Successful Small Firm Practice Course

District of Columbia Bar October 3, 2020

Confidential Survey

Rule 1.6(j) applies

Tell us about you and what you need to be successful.

Course Supplement Website

Why this Course is necessary.



What is it that we do?

We are licensed to solve the problems of others.

In a unique context . . .

We are regulated DC Rules of Professional Conduct

Where does ODC spend its time?

Chart V - Type of Practice

Chart v - Type of Practice											
Type of Practice	2019	%	2018	%	2017	%	2016	%	2015	%	
Solo/Small Firm	110	47%	139	47%	119	40%	155	45%	139	48%	
Firm	92	39%	119	40%	130	44%	151	44%	114	39%	
In House	15	6.4%	8	3%	8	2.7%	7	2%	9	3.1%	
Other	8	3.4%	10	3.4%	15	5.1%	11	3.2%	13	4.5%	
Government	6	3%	11	4%	16	5%	17	5%	8	3%	
Public Interest	5	2%	7	2.4%	9	3%	6	1.7%	7	2%	

Historically, 40% to nearly 50% of Disciplinary Counsel's investigations are of small firms.

We do this for money

The elusive profit

The 1958 Lawyer and his 1938 Dollar

We were not always tied to the billable hour

The 100 best paying jobs in 2020

#50 Lawyer Median salary: \$120,910 Stress level: High



Management Occupations

Legal Occupations

Computer and Mathematical Occupations

Architecture and Engineering Occupations

Healthcare Practitioners and Technical Occupations

> Business and Financial Operations Occupations

Life, Physical, and Social Science Occupations

Arts, Design, Entertainment, Sports, and Media Occupations

> Educational Instruction and Library Occupations

Construction and Extraction Occupations

Community and Social Service Occupations

Installation, Maintenance, and Repair

The mean salary for lawyers in DC is the highest in the country

- D.C. \$192,530 (2020)

Six years ago

The 10 Best-Paying Jobs of 2014

Health-care jobs that require advanced degrees dominate the list.

Average annual salary

Surgeon Physician Psychiatrist Orthodontist Dentist Petroleum Engineer Air Traffic Controller Pharmacist Podiatrist Attorney



And the public has an attitude about us

Please tell me how you would rate the honesty and ethical standards of people in these different fields -- very high, high, average, low or very low? How about -- [RANDOM ORDER]?

	Very high	High	Average	Low	Very low	No opinion
	%	%	%	%	%	%
Nurses	31	54	14	*	1	*
Engineers	17	49	31	2	1	1
Medical doctors	20	45	28	4	2	*
Pharmacists	15	49	28	5	3	*
Dentists	13	48	33	4	2	*
Police officers	17	37	31	9	5	*
College teachers	12	37	34	10	7	1
Psychiatrists	10	33	43	10	2	2
Chiropractors	6	35	47	9	2	1
Clergy	10	30	42	10	5	4
Journalists	5	23	34	20	17	1
Bankers	3	25	52	15	5	*
Labor union leaders	4	20	48	20	7	1
Lawyers	4	18	49	19	9	*
Business executives	2	18	50	22	8	1
State governors	4	16	52	21	6	*
Stockbrokers	2	12	55	22	8	2
Advertising practitioners	2	11	44	30	10	2
Insurance salespeople	2	11	52	26	9	*
Senators	2	11	42	32	13	1
Members of Congress	3	9	33	34	21	1
Car salespeople	1	8	47	30	13	*

Dec 2-15, 2019

Trend in Perceived Contribution

% saying each group contributes "a lot" to society's well-being



Where we rank higher

Lawyers are generally in the top ten percent for suicide and depression

Lawyers frequently struggle with alcohol abuse, depression & anxiety.

The goal of this Course

To create a law firm where you are:

solving problems you love to solve;

remaining always ethical; and,

making a profit without burnout.

Selecting the problems to solve

Where is your passion and competence?

How to choose the problems you will solve

- What do I know how to do?
- In what am I most expert?
- Where is my best market?
- Who is the lawyer within?

Play to your strengths

https://www.gallupstrengthscenter.com/

http://www.viacharacter.org/www/

https://www.authentichappiness.sas.upenn.edu/



The internal determines the external

Focusing narrowly on what you love

Makes it easier to establish expertise

Makes it easier to know your ideal client

Makes it easier to know your value to your ideal client

The path to a successful firm starts with:

A concept map

and

a business plan

The concept map A visual thinking tool to -

Analyze Organize Understand Remember

It's power is in its simplicity

It works like your brain works.

Use it for

Note taking Brainstorming Problem solving Studying Memorization Planning Researching Presenting Figuring things out r –

Start in the middle of a blank page





Develop subtopics all around the central topic

Examples using

Mindmeister

Simple Mind









Concept mapping resources

The Mindmap Blog

YouTube Example

The theory underlying concept mapping

The law firm business plan & workbook

A good place to start is with the Mission Statement

A short statement - 30 words or less explaining your reason for being



Nature of the client's problems

Google "law firm mission statement" for examples

Make yours unique and relevant.

Mapping for time management

Start your day with a concept map



Fee agreement

Summary judgment

Newsletter

Return calls, respond to email
Are you an entrepreneur who happens to be a lawyer, or a lawyer who has shutdown entrepreneurial instincts

How do you respond to the prospective client who shows up with this?



How will you respond when <u>hello divorce</u> arrives?



serving California & Colorado

No court battles, lawyers or hidden fees

Installment

One Payment

Get a 7 day trial of the DIY and DIY Pro plans with coupon code 7DAYSFREE



Better Value!

DIVORCE WITH BENEFITS



When your only tool is a

hammer,

everything looks like a

nail

How we are taught to think and how we work,

- our fire-walling mindset,
 - does not serve us
 - in growing our firm

To grow the firm one must be pathologically optimistic

The 6 Predominant Lawyer Personality Traits



General Public (50th Percentile)
Lawyers

From the research of Larry Richard, Ph.D.

New, different tools are needed

Start with this truth:

We act according to our self image

The situation:

- We don't know what we are doing
- We've never done it before
- We have no clients
- We are not sure how to get clients
- We have very limited funds
- We want to start a law firm

The resilience issue

Is the situation a threat or challenge?

To grow resilience, find your purpose and nurture your network.

The entrepreneur-lawyer sees opportunity and begins to plan

Planning

What does it look like?

Brain storming

Imagining

Talking

Writing

Fact gathering

Relationship building

Finding mentors & guides

Creating a network

Why plan?

It's essential for success

It can protect you from the firewalling mindset

It will give you a distinct advantage over the competition

Planning is a gerund (a noun derived from a verb).

Planning is an action, not an end in itself.

The plan does not have to be perfect.

The entrepreneur-lawyer plans but also understands the power of

now



Future +

How do you plan? Pay a visit to your self-image Get permission to plan Form the intention Visualize it Concept map it Work the template Test drive it

The goal -

actualization

not perfection

Planning for profit

Know your break-even point

Know the cost of problem solving

Know the value of a productive hour

The value of a productive hour is the cost of compensated problem solving needed to survive

The calculation:

- Total revenue needed to cover professional & personal expenses
- Divided by 50 weeks
- Divided by five days
- Divided by the average number of productive hours in a day
 - E/50/5/3 = PH

You may average two to three productive hours a day for this & other reasons

\$200,000 in annual expense

- \$200,000 divided by 50 = \$4,000 a week
- \$4,000 divided by five = \$800 a day
- \$800 divided by three = \$266.67

The cost of problem solving is \$266.67 for this law firm. Billing and collecting at \$300 an hour generates \$25,000 profit.

\$200,000 in annual expense

- \$200,000 divided by 50 = \$4,000 a week
- \$4,000 divided by five = \$800 a day
- \$800 divided by four = \$200

- The cost of problem solving is now \$200 for this law firm.
 - Billing and collecting at \$300 an hour generates \$100,000 profit.

Break-even: at what point do you become profitable?

- Determine your total fixed costs (the costs that don't vary with revenue);
- Divide total fixed cost by the difference between your matter price and its cost (margin/profit);
- That tells you the number of matters needed to break-even.

Break-even calculation:

- Your firm has \$5,000.00 in monthly fixed costs;
- You charge \$1,000 for each matter;
- Each matter costs you \$750;
- \$5,000 divided by \$250 = 20 matters each month to break-even

Break-even calculation:

- Your firm has \$10,000.00 in monthly fixed costs;
- You charge \$5,000 for each matter;
- Each matter costs you \$1,500;
- \$10,000 divided by \$3,500 = 2.85 matters each month to break-even.

The lower the overhead, the higher the margin, the more quickly you show profit

Collected fees determine profit.

For the client, fees are driven by emotion & value

When is a prospective client's need for your problem solving at its peak?

Why is this important?

Planning for the problem solving

Answer the who, what, when, where why & how of the problem

Learning your client's cycle: the problem recognition process

Planning for the problem solving

How does your client experience the problem solving?

Does your client see your work?

What does the solution

look & feel like?

Why does a client chose you?

Price?

Value?

Location?


Characteristics of the entrepreneurial small firm

- Steps back & strategizes
- Sees problems as opportunities
- Can live in the weeds & not get lost
 - Will spend money to make money
 - Understands the client's need
 - Able to say "no"

egizes rtunities not get lost ake money

Lawyers often focus intensely on:

The firm name The firm entity The firm business card

To make the launch meaningful & efficient:

Focus on the client & the problem you solve, then proceed ahead

It's not the kite, it's the air.

The law firm name Rules 7.1 & 7.5 DC Rules of Professional Conduct

Don't mislead, don't confuse, don't sound like something you are not

If the firm is me, me is not a Group & not Associates

But me can be a Firm

Legal Ethics Opinion 332

The Mills Family Law Firm

Be cautious about the unique name

Panovia Group LLP

Disan LLP

Startup naming concepts





Ipseity, from the Latin word *ipse*, meaning "itself"

"Ipseity reminds me of my core self,

the me beneath all layers of adaptation & personality,

and that's why I choose Ipseity Law for the

Test drive the firm name

How to Choose a Name for a Law Firm



Consider a logo

99.designs.com

Best Law Firm Logos

Law Firm Logos on Pinterest

Logo basics







Whose problems does this firm solve?

The small firm's office

How, when & where you will solve your clients' problems drives the need for an office

DC does not have a physical presence requirement

But if you are working from an office (home) where you are not barred, you may need a professional address in DC.

Carr WorkPlaces is a DC Bar member benefit

OSI Offices has nearly 1000 tenants & about half are lawyers 1629 K Street Suite 300

Washington, DC 20006

Avoid UPL

- DC Rule 5.5 bars a DC Bar member from the
- unauthorized practice of law in another jurisdiction.

Be careful to whom you email.



The entity

Know why you need an entity

Sole proprietor is an option

an entity an option

Resources on forming a business in DC

Useful information from DCRA

Know about estimated taxes

DC recognizes PLLC

Your firm needs an EIN

Apply to the IRS for an Employer Identification Number

Use your firm's EIN to open its business checking account

Small firm bank accounts

The business or operating account

- I The DC IOLTA, assuming there are IOLTA eligible funds
 - The Trust Account for a single
 - client or case, if needed

Firm communication

Your obligation in Rule 1.4

- Be an active listener
- Use an identifiable phone number
- Use a professional email address
- Have an appropriate business address
 - Be responsive
 - How to sound confident on the phone
 - Consider CallRuby or Smith.ai

Malpractice Insurance

It is not mandatory in DC

An entity will not protect you

It is best to have coverage

USI Affinity is our member benefit

Small Firm Tools

- Laptops Desktops
- Chromebooks
 - Tablets
- Manufacturer tech support
 - In-store tech support
- Printers (all-in-one & dedicated) Scanners
 - Dymo label/stamp printer
 - Phone system



Estimated expenses

- The annual range:
- Low no staff & office-on-demand
 - \$10,000 \$20,000
 - High staff & office space \$115,000 - \$175,000

Funding sources

- Personal funds the more, the better
 - Family & friends be careful
 - Credit cards be even more careful
 - Bank & SBA
 - Business incubator program
 - Rule 5.4(b) is NOT for a lender

the better careful re careful

rogram lender

Funding guidelines

- Create funding milestones
 - Bootstrapping is better
 - Do a cash-flow analysis
- Estimate revenue realistically
 - Know fixed & variable costs
 - Use GAAP
 - Tie the Plan to funding

Marketing

- Educate, inform, network
- A good, professional photo
- A presence in social media
 - A good business card
 - Make it easy to be found
- Focus on the problem & it's solution

Michelle C. Thomas





www.eliturner.com



Resources

DC Bar resources

DC Bar Communities

DC Bar CLE

SoloSez

MILO

Lawyerist

AttorneyAtWork

Our newsletter



Backup yourself

- Backup data to a safe, encrypted external hard
 - drive and/or the cloud
 - Backblaze Carbonite Reviews
 - Rule 1.3, Comment 5
 - DC App. R. XI, \$15(a)
 - Request the Agreement for Emergency Backup Services

Growth

Do you really need a partner?

Lawclerk.legal

Montage Legal Group

Lawyer Exchange

<u>UpWork</u>

Where to find virtual staff?

- <u>upwork.com</u> (My personal favorite)
- <u>freelancer.com</u> (general VAs all categories)
- <u>fiverr.com</u> (everything from powerpoint to logos to research and article writing for \$5)
- <u>atlasvirtualparalegal.com</u>
- <u>99designs.com</u> (logo and graphics)
- <u>guru.com</u> (great pool of admin and paralegal support)
- virtualparalegalservices.com
- <u>thevirtualparalegal.com</u>
- <u>starrparalegals.com</u> (bankruptcy specialty)
- <u>flex-counsel.com/</u>
- <u>equivityva.com</u>
- Off-line options:
 - local colleges

The small firm lawyer is a business owner

You depend on your community. Be a good citizen.

How do you do that? By answering these questions:

Why am I here?

What's going on around me?

What am I going to do about it?

How will my actions affect others?

Resilience

shape circumstances

Ability to adapt &

Awareness



The result:



Rules drive behavior

Rules set a standard of care

Some say "shall", some "may"

Rules drive how we manage

Managing is simple

- It's figuring out what to do
 - Doing it habitually
 - Creating good habits
 - Making checklists
 - Creating workflows
 - Following-up
- t to do lly its ts
Managing gets complicated when it's neglected

The upside of managing

- You are above the
- standard of care;
- You are building credibility;
 - Clients are happy;
 - Others are impressed;
- You have space & time to be a lawyer

The downside of neglecting

You are vulnerable

You spend more time on your problems & less on client problems

You live & work under a dark cloud

Good management takes less time than bad management

Getting started

Form the intent

Create the time & space

Pick a tool

The tools

Pens & paper Computer & software The Plan Concept mapping Spreadsheets & databases Calendar

The power of now **S** the power of no





Client intake

- Draft the process of how
 - a PC becomes a C
- Going from Prospective Client to Client
 - Create the intake form



Client intake triggers Rule 1.18

How are you contacted? How do you document? What do you create? How do you protect?

LEAD CONVERSION FLOW

GENERATE

CAPTURE



Bad leads



118

Would you put your intake form on your website?

Bailey & Galyen has several here

Does it need a disclaimer?

At what point do you have a "prospective client"?

Managing referral sources

Harvest this information

Thank them without violating

Rule 1.6

Market to referral sources

File creation, organization & maintenance

How you organize this process will impact you & the client.

How you carry it out will be key to your client's solution & to your

success.

It once was this simple

United States John Edwards file



Abbe Lowell

Client data now has multiple forms, formats & locations

Paper Digital Images Video Audio Various formats / various devices

It is all a part of the client file LEO 333

Know what & where the data is;

Organize it, protect it, back it up;

- Manage it & keep it useful;
 - It belongs to the client.

Are you preserving texts?

Phoneview Messages Documenting text messages How to save text messages using Android or iOS



Sample file workflow

- Client intake tool / Conflicts check
 - New matter sheet
 - Calendar system
 - Billing system
 - Case management system
 - Ideally all should be synced

Conflicts checking

resources

LA, not DC compliant







Sample client/problem workflow

- Client intake completed
- Fee Agreement Communication protocol
- Cause of action / SOL
 - Notice issues
- Pleading preparation

File closing workflow

- Review scope in the fee agreement
- Disengagement/status client letter
 - File organization & closing
 - Billing status & conclusion
 - Client trust account status
 - Archiving the file & data
 - Take aways for the Plan

Time & billing workflow

- Client established
- Fee agreement reviewed
- Data entry following action
 - Draft of report
 - Finalize & send

Followup



Communication workflow

- Client established
- Fee agreement reviewed
 - Initial client letter
- Work product transmission
 - Third party information
 - Status reports
- Disengagement / conclusion / file

Management Tools

Clio a <u>DC Bar benefit</u>

Rocket Matter

MyCase

Cosmolex

The Form Tool

Smokeball

Lawyerist Reviews

Staff

- How to determine the need
- How to determine the cost
 - \$70K is really \$88K
- Keep payroll well below 40% of revenue
 - **How to Evaluate Law Firm Financials**

Hiring resources

Mechanics of hiring

eGuide to hiring





The uniqueness of <u>Rule 1.6</u> in DC



Kenneth P. Vogel 🤣 @kenvogel



Here's a photo of Ty Cobb & John Dowd casually & loudly discussing details of Russia investigation at @BLTSteakDC while I sat at next table.



Follow \sim

What checking accounts do I need?

- **Operating (business) checking account a** commercial checking account for your firm
- IOLTA Trust Account (assuming you have IOLTA) eligible funds) Create with the IOLTA **Registration Form**
- Trust Account for a single client or case (only if you have a non-IOLTA eligible fund that will generate interest for its owner)

IOLTA eligible funds . . .

- Must be held in an approved IOLTA bank;
- Are funds that are nominal in amount, or
- Held for a short period of time;
- Such that effort to administer consumes interest income.
- **P** Example of an account name: *Daniel M. Mills DC IOLTA Account;*
- Interest goes to the DC Bar Foundation for pro bono legal services.

Three exceptions in Rule 1.15(b) & (e)

- "... when the lawyer is otherwise compliant with the contrary mandates of a tribunal . . .";
- If you are licensed and principally practice in another jurisdiction and are IOLTA compliant there; Rule 1.15(b);
- "unless the client gives informed consent to a different arrangement." Rule 1.15(e)

Trust Account Records

- What are you required to keep? Complete records - Rule 1.15(a);
- How long? . . . for a period of five years after termination of the representation. Rule 1.15(a);
- But is it ever safe to destroy trust account records when there is no statute of limitation on a Bar **Complaint?**

Complete records? What are complete records of a trust account

- transaction?
- If Disciplinary Counsel cannot figure it out from your records, then your records are not complete.
- In re Donald A. Clower, 831 A.2d 1030, DCCA 2003.

- handled the money and whether the lawyer followed the **Rules;**
- If the records show what happened and that you complied with the Rules, then they are complete;
- "The reason for requiring complete records is so that any audit of the attorney's handling of clients funds by Bar **Counsel can be completed even if the attorney or the** client, or both, are not available." In re Clower at 1034.

Managing Money



IOLTA

So where does the money go?



Operating

If the Fee is an ...

Advance Fee





It goes in your...

IOLTA Account
Then you....



And then...

Perform the work

Send invoice

Move the money per your fee agreement ...



From

IOLTA

These separate accounts can be at the same bank or different banks



Operating

What if you get paid after the work is performed?



Operating Account

Then you deposit straight to...







Advance Fee



Operating Account

UNLESS.....

You obtain the client's "Informed Consent" to deposit their money into your operating account - Rule 1.15(e).

Best Practice Tip: Don't Do This!



Your Money

NEVER







IOLTA Account

Except....

You can put your own money into an IOLTA Account pursuant to D.C. Rule 1.15(f) which says...

Nothing in this rule shall prohibit a lawyer from placing a small amount of the lawyer's funds into a trust account for the sole purpose of defraying bank charges that may be made against that account.

In Re Mance 980 A.2d 1196 (D.C. 2009)

- A flat fee is now an advance fee when it is paid before work begins
- Rule 1.15(e) applies it must be entrusted
- Flat fees go into the IOLTA Trust Account
- The fee agreement determines how and when you earn the fee
- A lawyer cannot earn a fee for doing nothing. In re Sather, 3 P.3d at 414

When does a flat fee go into the operating account?

- When the work is done and the fee is earned.
- If a flat fee is paid after the work is performed, it goes into the operating account.

Availability - What's that?

- Flat fee for work is not an engagement retainer (classic definition)
- Engagement retainer refers to availability, if required
- Flat fee for a task-based matter covers all the work to be done
- LEO 355 Flat Fees & Trust Accounts
- **Availability gigs are rare and unique**

Rule 1.15(e) informed consent - what is needed?

- Flat fees normally are entrusted
- Un-entrusted fee will be treated as the lawyer's property
- Lawyer must work for the fee to keep it
- Lawyer must explain the benefit or service
- Lawyer must refund any fee not earned
- Fee is subject to the lawyer's creditors

What is the message sent by this?



IN RE KENNETH A. MARTIN NO. 11-BG-775 DCCA February 13, 2014

- If a client, with reasonable promptness, disputes a lawyer's fee after it has been withdrawn from the trust account, the lawyer must return the disputed sum to the trust account;
- Unearned fees that must be returned to the client under Rule 1.16(d) include an arbitration award in favor of the client.

Be alert for the scam

- It's very sophisticated now;
- It involves a check to deposit in your trust account and fees for you;
- P The scammer will want funds wired;
- Wait for the check to clear. That is the only way to know if it is a fake check.
- And use a unique procedure under the UCC for added protection.

And if you want to be safe...

- Ask the bank to send the check for "collection" (UCC 4-501);
- Allows for positive confirmation the check has been paid before any funds are disbursed.



Ethics help...

- From the DC Bar, it is free & confidential;
- Hope Todd, Saul Singer, Nakia Matthews & **Erika Stillabower;**
- 202-737-4700 ext 1010
- ethics@dcbar.org

Practice Management

Dan Mills / 202-780-2762 dmills@dcbar.org

 Rochelle Washington / 202-780-2764 <u>rwashington@dcbar.org</u>

November 7 session

In the business plan template, draft your firm's Mission Statement, the General Firm Description & create a concept map of your strengths & weaknesses as a small firm lawyer. (page five of the Business Plan template)

> Explore Zwillgen **NakiaGrayLegal**

Potomac Law Group

Free and confidential ethics guidance

Help with business issues from the Practice **Management Advisory Service**

Help with stress, addiction & personal issues from the Lawyer Assistance Program

Fee dispute resolution with the Attorney Client **Arbitration Board**

