bytes of additional information the software needs to display the document.

Kilobyte	1,000 bytes
Megabyte	1 million bytes
Gigabyte	1 billion bytes
Terabyte	100 billion bytes

#### **Cable:**

PCs communicate with each other on networks by way of cables. The cables you need are called Category *5* cables, or Cat *5* for short. The number designates what kind of signals the cable can carry. Most phone systems run on Cat 3 cables. Since your cables plug in to each PC's network interface card, it is important to ensure that if you are using Cat *5* cable with RJ45 connections, you get a network interface card that has an RJ45 plug. An RJ45 connection looks a lot like a regular phone jack (which is an RJ11 connection). It is just bigger, hence the higher number.

#### **CPU:**

CPU stands for Central Processing Unit. The CPU is the brain of the computer. All processing occurs within the CPU.

#### **Email:**

Email is a method of sending text from one computer to another. Most email programs are compatible, in that you can send a text message from one type to another and it will be readable. All email that travels on the Internet must be SMTP-compatible mail. SMTP stands for Simple Mail Transfer Protocol. An SMTP “envelope” is required for any message from any system that will use the Internet for part of the journey.

#### **Email Attachment:**

An attachment is a file or document that has been attached to an email message for delivery. Attachments don't always work for a variety of

reasons. You should establish that an attachment is compatible between two systems prior to relying on this method of exchange for critical data. AOL is an example of a system that does not handle attachments to emails from external systems.

**Extranet:**

Some companies are connecting portions of their Intranets to other Intranets as a way to save money and time. For example, Company A makes airplanes and Company B provides some of the parts. Company A can save money by not storing parts that it doesn't need right away by providing Company B with access to its Intranet for the purpose of determining when the parts are needed and delivering those parts "just in time." Company B gains in that it is now the "preferred supplier" of these parts and does not have to bid separately for each order, saving time and money.

**Floppy Disk:**

A portable filing cabinet (like a briefcase). You can save something to a floppy disk and then transfer it to another computer. A floppy disk is inserted into a floppy drive.

**Floppy Drive:**

A floppy drive has no storage space of its own. It is used in conjunction with a floppy disk. Most new computers will only have one floppy drive, normally a 3.5 drive. 3.5 inches is the size of the floppy disk you will use in the drive.

**Hard Disk/Hard Drive:**

The hard disk is the storage space (for files and programs) inside your computer. The hard disk is like a file cabinet. You keep information in the form of files and file folders inside the file cabinet. How many files you keep is dependent on the size of your hard disk. In most cases the hard disk is also called drive C.

**Internet:**

The Internet is a vast network of computer connections spanning the globe. It is made up of phone lines, special telecommunication lines, servers of all types, satellites, modems, etc. The Internet is decentralized. Each computer, called a host, is independent. Its operators can choose which Internet services to use and which local services to make available to the global Internet community.

**Intranet:**

An Intranet is a private version of the Internet. A single company may decide to place proprietary information on a server to make available to its employees, using browsing software as the method for viewing

the information. Often the employees can connect to the Intranet via the Internet, providing a username and password to identify them and be allowed access.

### **ISP/Internet Service Provider:**

When you use a modem to connect to the Internet, you need to dial into a location that provides access. ISPs provide this service. They have a modem on the other end of your telephone call that receives your call. The ISP modem is attached to a server that is connected to the Internet, (or rather is the Internet). ISPs can provide you with e-mail accounts, help you set up web pages, and in general provide assistance with your Internet access.

### **Megahertz/MHz:**

One MHz represents one million cycles per second. The speed of microprocessors, called the clock speed, is measured in megahertz. For example, a microprocessor that runs at 200 MHz executes 200 million cycles per second. Each computer instruction requires a fixed number of cycles, so the clock speed determines how many instructions per second the microprocessor can execute. To a large degree, this controls how powerful the microprocessor is.

### **Memory/RAM:**

Random Access Memory (RAM) is a special kind of memory your PC uses to run software. Software is stored on your hard drive and is loaded into RAM when you start up a program. Your computer can access and run modules of programs much faster from RAM than it could if it had to search your hard drive for the appropriate information every time you issued a command. RAM is managed by your operating system and can be increased by adding memory chips (sometimes called SIMMS). There are different types of memory chips. DRAM and SDRAM are two examples. The system specifications that came with your PC will tell you the kind of RAM to purchase if you wish to increase your memory. Additional RAM will impact the performance of your PC by decreasing response time (how fast your PC “responds” to your commands).

Deleting files from your hard drive does not increase memory. It increases the amount of available storage space only.

**Modem:**

Modem stands for Modulator/Demodulator, which refers to a method of transmitting data using electrical impulses. You use a modem to connect to the Internet over regular telephone lines. The faster the transfer rate, the faster the modem and the faster you can send and receive data. Transfer rates are described as Baud rate or Bits per Second (bps). A modem that transfers data at 56,000 bits per second (56k) is faster than a modem that transfers data at 14,400 bits per second (14.4k).

**Networks:**

A network is a collection of computing equipment connected to each other by cables and/or other methods (wireless). A simple network usually means a series of workstations (PCs) and a server of some kind. A server is an industrial strength PC that has been assigned special tasks, like sharing a printer, sharing software among the PCs, monitoring for viruses, or managing a connection to the Internet. A LAN is a Local Area Network — a single office or a single location. A WAN is a Wide Area Network — several offices or locations connected to each other.

**Parallel Port:**

A parallel port is a type of connection on the back of your PC. Used primarily for printers. You can also use a parallel port to connect scanners and Zip drives.

**Read Only Memory/ROM:**

Read Only Memory is a special area of memory that you may not modify. ROM is used to store machine specific information that has to be loaded first in order for your PC to properly operate. There are also a series of tests run by ROM when you turn on your PC that provide information to the operating system about your PC.

**Serial Port:**

A serial port is a connection on the back of your PC. Normally, PCs have two serial connections. You commonly use a serial connection for an external modem. You need a serial cable to connect to a serial port.

**Super Video Graphics Array/SVGA:**

SVGA is a set of graphics standards designed to offer greater resolution than VGA. There are several varieties of SVGA, each providing a different resolution. For monitors, the screen resolution signifies the number of dots (pixels) on the entire screen. Monitors display pictures by dividing the display screen into thousands (or millions) of pixels, arranged in rows and columns. The pixels are so



close together that they appear connected. For example, a 640 x 480 pixel screen is capable of displaying 640 distinct dots on each of 480 lines, or about 300,000 pixels.

### **Wide Area Network (WAN):**

A WAN is a series of LANs connected by phone lines to cover a large geographic area. A series of offices spread all over the state of Washington connected by phone lines would be called a WAN. There are several ways to connect remote offices. You can use dedicated phone lines, ISDN lines (a special kind of phone line requiring specific equipment), or frame relay (another kind of system) or you can use your Internet connections to create a “virtual” WAN. This means that while you have no special software or hardware in place to create a dedicated WAN, you would be using the Internet to communicate with each office in much the same way as you would with a WAN.

### **World Wide Web/WWW:**

The World Wide Web is a system of Internet servers that support specially formatted documents. These documents are formatted in a language called HTML (HyperText Markup Language) that supports links to other documents, as well as graphics, audio, and video files. This means you can jump from one document to another simply by clicking on a “hot spot.” The hot spot acts as a pointer to another location in another document. You use special software called a browser to view information available on the WWW. The two most popular kinds of browsers are Internet Explorer by Microsoft and Navigator by Netscape. America Online (AOL) has its own browser based on Internet Explorer.

Not all Internet servers are available on the WWW. Some servers are accessible only through other methods of data exchange. For example, FTP or File Transfer Protocol is a method of downloading data from a server on the Internet. FTP does not require a browser. However, it is a less intuitive and less user-friendly method.

## Notes

# Chapter Seven: Ethical Considerations

## Introduction

Ethical matters should always concern a lawyer.

From time to time a lawyer should read the oath given upon admission to the practice of law, which will help remind the lawyer of his basic duties to the client and society. In the oath the lawyer solemnly declares, among other things, to support the state and federal constitutions, to obey the law, to abide by the Rules of Professional Conduct, to respect the courts and judges, to neither counsel nor maintain an unjust suit, to maintain client confidences and secrets, and to “abstain from all offensive personalities”. Lawyers have a responsibility not only to the client but also to society. They must forcefully represent the client to the fullest extent allowed under the law, while not damaging the legal system.

## Sources of Ethical Rules

Several sources guide the lawyer seeking an answer to an ethical dilemma. They are:

- Decisions of the Washington State Supreme Court

- Rules of Professional Conduct

- Formal Opinions adopted by the Board of Governors

- Informal Opinions of the RPC Committee

- Ethics Line advice (206-727-8284)

The highest authority for ethical guidance is the Washington State Supreme Court (WSSC). WSSC acts in two ways. First, it reviews and writes opinions for all discipline cases resulting in suspension or disbarment. These decisions state the specific facts of the lawyer ethical misconduct that lead to the imposition of severe discipline. Second, the Court issues general rules of conduct – the Rules of Professional Conduct - setting the minimum ethical standards lawyers must follow.

The Washington State Bar Association assists lawyers in understanding their ethical obligations by issuing opinions about specific situations. Many of the opinions are responses to lawyers’ inquiries to the Bar for ethical guidance. There are two types. Formal ethics opinions are issued by the Rules of Professional Conduct Committee and have been adopted by the Board of Governors. These opinions generally address matters of wide concern and, once adopted,

are published in the Bar News. Informal opinions do not reflect the official position of the Bar. Informal opinions address less sweeping topics. They are not published but they are accessible on the WSBA Web site. There are over one thousand informal opinions on the site which can be searched by word and opinion number. The inquiring lawyer may rely upon the informal opinion, which does create a rebuttal presumption that the lawyer's action is ethical. A Bar member wishing an informal opinion may contact the RPC Committee by writing the Professional Responsibility Counsel at WSBA offices.

Finally, the Bar Association operates an ethics line for its members. The line is staffed during normal business hours by a lawyer who is available to help the calling member to analyze the situation, to apply the proper rules, and to make an ethically sound decision. Reasonable efforts are made to return all calls within one business day. The advice given is for the information of the inquirer and does not constitute the official position of the Bar. (See APR 19(e).)

### *Rules of Professional Conduct*

The Rules of Professional Conduct (RPCs), which were adopted by the Supreme Court in 1985 and extensively revised in 2006, are a statement of minimum standards of ethical behavior. The RPCs are mandatory and they set the level below which no lawyer can fall without being subject to disciplinary action. They are divided into several sections, each relating to a different aspect of a lawyer's professional activities:

- Preamble, Fundamental Principles of Professional Conduct

- Client-Lawyer Relationship

- Counselor

- Advocate

- Transactions with Persons Other Than Clients

- Law Firms and Associations

- Public Service

- Information About Legal Services

- Maintaining the Integrity of the Profession

The Preamble states the importance of law as the basis for justice. Justice makes a democratic society possible and lawyers perform an indispensable role as guardians of the law. In fulfilling professional duties, a lawyer must play various roles that require the performance of many difficult tasks. While not every situation can be foreseen, the fundamental ethical principles are always present. The RPCs set the

minimum standards of ethical conduct. Each lawyer must find within his or her own conscience the touchstone against which to test how far his or her actions should rise above the minimum standards. In the final analysis, it is the lawyer's desire for the respect and confidence of the members of the legal profession and society that should provide the lawyer the incentive for the highest possible degree of ethical behavior.

The Terminology section defines many important terms used in the RPCs. These terms should be carefully read and studied so that their meaning is understood when applying the rules to the various situations giving rise to the frequent dilemmas faced by lawyers everyday.

Please note that comments have been added to the rules. The comments help explain the rule, give examples of its application, and cross-reference other important sources of information.

Title 1 of the rules is of particular importance because it sets the standards for lawyer-client interaction. When representing a client, the lawyer must act competently (RPC 1.1), and diligently (RPC 1.3) within the scope of representation set by the client (RPC 1.2). RPC 1.2(c) was amended in 2002 to make more explicit that lawyers may unbundle their legal services by providing limited representation of a client. A lawyer must keep the client reasonably informed about the case. If lawyers would talk to their clients to the minimum level required by RPC 1.4, there would be fewer complaints made against lawyers and lawyers' public esteem would be greatly enhanced.

Lawyers' fees must be reasonable. RPC 1.5(a) states nine factors to be included when determining the reasonableness of fees. A fee may be contingent but must be in writing and may not be used in certain domestic relation matters (RPC 1.5).

RPC 1.6 requires that lawyers protect all information relating to client representation. A lawyer may only reveal such information without the client's consent, when the lawyer reasonably believes necessary to prevent the client from committing a crime; to establish a claim against the client (fee dispute); to defend himself in a controversy with the client; pursuant to court order; to prevent, mitigate or rectify substantial injury to the property of another where the lawyer's services have been or are being used; and to disclose to a tribunal a client's breach of certain fiduciary responsibilities. RPC 1.6(b)(1) requires, to the extent a lawyer reasonably believes necessary, the disclosure of information to prevent reasonably certain death or serious bodily harm.

RPC 1.7, 1.8, 1.9 and 1.10 state the principles concerning conflict of interest between client and client, lawyer and client and lawyer and former client. These rules prohibit representation where an actual conflict exists but allow representation where the conflict is potential and if certain steps are taken to protect the client. RPC 1.11 deals with conflicts that may arise in successive government and private employment, while RPC 1.12 prohibits a lawyer from representing a client in a matter in which the lawyer acted as a judge, arbitrator, mediator or law clerk, unless all parties consent after full disclosure.

Infrequently a lawyer may have a client whom the lawyer reasonably believes is incapable of acting in the client's own best interest. RPC 1.14 allows the lawyer to seek the appointment of a guardian or take other appropriate protective action.

RPC 1.15A and 1.15B<sup>13</sup> is an extremely important rule governing a lawyer's responsibilities of preserving the identity of funds and property of a client. A review of Washington Supreme Court cases would reveal that violation of this rule is the single greatest reason for disbarment. The rule states that all funds of clients paid to a lawyer must be deposited into an identifiable pooled interest bearing trust account at a financial institution approved by the Bar Association. The purpose of the account is to protect client funds held for a short time or where the amount is so small that a net positive return to the client from an individual trust account is not likely. The accrued interest is periodically paid to The Legal Foundation of Washington to be used to fund access to justice programs. If, after payment of handling and bank charges, the amount of a client's funds or the length of time they are to be held on deposit is sufficient to yield net interest, a separate trust account should be opened so that the interest will accrue to the client.

According to RPC 1.16<sup>14</sup>, a lawyer may not represent a client when the client has discharged the lawyer or when representation would violate the RPCs, or when health or mental condition impairs his ability to represent the client. A lawyer may withdraw from representation if: withdrawal can be made without material adverse effect to the client's interests, client persists in a course of conduct the lawyer reasonably believes is criminal or fraudulent, if the client insists upon pursuing an objective that the lawyer considers imprudent or repugnant, client fails to assist in the accomplishment of the objectives of the representation, representation will cause an unreasonable financial burden on the lawyer, or other good cause exists.

Title 2 states that a lawyer acting as an advisor may refer not only to the law but also to moral, economic, social and political factors.

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<sup>13</sup> 1.15A and 1.15B after 2005

<sup>14</sup> 1.16 after 2005

Title 3 states the ethical rules governing lawyer's behavior as a litigator. These rules state that:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous.

A lawyer, in criminal matters, may so defend a case that every element must be proved. A lawyer must make reasonable efforts to expedite litigation.

A lawyer may not knowingly make a false statement of material fact, omit a fact that would be materially misleading to a tribunal, offer evidence that the lawyer knows to be false, or fail to disclose to the tribunal legal authority known by the lawyer to be controlling even though it may be adverse to the client.

A lawyer must act with fairness to the opposing party and with impartiality and decorum to the tribunal.

A lawyer may not act as an advocate at a trial in which the lawyer is likely to be a witness, but another member of the firm may appear at the tribunal.

Under Title 3, prosecutors have special responsibilities, among them they should refrain from acting on a charge that is not supported by probable cause, and should make timely disclosure to a defendant of all information that tends to exonerate or mitigate the case.

Title 4 governs ethical behavior of lawyers with persons other than clients. It requires that lawyers not knowingly make a false statement of material fact or law to others, or fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 1.6. When representing a client a lawyer shall not communicate directly with others known by the lawyer to be represented by another lawyer. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer should not state or imply that he is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer should make reasonable efforts to correct the misunderstanding. RPC 4.4(b) requires a lawyer, who receives misdirected confidential information, to promptly notify the sender.

The responsibilities of a partner or supervising lawyer to subordinate lawyers and nonlawyer assistants are discussed in Title 5. A partner or supervising lawyer should make reasonable efforts to ensure that the firm conforms to the RPCs. A supervising lawyer or partner will be responsible for another lawyer's misconduct if the lawyer orders or

ratifies the misconduct, or fails to take reasonable steps to mitigate the consequences of the subordinate's misconduct.

Title 5 focuses on lawyers' professional independence and to further this goal prohibits the following:

- Lawyers may not share fees with nonlawyers, except with the heirs of a deceased lawyer's estate or with employees who may be included in certain benefit plans
- Lawyers may not establish any business relationship with nonlawyers if any of the activities of the business consist of the practice of law
- Lawyers may not allow a person who is paying another's legal expenses to direct or regulate the lawyers' professional judgment
- Lawyers may not practice law in a jurisdiction in which he is not authorized to do so, nor may he assist a person who is not a member of the Bar in an activity that constitutes the unauthorized practice of law

RPC 5.5 permits out-of-state lawyers to practice in Washington who meet certain qualifications.

Lawyers are encouraged to render public interest legal service by Title 6. A lawyer should not seek to avoid appointment by a tribunal to represent a person, except for good cause. Title 6 also permits lawyers to participate in legal service organizations notwithstanding that the organization serves persons having interests adverse to a client of a lawyer and organizations involved in the reform of the law even though the reform may affect the interests of a client of the lawyer. Title 6 was amended in 2002 by the addition of a new section, RPC 6.5, which encourages the deliverance of unbundled legal services through court sponsored and nonprofit legal services programs.

Rules about conveying information regarding legal services are found in Title 7. A lawyer may not make a statement about himself or his services that is false or misleading. A lawyer may advertise through public media or by mailing written information to potential clients, but he may make no direct contact in person or by telephone to persons with whom he has no prior professional or family connection or when a primary motive is making a profit. A lawyer may not give anything of value to anyone for recommending his services. With few exceptions, a lawyer may not communicate or imply that he is a specialist in an area of law. RPC 7.5 states the rules about firm names and designations. Trade names are now permitted under an amendment issued by the Supreme Court effective September 1, 1998 so long as they do not



imply a connection to a governmental or charitable organization and otherwise comply with RPC 7.1 and 7.4.

Finally, Title 8 concerns the maintenance of the integrity of the profession. RPC 8.1 makes it unethical for a bar applicant to make a false or misleading statement in his application. RPC 8.3 states that a lawyer having knowledge that another lawyer has violated an RPC should promptly inform the appropriate authorities. This provision is aspirational and not mandatory. RPC 8.4 makes it professional misconduct for a lawyer to violate, attempt to violate, or to assist another to violate any RPC. It is ethical misconduct for a lawyer to commit a crime that reflects adversely on the lawyer's trustworthiness, to engage in behavior involving dishonesty, fraud, deceit or misrepresentation, or to engage in activities that are prejudicial to administration of justice. It is unethical for a lawyer to commit any discriminatory act prohibited by law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities.

Several sections were added to RPC 8.4 making it professional misconduct that is prejudicial to the administration of justice to commit an act of moral turpitude, to commit an unjustified act of assault, to willfully disobey an order of court, to violate his oath, to violate the Code of Judicial Conduct, to violate a duty or sanction imposed by the Rules for Enforcement of Lawyer Conduct, or to engage in conduct demonstrating unfitness to practice law.

#### *Rules for Enforcement of Lawyer Conduct*

The Rules for Enforcement of Lawyer Conduct (ELC) were adopted in 2002 and represent an overhaul of the Rules of Lawyer Discipline which were withdrawn at the same time. The ELCs set the procedural rules for disciplining lawyers.

### *FREQUENTLY ASKED QUESTIONS*

Below are some frequently asked questions, with answers, that illustrate and apply rules of ethical conduct.

*Q. What should a lawyer do to ensure client confidentiality?*

A. In order to comply with the confidentiality requirements of RPC 1.6, among other actions, a lawyer should make sure that the office is arranged so that client consultations may be conducted with privacy. Client files should be kept in a secure area where only authorized persons have access.

A lawyer should instruct and train his staff to be sensitive to issues of confidentiality in all aspects of handling a client's case. Legal

assistants should not discuss client matters in reception areas and they should be discrete when answering the phone and when taking messages that might be overheard.

*Q. May a lawyer share office space with other lawyers? With nonlawyers?*

A. A lawyer may share office space with other lawyers but should be mindful that the office arrangement creates its own set of ethical considerations, including client confidentiality, conflicts of interest and advertising. Care should be taken to display signage to comply with Title 7 of the RPCs and so that clients are not misled in thinking that the lawyers are members of one law firm. The phone should be answered with a greeting that does not create the impression that office sharers are one law firm. Lawyers sharing offices who maintain separate entities need not screen conflicts of interest. If they do operate as a single entity, they need to establish a system to check for conflicts.

Lawyers may share offices with nonlawyers. But a lawyer needs to exercise care. Assuming that a listing of lawyers and nonlawyers was neither false, nor misleading, there would be nothing improper in doing so. For example, there is nothing in RPCs to prohibit a lawyer from sharing space with independent claims adjuster. Lawyers may share office space with nonlawyer so long as it is clear to public they are not partners. A lawyer may accept referrals so long as the lawyer can maintain independent professional judgment and so long as nothing of value is exchanged.

*Q. May a lawyer incorporate an escrow company with a nonlawyer?*

A. Under certain circumstances a lawyer may incorporate an escrow company with a nonlawyer and share space with the escrow company. The lawyer may supervise the work with the nonlawyers in the escrow company, and refer legal clients to the escrow corporation for services. A written disclosure notice should be posted in the reception area commonly shared by the lawyer and the escrow company regarding the relationship between the lawyer and the escrow company. Further, the lawyer should not advertise that the lawyer is a lawyer in any advertisements for your escrow business. There is concern regarding the question of solicitation of professional employment for the law practice from the escrow business. The escrow company may not refer clients to the lawyer for related legal business, not only because there is potential for improper solicitation, but also because there would be potential conflict of interest in representing the clients on matters related to the escrow work for which the corporation was also representing them. The RPC Committee was of the opinion

that, since as an escrow officer, the lawyer would owe an equal obligation to both parties to the transaction, the lawyer could not undertake the representation of either party on related legal matters because the lawyer's independent legal judgment may be adversely affected. *See* Formal Opinion 187.

*Q. How long should a lawyer maintain client files?*

A. At one time, lawyers often kept everything. But that practice is now not feasible because storage space is limited and expensive. In addition, the lawyer who keeps everything places a heavy burden upon his successors to go through the files when the lawyers retires or changes careers. There are no specific ethical rules or opinions, directly addressing this problem. It is not the duty of a lawyer to serve as a repository for client files. A lawyer should at the beginning of his career develop a file retention and destruction policy that is integrated with a file management system. Some lawyers mail a letter to the last known address of a client after a number of years (e.g. six years) that the file will be destroyed in five months if the client does not take possession of the file. An alternative approach would be for the lawyer to analyze the contents of a file to determine how long it should be kept.

Some items may be destroyed as the file evolves. For example, letters asking for information may be destroyed upon receipt of the information, or letters notifying a client of deposition after the deposition has taken place. At the time a file is closed, the lawyer should determine how long to keep the file. Some factors to be considered are:

- Applicable statutes of limitation
- Age of majority of minors, plus six (6) years
- Need of information in the future, e.g., tax returns
- Malpractice and business concerns
- Legally imposed retention periods
- Time requirements for appeal

The file may be stripped of such things as duplicate copies and copies of documents filed in court. Any original documents of the client should be returned to the client. The file should contain a record of the documents given to the client.

The lawyer should set a schedule for file destruction. Some firms destroy certain categories of files at the end of a fixed number of years. Others retained stripped files permanently. Depending on the lawyer's practice, variety of work, personal opinion and storage availability, the

schedule will differ. The following schedule is for illustrative purposes only:

TYPE OF CASE	SUGGESTED RETENTION
Probate Claims & Estates	Excluding tax, 10 years after final judgment. Tax basis information-permanent.
Tort Claims-Plaintiff	6 years after final judgment or dismissal, except when minor involved.
Tort Claims-Defendant	6 years after final judgment of dismissal.
Bankruptcy Claim & Filings	6 years after discharge or payment.
Contract Action	3 years after satisfaction of judgment, dismissal, or settlement.
Dissolution	6 years after entry of decree or dismissal, except when minor child custody involved.
Real Estate Transactions	Subject to guidelines and tax needs, otherwise 6 years after termination of sale, foreclosure, or other completion of matter. Surveys and legal descriptions not of record are retained.
Leases	6 years after termination of lease.
Criminal Cases	6 years after date of acquittal or length of incarceration
Original Wills	Return to client after signing and conclusion of matter or file with local court of jurisdiction (filing now permitted by statute)

*See also "Records Management" in Chapter Three.*

Each file marked for permanent retention should be reviewed every ten years or so to be sure that intervening events have not changed the need to keep the file. Some lawyers think if a file is to be kept indefinitely, the lawyer should put a written justification for retention in the file.

*Q. What are some ethical considerations of billing?*

A. The foremost ethical consideration is that fees be reasonable. RPC 1.5 sets forth several factors used in determining reasonableness, including the time and effort required, the preclusion of other employment, custom in the locality for similar work, amount involved and the results obtained, time limitations, nature and length of the relationship with the client, the experience and reputation of the lawyer, and whether the fee agreement demonstrates that the client

had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's *billing practices*. RPC 1.5 also requires that contingent fee agreements be in writing and that upon the conclusion of the matter the lawyer prepare a written statement setting forth the amount of the recovery, the remittance to the client and the method of its determination. Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution or annulment of marriage or upon the amount of support or maintenance, or property settlement in lieu thereof is prohibited, except in post dissolution matters. The division of fees between lawyers in separate firms may be made only under certain circumstances set forth in RPC 1.5.

The billings themselves must be fair and accurate statements of the services rendered on behalf of the client. A lawyer may set an hourly fee to include the overhead and cost of support staff, and then bill for his time only. He may not also bill for support staff time. If the lawyer chooses to break out the cost of support staff, then the support staff time must be billed at a reasonable rate for the work done by the staff. A lawyer should not double bill. For example, if a lawyer is billing for travel time for a trip in which work for more than one client will be done, the travel time must be apportioned among the clients benefiting from the travel. Likewise, if while waiting in a courtroom to argue a motion on behalf of one client, the lawyer works on another client's file, the lawyer may bill the time only once to the respective clients.

*Q. Must a lawyer maintain an IOLTA account?*

A. If a lawyer has no client funds, the lawyer need not open a trust account. But RPC 1.15A states that all funds of clients paid to a lawyer or law firm, including advances for costs and expenses, must be deposited into one or more identifiable interest-bearing trust accounts, and no funds belonging to the lawyer or the law firm may be deposited therein except funds reasonably sufficient to pay bank charges. Also, if funds belonging in part to a client and in part presently or potentially to the lawyer, the portion belonging to the lawyer should be promptly withdrawn when due unless the client disputes the lawyer's right to receive a portion, in which event the disputed amount must remain in the trust account until the dispute is resolved.

*Q. When a lawyer is representing a corporation, who exactly is the client?*

A. A lawyer employed or retained by an organization represents the organization through its duly authorized constituents. See RPC 1.13. An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other

constituents. When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by RPC 1.6. For example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by RPC 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by RPC 1.6 and 1.13(c).

*Q. May a lawyer use e-mail and the Internet to communicate with a client?*

A. A lawyer may use any means to communicate with a client so long as the communication can be accomplished in conformity with the RPCs. One of the most important duties a lawyer owes a client is to keep confidences and secrets. Communication in person, through the mail or electronically should be made in such a way that a client's reasonable expectation of privacy is maintained.

Rapid technological developments can strain the legal community's ability to adopt rules that deal with the ever-expanding means of communicating. The use of Internet e-mail is an example. There is little ethical guidance in this area. In 1999, however, the American Bar Association adopted Formal Opinion 99-413 that states a lawyer may transmit information relating to client representation by unencrypted e-mail over the Internet without violating the Model Rules of Professional Conduct because the mode of transmission affords a reasonable expectation of privacy from a technological and legal standpoint. A lawyer may therefore rely upon RPC 1.6, which sets forth the general requirements of confidentiality. A prudent lawyer should assume that e-mail is unsecure, disclose this to the client and then obtain the client's consent prior to using it as a means of communicating. If sending unencrypted e-mail, the lawyer should advise the client that potentially any one can read the message. Even when encryption is used, some particularly sensitive information should never be sent by e-mail over the Internet.

## Chapter Eight: Managing Staff

(Footnotes are found in Appendix A, RCW 49.12ff)

### Introduction

In this chapter there are descriptions of many of the issues that may arise in a staff person's working experience along with suggested actions to take. This information may be helpful as you consider hiring staff. There is also a sample outline of a policy and procedures manual. Following the policy and procedures manual are references to the pertinent general concepts of employment law and legal authority governing workplace matters. Please use the note references in this chapter by referring to the applicable Washington law at Appendix A to this chapter. Other issues included in the list of statutes at Appendix A are not included in the text. Please review the entire list of selected statutes for a broader identification of issues relating to employers and employees. See also RPC 5.3 Responsibilities Regarding Nonlawyer Assistants

**Seek qualified legal advice whenever you are in doubt about an employment-related matter.**

A successful law practice may require you to hire staff. *Gross fees of your practice should be at least \$9,000 per month.* First and foremost, talk with other lawyers about their experiences integrating a staff person into their practices. Do this before you hire anyone. At the minimum, your staff person must be organized. Prior legal experience comes at a premium but can be well worth it. Check references!

A staff is expensive. It pays to invest the time to educate and motivate. Ensure the person answers the phone properly, is helpful to your clients and prospects in your absence (without practicing law!), and follows the established procedures for your office. Support additional education outside the office. Today's staff person values a challenge and the opportunity to build on his or her skills. Further motivate your staff person by describing your cases and what you hope to achieve on behalf of your client. Always stress confidentiality because the case in your office that makes the local news still is not the subject of discussion with outside parties—ever! Meet regularly with your staff person to review open matters, the recent week's events, and to plan the week ahead. Encourage questions!

An experienced staff person can wear several hats: secretary, paralegal, bookkeeper, and receptionist. A paralegal can do factual research, interview witnesses, identify experts, assist with discovery, and keep larger cases organized. A paralegal's time is billable when

performing these types of tasks. You should establish a rate for such time and include reference to it in your written fee agreement.

Treat staff people with care by providing training opportunities and recognition. Praise publicly and always counsel mistakes privately. Never lose your temper. Mistakes made by your staff are your responsibility. *Never, never criticize your staff person in front of a client!* Create a safe environment for staff to ask questions about the work they are assigned (as well as questioning the work itself) to ensure only the best work leaves your office. The lawyer also questions the work, but never the competence of the individual producing it.

Having an employee subjects you to requirements concerning pay, record keeping, working conditions, and procedures that are governed by federal, state, county, and city mandates. Query your accountant about employee record keeping matters. Employment litigation and settlements are legion in the workplace. Common sense and using the Golden Rule will help you to avoid many problems. The other side of the coin is to be alert to embezzlement. A staff person who refuses to take a vacation can mean trouble.

Here is a non-exhaustive description of the issues that arise with having an employee. Also see the resources later in this chapter. *The notes refer to Appendix A to this chapter at RCW 49.12ff.*

1. Avoid certain questions when recruiting. Examples include age, marital status, and arrests.<sup>54</sup>
2. You may investigate the background of an applicant if the information requested is substantially job related and your reasons for the use of the information are disclosed to the applicant but include proper disclosure language on your application form and generally follow the procedures required by the state fair credit reporting act, RCW 19.182 et seq.<sup>26</sup>
3. Your offer should be in writing and include an “at will” statement.
4. Use the Immigration and Naturalization Service Form I-9 to have your new employee certify that he or she can work in the United States.
5. Do not treat your employee as an independent contractor to simplify record keeping. It will not withstand IRS scrutiny. You may hire a long-term temporary from an agency where the person is an



employee of that agency, is paid by that agency and you pay the agency's bill for that person.

6. Have a standard orientation process in writing. Turnover is inevitable so you will be using that process on repeated occasions. This includes office procedures and workflow practices.

7. Remember that you must pay a minimum hourly wage.<sup>31</sup>

8. "Exempt" and "non-exempt" (from the Wage and Hour law) employees are not paid overtime or are paid overtime, respectively.<sup>30</sup> Your staff person is non-exempt so you must pay overtime at 1 ½ times the hourly rate for hours worked over 40 per week.<sup>31</sup> An exempt employee generally is a management person with independent authority and discretion to act. Paying an employee on a salary basis does not convert them to "exempt" if their job duties otherwise make them "non exempt." The IRS has very specific guidelines that define an exempt employee. See IRS Publication 15 Employer's Tax Guide

9. Remember that an employee may have a right to COBRA health coverage after termination of employment. "COBRA" is the acronym for Consolidated Omnibus Budget Reconciliation Act. This particular section is codified as part of the Employee Retirement Income Security Act, 29 USC 1001. COBRA is at part 6 of Title I.

10. Employee records and timesheets **must** include and must be kept for at least three years:<sup>12 & 13</sup>

- Employee's full name<sup>4</sup>
- Social Security Number (necessary for tax reporting)
- Address<sup>33</sup>
- Date of birth
- Gender
- Occupation<sup>33</sup>
- Day and time work week begins<sup>33</sup>
- Regular hours worked each day<sup>33</sup>
- Rate of pay<sup>33</sup>

- Total daily or weekly straight-time earnings<sup>33</sup>
- Total overtime earnings for the work week<sup>33</sup>
- All additions to and deductions from wages
- Total taxes paid each period. [See your accountant about IRS reporting schedules.]
- Dates of payment and the pay period covered by each payment
- Copies of any deductions authorized by the employee

A staff person can yield great productivity benefits. Staff are an added responsibility but there are many resources available to help you with questions that arise with administering a staff person. See also RPC 5.3 and Appendix B to this chapter. The WSBA has several Employment Law continuing legal education texts and materials for further background on these and similar issues.

## PROFILE OF A STAFF PERSON'S WORK LIFE IN A SMALL LAW OFFICE

This is a summary description of the events surrounding a staff person's tenure with a law firm. The purpose is only illustrative and not intended to be all-inclusive. The format follows the progression from recruiting to termination of employment. Above all, remember that you enhance the "street reputation" of your office by following good employment practices. Applicants with legal experience apply at firms with good street reputations.

### 1. RECRUITING

**What is the need; Job Description; Writing the Want Ad; Salary; FLSA; Hire My Niece; Fringe Benefits; Commuting Convenience; Risk of Turnover**

Hiring a staff person is an important event and the cost can exceed the rent for your office space. Hiring is akin to adopting a family member. Your whole life changes. Why? Working with a staff person implies *communication*. Resolve immediately to communicate effectively with whomever you hire. But let's go back a step. Why hire anyone? Today's technology enables you to stay in touch with clients and to produce work product in amazing ways without a staff person. Consider hiring a staff person as a last resort. Assess your needs and growth plans. Assess your present systems. Are you organized? Can you easily pass on your systems and procedures to another person? The cost alone is worth the analysis. Aside from the money cost, there

is the cost in your time to educate. Resist the temptation to think that a staff person will rescue you. Another thought: Effective use of case management software can postpone the hiring of staff and thereby pays for itself very easily.

Use a job description for your staff person's position. It focuses your thinking on your needs and helps the staff person understand what is expected. A job description is a one-page document that describes overall responsibilities and lists specific duties. The job description therefore assists you with evaluating the staff person's performance because the duties and responsibilities are clear and mutually understood. Include the clerical duties you are doing now.

Write a classified ad<sup>25, 48 & 56</sup> that describes the job but also describes your office and what a great place it is to work. Include what you offer as benefits such as work schedule, ease of commuting, etc. Newspapers accept ads by email. That makes it quick and easy to communicate with the publication. They will also put the ad on their website. Include salary and other compensation in the ad to screen applicants. (Consider adding "DOE" which is "Depending on Experience" to give you further flexibility.) If you use a personnel agency, they will place an ad and do some screening for you. An agency will charge from one month's salary (8.33%) to 20% of the yearly salary for this service. Negotiate the fee up front. There is usually no charge to see resumé's. Do not hire a relative if it can be avoided. A person with fewer years of experience may be a better bargain and stay longer with you as they learn, but they will need more of your time to educate. A person with more years of experience will need less education and can draw on systems knowledge from other law firms, but will cost more. A flexible schedule, a short commute, being on a bus line, free parking, or liberal time off can help offset a lower salary.

## 2. APPLICANTS

### **So Many Resumes; My Client's Daughter; Scheduling Interviews While Trying to Practice Law**

When the resumes come in, match the relevant skills to your job description for the position. Particular computer skills are important to note. An application form is not necessary, but can be useful. Office supply stores have employment applications. An applicant's thoughtful and well-written cover letter can signal a very good candidate. In addition, careful reading may reveal poor grammar,

spelling, and typographical errors, which would indicate carelessness or applicants not worthy of further consideration.<sup>15</sup>

Look for experience in your practice area. If the candidate already knows the clerk of the local court, that is a plus. If a client asks you to hire their child as an employee or intern, remember the problem of confidentiality of your files. Avoid doing so if you can. Candidates are often very flexible about interview times and places. Early or late in the day is acceptable, and so is meeting a candidate for lunch (at your expense). Having a Saturday interview is also a possibility.

### 3. INTERVIEWS

#### **Purpose; Questions to Avoid; Encouraging Questions; Eye Contact; Job History; Meeting the Staff**

You wish to meet the applicant because the resume and/or cover letter looks interesting. You may wish first to conduct a telephone interview. A telephone interview should be short (5 minutes) and can be used to understand specific practice area experience before deciding to ask the applicant to meet with you. Did the resume have a cover letter? If so, that is a good sign of professionalism and it gives you some insight into writing skills. It is common to receive applications by email and fax. Ask for the originals if and when you meet the applicants.

The applicant likely has the basic skills to do the job. The larger questions are whether he or she wants to do a good job for you; will he fit in to the culture of your office; will she remain with you for a period of time? Can he handle pressure? Will your clients like dealing with her? Your staff person's interpersonal skills will be critical, too, because having a staff person should free your time to practice and permit you to convey routine communication through the staff person to the clients.

Do not ask about family arrangements, race, religion, age, arrests, children, disabilities, and similar queries that can be mistaken for bias.<sup>54</sup> Think twice about "Googling" the applicant, or researching their MySpace or Facebook pages before the initial interview. Again you want to avoid the appearance of bias, and you may learn things through the internet search that you would not otherwise have a right to ask during the interview process (i.e. sexual orientation, political affiliations, religious practices). It is a good sign if the applicant asks questions. The better the questions asked the better the applicant. Answer the questions fully and candidly. Have a written description of your fringe benefits to give to the applicants. Legal staff has a choice of jobs, so be sure to be interested in the applicant's questions. A top

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<sup>15</sup> If an applicant text messages you with an attached resumé with the greeting "how RU?" You may also wish to pass on this candidate.

applicant will be evaluating you as much as you are evaluating the applicant. Eye contact in the interview is an important indicator of self-confidence and preparedness.

Ask open-ended questions like “Tell me about yourself?” “Talk about your resume (or job history).” “What would your supervisor say about you?” “Talk about a big project you oversaw or helped to complete.” “How do you handle pressure or unpleasant situations?” “Describe your experience keeping a docket and calendar?” It is also helpful to describe work scenarios and ask how the candidate would handle them. An example is: “What would you do if I had signed a letter with attachments and left the office for the day. You later see that the addressee is correct but the salutation is wrong and an attachment is missing?”

It is important to have a promising applicant meet with your other staff and have them be part of the process. Show the applicant's resumé to your other staff (if applicable). You may also want to have your spouse meet the finalist before making an offer.

#### 4. CANDIDATES

##### **Three Finalists; Gauging Enthusiasm; Gauging Logic; Second Interview**

The applicant becomes a candidate when they pass your interview successfully. Ideally, it is good to have three promising candidates. Each may have a different personality—which, in the end, may be the most important determining factor. Another important factor is whether the candidates have said they want the job. Enthusiasm counts for a lot. Are you offering just a job or a great opportunity? Each candidate makes this implicit decision whether they realize it or not. The enthusiastic candidate will express it.

Second interviews are not always practical in a competitive job market. It is a good idea for a second interview to meet another staff person in your office who will be working closely with the new person. In tighter labor markets, consider doing this the first time you meet the applicants.

Remember that a law office has desks, computers, conference rooms and files—no different than any business office. But we know that a law office is a very special place where a word omitted or in the wrong place in a document can bring embarrassment, loss and perhaps a grievance or malpractice claim. The work in a law office is very important work. Inexperienced candidates have no recognition of this reality. For them, an office is an office. Better candidates know the difference and embrace it. This is what gives the lawyer and the staff person “permission” to question the work before it leaves the office.

Consider your tolerance for training “from the ground up” or for choosing someone with law office experience.

## 5. FINALIST

### **References; Making the Offer; Thinking it over; Dealing with a Counter-Offer; Start Date; Overlap**

Check those references<sup>34</sup> and why the person left prior positions.<sup>26-28</sup> Talk with the lawyer for whom the candidate worked rather than the HR manager, if possible.<sup>23</sup> When applicable, your offer should include salary, overtime opportunities, bonus, vacation, sick leave, health benefits, help with commuting cost, flex-schedules, etc. Follow up in writing and include a description of your “orientation period” that allows time to assess the fit for the position. This arrangement permits you more flexibility for earlier release of a poorly performing employee.

It is acceptable for the candidate to think it over. That is an indicator that he or she is serious and is making the correct decision. Sometimes it is a prelude to a counter offer. Handle such counter-offers according to your own discretion. Sometimes telling the candidate that you will review salary after 90 days can be a good compromise response to more money now. Bonuses are another factor to include in your offer. (Keep in mind that bonuses for non attorney staff should not be specifically tied to a successful outcome of a case as this is most likely a violation of RPC 5.4. *See* WSBA Informal Opinions 1816 and 2126.)

Agree on a start date that allows the candidate to disengage gracefully from their present employer. If they are in the middle of a trial, be understanding. The reverse could happen to you. That said, if you can have any overlap with your departing staff person, all the better for educating your new staff person. Sometimes both parties will agree to meet after hours, be available for phone calls, etc. to help with the transition. Just ask.

The Fair Labor Standards Act (FLSA) and the Washington Minimum Wage Act provide that you must pay overtime at a rate of 1 ½ times the regular rate when weekly hours worked exceed 40. You need not include sick time, vacation or holidays when counting hours worked. Some law firms do count one or more of these categories toward overtime as a “benefit” for the employees. If you pay on the 15<sup>th</sup> and the end of the month, an employee may work 42 hours one week and 37 hours the next week as long as both weeks fall within the pay period. In this example the two hours of overtime worked translated into 3 hours of overtime at 1 ½ times the regular rate. Your payroll cost is the same for both weeks.

With staff comes turnover. Washington is an “employment at-will” state. You may release a staff person and a staff person may resign with or without a reason. Be sure your offer letter is explicit in describing this at-will relationship. Turnover means re-educating the next staff person about your office and clients. Have materials and procedures in place to ease this re-education burden.

## 6. THE FIRST DAY

### **Go to Lunch; a Plant; Orientation; Previously Scheduled Vacations**

Remember the amenities. A plant, candy, a lunch in a nice restaurant are all good ways to introduce your new staff person to your office culture. Of these, the lunch is the most important. Here begins your *communication*. Talk about your clients and your practice. What was your favorite case? Ask about any previously planned vacation and how coverage might be handled. You are building mutual respect and trust.

Engender a feeling of working *with* your staff person as opposed to their working *for* you. Taking adequate time to educate your staff person on office and computer systems tells them that you want to invest in their success. Spend that time now in an organized fashion. If not, you will spend that and more time later putting out fires that started due to poor education. Use written materials as much as possible. Keep the materials on the computer for ready reference, access and updating.

## 7. THE SECOND DAY

### **Scheduling Time to Talk About Clients; Your Expectations; What Works for You; What Does Not Work For You**

On the second day and after, schedule time to continue discussing your clients, upcoming cases, special challenges, office systems, procedures, what the local judges like and dislike. Ask your new staff person to share their own “war stories.” Yes, this is a bonding process. Clients, courts and adversaries are demanding something from you. Your firm is your sanctuary. Be mutually supportive within your office. Maintain a “safe” environment. During times of stress, the payoff is incalculable.

You know your expectations of your staff person. Tell them what those expectations are. *Leave nothing to assumption*. Ask your staff person what their expectations are. Mention procedures you have tried that have worked and not worked. This may elicit interesting responses from your staff person. Have this discussion early on because time

travels quickly as you both pursue the daily practice of law and pace of keeping up with things.

## 8. COMMUNICATION

### **Keep it Open**

Yes, keep it open. Your staff person must feel comfortable coming to you and revealing a mistake. The sooner you know about the mistake, the more options you may have to correct the situation. Admit your own mistakes and foibles. Your staff person will know your mistakes anyway, so get the communication and credibility mileage out of admitting them. *Communicate, communicate, and communicate* with your staff person.

**Avoid the notion of blame.** It has no room in supervisory parlance. Consider instead how to mutually solve the present problem. Your staff person will think twice before leaving such a positive office culture if presented with another job offer.

## 9. AFTER 30 DAYS

### **Sick Leave; Tardiness**

Taking time off due to illness is not unusual. Watch the pattern. Is it mostly Mondays? Lateness suggests disinterest in the job and/or events in their personal life that may presently be too demanding of their time. Such things happening during the first 30 days are not encouraging. Remember that you have an “orientation period” at the conclusion of which you will decide if the match is going to continue.

Keep notes of specific dates and times of absence and tardiness. Just mark your calendar. If you meet with the person about these issues, keep more formal notes that will be easy to understand later. You will draw on these notes if the need arises for drafting a termination of employment memorandum.

## 10. PERFORMANCE

### **Typos; Telephone; Email; Follow up; Calendar**

Now comes proof of the wisdom of your hiring decision. Things are falling through the cracks; clients are voicing frustration with how obtuse your staff person is. The court clerk thinks your staff person’s “attitude” leaves something to be desired. There seem to be too many personal telephone calls. First, review your own conduct. Have you mentioned each mistake in a way that is non-threatening? Initially, at least, this is essential. Is it because of poor education about procedures?

Gradually however, you may realize the staff person is in over their head. That is a sinking feeling as you ponder the upcoming trial



calendar and the specter that turnover poses. First, try to learn from this experience and hone your interviewing skills next time. But right now, you have a personnel problem.

Plan A is always to “retrieve” the employee. Do your best to provide extra education and to understand why mistakes are being made. Be sure to follow up on tasks assigned and provide positive feedback when warranted. Perhaps they need a little time off to deal with a domestic situation. Bring in a temporary worker to fill the gap. Remember your investment of time in this employee. The very last resort is accepting that termination of employment is the best answer.

#### 11. AFTER 90 DAYS

##### **First Procedural Evaluation**

Your offer letter mentioned the first 90 days as an “orientation period.” At the conclusion of this period you meet with the staff person and provide feedback about performance, their learning curve, special skills and problems you saw them overcome. You would have discussed the problems at the time of occurrence.

You ask their opinion about their performance and about your communication with them. This meeting sets “the record straight” about any misunderstandings and mutual expectations. If this first 90 days has gone well, chances are you can expect your staff person to continue to do well. Do not ever let down on your commitment to *communicate* effectively with your staff person.

#### 12. Surgery

Your staff person informs you of some scheduled surgery. Ask about dates of absence and obtain a note from the provider that documents the need for your staff person to be out of the office. Check your docket and calendar and perhaps arrange for a temporary staff person, if you believe that to be necessary depending on the length of absence and how busy your office is.

It is good business to be sympathetic to a staff person’s needs in these circumstances. She can use sick leave, vacation, and leave without pay to cover the time out of the office. It is good practice to continue to pay the health insurance premium while staff are on sick leave.

#### 13. Mondays Absent

You are beginning to note a pattern of absences and tardiness on Mondays. Meet with your staff person privately to express this and note the specific dates and times that you have marked on your calendar. Seemingly satisfying explanations are not a reason to agree to what is, in effect, a changed work schedule. Being present for work

is an essential function of the job. Your trust is shaken and dependability is important. Obtain a commitment to correct the pattern.

If things do not change, proceed to document the absences progressively in two successive memoranda to the staff person. Your second memorandum mentions the possibility of termination of employment, so therein was the warning. If the absences continue, terminate the employment of the staff person. You need not give notice. It is best to sever the relationship quickly but with a plan to staff the position with a temporary worker. See below for more detail about ending the employment of the staff person.

#### 14. **Family Leave**

Your staff person's child is seriously sick. Your staff person must stay home to take care of the child. As a small business, you are not covered by the Family and Medical Leave Act (FMLA) but there is a state statute that requires you to grant accrued sick leave to care for a sick child.<sup>15-19</sup> There is also a state statute that requires you to grant accrued sick leave or paid time off (PTO) for care of family members. It is good business to be sympathetic to these circumstances and be supportive of your staff person. As described above under Surgery, take precautions to check your docket and calendar and have a temporary staff person cover the absence, if necessary.

#### 15. **Migraine Headache**

Unfortunately, migraine headaches afflict a portion of the workforce, just as they do the general population. Migraines can be incapacitating. It is a protected disability under the Americans with Disabilities Act (ADA) and even more so, under the Washington Law Against Discrimination. As a small business, ADA does not cover you but the Washington Law Against Discrimination does; see Roberts v. Dudley, 140 Wn2d 58 (2000). In addition, many city and county codes may cover you as a small business. However, it is good business to be sympathetic to these circumstances and be supportive of your staff person. That means accommodating the staff person.<sup>57</sup> An example might be a reduced schedule for a period of time.

#### 16. **Errors in Work**

Mistakes related to the work should be discussed contemporaneously. Above all, do not wait until the annual evaluation or end of the "orientation period." Consider your approach. Use your office instead of a public area. Choose a time after the matter of the moment, such as the next day. Be calm and explore the reason for the error. **Do not cast blame.** Listen carefully to your staff person's explanation. Make some notes after the conversation for future reference in case the same

mistakes continue. Defensiveness, assigning blame to you or to others and denial portray insecurity and poor past experiences dealing with work quality. Your staff person may have been in a very accusatory environment and learned these “survival skills” that served him or her well in that environment. Not so now. Remind her or him that you are interested in learning from the situation that gave rise to the error and you do not think less of the staff person as an individual. Be accepting that something you may have done or not done gave rise to a false assumption about the task and contributed to the error by the staff person.

## 17. COUNSELING

### **Preparing the File**

You have invested much time in the education and orientation of your staff person. At this point, do not allow your frustration to bring you prematurely to a decision about the future of your staff person’s employment. Termination of employment is a last resort.

Up to now, the file (or your own notes) are sufficient to identify the mistakes.<sup>12-14</sup> They should also identify your efforts to assist the staff person to avoid mistakes in the future. In the end, a third pair of eyes (i.e., plaintiff’s counsel) should be able to reach the conclusion from these records that the loss of your confidence in the staff person’s work is clearly justified.

## 18. ANNUAL EVALUATION

### **What to Say and How to Say It**

We all prefer not to go through this annual evaluation process. Yet, if you have been working on the communication with your staff person throughout the year, the evaluation will be an easier process. Consider it an educational exercise. Have your staff person complete a self-evaluation using the same questions as you use to complete your evaluation of the staff person. Consider these as drafts. Talk about the legal skills, job knowledge, initiative, client relations, technology skills and ease under pressure of your staff person. Exchange the completed forms.

Allow a couple of days to go by as you each read over each other’s responses. Plan a time to sit down and discuss the final evaluation that reaches the file. Work together on your appraisal of the staff person. This feeling of inclusion deflates some of the tension and creates a less formal environment in which to complete the evaluation. Remember to describe goals for the coming year that can be used to measure future performance.

If this process seems elongated, it is and it is worth it. Remember that staff evaluate law offices as well. But the more important reason is that this staff person is an investment *each year* totaling \$25,000 to \$35,000 and up. It is prudent business practice to take the pulse, so to speak, of this major investment.

## 19. WARNING

### **Documentation**

Things continue to not go well. You must now commence the termination process. The first important step is to provide a memorandum that describes the causes of your concern regarding performance. State clearly what has to change and within what timeframe. Usually 60 days is a reasonable time to demonstrate a pattern of improvement.

Be sure to meet privately with your staff person and present the memorandum. A Friday afternoon is a good time to do so. Describe its contents and remember to include a statement mentioning possible termination of employment. Be sure a copy is put in the personnel file. Be prepared for a resignation on the spot. If that occurs, ask for the resignation in writing. If notice is given, you need not accept the notice. You can make the resignation effective immediately. If you do not allow them to work out their notice period, you may still wish to pay them for the notice period, otherwise it converts a voluntary quit to a “termination” for the purposes of unemployment compensation and makes it more likely the employee will be eligible for unemployment benefits. The circumstances may be such that you might have called for a temporary worker to be on call before this meeting with your staff person. You also need not honor a withdrawn resignation.

## 20. TERMINATION OF EMPLOYMENT

### **Checklist; COBRA; References**

The tenor of the meeting informing your staff person of the termination of her or his employment is similar to that of the warning above. Again, do it privately, on a Friday afternoon and have a memorandum ready that describes the termination, the effective date and the reasons why. However, if you have reason to believe the employee might become unstable or for some reason may take the termination badly, a Friday morning may be a better time as that ensures the employee will more likely have access to counseling services or other support. Best practice is to have the employee's final paycheck ready, though you do not have to pay them their final paycheck until the end of the regularly scheduled pay period. Be neutral in the face of protest. Do not argue about the reasons. Allow the staff person to vent for a few moments. Circumstances of terminations vary widely. If you are able to help them find another position, do so.<sup>26</sup> Try to be as supportive and understanding as possible.

Often a staff person is relieved to be released from employment because he or she has long been feeling frustrated or out of his or her depth or simply suffered from inertia to make a change. After the points are covered, bring the meeting to a conclusion. Use a checklist to remember filing cabinet keys, status of projects, consent regarding a reference, health insurance, etc.

COBRA (A federal law that requires larger employers to offer continuing health coverage to former employees at the employee's cost—part of the Employment Retirement Income Security Act, 29 USC 1001) may not cover you, but again it is good business to consider extending health coverage for an extra month after termination of employment.

Severance pay is purely optional. Pay any overtime and unused vacation that may be due in accordance with your Employment Policies or Employee Handbook.. If you do not have a policy of paying accrued but unused vacation time, you do not have a legal obligation to pay it at termination. If you decide to pay a severance, use a formula such as a week of pay for every quarter worked. Be consistent by relying on the same formula in the future. Such good practices build the "street reputation" of your office as a well-managed and reasonable place to work. That reputation can pay dividends as your office starts to attract higher quality applicants from your ads or increase unsolicited inquiries you may receive.

This is not, in any way, an exhaustive list of issues or of laws that apply to you. When in doubt, contact an employment law attorney. The practice of law is a demanding profession for both the lawyer and the staff. Finding the right staff person to help you shoulder the burden is more art than science. Consider carefully the need and then really commit to a high level of communication in both directions to help ensure success.

## **Office Manuals**

The two essential kinds of manuals are a policy manual and a procedure manual. Policies describe overall matters such as ethics/confidentiality, time-keeping, vacation and sick leave. Procedures describe specific tasks such as checklists for the intake of a new client, style formats, or how to un-jam the copier.

One manual can include both policies and procedures. Include checklists for new employees, a conflict checking procedure, steps for opening new files, office equipment service phone numbers, and similar subjects. Format is less important than content. Keep the manual on the computer for easy updated and reference in “read-only” format that does not allow edits, except by authorized personnel.

A sample table of contents for your office manual might include:

- Disclaimer
- About the Office
- Description of Practice
- Confidential Nature of Work
- Equal Opportunity Employer
- Sexual Harassment
- Medical & Life Insurance
- Parking
- Termination of Employment
- For Cause (with a disclaimer that the decision is always at the employer’s discretion)
- Notice Before Terminating Employment (again solely at the employer’s discretion)
- Vacation Pay
- Severance Pay
- Letters of Recommendation

- Master Docket Calendar
- Library
- Form Files
- Office Security and Emergency Procedures
- Accounting for Client Costs
- Accounting for Firm Costs
- Accounting for Petty Cash
- Reimbursement of Expenses

The topics will expand as your practice grows, and the manual should be updated accordingly.

A manual sounds ponderous but need not be. As mentioned, keep it on your computer system where you and your staff person can access and update it easily, if authorized to do so. Also have printed copies available. The manuals are important educational tools for your staff. Always emphasize confidentiality with your employees and assume that they have no prior knowledge of any of the points in your manual when you train them. Then you will be certain not to overlook anything of importance.

<h2>SAMPLE PERSONNEL MANUAL</h2>
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### SECTION I.

#### INTRODUCTION

This Policy Manual provides guidelines for the operation of our law office and general statements of firm policy. This Policy Manual is not to be construed as forming a contract between the firm and any employee nor is it intended to constitute a promise of specific treatment. The firm reserves the right to amend or modify its policies whenever the firm, in its sole discretion, determines that circumstances warrant amendment or modification.

All new employees begin with a 90-day orientation period. During this period we both will be able to assess whether the fit feels like one that will work for both of us. Your performance generally will be evaluated at the conclusion of this period. This is an at-will employment relationship. “At will” means that either you or the firm may terminate the relationship at any time with or without cause or advance notice. Your satisfactory completion of the orientation period will not change the at-will character of your employment.

## SECTION II.

### STANDARDS OF CONDUCT

The primary objective of our firm is to provide competent, effective and professional legal services to our clients. In order to accomplish this objective, it is essential that our office operate efficiently in a comfortable and pleasant environment. This environment should foster an esprit de corps and a sense of teamwork. In order to accomplish this objective, it is important that the conduct of each employee conform at all times to the following standards:

#### A. DEALING WITH OUR CLIENTS AND THE GENERAL PUBLIC

1. Reception - keep area clean.
2. Always be courteous and polite.
3. Use correct address/name.
4. Address other attorneys as Mr., Mrs., or Ms. (until given permission otherwise)
5. Treat clients respectfully/maintain composure.
6. Be punctual - with clients or for appointments for the firm.
7. Confidentiality - past and present clients' confidence is total and absolute.
8. Dress in appropriate business attire.
9. Without specific instructions or authority from an attorney within the firm, members of the support staff should not offer or attempt to offer any legal advice or answer any questions which might be construed as the offering of legal advice to any clients or third parties.
10. Remember you are representing the law office at all times.

#### B. GENERAL OFFICE CONDUCT

1. Keep safety a priority for yourself and others.
2. Maintain a positive demeanor, be courteous and polite.
3. Respect co-workers/be mindful of office gossip.
4. Valid co-worker complaints should be reported to the Firm Manager/Office Manager/HR Manager.
5. Distribute incoming faxes/correspondence in timely fashion.



6. Never interrupt an attorney when they are with a client, unless it is an emergency, or if they specifically ask you to do so.

7. Confidentiality - be loyal to the firm, its clients, and co-workers.

8. Personal telephone calls/business should be kept to a minimum.

9. Phone Procedures:

- Answer the phone with, "Good morning/good afternoon, Firm's name, this is [your first name], how may I help you?"
- Be personable/speak clearly
- Obtain caller's phone number and repeat it back to the caller (for ease with callbacks)
- First/last name of caller - make sure spelling of last is correct
- Fill in appropriate blanks on message form and write legibly
- Write message exactly as the caller gives the message.
- If the caller asks for an attorney who is busy, tell the client: "I'm sorry, but he/she is in conference right now, may I take a message?"
- NEVER promise a return call; state that you will give the message to the attorney.
- No information should be given over the phone regarding clients.

#### C. INTERNET, EMAIL, BLOGGING/PERSONAL WEBSITE POLICY

1. **Internet.** The Firm recognizes the business need for employees to have access to the Internet while on the job, using the Firm's computers. As such, the Firm has made the Internet available to employees.

- The Firm intends for the Internet to be accessed for business purposes and expects that employees will spend no more than X minutes per day accessing the Internet for non-business purposes. [or Personal use of the Internet is not prohibited if it does not interfere with job responsibilities and productivity.]
- The Firm specifically prohibits employees from accessing the following types of sites using company computers, unless it is for a pre-approved business need: a) Gambling sites; b) Auction sites; c) Hate sites; d)

Pornographic sites; or e) Any site engaging in or encouraging illegal activity.

- The Firm reserves the right to use monitoring software to make sure the Internet policy is being adhered to by its employees. The Firm may record and/or monitor employees' computers and Internet activity for any reasons and without any specific notice.

**2. Email/Instant Messaging/Texting.** All of the general rules of office conduct apply to electronic communication. Employees have no personal privacy right in anything created, received, or sent on or from the email system. Personal email/instant messaging/texting is prohibited during work hours. [or Personal email/instant messaging/texting is not prohibited if it does not interfere with job responsibilities and productivity.]

**3. Personal Blog/Personal Website.** The Firm recognizes employees may have personal blogs or websites outside of the firm and respects employees privacy and freedom of expression. However, even personal sites may impact professional associations and the Firm has the following policy:

- Employees must make it clear that the views expressed are the employee's alone and do not necessarily represent the views of the Firm and the employee must not make any express or implied endorsements of the Firm
- Respect and maintain all client and Firm confidentiality.
- Be respectful to the Firm, Firm employees, clients, vendors, opposing counsel, opposing clients, judges and co-counsel.
- Understand and comply when the Firm asks that topics not be discussed for client confidentiality or legal compliance reasons.
- Ensure that any blogging or personal website activity does not interfere with your work commitments.

### SECTION III.

#### OFFICE HOURS

Office hours for the firm are from 8:30 a.m. to 5:00 p.m. M-F (except holidays).

Each full-time employee shall be required to work eight (8) hours per day. Each employee will be entitled to one hour per day for lunch and

break purposes (30 min. for lunch, with two 15-min. breaks included). The primary objective will be to provide continuous secretarial support coverage for answering telephones and providing clerical support throughout the firm's office hours.

#### SECTION IV.

##### HOLIDAYS

The firm will observe and recognize the following holidays:

- New Year's Day
- Martin Luther King's Birthday
- Presidents Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans' Day
- Thanksgiving Day
- Day after Thanksgiving Day
- Christmas Day

#### SECTION V.

##### VACATION

Full-time employees of the firm will be entitled to 80 hours paid vacation after the firm has employed them for one year. Once the firm has employed an employee for over five consecutive years, they will be entitled to 120 hours paid vacation. However, employees shall not be entitled to take more than two consecutive weeks of vacation at any one time unless the firm, in its sole discretion, decides that the circumstances justify an exception to this provision and the Firm's Managing Director approves this exception.

Leaves of absence without pay from the firm shall only be taken with the approval of the Firm's Managing Director.

#### SECTION VI.

##### SICK LEAVE

Each full-time employee shall be entitled to 4 hours of paid “sick leave” for each month that the firm employs them. This sick leave may only be used for the following purposes:

1. Dental or doctor appointments;
2. Illness or temporary disability, including pregnancy or childbirth;
3. To care for a newborn, newly adopted or terminally ill child;
4. To care for a child under the age of eighteen when that child may have a health condition that requires supervision or treatment;
5. To care for a spouse, parent, parent-in-law or grandparent with a serious health condition or an emergency condition;
6. To care for an adult child who is incapable of self care because of a physical or mental disability.

There is no limit to how much sick leave an employee may accumulate.

In addition to accumulated sick leave, an employee may use their earned and accumulated vacation and compensatory time for the purpose of being paid during any period where the employee is absent due to sickness or disability or to care for a minor child. Except in very limited instances where the firm, in its sole discretion, decides that the circumstances justify an exception, the maximum time that an employee shall be allowed to be absent from the office for this purpose during any consecutive twelve month period shall be two months. In the event an employee has insufficient sick leave, vacation or compensatory time to use for this time off, they may take an unpaid leave of absence for the balance of this period.

In the event of termination of employment, any employee of the firm will be compensated at one-half the employee’s usual rate of pay for any accumulated and unused sick leave where:

- The employee leaves the firm in good standing; and
- The employee has given the firm appropriate and proper notice (two weeks in advance) of the employee’s intention to terminate his or her employment.

Except in the case of an emergency, an employee shall be required to provide the firm with thirty days advance written notice of the employee’s intent to be absent from the office for more than ten working days because of any temporary disability such as pregnancy or childbirth or elective medical treatment.

## SECTION VII.

### MEDIA AND PRESS

It shall be the general policy of the firm that no employee of the firm shall discuss any client matter with any representative of the media and/or press. The only exception to the policy will be when the client, the responsible attorney and the shareholders of the firm are in agreement that the best interest of the client will be served by discussing the client matter with the media and/or press.

[OTHER SECTIONS WOULD FOLLOW HERE.]

### **General Concepts of Employment Law For Sole Practitioners and Attorneys Practicing in Small Firms**

As an employer, you are obligated to handle each situation individually and with reference to the particular facts and circumstances at hand. While you should strive to be consistent, failure to consider mitigating or aggravating circumstances when making employment decisions can lead to unintended results, and at times, liability. Whenever you become unsure of the appropriate course of action, you would be well advised to contact an employment law attorney for advice and guidance.

This is a summary of some basic principles of employment law that are not referenced or are only tangential to the other materials provided in this section. Do not rely on this material exclusively. It is designed primarily to let you know what you do not know and remind you that there are state requirements and sometimes Federal laws that you must comply with.

#### *Unemployment Insurance*

The statutes relating to unemployment insurance are contained in RCW 50.20 *et seq.* Employment separations are categorized as resignations or discharges to determine eligibility for unemployment payments.

In general, an employee who is discharged from employment will be entitled to unemployment benefits unless discharged for misconduct, as defined by the statute. This means that the employee must have acted in willful or wanton disregard of the rights of an employer or an employer's interest; acted in deliberate violation or disregard of reasonable standards of behavior; acted with carelessness or negligence that could cause bodily harm to the employer or another employee; acted with carelessness or negligence to show a disregard of

the employer's interest. Due to changes to the statute in 2006 misconduct includes, but is not limited to insubordination showing a deliberate refusal to follow the reasonable directions of an employer; repeated inexcusable tardiness after warnings; dishonesty relating to employment; deliberate illegal acts; violation of a company rule if the rule is reasonable and if the employee knew or should have known of the existence of the rule. Under this framework, excessive excused absences, while a good reason to discharge an employee, may not be sufficient to deny the employee unemployment benefits. If the employee was actually sick, or the absences were beyond his/her control, the employee may receive unemployment benefits. The same would be true for an employee who is incapable or performing poorly.

If an employee resigns from his/her position, he/she must show good cause for doing as defined by statute. The statute limits good cause to ten specific qualifying circumstances: 1) if the employee leaves for another bona fide job offer that falls through; 2) the employee leaves due to their own disability or the disability of a family member, subject to certain restrictions; 3) the employee leaves to relocate for a spouse's mandatory military transfer, subject to certain restrictions; 4) the employee's departure was necessary to protect the employee or the employee's immediate family from domestic violence or stalking; 5) the employee's compensation was reduced by 25% or more; 6) the employee's usual hours were reduced by 25% or more; 7) the employee's worksite changed to such a degree that the commute was greater than that of other workers in the field; 8) the safety of the worksite deteriorated, subject to certain reporting restrictions; 9) illegal activities in the worksite, subject to certain reporting restrictions; and 10) the employee's work was changed to work that violates the employee's religious convictions or sincere moral beliefs. An employee who resigns because he/she decides she does not like the hours will not be entitled to benefits unless the hours have changed substantially from the date of hire. An employee, who resigns to pursue further education for other personal reasons, generally is not entitled to benefits. An employee may be granted benefits if the resignation was due to medical problems but in that instance, an employer may apply for a relief of benefit charges.

As an employer, you will pay a tax to the state unemployment insurance fund. The number of claims made by your former employees will affect your tax rate. The change in tax rate means that you may be more interested in your former employees' unemployment claims that you might have thought.

*Fair Labor Standards Act and Washington Minimum Wage Act*

The key to understanding these statutes is recognizing which employees are exempt from these acts. Although many employers think otherwise, the employer's designation of an employee as "exempt" is not controlling and does not have any affect on the employer's obligations if the government disagrees with the employer's label. Essentially, attorneys would be exempt employees, as would office managers. Most other employees, even paralegals, interns, and legal secretaries would not be exempt employees. You must pay each non-exempt employee 1 ½ times their hourly rate for any hours over 40 hours in one week. In addition, you must keep specific records of the hours worked by each of your employees, and what they were paid.

#### *Employee vs. Independent Contractor*

Categorizing an employee as an employee, or an independent contractor, has particular tax ramifications because you are required to deduct Federal Income Tax and Social Security from your employees' paychecks and remit those to the IRS. Again, even if you call an employee an independent contractor, if the Internal Revenue Service disagrees, their label usually controls. While it may seem convenient only to hire independent contractors, these individuals will probably still be treated as employees when it comes to discrimination claims and possibly with regard to Workers' Compensation issues. The IRS has issued guidelines to assist in distinguishing between employees and independent contractors. If you, as the employer, provide the tools and equipment, dictate the hours, control the manner in which the work is performed, you have an employee, not an independent contractor.

### *State vs. Federal Statutes*

Although many Federal statutes will not apply to you as a small business, in many cases there are state statutes that do apply to you and either follow all of the Federal requirements or most of them. You should be particularly aware that the Washington Law Against Discrimination (WLAD) is much broader than the Federal statute. The Washington statute defines marital status as a protected class. In addition, the definition of handicap is so broad under the state statute that any abnormal, medically recognizable condition may be considered a handicap. Although you are not an “employer” as defined by the WLAD if you have fewer than 8 employees, an employee may file suit for discrimination against you under the general WLAD section 49.60.030. **See Roberts v. Dudley, 140 Wn.2d 58 (2000).**

### *At Will Employment*

Although Washington is an “at will” employment state, there are definite exceptions. You may not terminate an employee for discriminatory or retaliatory reasons, or for any reason that would be in violation of public policy. A description of the public policy exceptions is outside the scope of this chapter, but if you are terminating someone for reasons other than inability to perform or misconduct, you may want to consult your employment law attorney about public policy considerations. Also, as discussed in the next section, employee handbooks or employment contracts may place constraints on your ability to hire and fire “at will”.

### *Employment Agreements*

You would be well advised not to establish employment contracts with non-attorney employees. These contracts are usually unnecessary and may be used to file suit on breach of contract grounds if the employee is terminated. If you establish employment agreements with your attorney staff, make sure that you include a disclaimer stating that although the contract establishes pay, billable requirements, leave entitlements, and other benefit and compensation entitlements, it does not abrogate the employment “at will” rights of the employer and employee. Do not outline reasons for terminating the employee because it may be read as an exclusive list. If you terminated the employee for a reason not on the list, it may be found to be a breach of contract. If you include non-compete terms, they must be reasonable in time and scope or they will be found to be invalid and stricken completely, or modified by the court to be reasonable. Keep in mind that non-competition agreements for attorney employees violate RPC 5.6(“Restrictions on Right to Practice”).

### *Employee Handbooks and Policy Manuals*



Be careful about your employee handbook. You should probably have one to establish minimum expectations, but you must include disclaimers. Absent disclaimers, the courts may read your handbook as an employment contract that takes away your ability to hire and fire at will. See *Thompson v. St. Regis Paper Company*, 102 Wn.2d 219 (1984). If an employer “creates an atmosphere of job security and fair treatment with promises of specific treatment in specific situations and an employee is induced to remain on the job and not actively seeking other employment, those promises are enforceable components of the employment relationship.” *Id.* at 230.

In order to avoid your employee handbook or policy manual being construed as a contract, the following principles should be followed:

It may be that statements will not always bind employers in employment manuals. They can specifically state in a conspicuous manner that nothing contained therein is intended to be part of the employment relationship and are simply general statements of company policy.

Additionally, policy statements as written may not amount to promises of specific treatment and merely be general statements of company policy and, thus, not binding.

Moreover, the employer may specifically reserve a right to modify those policies or write them in a manner that retains discretion to the employer. *Thompson*, 102 Wn.2d at 230-31.

In brief, there should be a disclaimer at the beginning of the handbook or manual and in any section that may appear to promise specific treatment in specific situations. For example, if you decide to implement a progressive discipline process for most problems, make sure you say that each step is at the employer’s sole discretion and make a statement that the guidelines do not abrogate the “at will” relationship. Also, even without a policy, be careful of always treating absence problems or misconduct in exactly the same way regardless of the particular facts. Your actions can create an implied agreement.

### *Criminal and Civil Penalties*

There are a number of “small” statutes that provide for criminal sanctions on the basis of a misdemeanor or gross misdemeanor charge for violating the statute. Refer to the index of selected statutes below.

## **Appendix A: Index of Appropriate Statutes with Title and Descriptive Headings**

Please note that this is not an exhaustive listing of statutes that apply to businesses and/or employers but are the statutes that are most applicable to small businesses. The federal statutes are not listed here – the one that is most critical for small employers is the Family Medical Leave Act because there is a corresponding state statute. The ERISA statute may be important if, or when, you decided to provide health care and/or retirement benefits or other benefits of that nature to employees.

You should be aware that if you provide health/retirement benefits to any employees, you are required to provide them for all employees at the same cost. If you decided to implement a benefits plan, you should retain a benefits management company to manage your benefit plan. ERISA requirements are so complicated that even attorneys practicing only in ERISA law have trouble keeping up with changes and keeping in mind how the various sections function together. Finally, if you are ever unsure about employment law matters, consult with a colleague knowledgeable and experienced in employment law.

### **RCW 19.182 Fair Credit Reporting Act**

1. 19.182.010, Definitions. (8) “Employment Purposes,” ...means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.
2. 19.182.020, Consumer Report – Furnishing – Procuring, a consumer reporting agency may furnish a report to a person who intends to use the information for employment purposes.
3. 19.182.050, Investigative consumer report – Procurement, preparation – Disclosure – Use – Liability – Record.
4. 19.182.060, Consumer report – Procedures for compliance – Information for governmental agency – Record.
5. 19.182.110, Adverse action based on report – Procedure – Notice. Must provide the employee/applicant with written notice if taking adverse action based on the report.

### **RCW 49.12 Industrial Welfare (Footnote References)**

1. 49.12.000, Definitions, An employer is any person or business which employs one or more employees. Also defines condition of labor.
2. 49.12.010, Declaration, Welfare of state demands that employees be protected from conditions of labor that adversely affect their health.

3. 49.12.020, Conditions of Employment – Wages, it is unlawful to employ workers at wages inadequate for their maintenance.
4. 49.12.041, Investigation of Wages, Hours and Working Conditions – Statements, Inspections Authorized, The Department of Labor and Industries is responsible for investigating wages, hours, and working conditions of all employees.
5. 49.12.050, Employer's Record of All Employees, All employers must keep records of names of all employees and permit department to inspect it.
6. 49.12.091-120. Investigation Information -- Findings -- Rules Prescribing Minimum Wages, Working Conditions Addresses administrative procedures upon finding a violation of laws relating to the employment of minors.
7. 49.12.130, Witness Protected – Penalty, Employer who discriminates or retaliates against employee because employee may act as a witness in proceedings under this chapter is guilty of a misdemeanor.
8. 49.12.140, Complaint of Non-Compliance, Employees may file complaints against employers with the department.
9. 49.12.150, Civil Action to Recover Underpayment, An underpaid employee may file a civil action and recover payment with costs and attorneys' fees.
10. 49.12.170, Penalty, Violation of provisions of this chapter is a misdemeanor.
11. 49.12.175, Wage Discrimination Due to Sex Prohibited – Penalty – Civil Recovery, It is a misdemeanor to discriminate in wages based on sex. Employee may pursue a civil action to recover the difference.
12. 49.12.240, Employee Inspection of Personnel File, At least annually, upon request of employee, employee shall be permitted to inspect any or all personnel files maintained by employer.
13. 49.12.250, Employee Inspection of Personnel File – Erroneous or Disputed Information, Employee may submit corrections or rebuttals to be placed in personnel file as long as submitted within 2 years of entry of incorrect or disputed document.
14. 49.12.260, Employee Inspection of Personnel file – Limitations, Employee may not have access to documents related to investigation of a criminal offense or records compiled for impending lawsuit.
15. 49.12.265, Sick leave, time off – Care of family members – Definitions. Defines “family members”, which includes child, spouse,

grandparent, parent, parent-in-law; also defines “sick leave or other paid time off.”

15. 49.12.270, Sick Leave, time off – Care of family members, Employer shall allow employee to use accrued sick leave to care for a family members as defined in 49.12.265.

16. 49.12.275, Sick Leave to Care for Family Members – Poster required, Employer must display department’s poster in a conspicuous place accessible by employees.

17. 49.12.280-295, Sick Leave, Time Off -- Care of Family Members -- Administration and Enforcement. Relates to the department administration of sick leave for sick family members statute.

18. 49.12.350, Parental leave – Legislative Findings, Employers who grant leave to employees to care for a newborn child must make the same leave available on the same terms for adoptive parents and stepparents, men and women.

19. 49.12.360, Parental Leave – Discrimination Prohibited, specific requirements of parental leave established.

#### **RCW 49.17 Washington Industrial Safety and Health Act**

20. 49.17.010, Purpose, Standards established to ensure safe and healthful workplace, employers must meet or exceed federal Occupations Safety and Health Act. Note: white out, copier and printer toner, and batteries are regulated by these statutes as well as obvious hazards like loose cords and open file drawers.

21. 49.17.020, Definitions, Employer is any person or business which employs one or more employees.

22. 49.17.060, Employer – General Safety Standard – Compliance, Employer shall furnish to each employee a place of employment free from hazards causing or likely to cause serious injury or death.

#### **RCW 49.44**

23. 49.44.010, Blacklisting, – Penalty, misdemeanor to willfully or maliciously making statements to prevent another from obtaining employment

24. 49.44.040 – Obtaining Employment by False Letter or Certificate, misdemeanor to obtain employment by a false or forged letter or recommendation

25. 49.44.090 – Unfair Practices in Employment Because of Age of Employee or Application – Exceptions, It is an unfair practice to discriminate against an individual in employment over the age of forty including publishing any employment statement indicating discrimination based on age.

26. 49.44.120, Requiring a Lie Detector Test, Unlawful for any employer to required a prospective or current employee to take a lie detector test as a condition of employment.

27. 49.44.130, Requiring Lie Detector Tests – Criminal Penalty, Any person requiring a lie detector test is guilty of a misdemeanor.

28. 49.44.135, Requiring Lie Detector Tests – Civil Penalty and Damages – Attorneys’ Fee, in a civil action, court may award \$500 in addition to actual damages, attorneys’ fees to prevailing party.

#### **RCW 49.46 Minimum Wage Act**

29. 49.46.005, Minimum Wage Act – Declaration of Necessity and Police Power.

30. 49.46.010, Minimum Wage Act – Definitions, Defines employer, employee, and those exempt from the requirements of this chapter.

31. 49.46.020, Minimum Hourly Wage, Currently (2009) \$8.55 per hour to be adjusted each year.

32. 49.46.040, Investigation – Services of Federal Agencies – Employer’s Records – Industrial Homework, Employers are required to make, keep, and preserve records of hours, wages, and other conditions and practices of employment, the department is authorized to investigate and gather such data.

33. 49.46.070, Records of Employer – Contents – Inspection – Sworn Statement, Employer must keep record of name, address, occupation, rate of pay, amount paid each pay period, the hours worked and must produce for inspection by the department.

34. 49.46.090, Payment of Wages Less Than Chapter Requirement – Employers Liability – Assignment of Wage Claim, Permits the department to pursue wage claim on behalf of employees, employer required to pay the cost and reasonable attorneys’ fees for such action.

35. 49.46.100, Prohibited Acts of the Employer – Penalty, Employer who interferes with department investigation, or retaliates against an employee who complains to department or participates in investigation, is subject to penalty for a gross misdemeanor.

36. 49.46.120, Chapter establishes minimum standards and is supplementary to other laws – More favorable standards unaffected.

37. 49.46.130, Minimum Rate of Compensation for Employment in Excess of Forty Hours Work Week – Exceptions, Employer must pay non-exempt employees one-and-one-half times hourly rate for hours exceeding 40 hours in a week unless exception applies.

38. 49.46.910, Short Title, This chapter is the Washington Minimum Wage Act.

#### **RCW 49.52 Wages – Deductions – contributions – rebates**

39. 49.52.050, Rebates of wages – False Records – Penalty, Any employer who willfully withholds wages or pays a lower wage than obligated is guilty of a misdemeanor.

40. 49.52.060, Authorized withholding, An employer may not withhold amounts from employee's pay unless it is required by law or has been authorized in advance in writing by the employee for a purpose that benefits the employee.

#### **RCW 49.60 Washington Law Against Discrimination**

39. 49.60.010, Purpose of Chapter, Law Against Discrimination, declares practices of discrimination based on race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or use of a trained service animal are against the public interest. Note: The state law provides protection for categories of persons not protected by the Federal civil rights statute. **NOTE:** This section has been applied by the Washington Supreme Court to support a tort action against an employer even though the employer had fewer than eight employees, *Roberts v. Dudley*, 140 Wn.2d 58 (2000)\_cf. Griffin v. Eller, 130 Wn.2d 58, 922 P.2d 788 (1996).

40. 49.60.020, Construction of Chapter – Election of Other Remedies, Chapter to be Construed Liberally to Protect Citizens. Nothing in the chapter repeals or otherwise affects person's ability to use other available remedies.

41. 49.60.030, Freedom from Discrimination – Declaration of Civil Rights.

42. 49.60.040, Definitions, employer is any person acting as an employer who employs eight or more persons. But see Roberts v. Dudley 140 Wn.2d 58 (2000). Gives only a broad definition of employee. The statute has been interpreted to provide protection to independent contractors, WAC 162-16.230.

43. 49.60.050, Commission Created, Establishes Human Rights Commission.

44. 49.60.100 through 170 describe the powers, duties and responsibilities of the commission.

45. 49.60.172, Unfair Practices with Respect to HIV Infection, Employers may not require an HIV test as a condition of employment unless absence of HIV is a bona fide occupations qualification. Employers are immune from civil action based upon transmission of HIV from employee unless transmission is the result of employer's gross negligence.

46. 49.60.174, Evaluation of Claim of Discrimination – Actual or Perceived HIV Infection.

47. 49.60.180, Unfair Practices of Employers, unfair practices include refusing to hire, discharging, discriminating in compensation, based upon protected class. Also, advertising for employment which expresses any limitation on employment based upon membership of a protected class unless based upon a bona fide occupational qualification.

48. 49.60.210, Unfair Practices – Discrimination Against Person Opposing Unfair Practice – Retaliation Against Whistleblower.

49. 49.60.220, Unfair practice to aid in violation.

50. 49.60.230 - 310, Procedures for Filing and Processing a Complaint Against a Person in Violation of Chapter. Complaint must be filed within 6 months of the incident.

51. 49.60.400, Affirmative Action – Discrimination Prohibited.

## **RCW 49.78 Family Leave**

52. 49.78.010, Legislative findings, The legislature finds it is in the public interest to provide reasonable leave for medical reasons, for the birth or placement of a child, and for the care of a family member who has a serious health condition.

53. 49.78.020, Definitions. Defines “Employer” as an entity which employs fifty or more employees.

## **Regulations**

### **WAC 162-12**

162-12-140, This WAC provides a fairly comprehensive listing of permissible and impermissible pre-employment inquiries

**WAC 162-16**

162-16-230, States that the Law Against Discrimination applies to independent contractors.

162-16-260, Describes appropriate and inappropriate advertising language to comply with Law Against Discrimination.

**WAC 162-22**

162-22-065, Reasonable Accommodation, Explains requirements of accommodating employees with disabilities.

**WAC 296-126**

296-126-025 and -028, Explain what you can and cannot withhold from an employee's paycheck and distinguishes between final paycheck and ongoing employment.

**WAC 296-130**

296-130-020, Definitions for the RCW 49.12.265 - .295; employer includes any entity with one or more employees.



## Chapter Nine: Building Your Practice in Today's Marketplace

None of us likes the words “marketing” and “selling.” Nonetheless, clients “perceive” you and buy your services, so aspects of marketing and selling inevitably take place regardless of intention.<sup>16</sup>

As a professional, you provide services—not products. Before people commit to benefiting from your services, they evaluate you. That “evaluation” uses a variety of sources of information. Word-of-mouth referral is the most powerful source of information. Direct observation of you in a public forum such as a seminar or social event is another. A third source is your yellow pages advertising and/or website. Another might be a news article that mentions you by name.

As a “public citizen”<sup>17</sup> you are “on display.” If you do no overt “marketing” you remain on display nonetheless. Your reputation and conduct as a professional inexorably builds your image in the public and legal communities. Influence this process and prosper!

### The Lay of the Land

No one has a monopoly on the “legal market.” Your particular skills, personality, and level of service will attract clients despite similar efforts of other lawyers. You are unique in that sense. While clients assume you are competent, they can only hope you will listen, provide good service, and understand their objectives.

Remember that the market for legal services is even more universal than the market for medical services. An attorney assists individuals *and* legal entities on practically all aspects of living and working in society. A physician assists only individuals and only usually when they are ill.

A definition of a market and related concepts are

*MARKET* – (1) people who possess the ability and desire or need to purchase; (2) a geographical area that includes a significant number of potential customers; (3) an estimated or realized demand for an item or service.

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<sup>16</sup> Caution: If you are starting out in practice, do not accept too much work too soon. Why? You need the time to develop your workflow systems and procedures and test them. You also need to learn new software. After a couple of months you can accept more clients.

<sup>17</sup> [1] [Washington revision] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the court and a public citizen having special responsibility for the quality of justice. Excerpted from *Preamble: A Lawyer's Responsibilities*, Rules of Professional Conduct amended effective September 1, 2006

*MARKETING* – activities that accelerate the movement of goods and services from the manufacturer to the consumer, including everything connected with advertising, distribution, merchandising, product planning, promotion, publicity, R&D, sales, transportation and warehousing of goods or services.

*MARKETING MIX*—Prof. Neil Borden of the Harvard Business School, was the originator of the famous four Ps concept or the “Marketing Mix.” J. McCarthy propagated it as basic to strategy in his book: *Basic Marketing*. The marketing mix consists of everything the firm can do to influence the demand for its product. The many possibilities can be collected into four groups of variables known as the “Four Ps”: *Product (Service), Price, Place, and Promotion*.

**Product (Service):** It means the goods and service combination the company offers to the target market.

**Price:** The amount of money the customer has to pay to obtain the product.

**Place:** It includes the company’s activities that make the product available to target consumers.

**Promotion:** The activities that communicate the merits of the product and persuade target customers to buy it.

A marketing program will blend all of the marketing mix elements into a coordinated program. Design the program to achieve the firm’s marketing objectives by delivering *value* to consumers.

The law is as varied as society itself. You have a wide choice of specialties. Your choices may become fewer as you choose geographic area, a rural or a city practice, a personal/family practice or a commercial practice. No choice is irrevocable. Talking it over with colleagues and friends also helps. In the end, you should choose a practice that is the best fit for your own personality, goals and ambitions.

As mentioned, your choice of practice area is not irrevocable, yet consider it carefully. Match it (or them) to your personality and strengths. Your practice specialty may likely change over time. Internet IP did not exist until recently for example. You may prefer a general practice that brings you into contact with companies and individuals. Each respective practice specialty imposes on you certain

- tasks
- objectives
- types of clients

- level of paperwork
- interruptions
- data gathering
- meetings
- desk work
- travel
- communication
- level of client sophistication.

Ponder these aspects as you consider your direction or redirection.

Remember that your practice area will dictate how you build that particular practice. For example, your estate planning practice may call for you to become familiar with AARP and preparing presentations to groups interested in having a will. Your corporate practice may benefit from you being a member of the local Rotary Club or similar organization to facilitate networking with business people. Your personal injury practice may most benefit from having a more than modest investment in advertising.

Competition does exist, of course—now more than ever. There are 30,000 members of the WSBA.<sup>18</sup> Your law school classmates are your competition as are accounting firms and work going to in-house counsel. The Internet is competition both locally and internationally.

#### **Active WSBA Members by County**

King	12,859	57.3%
Pierce	1,704	7.6%
Spokane	1,541	6.9%
Thurston	1,264	5.6%
Snohomish	1,092	4.9%
Clark	612	2.7%
Kitsap	568	2.5%
Other Counties	2,814	12.5%
<b>TOTAL</b>	<b>22,454</b>	<b>100%</b>

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<sup>18</sup> About 60% practice in solo or small firm settings; Active members in Washington total 22,454. Source: WSBA Demographics Quarterly Count Sheet

Alternatively, these factors may represent opportunities. Referrals of cases from other lawyers often support a large portion of a lawyer's practice. Cultivate referrals carefully and deliberately. The Internet is a force that you must understand and harness.

If you have an overriding desire to live in a certain place, be prepared to tailor your practice (and perhaps standard of living) to the demographic market and resources of that geographical area.

Lastly, it is a good idea to consider what clients typically think and expect. Clients with experience using counsel are usually easier to communicate with about case strategies or settlement recommendations. A first-time user of counsel may require handholding and copious explanations about the reasons for your action or inaction in a particular matter. How does your personality measure up to these respective realities?

### **Becoming Known in the Community**

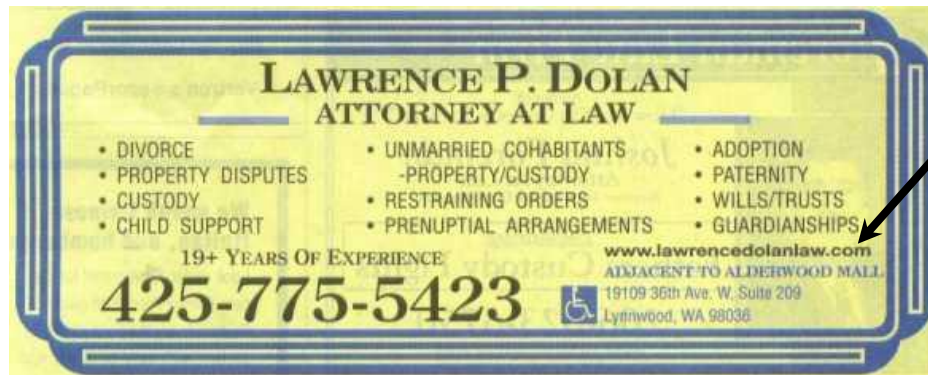
Becoming known in the community is the process of establishing your reputation among your colleagues and the public. To a certain extent, this happens of its own accord. Obviously, you have the largest role to play in fostering your network and how well that network perceives you.

Let's consider the three reputations that you have. Your **professional reputation** establishes you among colleagues. Your practice area, integrity, honesty, level of service, knowledge of the law and how easy you are to deal with all come into play. Your **social reputation** establishes you among colleagues, friends, family and staff. Your social reputation includes how others perceive your table manners, use of alcohol (if applicable) and general social bearing as you engage in professional activities, hobbies, sports activities and cultural interests. Your **street reputation** establishes how you are perceived by staff. Your street reputation describes your office and how you handle the management of your practice. Examples are your level of professionalism and respect when communicating with your staff, non-monetary fringe benefits such as staff scheduling flexibility and, of course, your management of anger and how you communicate reprimands. All of these networks can attract or repel new clients and staff applications, all depending on you.

Staff can be a good source of new work from their church groups, families and friends. This will be all the more so if you administer your office in a humane fashion. Treat staff as the professionals they are by clearly articulating objectives, praising publicly, counseling privately, and sharing case information in a consistent and deliberate

fashion. You will realize growing loyalty and attract employment applications from the best people. This is your street reputation.

Is advertising worth it? Advertising in the yellow pages is expensive but many lawyers agree that it is indispensable for a “retail” practice. A retail practice looks to the general public for a majority of its cases, in contrast to representing entities.



Yellow Pages Ad Referencing a Website  
(Example used by permission.)

The Internet is important and can complement your yellow pages advertising by allowing a smaller yellow pages ad with reference to your more expansive website. Church bulletins, neighborhood mail packets, chamber of commerce maps and airline magazines can be effective for targeting certain demographic groupings for certain periods of time. Refer to RPC Title 7, *Information About Legal Services*, for further guidance about the limitations of the use of advertising. Use photographs of yourself in both the yellow pages and the website. Photographs give the reader another way to link with you as a potential provider of service. The photograph can help a prospect decide whom to call about his or her likely stress-inducing matter. Be sure to smile!

A logo is a visual symbol of your practice. There is nothing wrong with using a logo. The logo can be your firm name in a unique font and/or color. The logo can be the color paper you use for correspondence. The logo can be a design that uses art, letters, symbols, shapes or a photograph. Many people react favorably to visual input. People remember the logo before remembering a name.

A website requires planning. There are templates or models of websites for lawyers that are easy to implement. Look at other lawyer websites to help start your thinking about how you want the website to support your practice.

Do not let the thought of public speaking deter you from participating in seminars either individually or as a member of a panel. Consider making yourself available to present with other professionals such as accountants, bankers and insurance people. Join a local Toastmasters Club to help develop your skills in a supportive forum—and thereby extend your network! Labor and employment law especially lend themselves to occasional “updates” meriting periodic presentations.

Business cards are essential. Always have them handy—including in your blue jeans on weekends! Use better quality card stock. Consider including information on the back of the card that describes your practice in layman’s terms. For a DUI practice, you may include on the card certain tips for communicating appropriately with the police. Use a font size and design that are easy to read, particularly if you represent elderly clients.

Your networking includes your volunteer time on non-profit boards, committees, projects and municipal or charitable activities. These groups appreciate having a lawyer as a member.

### **Becoming Known Among Lawyers**

Your professional reputation establishes you among colleagues. Among your colleagues, you want to cultivate referrals that fit into your practice goals. It is, of course, a two-way street. Be alert to refer out cases that may repay you with a fair return of new work. Your professional reputation defines how others will gauge any risk of referring matters to you in terms of probable return referrals, client comfort and your getting the work done timely. Referrals arise because the lawyer has an unwaivable conflict, the work required is beyond the lawyer’s capabilities or the lawyer’s schedule precludes additional work. Another reason is that the lawyer may not feel totally comfortable with the client’s personality or other circumstances of the matter. Always write a thank-you note for referrals whether you accept the matter or not.

Do not overlook opportunities for leadership within the profession. The WSBA includes a variety of sections that offer the lawyer the opportunity to meet other lawyers with similar practice interests. Consult your local or specialty bar in your area for similar opportunities. Sections and specialty bar associations may have referral mechanisms such as list serves, discussion groups and a case referral service for the public.



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### WSBA Practice Sections

WSBA sections provide a forum for members to pursue their interests in various areas of the law. Among other things, sections support the continuing legal education of lawyers, cooperate in the development of the WSBA's legislative program, organize and inform section members of issues and events in their areas of interest, and foster collegiality among members.

#### Section Websites:

- [Administrative Law](#)
- [Animal Law](#)
- [Antitrust, Consumer Protection and Unfair Business Practices](#)
- [Business Law](#)
- [Construction Law](#)
- [Corporate Law Department](#)
- [Creditor-Debtor](#)
- [Criminal Law](#)
- [Dispute Resolution](#)
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Volunteering as faculty for CLE events is a good way to meet other lawyers who are co-presenters as well as the attendees themselves. This activity enables you to enhance your professional credentials in a very visible fashion.

There are also boards and committees of the bar that provide opportunities to shape policy as well as meet other lawyers. The WSBA offers such opportunities to serve on committees, boards and panels. Contact your congressional district Board of Governors member for further information. See next page for the WSBA webpage describing opportunities for leadership and visibility. Your commitment to a better legal profession can only enhance your professional reputation and attract referrals.

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### WSBA Standing Committees/Boards/Panels/Special Board of Governors Committees

Under the [WSBA Bylaws](#), the Board of Governors authorizes standing committees to investigate matters relating to the general purposes and business of the Bar that are of a continuous and recurring nature.

The Board authorizes special committees and task forces to investigate matters relating to specific purposes and business of the Bar that are of an immediate or nonrecurring character.

#### Standing Committees/Boards/ Panels

- [Adjunct Investigative Counsel \(AIC\) Panel](#)
- [Alternative Dispute Resolution Committee](#)
- [Amicus Brief Committee](#)
- [Bar Examiners Committee](#)
- [Character and Fitness Board](#)
- [Civil Rights Committee](#)
- [Committee on Public Defense](#)
- [Continuing Legal Education Committee](#)
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You may wish to consider formally or informally mentoring or otherwise assisting newer practitioners who may have a future need to refer matters to you.

## Measuring Prospects

An important rule is to avoid just accepting any matter that comes in the door. Retain control of your law practice by proactively assessing each potential client opportunity. Be prepared to turn some prospects down. Each new matter that you do accept is a major commitment of time, hard work, communication and attention. The new matter should fit as easily as possible into your competence to practice (or to reasonably reach that level relatively quickly), your case calendar, your personal calendar and your *personality*. You may say that you “are not accepting any new matters for the time being.”

Listen very carefully to what the prospect says and how the prospect says it. Are other family or friends doing the talking? Repeat what you understand the matter to be about. Ask questions. After hearing the facts and circumstances of the matter, always ask the prospect,



*“What do you want me to do?”* The answer may vary very much from what you might think is appropriate. Better to know this now!

The Internet makes it easy to do a cursory background check to verify address, date of birth, financial resources, etc. Use these tools whenever your gut tells you to!

Before accepting a matter, be sure to perform a conflict-of-interest check. If an unwaivable conflict arises or you simply wish to decline representation, use a “non-engagement” letter to describe this fact and cite the possible existence of a statute of limitations and encourage seeking other counsel.

### **Defining Client Relations**

Use the engagement letter or fee agreement to describe the client’s obligations to you and the matter. Describe the scope of representation and what you are *not* going to do. You may wish to have a more limited scope for certain clients whom you have some doubts about. A limited scope such as only investigation can benefit the client by limiting the initial cost and allowing a chance to reassess the merits of the case at a later date. Depending on the circumstances, include reference to RPC 1.16, *Declining or Terminating Representation*.

Clients want to feel cared for. Repeat, clients want to feel cared for. Clients worry little about whether you know the law or legal procedure as long as they have some sense that you have successfully handled similar cases. What will set you apart from other lawyers is your attention to communication and caring.

You may even want to use a “communication plan” for certain clients and matters. An important part of such a plan is to return telephone calls timely. Email is another matter, however. We already receive too much email! Inform your client of your policy about responding to telephone calls and email thus to avoid unrealistic expectations. It is also a good idea to obtain permission from your client to use email. Remember that each client owes you:

- To appear at meetings
- To make key decisions
- To provide documents
- To provide evidence
- To return your telephone calls
- To allow you to manage the case
- To respect your judgment

- To pay your bill timely

Often, these points go awry and the lawyer is left with dealing defensively with a very unpleasant situation.

### **Ending the Engagement**

Every lawyer reaches this hurdle at some point. Prematurely ending the engagement may be required by the RPCs or you may reach this conclusion on your own. In either event it is best for you to separate yourself from a situation that, if continued, can only harm you professionally or psychologically—or both. Consider it to be what it is: *a business decision*. Make the decision, inform those affected, meet your ethical obligations, implement the decision and move on. Do not internalize the situation as a personal failure. Internalizing leads nowhere but to unnecessary grief.

A disengagement letter ensures that you are adequately communicating the fact of your withdrawal and the corresponding reason(s). Consult RPC 1.16, *Declining or Terminating Representation*, for your ethical obligations and protection of client interests.

A closing engagement letter declares the matter completed and that no further work will be performed on the client's behalf. You may wish to include a short survey for the client to complete. Return of the survey helps prove receipt of the closing engagement letter. In the closing engagement letter you may also choose to ask the client to refer other possible clients to your office.

At the conclusion of the representation of a client, the client often requests a copy of the "file." If the lawyer's fees remain unpaid, the lawyer may want to assert lien rights. If no lien rights are claimed, a question often arises as to what parts of the file must be provided and whether the lawyer can charge the client for the expense of copying the file. See **Formal Opinion 181 (1987)**, *Asserting Possessory Lien Rights and Responding to Former Client's Request for Files*

### **Keeping Perspective**

When you were in law school, the law was what you studied and you began to learn to "think like a lawyer." Law schools are not concerned with building your practice and client relations. Good client relations defines the successful practice from the unsuccessful practice. The law, alas, is "a people business." This may be the basis for your love of the law and motivate you to help people obtain all of their rights under the law.

Being people, clients are also prone to failings. You will be disappointed many times during your career by the clients who seemed so worthy and easy to work with at the beginning of the client relationship. Clients may later fail to meet their obligations to you in a variety of ways.

Your main concern is the quality of your clients and you can define what “quality” means. Ask other lawyers what their views are about client relations and minimizing the problems and issues described in this chapter. Use good client intake practices. Ensure you know client expectations of the outcome of the matter by asking what those expectations are. Document mutual obligations and end engagements when necessary.

Always remember that clients simply want to feel cared for, so do not overlook the communication courtesies. You will soon see that even if the matter did not resolve exactly to the client’s expectations, the client will appreciate how he or she was handled by your office...and come back again.

*You have a successful law practice when your clients are referring potential clients to you!*

## Chapter Ten: Balance

***Balance.*** Without it, we cannot stand up much less walk, ride a motorcycle, or ski. Likewise, without balance in our personal and professional lives, things tend to go sideways. That is why we're devoting a section of Up and Running to the topic.

We constantly make choices about allocating our most precious resource, time. The more conscious and informed these choices, the less stressed and more productive we will be. So let's ask and answer some of your questions about balance.

### **What do we mean by balance, specifically?**

First, let's look at balance inside your law practice. When you open your solo practice, you acquire three hats (see Michael Gerber's *The E-Myth Revisited: Why Most Small Businesses Don't Work* for a complete explication of this idea). The first hat is the Technician. Since your business is law, this is your lawyer hat. Wearing this hat, you provide legal services to your clients. Law school prepared you for this role.

The second hat is labeled Manager. Wearing this hat, you manage trust accounts, accounts payable and receivable, filing systems and calendars, staff (if any), and every other aspects of running a business. You are reading Up and Running for help with fulfilling this role.

The third hat is labeled Marketer. Without clients, you have no practice. Where will they come from? The Marketer's role is to generate business. You may or may not have experience developing a client base. If you've never learned how to develop clients, you may shy away from this role. See the chapter in this book titled "Building Your Practice in Today's Marketplace" for suggestions.

Many solo practitioners are less successful than they could be because they neglect one or more of these roles. Most of you attended law school so that you could wear the Technician hat and provide legal services to people. But you may have little or no training – or interest – in the other two roles that come with the job, Manager and Marketer.

Nevertheless, there they are. Neglect the Manager and Marketer hats, and your law practice will either shrivel up and die or careen out of

control. But if you allocate – or balance – sufficient time to play all three roles well, your law practice is likely to thrive.

Second, let's consider balance between work and the rest of your life. Picture a giant pie divided into 24 slices of one hour each. Sleep occupies a chunk of those slices; the remaining hours are allocated – either by choice or default – to the other categories you have or want in your life. Those categories might include Work, Family, Friends, Life Maintenance, Exercise, Recreation, Spiritual Pursuits, and so on.

Everyone has a pie. The categories and number of slices you choose are an individual matter. In other words, there is no moral imperative requiring you to allocate an absolute number of slices to various categories of your day. For example, some people require eight hours of sleep while others need only six. The person next door might accomplish work in seven hours that takes you ten. We are all different.

We get into trouble when our needs or values do not match our time allocations. For example, if you need nine hours of sleep and routinely get five, you will eventually get sick. If influencing your children positively is important to you but you rarely see them, internal conflict will develop because your values don't match your behavior. If you need to work at your practice ten hours per day to get it going but are spending only five, it will struggle to survive.

You see the problem: when we don't allocate time for the things we need and value most, conflict arises. Imbalances in major life areas create stress and disease.

**Why should I think about life balance when I'm trying to get a law practice going?**

As noted above, life imbalance produces stress and disease. Chronic stress can lead to physical illness, strained relationships, and poor quality of life. Stress can also lead to poor client service. Poor client service frequently leads to bar complaints.

We'd like you to stay out of trouble. That being said, you will need to pay close attention to all of your slices of pie. It's easy to spend too much time on your practice; it's also easy to spend too little.

A new practice is a lot like an infant. It needs a whole lot of attention and TLC for the first months and years. With proper care and feeding, it will grow up to be big and strong. Only then will it be in a position to take care of you.

Most new parents are sleep deprived for awhile. As you set out to grow your practice, you may be, too. Pay attention to your practice's needs to gauge how much time it actually requires. You want to work hard, of course, but you also want to work smart.

### **How can I tell if I'm out of balance?**

Problems tend to pop up when we're out of balance. Examples – complaints from significant others; kids act out; bills aren't sent out, leading to financial problems; friends stop inviting you to do things.

Burnout and other symptoms of disease can also emerge. Examples – you may find yourself: dreading going to the office; unable to listen to phone messages; missing deadlines; receiving (or ignoring) angry calls from clients. You may: use alcohol or prescription drugs to relax or cope; gain or lose weight; sleep too little or too much; stop caring or worry constantly.

These are all warning signals, information to you that something is seriously amiss. Don't ignore them – they can save your practice and even your life.

### **How can I possibly achieve a balanced life when the practice takes all my time?**

Use your calendar to block out times to attend to whatever is being neglected, be it personal or professional. Calendaring events can be more effective than generating a lengthy to-do list. See the Operations chapter of this book for calendaring suggestions.

Plan and calendar non-work activities in small increments. We tend to think that we have to block out big chunks of time for things like exercise or recreation, for example. Then we judge this use of time as impractical or irresponsible and therefore never get around to spending any time at all on these activities.

Instead, figure out ways to give yourself mini-breaks throughout your day and week. Ten minutes of exercise, walking the dog, having coffee with a colleague, or playing the guitar are much better than zero minutes.

Identify your Time Thieves. Some lawyers spend the first couple of hours at their desks reading the New York Times, playing solitaire, surfing the Internet, or reading email. These activities, while not necessarily unwholesome in their own right, have Time Thief potential. How can you tell if an activity is productive or a Time Thief?

Time Thieves usually serve a covert purpose. Often this purpose is avoidance of the work that really needs to be done. Consciously, we feel entitled to engage in Thief behavior – we feel we need to be informed, ease into our day, or to have some fun before the real work begins. Unconsciously, we may be hiding from ourselves or others.

The bottom line is this: any activity that derails you from your intention for the minute, hour, or day is probably a Time Thief. The time you lose to these activities has to be added onto your day somewhere, sometime. The more you are able to minimize or eliminate your particular Time Thieves, the more time you have to devote to both work and non-work activities.

### **What are some obstacles to balance?**

We create many obstacles between our ears in the form of beliefs and rules we were taught or made up on our own. Think for a moment about messages you received from parents, teachers, employers, etc. about Work and Career, or conclusions you've drawn from your own experience. Here are a few examples:

- No pain, no gain
- Work is called work for a reason
- Income determines success
- You have to work hard to get ahead
- I don't deserve down time until I'm successful
- I don't want to look like a loser
- I'll work like crazy and then retire early
- Working all the time is a badge of honor (and thus makes you superior to those who don't)

Again, there is nothing wrong, necessarily, with any of the ideas above. Problems crop up when we are unaware of our motivations and the beliefs that drive our everyday decisions.

Isolation is another obstacle to balance in that the less contact we have with our peers and families, the more skewed our point of reference can become. Isolation is an occupational hazard for lawyers, especially solo practitioners. It's easy to forget what "normal" people do in their lives when you and your peers are working 12 hours a day.

I'm overwhelmed by the complexities of practicing law and running a business. This manual is full of information about how to run a practice, but I end up spinning my wheels and accomplishing little. What's wrong?

To answer this question, we'd like to ask a few of our own. How good a fit is a solo or small practice for you? Does it play to your strengths more than your weaknesses?

The issue of fit is essential. Here are several factors to consider:

- Willingness to wear The Three Hats
- Credit history and credit/capital available to you
- Comfort with taking risks
- Able to provide your own structure
- Ability to devote more than a 40 hour work week, at least at first
- Ability to create and maintain a team of advisors (if you are relatively new to law or your practice area)

If you and your practice are struggling, chances are that one or more of the above do not fall into your strength column. The more factors that fall in the deficit column, the more stressed you are going to be. It's possible to run a practice with items in the deficit column, but you're going to be stressed. If this is the case, your own firm may not be the best choice in the long run.

### **How skilled are you at choosing your clients and cases?**

Many a lawyer has learned – the hard way – the importance of choosing good cases and clients. Poor cases and/or high-maintenance clients become black holes absorbing your time and often money.



Many new solo practitioners make the mistake of taking everything that walks through the door. This mistake is usually made due to fear of not having enough money, clients, etc. Consequently, they take clients other lawyers have fired or refused. Worst of all, they usually have an uneasy gut feeling about the client or case – which they ignore! Months later they end up regretting the day they said yes.

### **Do you set limits and maintain them?**

Managing your relationships with clients is key to a sane, healthy practice and life. See Chapter 4, Client Relations, for excellent suggestions on this topic.

The important point here is your ability to say no when it's in your best interest to do so. Some examples of setting boundaries:

- Limiting your phone and email availability after hours
- Limiting the time you spend with clients or prospects on the phone
- Limiting the number of times you check email
- Asking another lawyer to cover for you while you're on vacation
- Limiting the number of contingency fee cases you accept
- Insisting that clients maintain balances in their trust accounts

Have you developed effective methods for dealing with non-business life aspects that compete for your time and attention? Common examples include:

- Parenting
- Illness in family
- Elderly parents
- Pre-existing emotional or physical problems

Most relationships need maintenance – regular attention, care, and feeding. While you can't factor in unpredictable crises, you can schedule time and routines for the people who matter the most.

If you or someone close to you has a chronic condition, try to factor in time and money needed to work with that condition. Regular attention can help prevent crises.

## **Are you trying to do too much?**

Sometimes the only antidote to doing too much is – do less. Our culture leads us to believe that we can have or do anything if we just work hard enough. However, the cost of working hard can outweigh the benefit after a certain point. You may find it enormously relieving to scale back your expectations. Maybe you really can “have it all” – just not all at the same time.

Actually, too much work isn't my problem. I'm not putting in enough hours to make a living.

## **You may have fallen victim to the “DEADLY 3 PS”: Perfectionism—Procrastination--Paralysis.**

Perfectionism often leads to overwork – continuing to slave over something long past the point of diminishing returns. However, it can lead to avoidance if you aren't sure how to proceed with a project and you're afraid of doing it imperfectly. This leads us to the second P.

Procrastination occurs when we avoid doing what we need to do. Avoidance occurs because the task at hand is novel or difficult and we're not sure how to proceed. It also occurs when a task is tedious, such as entering time for billing purposes. We naturally avoid that which we find scary or unpleasant.

Which brings us to our final P. Paralysis is stuckness. It's the pile of files in the corner that you really need to get to but don't. It's the unreturned messages piling up or the unopened mail on your desk. Paralysis is about fear. Deal with the fear and you reduce the paralysis.

## **If the 3 Ps are not the problem, something else is going on. Common culprits:**

- Physical or emotional issues
- Permeable boundaries allowing other life elements to impinge on work time
- Insufficient marketing – too few clients, not enough work
- Your heart isn't in it

**I've tried to achieve balance, but my efforts aren't working. What's wrong?**

Maybe nothing is wrong. If your practice is in a developmental phase that is particularly needy or demanding, it may truly require more time than you would like. If this is the case, try to implement the best practices found in this book, and enjoy this phase of your business as best you can.

If the above does not apply, some other possibilities include:

- An underlying belief that you must work all of the time
- Chronic anxieties about money
- You don't know what to do when you're not working
- You're avoiding "having a life"
- A belief that taking care of yourself is optional or extravagant

The Lawyers Assistance Program (LAP) is available to help with issues like those above. If you or your practice are experiencing stormy times, don't hesitate to call 206.727.8268 for a confidential consultation.

## Conclusion

When it comes to keeping Washington lawyers “up and running,” there are plenty of resources available to help you manage your office as effectively as you manage your practice.

Many lawyers are unduly self-critical where law office management issues are concerned. They may think they should somehow innately possess this knowledge. Until very recently, these issues were not discussed in law school and they are not something that anyone - lawyers or otherwise - inherently knows or understands.

Law office management questions and concerns are universal to the profession. The wealth of information that is now readily available should prevent any practitioner from ever needing to “reinvent the wheel”. This assistance is offered in many forms, from section and committee involvement to the WSBA’s Law Office Management Assistance Program to bar association websites. The answers to your questions are just a phone call away. The State Bar’s Ethics Line, for example, was created to help attorneys determine appropriate solutions to a wide range of “gray area” dilemmas. **Call 206-727-8284 to reach the Ethics Line.**

The information contained in this manual was derived from the knowledge and experience of your colleagues and is made available so that every member of the profession can benefit from this collective wisdom. We hope that the information and resources discussed here prove useful to you in the day-to-day operation of your law office, whether you are a solo practitioner in a small town or the managing partner of a large metropolitan law firm.

Rest assured that there are numerous people and programs devoted to keeping you “up and running” in the ways that work best for you. It is never too late to consider ways in which the management of your office might be improved. The benefits are numerous, from greater peace of mind to improved client relations and higher productivity. Please contact the LOMAP office at (206) 727-8237 or go to [www.lomap.org](http://www.lomap.org) whenever you are in need of assistance.

*Best wishes for your success!*

## WASHINGTON STATE BAR ASSOCIATION

Law Office Management Assistance Program

1325 Fourth Ave., Suite 600

Seattle, WA 98101-2539

Phone 206-727-8237

FAX 206-727-8317

Email [peter@wsba.org](mailto:peter@wsba.org)

[www.lomap.org](http://www.lomap.org)

### SELF-AUDIT CHECKLIST

*THIS COMPLETED FORM DESCRIBES YOUR OFFICE ADMINISTRATIVE PRACTICES PRIOR TO OUR MEETING. PLEASE ASK YOUR STAFF AND OTHER LAWYERS TO COMPLETE A COPY OF THIS CHECKLIST. A NUMBER OF THE RESPONSES MAY VARY FROM YOURS. THAT IS THE USUAL CASE. THIS EXERCISE CAN LEAD TO A FRESH LOOK AT HOW TO ENHANCE THE FUNCTIONING OF YOUR PRACTICE AND MAKE MOST PRODUCTIVE USE OF OUR TIME AT OUR MEETING. USE THE RESULTS TO FOSTER A BETTER MUTUAL UNDERSTANDING OF WHAT GOES ON IN YOUR OFFICE. "YES" MEANS OFTEN OR ALWAYS. "NO" MEANS RARELY OR NEVER. THE LAST PAGE ALLOWS SPACE FOR YOUR NOTES AND COMMENTS.*

Name of firm \_\_\_\_\_

Lawyer Names \_\_\_\_\_

Staff Names \_\_\_\_\_

Areas of practice \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Who completed this form? \_\_\_\_\_



***PLEASE TAKE A FEW MOMENTS TO REVIEW ALL OF THE QUESTIONS AND NOTE ANY AREAS THAT YOU WANT TO DISCUSS MORE THOROUGHLY. WE RECOMMEND THAT ALL EMPLOYEES IN THE OFFICE COMPLETE THIS CHECKLIST.***

## CLIENT RELATIONS

**CLIENT RELATIONS ARE THE MOST IMPORTANT ASPECT OF YOUR LAW OFFICE. EVERYTHING THAT HAPPENS IN A LAW FIRM HAS A DIRECT OR INDIRECT EFFECT ON THE CLIENT. A CLIENT-CENTERED LAW FIRM IS ALL PERSONNEL DIRECTLY SERVING THE CLIENT. THE ATTORNEY IS A TEAM MEMBER INVOLVED IN PROVIDING OVERALL SERVICE TO THE CLIENT. “SERVICE” MEANS FULFILLING COMMITMENTS, CLIENT EDUCATION, ADEQUATE COMMUNICATION, AND COMPETENT LEGAL WORK.**

	<i>YES</i>	<i>No</i>	<i>N/A</i>
<b>1. DO YOU DISCUSS COMMUNICATION WITH CLIENTS SUCH AS HOW THEY WANT TO BE KEPT INFORMED, CONFIDENTIALITY, USE OF EMAIL, RETURNING PHONE CALLS, POSSIBLE EMERGENCIES AND HOW TO HANDLE THEM?</b>			
<b>2. DO YOU COMMUNICATE THE CLIENT’S PREFERENCES TO THE STAFF INCLUDING A NOTATION IN THE CLIENT FILE, I.E. “THIS CLIENT REQUIRES UPDATES, IMMEDIATE TELEPHONE NOTIFICATION OF ALL CHANGES AND WRITTEN CONFIRMATION OF APPOINTMENTS.”?</b>			
<b>3. DO YOU INTRODUCE CLIENTS TO STAFF?</b>			
<b>4. DO YOU DISCUSS FEES AND BILLING PROCEDURES IN THE <i>FIRST</i> MEETING WITH THE CLIENT?</b>			
<b>5. DO YOU PROVIDE CLIENTS WITH A WRITTEN AGREEMENT OF REPRESENTATION THAT INCLUDES:</b>			
<b>A) DETAILS REGARDING THE SCOPE OF REPRESENTATION?</b>			
<b>B) CLEAR DETAILS REGARDING FEES AND ANTICIPATED EXPENSES?</b>			
<b>C) REMINDERS THAT NO SPECIFIC RESULT HAS BEEN PROMISED?</b>			
<b>D) OBLIGATIONS OF THE CLIENT TO THE MATTER</b>			
<b>6. DO YOU HAVE TELEPHONE ANSWERING PROCEDURES INCLUDING THE IMPORTANCE OF HANDLING ALL CALLS WITH PROFESSIONAL COURTESY?</b>			
<b>7. Do you return clients’ phone calls and email within 24 hours?</b>			

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>8. DO YOU PERFORM ALL THE WORK YOU TOLD THE CLIENT YOU WOULD?</b>			
<b>9. DO YOU USE A MASTER LIST OF OPEN MATTERS WITH THE STATUS OF EACH MATTER TO HELP AVOID NEGLECTING ANY MATTERS?</b>			
<b>10. DO YOU SEND FOLLOW-UP LETTERS DOCUMENTING A MEETING OR A TELEPHONE CONVERSATION IN WHICH MAJOR NEW DECISIONS HAVE BEEN REACHED?</b>			
<b>11. DO YOU SEND THE CLIENT A MATTER CLOSING LETTER?</b>			
<b>12. DO YOU COMPLETE THE WORK IN A TIMELY FASHION?</b>			
<b>13. DO YOU FOLLOW UP WITH CLIENTS WHEN THEIR CASES ARE INACTIVE?</b>			
<b>14. DO YOU SEND A LETTER AT THE END OF EACH MATTER TELLING THE CLIENT YOUR REPRESENTATION IS COMPLETE, THANKING THEM FOR THE OPPORTUNITY TO SERVE THEM, HOW YOUR SERVICE MIGHT BE IMPROVED, AND ENCOURAGING A REFERRAL?</b>			
<b>15. DO YOU THANK CLIENTS IN WRITING FOR THE REFERRALS THEY SEND?</b>			
<b>16. DO YOU ACKNOWLEDGE STAFF FOR GOOD CLIENT RELATIONS SKILLS?</b>			
<b>17. DURING THE MATTER DO YOU ASK THE CLIENT FOR FEED-BACK ABOUT YOUR COMMUNICATION?</b>			

## CONFIDENTIALITY

**CLIENTS DEPEND ON YOU TO SAFEGUARD THE INFORMATION THEY PROVIDE. TRUST IS VERY DIFFICULT TO REESTABLISH ONCE IT HAS BEEN BROKEN SO IT IS IMPORTANT THAT YOU TAKE STEPS TO ENSURE THAT EVERY MEMBER OF THE FIRM DOES ALL THEY CAN TO SAFEGUARD CLIENT INFORMATION.**

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>18. DO EMPLOYEES SIGN A CONFIDENTIALITY FORM ACKNOWLEDGING THEY HAVE READ AND UNDERSTAND RPC 1.6 CONFIDENTIALITY AND WILL NOT BREACH CONFIDENTIALITY DURING AND AFTER THEIR ASSOCIATION WITH YOUR FIRM?</b>			
<b>19. DO YOU ENSURE THAT NO CLIENT FILES OR OTHER CONFIDENTIAL MATERIALS ARE EVER LEFT IN THE RECEPTION AREA?</b>			
<b>20. WHILE CONFERRING IN PERSON WITH CLIENTS DO YOU AVOID TAKING CALLS OR OTHERWISE TALKING WITH OTHER CLIENTS SO AS TO PROTECT CLIENT IDENTITIES AND CONFIDENTIALITIES?</b>			
<b>21. IS THE OFFICE LOCKED EVERY NIGHT TO DISCOURAGE THEFT?</b>			
<b>22. IS EMAIL MARKED “CONFIDENTIAL PRIVILEGED COMMUNICATION?”</b>			
<b>23. ARE THE FAX MACHINES AND COPIERS LOCATED WHERE NON-FIRM PERSONS WILL NOT BE ABLE TO SEE CONFIDENTIAL MATERIALS?</b>			
<b>24. DO YOU USE PASSWORDS FOR ACCESS TO THE COMPUTERS AND FOR DOCUMENTS ATTACHED TO EMAIL?</b>			
<b>25. IF YOU ARE IN AN OFFICE SHARING ARRANGEMENT, HAVE YOU DISCUSSED CONFIDENTIALITY WITH THE LANDLORD, OTHER TENANTS AND ANY EMPLOYEES WHO MAY BE PRIVY TO CONFIDENTIAL INFORMATION (E.G. RECEPTIONIST, WORD PROCESSOR, COMPUTER TECHNICIAN, ETC.)?</b>			



## CONFLICTS OF INTEREST

**MANY LAW FIRMS RELY ON COLLECTIVE MEMORIES TO DO CONFLICT-OF-INTEREST CHECKING. EVERY CASE HANDLED CANNOT BE SO MEMORABLE THAT YOU WILL NEVER FORGET EVERY PERSON INVOLVED. YOU SHOULD MAINTAIN A WRITTEN CONFLICT OF INTEREST SYSTEM AND KEEP IT CURRENT. ALL STAFF SHOULD BE TRAINED TO USE THE SYSTEM. CONFLICT CHECKS SHOULD BE DONE PRIOR TO THE DISCUSSION OF ANY NEW MATTER WITH A CLIENT OR POTENTIAL CLIENT.**

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>26. DO YOU MAINTAIN A MASTER CONTACT LIST OF CLIENTS, FORMER CLIENTS, PARTIES, EMPLOYEES AND OTHERS WITH CROSS REFERENCES TO FILES FOR RESEARCHING POSSIBLE CONFLICTS OF INTEREST?</b>			
<b>27. DO YOU OBTAIN A SIGNED WAIVER FROM THE CLIENT IF REPRESENTATION IS REQUESTED AFTER THE CONFLICT IS DISCUSSED?</b>			
<b>28. DO YOU REQUEST INFORMATION REGARDING OTHER NAMES (I.E. MAIDEN, MARITAL, ETC.) THAT POTENTIAL CLIENTS AND ADVERSE PARTIES MAY HAVE USED IN THE PAST?</b>			
<b>29. DO YOU INCLUDE INFORMATION REGARDING THE ADVERSE PARTY?</b>			
<b>30. DO YOU CHECK YOUR MASTER LIST FOR CONFLICTS OF INTEREST BEFORE ACCEPTING A NEW CLIENT OR MATTER?</b>			

## DOCKET/CALENDARING

**MISSING A FILING DEADLINE OR COURT APPEARANCE CAN BE EXTREMELY DAMAGING TO A CLIENT AS WELL AS CAUSING EMBARRASSMENT AND A POTENTIAL MALPRACTICE CLAIM. EACH FIRM MEMBER SHOULD MAINTAIN AN INDIVIDUAL CALENDAR IN ADDITION TO A MASTER CALENDAR FOR THE ENTIRE FIRM.**

<b>31. DO YOU KEEP INDIVIDUAL CALENDARS, I.E. ATTORNEY</b>			
--	--	--	--

AND SECRETARY/PARALEGAL?			
	YES	NO	N/A
<b>32. DOES YOUR CALENDAR INCLUDE (AS APPLICABLE):</b>			
a) STATUTES OF LIMITATIONS?			
b) ALL COURT APPEARANCES?			
c) CLIENT AND OTHER APPOINTMENTS?			
d) ALL ADMINISTRATIVE HEARINGS?			
e) REAL ESTATE CLOSING DATES?			
f) ALL LITIGATION DEADLINES?			
g) ALL SELF-IMPOSED, DISCRETIONARY DEADLINES (I.E., PROMISES MADE TO OTHERS, PROMISES MADE TO YOU, AND WORK DEADLINES YOU HAVE SET)?			
<b>33. DO YOU MAINTAIN A MASTER (ALL LAWYERS) CALENDAR?</b>			
<b>34. DO YOU USE THE CALENDAR TO SCHEDULE TIME TO DO PROJECTS?</b>			
<b>35. DO YOU USE REMINDERS OR TICKLER SLIPS TO DRAW ATTENTION TO UPCOMING DEADLINES?</b>			
<b>36. IF THE CALENDAR IS MAINTAINED ON THE COMPUTER, DO YOU FREQUENTLY PRINT OUT A COPY IN CASE OF POWER FAILURES OR OTHER COMPUTER PROBLEMS?</b>			

## RECORDS MANAGEMENT

**THE CLIENT FILE IS A RECORD OF THE WORK YOU HAVE PERFORMED FOR THE CLIENT. THE PAPER IN THE CLIENT FILE CAN AFFECT THE RIGHTS, RESPONSIBILITIES, MONEY, OR LIBERTY OF THE CLIENT. MAINTAINING THE FILES IN AN ORDERLY MANNER THAT ALLOWS FOR EFFICIENT ACCESS TO CLIENT INFORMATION WILL SAVE TIME AND MONEY IN THE LONG RUN. A MISFILED DOCUMENT IS MUCH WORSE THAN A LOST DOCUMENT AND THE ABILITY TO PROMPTLY RESPOND TO INQUIRIES BY HAVING THE INFORMATION AT YOUR FINGERTIPS WILL ENHANCE YOUR PROFESSIONAL IMAGE.**

***"CLERICAL" DOES NOT MEAN "UNIMPORTANT"--ESPECIALLY IN DEALING WITH A PHYSICAL CLIENT FILE. CONSIDER USING "DOCUMENTS ON DEMAND" – EASILY RETRIEVABLE ELECTRONIC AND SCANNED VERSIONS OF FREQUENTLY USED***

**MATERIALS. (EXAMPLES ARE POLICE REPORTS, CLIENT QUESTIONNAIRES, FINANCIAL STATEMENTS, CONDO RULES, RPCs, CASE LAW, ETC.)**

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>37. DO YOU HAVE A STANDARDIZED FILING SYSTEM FOR ALL CLIENT FILES?</b>			
<b>38. ARE ALL MATERIALS FILED TIMELY AND REGULARLY?</b>			
<b>39. DO YOU FOLLOW A FILE RETENTION SCHEDULE AFTER A CASE IS COMPLETED, I.E. WHEN TO CLOSE, WHEN TO REVIEW FOR DESTRUCTION, WHAT TO RETURN TO CLIENT, WHAT TO KEEP – AND FOR HOW LONG?</b>			
<b>40. DO YOU STORE CURRENT RECORDS IN A SECURE AREA AND SAFE FROM WATER AND VERMIN (AND AWAY FROM SPRINKLER HEADS)?</b>			
<b>41. DO YOU KEEP BACK-UP MEDIA OF ELECTRONIC RECORDS OFF-SITE?</b>			
<b>42. DOES EACH FILE HAVE A CASE SCHEDULE, CHECKLIST, LOG, OR DIARY OF ALL THE EVENTS OF THE MATTER INCLUDING COMMITMENTS TO YOU AND YOUR COMMITMENTS TO OTHERS?</b>			
<b>43. DO YOU KEEP THE WORK OF THE FILE “MOVING” WITHOUT LETTING FILES PILE UP ON YOUR DESK?</b>			
<b>44. ARE CLIENT FILES WELL ORGANIZED BY TYPE OF DOCUMENT AND LARGER FILES INDEXED?</b>			
<b>45. DO YOU USE “DOCUMENTS ON DEMAND” BY SCANNING TO PDF THE MOST USED DOCUMENTS FOR EASIER RETRIEVAL?</b>			

**STAFF MANAGEMENT** (SKIP THIS SECTION IF YOU HAVE NO STAFF)

**A LARGE PART OF A CLIENT’S IMPRESSION OF YOUR LAW FIRM WILL COME FROM THE ACTIONS OF YOUR STAFF. IT IS CRITICAL TO YOUR SUCCESS THAT YOUR STAFF IS TRAINED AND MOTIVATED TO PROVIDE EXCELLENT SERVICE TO CLIENTS. WORKING IN A LAW OFFICE IS MUCH MORE THAN JUST A JOB BECAUSE A CLIENT’S WELFARE IS PLACED DIRECTLY AT STAKE BY HOW THE WORK IS DONE.**

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>46. DO YOU HAVE A POLICY AND PROCEDURES MANUAL AND FOLLOW IT?</b>			
<b>47. DO YOU TRAIN YOUR EMPLOYEES WHEN FIRST HIRED AND WHEN MAJOR PROCEDURAL CHANGES OCCUR?</b>			
<b>48. DO YOU INFORM EMPLOYEES OF THE ETHICAL REQUIREMENTS OF WORKING IN A LAW OFFICE? SEE RPC 5.3.</b>			
<b>49. DO YOU ASK EMPLOYEES TO READ THE RULES OF PROFESSIONAL CONDUCT, PARTICULARLY RULE 1.6, CONFIDENTIALITY?</b>			
<b>50. DO YOU OFFER YOUR STAFF CONTINUING EDUCATION OPPORTUNITIES SUCH AS COMPUTER SKILLS AND THE LEGAL SYSTEM?</b>			
<b>51. DO YOU KEEP STAFF MEMBERS INFORMED AND GIVE THEM AN OPPORTUNITY TO OFFER INPUT REGARDING MATTERS AFFECTING THEM?</b>			
<b>52. DO YOU SUPERVISE EMPLOYEES BY REVIEWING THEIR WORK?</b>			
<b>53. DO YOU SET A GOOD EXAMPLE BY CREATING, IMPLEMENTING, AND MONITORING OFFICE POLICIES AND SYSTEMS, (I.E., WORK CONTROL, GOOD DOCUMENTATION, TELLING WHERE YOU ARE GOING AND FOR HOW LONG.)</b>			
<b>54. DO YOU EXPRESS APPRECIATION TO EMPLOYEES FOR WORK WELL DONE AND MAKE SURE ANY ERROR CORRECTION</b>			

<b>IS SHARED PRIVATELY IN A TIMELY AND CONSTRUCTIVE MANNER?</b>			
	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>55. DO YOU CLEARLY COMMUNICATE EXPECTATIONS OF PERFORMANCE TO ALL EMPLOYEES SUCH AS IN ANNUAL PERFORMANCE EVALUATIONS?</b>			
<b>56. DO YOU ENCOURAGE AND MOTIVATE EMPLOYEES TO TAKE PRIDE AND OWNERSHIP IN THEIR WORK?</b>			
<b>57. DO YOU PROVIDE SUPPORT AND ASSISTANCE TO STAFF IN THE HANDLING OF RUDE AND OTHERWISE OUT-OF-LINE CLIENTS AND OTHERS?</b>			
<b>58. DO YOU KEEP YOUR STAFF INFORMED ABOUT YOUR WHEREABOUTS AND SCHEDULE?</b>			
<b>59. DO YOU PROVIDE A "SAFE" OFFICE ENVIRONMENT? "SAFE" MEANS THE PHYSICAL SPACE AS WELL AS YOUR OFFICE CULTURE THAT ALLOWS FOR THE QUESTIONING OF THE WORK BY ANYONE BEFORE IT LEAVES THE OFFICE WITHOUT ANYONE FEELING THAT HIS/HER COMPETENCE IS BEING CHALLENGED.</b>			
<b>60. DO YOU USUALLY INTERRUPT EMPLOYEES TO ASK WHETHER TASKS ARE COMPLETED?</b>			
<b>61. DO YOU ASK EMPLOYEES TO INFORM YOU OF TASK COMPLETION AS A PART OF THE TASK ITSELF TO REDUCE THE NEED TO INTERRUPT THEM?</b>			

## FINANCIAL MANAGEMENT

Financial software used:

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**TIMEKEEPING, BILLING, BUDGETING, AND FINANCIAL  
RECORDKEEPING/REPORTING SHOULD BE COORDINATED TO PRODUCE AN  
EFFICIENT ACCOUNTING AND RECORDKEEPING SYSTEM. MASTERING THE  
ELEMENTS OF FINANCIAL MANAGEMENT GIVES YOU CONTROL OVER THE  
FISCAL DIRECTION YOUR FIRM AND ENABLES THE FIRM TO PROSPER.**

### TIMEKEEPING:

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>62. DO YOU HAVE TIMEKEEPING PROCEDURES SUCH AS FOR TRAVEL TIME OR RECORDING IN X-MINUTE INCREMENTS?</b>			
<b>63. DO YOU INFORM TIMEKEEPERS IN PROPER TIMEKEEPING METHODS AND WHAT TASKS ARE BILLABLE AND NON-BILLABLE?</b>			
<b>64. IS TIME RECORDED AT THE TIME THE WORK IS PERFORMED?</b>			

### BILLING:

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>65. ARE COSTS POSTED TO CLIENTS' FILES ON A REGULAR BASIS?</b>			
<b>66. ARE INTERNALLY INCURRED EXPENSES (POSTAGE, LONG DISTANCE, ETC.) POSTED TO CLIENTS' FILES REGULARLY? NOTE: YOU MAY USE A FLAT PERCENTAGE OF FEES IN LIEU OF ACTUALS.</b>			
<b>67. ARE PAYMENTS AND CREDITS POSTED TO CLIENTS' FILES TIMELY?</b>			
<b>68. ARE DISCOUNTS (WRITE-DOWNS) SHOWN ON THE BILL?</b>			
<b>69. ARE CREDIT CARDS ACCEPTED FOR PAYMENT?</b>			

<b>70. ARE BILLS SENT OUT ON A SCHEDULED BASIS?</b>			
	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>71. ARE THE ACCOUNTS RECEIVABLE EVALUATED AND FOLLOWED UP?</b>			
<b>72. ARE CLIENT TRUST FUNDS KEPT IN A BANK ACCOUNT (IOLTA OR INDIVIDUAL) SEPARATE FROM OPERATING FUNDS IN THE OPERATING ACCOUNT?</b>			
<b>73. ARE CLIENT LEDGERS KEPT FOR ALL CLIENTS WITH FUNDS IN TRUST?</b>			

BUDGETING:

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>74. DO YOU HAVE AN ANNUAL GROSS FEES BUDGET?</b>			
<b>75. DO YOU COMPARE MONTHLY GROSS FEES TO THE BUDGET ON A REGULAR BASIS? AMOUNT SHOULD BE AT LEAST \$12,500 PER LAWYER.</b>			

FINANCIAL RECORDKEEPING AND REPORTING:

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>76. DO YOU PREPARE TAX RETURNS TIMELY?</b>			
<b>77. DO YOU HAVE CASH HANDLING AND ACCOUNTING CHECKS AND BALANCES IN PLACE, I.E. DIVISION OF RESPONSIBILITIES?</b>			
<b>78. DO YOU KEEP CHECKBOOKS LOCKED AWAY UNLESS IN USE?</b>			
<b>79. DO YOU PERFORM THE TRUST ACCOUNT BANK RECONCILIATIONS?</b>			

PROFESSIONAL PRACTICE (STAFF RESPONSES NOT NECESSARY)

THESE QUESTIONS RELATE TO SEVERAL OF THE DETAILS OF HOW YOU HANDLE DAILY EVENTS. YOUR STANDARDS OF CARE SHOULD BE CONSISTENT AND TIMELY.

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>80. DO YOU GIVE LEGAL ADVICE OVER THE PHONE IF YOU ARE NOT FAMILIAR WITH THE CALLER?</b>			
<b>81. DO YOU HAVE A DESIGNATED BACK-UP ATTORNEY IN CASE YOU ARE INCAPACITATED OR OTHERWISE REQUIRE HAVE A LONG-TERM ABSENCE?</b>			
<b>82. DO YOU DELAY GOING TO CLEs UNTIL THE YEAR YOU NEED TO REPORT CREDITS?</b>			
<b>83. DO YOU DISCUSS THE RECOMMENDED COURSE OF ACTION WITH CLIENTS AT A TIME AND PLACE CONDUCIVE TO A GOOD EXCHANGE OF INFORMATION AND QUESTIONS?</b>			
<b>84. DO YOU DOCUMENT THE CLIENT'S CHOICE OF ACTION AND SO INFORM THE CLIENT IN WRITING, PARTICULARLY WHEN THE CHOICE IS ADVERSE TO YOUR ADVICE?</b>			
<b>85. DO YOU FOLLOW UP ON ASSIGNMENTS GIVEN TO OTHERS?</b>			
<b>86. DO YOU NOTIFY CLIENTS OF THE RESULTS OF MOTIONS ON THEIR CASES AND SO DOCUMENT THE FILE?</b>			
<b>87. DO YOU SET ASIDE TIME JUST TO THINK?</b>			
<b>88. DO YOU USE THE WSBA ETHICS LINE (206-727-8284)?</b>			



## TECHNOLOGY

**OFFICE TECHNOLOGY IS THE TOOLS TO BEST SERVE YOUR CLIENTS. THE CHALLENGE IS TO HAVE THE KNOWLEDGE TO USE THESE TOOLS FULLY.**

**INDEED, THE LAWYER’S PROFESSIONAL COMPETENCE INCLUDES THE ADEQUATE USE OF TECHNOLOGY SUCH AS USING PASSWORDS, BACKING UP DATA, AND REMOVING METADATA FROM ELECTRONICALLY TRANSMITTED FILES.**

	<i>YES</i>	<i>NO</i>	<i>N/A</i>
<b>89. DO ALL LAWYERS AND STAFF USE COMPUTERS?</b>			
<b>90. DO YOU USE A NETWORKED CALENDAR PROGRAM?</b>			
<b>91. IS EVERYONE TRAINED TO USE THE SOFTWARE?</b>			
<b>92. DO YOU USE PRACTICE MANAGEMENT SOFTWARE SUCH AS AMICUS ATTORNEY®, ABACUS LAW®, TIME MATTERS®, OUTLOOK®, NEEDLES®, OR PRACTICE MASTER®?</b>			
<b>93. DO YOU PASSWORD ATTACHMENTS TO EMAIL?</b>			
<b>94. DO YOU ATTEND THE FREE MONTHLY LOMAP COMPUTER TIPS CLASSES?</b>			
<b>95. DO YOU BACK UP DATA AT LEAST WEEKLY?</b>			
<b>96. DO YOU DO PERIODIC “RESTORES” OF DATA (TO CHECK IF IT WORKS)?</b>			
<b>97. DO YOU TRAIN NEW EMPLOYEES ABOUT YOUR COMPUTER SYSTEM?</b>			
<b>98. DO YOU USE COMPUTER VIRUS FILTERS AND A FIREWALL?</b>			
<b>99. DOES VOICEMAIL TELL CALLERS TO LIMIT THEIR MESSAGE?</b>			
<b>100. DO YOU REMOVE THE METADATA BEFORE EMAILING ATTACHMENTS?</b>			



## **CHECKLIST FOR STARTING A LAW PRACTICE**

*This checklist is designed simply as a guideline to provoke thought when starting a law practice.  
It is not meant to be all inclusive.*

### **I. PLANNING/BUDGETING**

- ☐ Do self-assessment about starting a practice
  - ☐ Tolerance for Risk
  - ☐ Managerial Skills
  - ☐ Marketing Skills
  - ☐ Confidence Level in Legal Skills
- ☐ Write a Business and Marketing Plan
  - ☐ Projection of gross receipts
  - ☐ Projection of overhead and expenses
  - ☐ Projection of net receipts
  - ☐ Cash flow projections
  - ☐ Projection of hours worked
  - ☐ Marketable experience
  - ☐ Setting fees to make a profit
  - ☐ Written fee agreements

### **II. MARKETING PLAN/PRACTICE DEVELOPMENT**

- ☐ Potential Client Base
- ☐ Advertising
  - ☐ Yellow Page ad
  - ☐ Website
  - ☐ TV, radio, billboard
  - ☐ Office signage
  - ☐ Sign up for Lawyer Referral Service
  - ☐ Firm brochure
  - ☐ Client newsletter
  - ☐ Join civic organizations
  - ☐ Produce community seminars
  - ☐ Announcements
  - ☐ Speak at CLE programs

### **III. FORMS OF PRACTICE**

- ☐ Considerations in Selecting Form of Practice
  - ☐ taxation
  - ☐ liability
  - ☐ succession/dissolution
- ☐ Solo Practice
- ☐ Partnership
- ☐ Professional Corporation
  - ☐ Articles of Incorporation
  - ☐ shareholders, officers, chief operating officer
  - ☐ Statement of Good Standing from Clerk of Supreme Court
- ☐ Limited Liability Company

- ☐ Articles of Organization
- ☐ members
- ☐ Limited Liability Partnership
- ☐ Consult with CPA
- ☐ Specialized/General Practice
- ☐ Partnership Agreement in writing
  - ☐ Capital/equity from partners
  - ☐ Withdrawal/retirement issues
  - ☐ Compensation and profit distribution
  - ☐ Each partner's role in the practice
    - ☐ Managing Partner
    - ☐ Rainmaker
    - ☐ Others

#### **IV. OFFICE SPACE/LOCATION CONSIDERATIONS**

- ☐ Office Building
  - ☐ Image, upscale, informal
  - ☐ Square footage
  - ☐ ADA considerations
  - ☐ Parking
  - ☐ Services, janitorial
  - ☐ Expansion Opportunities
  - ☐ Renovation Needs
- ☐ Location
- ☐ Office sharing
- ☐ Renting, leasing
- ☐ Purchasing/buy into a law practice
- ☐ Working from home

#### **V. ACCOUNTING NEEDS**

- ☐ Consult with CPA
  - ☐ set up accounting procedures
    - ☐ Chart of accounts
    - ☐ Profit and loss statements
    - ☐ Balance sheets
    - ☐ Cash Flow Statement
  - ☐ quarterly and annual tax returns
  - ☐ payroll services
  - ☐ bank and trust accounting systems/reconciliation procedures
  - ☐ software compatible with accountant

#### **VI. START UP COSTS/CREDIT SOURCES**

- ☐ Highly suggested that enough cash or a line of credit be available to cover start-up costs and at least the first 6 months to one year of operating expenses plus personal living expenses.

- ☐ Sources of credit
  - ☐ Local bank/Credit Union
    - ☐ personal, business loan
    - ☐ home equity, home refinance
    - ☐ line-of-credit to be drawn upon as needed
    - ☐ lease, equipment loans
    - ☐ family loans/private investor loans
  - ☐ Personal savings

## **VII. BANK ACCOUNTS**

- ☐ Trust account (separate account)
  - ☐ IOLTA account, if applicable
- ☐ Business operating account for expenses/payroll
- ☐ Short term savings
- ☐ Safety deposit box
- ☐ Firm credit card
- ☐ Investments
- ☐ Checks, deposit slips, endorsement stamp
- ☐ Set up account to accept credit cards
- ☐ Retirement plan

## **VIII. TECHNOLOGY**

- ☐ Software
  - ☐ Word processing
  - ☐ Time and billing/accounting
  - ☐ Calendaring and docketing
  - ☐ Conflicts checking
  - ☐ Case Management
  - ☐ Document assembly
  - ☐ Office Suite Software
    - ☐ Word processing
    - ☐ E-mail
    - ☐ Spreadsheet
    - ☐ Presentation Software (such as PowerPoint)
    - ☐ Others
  - ☐ Virus protection for computers
  - ☐ Voice Recognition
  - ☐ Other specialized or practice specific software
- ☐ Hardware
  - ☐ Computers
    - ☐ Operating system
    - ☐ Back-up system
    - ☐ Lease or purchase
  - ☐ Printers
  - ☐ Network/Firewall
  - ☐ Scanners

- ☐ CD-ROM
- ☐ Laptop Computer
- ☐ Personal Digital Assistant (PDA)

**IX. OFFICE EQUIPMENT/SERVICES/SUPPLIES**

- ☐ Fax Machine
- ☐ Photocopier
- ☐ Scanner
- ☐ Shredder
- ☐ Dictation equipment/Voice Recognition Software
- ☐ Internet Service Provider
- ☐ Email address
- ☐ High speed Internet access or DSL line
- ☐ Telephone System
  - ☐ Equipment/answering machine
  - ☐ Voice mail/manual message system
  - ☐ Answering service
  - ☐ Local and long distance carrier
  - ☐ Conference calling
  - ☐ Music on hold
  - ☐ Cell phone/service
  - ☐ Pager
- ☐ Postage scale/mail equipment
- ☐ Establish UPS and Fed Ex accounts
- ☐ Office furniture for lawyer(s), staff, reception area, file cabinets, conference room furniture, carpeting and area rugs, book shelves, art work/office decorating needs
- ☐ Office supplies, paper, envelopes, pens, staplers, file folders, etc.
- ☐ Business cards, announcements
- ☐ Order public information brochures from the Bar for clients

**X. LIBRARY/LEGAL RESEARCH**

- ☐ Online legal research provider
- ☐ Purchase new or used law books
- ☐ Local law library
- ☐ Law school library
- ☐ Courts library
- ☐ Internet research
- ☐ CD-ROM
- ☐ CLE Deskbooks

**XI. OFFICE SYSTEMS/PROCEDURES**

- ☐ Develop office manual/operating procedures manual
  - ☐ Standard procedures/policies for practice
  - ☐ Personnel issues/benefits
- ☐ Docketing, calendaring, tickler system

- ☐ Computer (dual-system is highly recommended)
- ☐ Manual
- ☐ File organization
  - ☐ Alpha/numeric
  - ☐ Centralized/decentralized
  - ☐ Opening file procedures
  - ☐ Closing file procedures/retention/storage/destruction
  - ☐ Document maintenance
    - ☐ Offsite - safety deposit box
    - ☐ Computer backup
    - ☐ Fireproof files
  - ☐ Forms used in practice
    - ☐ Client interview form
    - ☐ Engagement/non-engagement letters
    - ☐ Written fee agreements
    - ☐ Practice specific checklists
    - ☐ Billing Statement Form
    - ☐ General client correspondence, notices, etc.
    - ☐ Client survey form after conclusion of representation
- ☐ Client billing procedures
  - ☐ Regular monthly statements even if no amount due
  - ☐ Detailed billing statement
  - ☐ Expense billing
  - ☐ Costs to be billed
    - ☐ legal assistant time/paralegal time
    - ☐ telephone expenses
    - ☐ duplicating expenses
    - ☐ computerized legal research
    - ☐ mailing costs
    - ☐ others
  - ☐ Collection policy
  - ☐ Credit cards for payment
- ☐ Client Relations Policy
  - ☐ Setting appointments, introducing staff
  - ☐ Returning phone calls, e-mail messages
  - ☐ Client intake form/survey at conclusion of representation
  - ☐ Keeping clients informed
    - ☐ Send copies of work, documents
  - ☐ Communicating Fees
    - ☐ Clear discussion about fees
    - ☐ Written fee agreements/engagement letters
- ☐ Accounting Procedures
  - ☐ Bank account reconciliation
  - ☐ Cash Flow Statement
  - ☐ Accounts Receivables/Payables
    - ☐ aging review
  - ☐ Expense Approval System

- ☐ Counter signature requirement on checks
- ☐ Others

**XII. INSURANCE PROTECTION**

- ☐ Professional liability
- ☐ Workers' Compensation
- ☐ Health Plan
- ☐ Car Insurance for business use
- ☐ Property (liability, wind, fire, earthquake, etc.)
- ☐ Loss of valuable documents
- ☐ Life
- ☐ Disability
- ☐ Business Interruption

**XIII. PERSONNEL**

- ☐ Legal Assistant/Paralegal
  - ☐ Full-time
  - ☐ Part-time
  - ☐ Temporary
  - ☐ Hours, flex-time
  - ☐ Sharing personnel with other professionals
  - ☐ Training
- ☐ Employee benefits
  - ☐ Vacation, holidays
  - ☐ Sick leave
  - ☐ Overtime policy
  - ☐ Medical insurance
  - ☐ Retirement Plan
  - ☐ Others
- ☐ Secure I-9 forms, W-4 forms, confidentiality agreement, employment applications, etc

**XIV. MISCELLANEOUS**

- ☐ Call 206-727-8237 for the WSBA Law Office Management Assistance Program for assistance
  - ☐ Lending library
- ☐ Register fictitious name (if applicable)
- ☐ Obtain city or county business licenses or permits
- ☐ Order Post Office Box (if needed)
- ☐ Build a forms file
- ☐ Become a notary or have someone on staff or close by that is available
- ☐ Develop a disaster plan for your office, files, computer, etc.
- ☐ Develop a plan for your illness, incapacity or death.



- ☐ Join a Solo and Small Practice Section and email listserv for access to a network of other solo and small firm lawyers.
- ☐ Change address with your bar
- ☐ Call your bar's Ethics Counsel with prospective ethical questions.
- ☐ Join local bar association(s), sections, and committees
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