PRACTICE MANAGEMENT ADVISORY SERVICE

BASIC TRAINING AND BEYOND

District of Columbia Bar

PRACTICE MANAGEMENT ADVISORY SERVICE

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INTRODUCTION TO BASIC TRAINING AND BEYOND

This material is provided as a part of Basic Training & Beyond for DC Bar members. The information presented at the two-day session, in the slides and in this manual is not intended as legal advice. Legal advice is case specific and is not provided by the overall program or by this manual. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. No one should act upon any information in the program or the manual without careful consideration for your specific fact situation, without careful analysis, and without seeking professional advice where appropriate. The information contained in the program and manual is provided only as general information, which may or may not reflect the most current developments. This information is not provided in the course of an attorney-client relationship and is not intended to constitute legal advice or to substitute for obtaining legal advice from a licensed attorney.

Welcome to Basic Training and Beyond! You may be thinking of starting your own law firm or you may be a veteran. No matter what your reason is for participating, we believe this two-day program will provide you with the guidance you need to establish or improve your law firm. Law school teaches us to think like a lawyer. It's also necessary to think like a businessperson and that is the focus of Basic Training & Beyond. It is also the focus of the DC Bar's Practice Management Advisory Service. Dan Mills, the Assistant Director for the Practice Management Advisory Service, has developed this course to serve as a resource for DC Bar members who want to create and grow their own firm. This course is conducted in two full day sessions typically on the second and third Wednesday of every month. Members may attend either or both sessions, and may attend more than once if they wish. Some attend

when the interest in having their own firm first manifests and then again, perhaps months later, nearer the time of the actual launch.

The Day-One session provides the essentials of launching a firm in DC, and explores the characteristics of the small firm lawyer, the best firm name to choose, whether a business entity is necessary, why the business plan gives you an edge, along with insurance, office space, handling money, bank accounts, fees and fee agreements, billing, "of counsel" issues and developing the skill of networking. **Day-Two** is about growth issues such as client relations, office management, hiring staff, productivity/technology and marketing your law firm enterprise.

Daniel M. Mills is the Assistant Director of the Practice Management Advisory Service of the D.C. Bar. Dan helps lawyers with the business of their law office. He is a member of the Bar of the District of Columbia. Dan leads Basic Training & Beyond, a two-day, monthly, free program for small firm lawyers in the DC Bar sponsored by the Practice Management Service Committee. The program received the ABA's Gambrell Award for Professionalism in 2011.

Dan's first job after college was at The Washington Post. He worked as a journalist for several years covering courts and lawyers and attended Indiana University Law School in Indianapolis at night. He was a trial lawyer in Indiana for twenty-eight years until his retirement from solo and small firm practice in Indiana in 2007. He has been an advocate for children and has served as a court

appointed special advocate and guardian ad litem for abused and neglected children.

Since joining the D.C. Bar in 2008, Dan has helped many lawyers transition into solo and small firm practice. He speaks and writes regularly about ethics and fee agreements, ethics and trust accounts, IOLTA, flat fees and advance fees in light of *In Re Mance*, the characteristics of the small firm attorney, launching a practice in today's economy, marketing, social media, planning, productivity, and the lawyer as entrepreneur. He leads a monthly networking dinner of local lawyers the second Tuesday of each month. Dan can be reached at the DC Bar at 202-626-1312 or dmills@dcbar.org

Rochelle Washington is the Senior Staff Attorney in the Practice Management Advisory Service of the D.C. Bar. Rochelle, along with the Assistant Director Dan Mills, assists lawyers with the business aspects of starting and managing small law firms. She leads an annual 10-week program titled *Successful Small Firm Practice Series*: *How Small Firm Lawyers Can Compete, Thrive, and Be Ethical in the 21st Century.* Rochelle provides individual assessments and host networking opportunities for bar members. She also co-leads the two-day program, *Basic Training and Beyond*, which is offered on a monthly basis. This two-day program is sponsored by the Practice Management Service Committee and received the ABA's Gambrell Award for Professionalism in 2011. All programs and services of the Practice Management Advisory Service are free to D.C. Bar members.

Rochelle attended Towson University for undergraduate studies and American University, Washington College of Law where she obtained her J.D. She is licensed to practice in Maryland, the District of Columbia and the Federal District Court of Maryland. For several years she practiced as a sole practitioner in the areas of family, bankruptcy and personal injury law. In addition, she served as a volunteer attorney providing pro bono legal services in juvenile proceedings and family cases involving domestic violence.

In January 2013, Rochelle joined the Practice Management Advisory Service of the DC Bar. She can be reached at the DC Bar at 202-626-1317 or rwashington@dcbar.org.

D.C. BAR PRACTICE MANAGEMENT ADVISORY SERVICE

The Practice Management Advisory Service is a free and confidential service of the D.C. Bar to provide practice management information and resources to its members.

The D.C. Bar Board of Governors authorized the Practice Management Service Committee in January 1995 as a result of a recommendation of the Disciplinary System Review Committee to institute a program to assist lawyers with practice-related problems that often lead to disciplinary charges and other complaints by clients and the public.

As envisioned, the program would assist lawyers voluntarily to help them avoid disciplinary problems. The program would also provide remedial and oversight assistance to lawyers in the disciplinary system, referred by the Office of Bar Counsel or the Board on Professional Responsibility.

The Board of Governors appointed the Practice Management Service Committee (PMSC) in October 1995. The PMSC consists of 10 active members of the D.C. Bar and three non-lawyers, who are appointed by the Board of Governors to two-year terms. Among the areas of expertise in practice management issues represented by committee members are financial management, risk management, client relations, office systems, office technology, and personnel issues.

The role of the PMSC is to oversee the Practice Management Advisory Service (PMAS), a multifaceted program to help Bar members improve and enhance management skills in the practice of law. The PMAS is staffed by Bar employees who assist members in all aspects of practice management, including financial management, client relations and communication, business planning, office technology, and office systems and procedures such

as calendar and docketing systems. By improving management practices the PMAS seeks to improve the practice of law and the delivery of legal services to the community.

CHAPTER ONE: ON BEING A SMALL FIRM LAWYER

The purpose of this chapter is to discuss the issues a lawyer should consider before starting a small firm. However, our content is also beneficial to the small firm lawyer who wants to improve their firm.

"Only those lawyers with *extraordinary* determination, aggressiveness, independence, courage, and talent should endeavor to become solo." - Bill D. Burlison, Letters Washington Lawyer January, 2010 (53 years as a solo).

The successful small firm lawyers I have known have been blessed with varying amounts of the following ingredients: drive, thinking ability, competence in human relations, communications skills, technical knowledge and always a keen moral compass that keeps them on the straight path.

Daniel Mills

We disagree. In truth, those lawyers with ***ordinary*** determination, aggressiveness, independence, courage and talent can be successful in the small firm.

Although we believe that *ordinary* is, a lawyer must be realistic about the planning and work involved in starting and growing a law firm. The questions posed below are intended to encourage you to reflect on your abilities to solve the problems of others, get paid for it, attract new business, create positive client relations and manage an enterprise. If you have never practiced law or are coming from a large firm setting, it is likely that you have not had experience with the issues of billing, trust accounting, dealing with prospective clients, attracting and retaining clients, or networking for business.

Checklist for Starting a Law Firm

Checklists, by their nature, are limiting. There is no one-size-fits-all checklist for the variety of small firms that exist today or could exist tomorrow.

Generally in a checklist for starting a law firm, one needs to address:

The creation of the business plan

The nature of the business entity

The office issue

The accounting issue

The bank accounts

The technology issues

The infrastructure issues (equipment, services & supplies)

The insurance issues

For a more detailed checklist, click here and download the PDF "Checklist for Starting a Law Practice"

THE INGREDIENTS OF A SMALL FIRM LAWYER

What are the necessary ingredients of the small firm lawyer? The small firm world is not for everyone and there are some who can only be successful as a small firm lawyer.

> ***"but before I can live with other folks I've got to live with myself. The one thing that doesn't abide by majority rule is a person's conscience."***
>
> ***Atticus Finch, To Kill a Mockingbird***

To know if you have the characteristics of the small firm lawyer, it takes a long, honest and deep look inside.

Where do you stand on ***optimism****?*

What is your ***passion*** factor?

Do you have a *creative* side that fits well with ***discipline*** and ***self-accountability****?*

Does your ***aggressive*** component allow you to be a good ***listener****?*

Are you ***empathetic*** and also able to maintain ***boundaries****?*

Can you put yourself in another's shoes all the while maintaining a professional distance?

Are you part ***idea*** *person* and part ***detail person****?*

Can you see the big picture and plot a strategy to a goal for your client all the while keeping track of the time and costs you expend while getting there?

Are you willing to spend money to make money, or will the idea of sending a check to someone for marketing paralyze you?

Can you bring forth naive enthusiasm when appropriate and invoke the ability to ignore your inner cynic?

How do you deal with rejection and setback?

What about your networking skills?

Do you dread walking into a room of strangers or do you look forward to meeting new people?

Have you ever sold anything?

Can you talk about money and fees? Do you know how to ***close****?*

How are you in dealing with unknowns? Can you commit yourself completely to a new enterprise and have faith in your ability to be successful, or will you have one foot in the job market?

And if any of the following conditions figure heavily into your nature, do not become a small firm lawyer in an attempt to resolve the condition: **procrastination, distractibility, irritability, addiction, listlessness and depression, feeling like a fraud, or fear of success**.

In summary, consider these questions when you think about starting or continuing a small firm:

1. Am I a self-starter?
2. How do I feel about people?
3. Can I lead?
4. Can I take responsibility?
5. Am I a good organizer?
6. Am I a good worker?
7. Can I make decisions?
8. Can people trust what I say?
9. Can I stick with it?
10. Can I keep records?

"Remember, if you take risks, you may still fail, but if you do not take risks, you will surely fail. The greatest risk of all is to do nothing." Robert Goizueta, a Cuban immigrant who rose from a Coke bottler to chairman and CEO of the Coca-Cola Co.

"Failure meant a stripping away of the inessential. Had I really succeeded at anything else, I might never have found the determination to succeed in the one arena I believed I truly belonged. I was set free, because my greatest fear had already been realized, and I was still alive, and I still had a daughter whom I adored, and I had an old typewriter and a big idea. And so rock bottom became the solid foundation on which I rebuilt my life."

J.K. Rawling, author of the Harry Potter novels who began writing while broke and unemployed.

AVOIDING THE UNAUTHORIZED PRACTICE OF LAW

You might be asking yourself, as a lawyer with a Juris Doctor degree on the wall, why should I be concerned with the unauthorized practice of law. Surprisingly, con-artists attempting to pass as lawyers are not the individuals filling the docket of the Unauthorized Practice of Law Committee ("UPL Committee").[1]

The majority of individuals before the UPL Committee involve complaints concerning lawyers admitted in surrounding jurisdictions who practice in D.C. without obtaining admission to the D.C. Bar.

Rule 49 in the District of Columbia

Rule 49 of the D.C. Court of Appeals ("Rule 49") prohibits persons who are not active members of the D.C. Bar from engaging in the practice of law or holding themselves out as authorized or competent

[1] http://www.dccourts.gov/internet/documents/rule49_compliance.pdf

to practice law in D.C. Rule 49 contains several exceptions that apply to a large number of practicing lawyers in D.C. including: in-house lawyers employed by private companies or organizations, lawyers engaged in certain pro bono work, U.S. government lawyers, lawyers who limit their practice to specific federal or D.C. agencies, and lawyers with pending applications to the D.C. Bar.[2]

There are several other conditions that a non-lawyer[3] must meet to comply with a given exception. One of the more salient conditions involves prominent and clear notice on all business documents apprising clients of the lawyer's restricted practice. Professional communication includes letters, business cards, emails, websites, firm letterhead, and other communications to the public.[4]

UPL Committee

Rule 49 also creates the UPL Committee, a standing committee of the D.C. Court of Appeals charged with investigating unauthorized practice of law complaints filed against attorneys. The UPL Committee prefers resolving complaints without formal litigation, however in some cases the UPL Committee has initiated judicial proceedings when a negotiated resolution could not be reached.[5] Matters under investigation by the UPL Committee remain confidential unless formal proceedings are initiated. The UPL Committee has provided lawyers with helpful official commentary to offer guidance in interpreting and acting in compliance with Rule 49. However, the text
of the rule governs before the Court or the UPL Committee.

Virginia and Maryland

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[2] Ibid.

[3] A non-lawyer is defined as any person, firm, association or corporation not duly licensed or authorized to practice law in that given jurisdiction.

[4] http://www.dccourts.gov/internet/documents/rule49.pdf

[5] http://www.dccourts.gov/internet/documents/rule49_compliance.pdf

The UPL rules for both Virginia and Maryland are similar to Rule 49. You can find Virginia's UPL rule (Part 6, § I) on the Virginia State Bar website:

http://www.vsb.org/site/regulation/unauthorized-practice/

You can find Maryland's UPL rules on the Maryland Attorney Grievance Commission website: [6]

http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&fn=main-h.htm

http://www.courts.state.md.us/attygrievance/rules.html

Why is Compliance Important?

If a non-lawyer has practiced in D.C. for a long period of time without falling under a Rule 49 exception, when finally seeking admission to the D.C. Bar the Committee on Admissions[7] will refer the lawyer's file to the UPL Committee. After investigating the matter, the UPL Committee will often acknowledge that an unintentional violation has taken place. Although the Committee on Admissions usually recommends the lawyer for admission, the referral process to the UPL Committee creates a significant delay in the admission to the D.C. Bar, and "may result in future embarrassing mandatory disclosures by lawyers who have been subject to investigation."[8]

There have also been occasions where dissatisfied clients have argued that they are not obligated to pay "for work done by lawyers

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[6] Using the LexisNexis link, search *unauthorized practice of law* at the website to locate Title 10 of the Maryland Code. The UPL Rule is 5.5. Alternatively, using the Maryland state court link, follow the directions given on the website to locate the Maryland Rules of Professional Conduct using Westlaw, and retrieve UPL Rule 5.5.

[7] http://www.dccourts.gov/internet/appellate/admincommittee/main.jsf

[8] http://www.dccourts.gov/internet/documents/rule49_compliance.pdf

who do not practice in compliance with Rule 49, or that a presumption of incompetence should be drawn in malpractice litigation if a lawyer not admitted in D.C. practices in D.C. without full compliance with Rule 49."[9]

Moreover, Rule 5.5(b) of the D.C. Rules of Professional Conduct[10] makes it unethical for a lawyer to "assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law." All lawyers in a firm have the responsibility to ensure that the lawyers with whom they practice comply with Rule 49. Rule 5.5 (a) also makes it "unethical for a lawyer licensed in one jurisdiction to engage in unauthorized practice in any other jurisdiction," making lawyers vulnerable to disciplinary action in their licensed state as well.[11]

What Lawyers and Law Firms Should Do?

Anthony C. Epstein, former Chair of the Committee on Unauthorized Practice of Law, has posited a set of guidelines to ensure compliance with Rule 49:[12]

1) Any lawyer practicing in the District who is not a member of the D.C. Bar should read Rule 49 and D.C.'s Rules of Professional Conduct to determine whether he or she is in full compliance.

2) Take an objective look at your practice and decide whether it fits cleanly and completely within an exception to Rule 49.

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[9] Ibid.

[10] http://www.dcbar.org/for_lawyers/ethics/legal_ethics/rules_of_professional_conduct/amended_rules/rule_five/rule05_05.cfm

[11] http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/august_2004/barcounsel.cfm

[12] http://www.dccourts.gov/internet/documents/rule49_compliance.pdf

If you do not fall under the specifics of the exceptions then you should apply for D.C. Bar membership.

3) Always make sure that you are providing notice of your status in the form required by the Rule to prospective and actual clients, as well as others with whom you have dealings.

4) Lawyers should audit their compliance with Rule 49 on a regular basis and take immediate steps to bring their practice within compliance, if they are not already. Steps include reviewing your practice with respect to new entry-level or lateral attorneys and evaluating the adequacy of disclosures in the firm's web site and in retainer letters for new clients.

Mr. Epstein has also written extensively about the unauthorized practice of law.
See:http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/may_2001/rule49.cfm

Examples of Common Violations:

► **John, a lawyer who limits his work to representing clients before the Federal Trade Commission falls under the 49(c)(2) exception for U.S. government practitioners. John states on his business documents that he is "not admitted in D.C."**

This would place John in violation of Rule 49. Rule 49 requires the practitioner to "expressly give prominent notice in all business documents of the practitioner's bar status and that his or her practice is limited" to the specific federal agency practice. D.C. UPL Committee Opinion 5-98 also stresses the saliency in the practitioner providing adequate notice of bar status on firm letterhead, letters, emails, websites, business cards, listings in the telephone yellow pages, specialty listings (e.g. Martindale Hubbell), and other communications to the public. The following formats meet the public notice requirement: "Limited to matters and proceedings

before federal courts and agencies" or "Practice limited to federal communications matters."

Please note if a non-admitted lawyer intends to rely on this exception, all of the lawyer's practice must fall within the exception. For example if 95 percent of John's practice is before the Federal Trade Commission, but 5 percent involves intellectual property work for a D.C. client, John would not be excused by the federal agency exception and would have to apply for admission to the D.C. Bar.

► **Sarah, a D.C. Bar member has drafted a will for a client in Virginia, where she is not admitted to practice.**

Sarah would not be in compliance with the Virginia UPL rule. According to Virginia's UPL Opinion 73 it is not the unauthorized practice of law to prepare form documents such as wills and leases for sale to the general public. It is the unauthorized practice of law for a lawyer who is not admitted to the Virginia Bar to give assistance to the general public in the completion of such forms or to render any legal advice concerning the completion of the forms.

► **Michael is an attorney from Chicago recently hired by a small D.C. firm. Michael's D.C. Bar application is pending, and he has begun working with clients under the direct supervision of his supervising partner, an active D.C. Bar member.**

Michael is covered under the Rule 49(c)(8) exception that permits lawyers admitted in another jurisdiction to practice in D.C. for up to 360 days while their application for the D.C. Bar membership is pending. Michael must make sure that he provides adequate notice to the public both of his bar status and of his supervision by a D.C. Bar member. The following format meets the public notice requirement:

"admitted only in [the other jurisdiction]; Supervision by [name of D.C. Bar member], a member of the D.C. Bar."

According to D.C. UPL Committee Opinion 1-98 "such notice must be included on all business documents signed or expressly presented by the practitioner who is not admitted to the D.C. Bar, including without limitation: letterhead or signature blocks (but not necessarily both); business cards; websites; emails; promotional materials; and filings or formal submissions." D.C. UPL Opinion 20-08 states that "D.C. admission pending" should not be used as a notice of bar status under Rule 49(c)(8). D.C. UPL Committee Opinion 1-98 also advises that there is no exemption allowing practitioners to wait until she or he may be eligible to waive into the D.C. Bar. If the only method available for admission during the first 90 days of practice is by examination, then the individual must apply for admission by examination.[13]

► **Jessica, a lawyer in a small Maryland firm who is not admitted to the Maryland Bar prescreens prospective clients, and when she determines that a client's matter involves federal legal matters, she proceeds to represent the client without the supervision of a Maryland attorney. However, when a prospective client needs representation in a Maryland state court, she refers the client to one of the firm's attorneys admitted in Maryland.**

Jessica is engaged in the unauthorized practice of law because her actions allow an un-admitted attorney from a general law office in Maryland to use a prescreening practice to hide behind an "unlimited-in-fact law practice." Attorney Grievance Comm'n of Maryland v. Harris-Smith, 356 Md. 72, 84 (Md. 1999).

What if I have More Questions?

D.C. Lawyers:

[13] http://www.dccourts.gov/internet/documents/rule49_compliance.pdf

A major function of the UPL Committee is to guide lawyers and non-lawyers on the requirements of Rule 49. In doing so the UPL Committee issues formal opinions made available online at the D.C. Court of Appeals website:

http://www.dccourts.gov/internet/appellate/unauthcommittee/main.jsf

Lawyers are also encouraged to submit a written inquiry if the available opinions do not answer their question. Written inquiries must set forth all relevant facts and should be sent to:

District of Columbia Court of Appeals, Committee on Unauthorized Practice of Law, Moultrie Courthouse Room 4200, 500 Indiana Avenue, Washington, D.C. 20001

The UPL Committee also provides informal guidance in response to telephone inquiries. The Committee can be reached at: (202) 879-2777. Operation hours are Monday – Friday: 9:00 a.m. – 4:00 p.m.

Virginia Lawyers:

Opinions issued by the UPL Committee are located on the Virginia State Bar website and can be searched through a topical index. To request an UPL Opinion you can download the "UPL Opinion Request Form" online at:

http://www.vsb.org/site/regulation/unauthorized-practice

or you can contact Kristi Hall at (804) 775-0557 or hall@vsb.org and arrange to have the form faxed or e-mailed to you. Operation hours are Monday – Friday: 8:15 a.m. – 4:45 p.m.

Maryland Lawyers:

Opinions issued by the Office of the Attorney General concerning the unauthorized practice of law are located on the Maryland Attorney General Website:

http://www.oag.state.md.us/Opinions/index.htm

The Maryland Attorney General's Office does not respond to requests for opinions from private citizens or lawyers. For questions and additional information please contact the Attorney Grievance Commission at 1-800-492-1660 or agcmd@mdcourts.gov. Operation hours are Monday – Friday: 9:00 a.m. – 5:00 p.m.

Interested in Reading More on the Topic?

For more on the unauthorized practice of law, see: http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/february_2002/practice.cfm

To find more opinions and articles, enter *unauthorized practice of law* in the search box at: http://www.dcbar.org/for_lawyers/ethics/legal_ethics/opinions.cfm

CHAPTER TWO: PLANNING

Proper planning prior to launching your law firm is one of the most important steps you can take as you venture into the small firm world. Consider this fact: less than 10% of the D.C. Bar's more than 100,000 members are small firm lawyers. However, small firm lawyers generate 45% of the docketed cases filed annually with the Office of Bar Counsel. How can this be? While there are many reasons for this statistic, the nature of the complaints tells us that a lack of planning and management underlie many of the complaints against small firms. Failing to communicate with clients, having too many clients, inadequate records and mishandling of IOLTA trust accounts are among the common reasons for such complaints. Proper planning and implementation can ensure the health of the small firm and act as a protection against bar complaints.

The Business Plan

So how can you avoid a Bar Complaint? Creating and implementing a business plan is a key defense. You need a business plan to assist you in creating and operating your business. Many lawyers do not believe they need a business plan. However, having a plan creates control and direction. In the absence of a good plan your decisions will be driven by the balance in your operating account rather than the course you intended to take when you ventured out as a small firm lawyer. Either you will control your business or your business will control you. The process of drafting your business plan is likely to present you with issues you had not considered. You will come to see your enterprise as a system composed of smaller systems. You will create a belief system when you create your plan that is crucial for growing your firm. We have a business plan template for a small

firm to assist you in this process. Spreadsheets are also available to aid your financial analysis as you plan and grow your firm. A Word version of the business plan template and the Excel spreadsheets are available by request to PMAS@DCBar.org

Your plan does not have to be a perfect. It is far more important that it be functional, realistic and evolving. The development of a business plan requires you to think through your mission statement, financial goals and the logistics of operating your business. If done properly the creation of your business plan will encourage the use and implantation of office management systems. The spreadsheets will help you work through the issues of budgeting, income and expense projections, and factoring profit into your pricing. When a lawyer backs into his/her pricing with no concept of profit, the lawyer becomes a cash-flow surfer with no idea whether the business is actually profitable.

The Small Firm Backup Plan

What will happen to your law firm if you become ill or incapacitated? How will you protect and maintain files and client information if your office is destroyed by fire or flood? Who will notify your clients and the courts? Of course we all hope that these things never occur but we must be prepared if they do. The time to think of a backup plan is not after the devastation occurs but before it does. So, how to you create such a plan and what are the options available to you for emergency arrangements? For creation of the necessary instruments, the ABA's "Being Prepared" is a great resource. It provides useful instruments and information to assist you in establishing a backup plan. It can be purchased from the ABA or on Amazon.com, or you may borrow it from the D.C. Bar Practice Management Library by contacting PMAS@DCBar.org

Here is what Comment 5 to Rule 1.3 of the D.C. Rules of Professional Conduct says about a solo's backup plan:

> *"[5] To prevent neglect of client matters in the event that a sole practitioner ceases to practice law, each sole practitioner should prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client that the lawyer is no longer engaged in the practice of law, and determine whether there is a need for immediate protective action. See D.C. App. R. XI, § 15(a) (appointment of counsel by District of Columbia Court of Appeals, on motion of Board on Professional Responsibility, where an attorney dies, disappears, or is suspended for incapacity or disability and no partner, associate or other responsible attorney is capable of conducting the attorney's affairs)."*

A lawyer without a backup system who has a full calendar of appointments and court appearances and who winds up in the emergency room and later intensive care could face his/her suspension from practice and the appointment of a stranger by the Board on Professional Responsibility with orders to enter the lawyer's office and examine files. To avoid this problem, create the backup plan you need for your firm and find a lawyer to function as your backup. The process of finding a backup lawyer is very fact specific. Contact the Practice Management Advisory Service (PMAS@DCBar.org) for resources.

Choosing a Law Firm Name

The selection of your firm name is an important step in establishing and branding your business. Your firm name will identify and represent you and serve as a marketing tool for your business. Consult D.C. Legal Ethics Opinion 332 and D.C. Rules 7.1 and 7.5 as you reflect on the name of your firm. The message of these rules is that in using a firm name, you are not to mislead, confuse, or

suggest you are something other than what you are. Avoid the following:

Do not suggest that you are something other than yourself. Never attempt to oversell yourself in your firm name to the point of falsifying your experience or expertise. Avoid references in your name that suggest you are the "Best" or the "Expert"

1. Do not imply a greater capacity than what you possess: Never suggest that you are "Attorneys at Law" if you are a solo or that you are" "*Your Name"* Law Group" or "And Associates". If you are a true solo then these names would not be permissible under the D.C. Rules. The use of the word "Firm" in your name can be permissible.

2. Do not imply you are connected with a government, charitable or public entity. Never represent that you are part of or associated with any other agency, organization or association unless you truly are.

3. Do not mislead. The main idea is to avoid misleading terminology that would cause the client to think that you are anything other than what you really are.

The simplest and most common name used for small firms is your own name. "*The Law Office of **Your Name**"* Others, however, may choose to use a name that has meaning in your specific practice area such as "DC Family Law Firm" or "DC Criminal Lawyer." If you choose to use a name other than your own, it is important to create a name that can be clearly understood by your target audience and not just you. Test-drive your proposed name before you launch it. If you are continuously asked to explain what it means, that is not a good sign.

Choosing the Business Entity

Attorneys have been practicing in professional corporations and limited liability companies in the District of Columbia for years. Even though there is no affirmative mandate, it is unlikely that an attorney would be prohibited from practicing through limited liability companies (LLC) or limited liability partnerships (LLP).[14] Rule 1.0(c) of the D.C. Rules of Professional Conduct defines "firm" or "law firm" and refers to entities. It says:

> *(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization, but does not include a government agency or other government entity. See Comment, Rule 1.10.*

The professional corporation statute (DC Code §29-40 1) requires that all shareholders, directors and officers be licensed to practice the profession that the PC practices. A professional service is defined under DC Code §29-402 and includes the service an attorney provides. Neither LLCs nor LLPs are subject to the requirement that each member, manager or partner must be licensed to practice the profession that the LLC or LLP practices.

Rule 5.4(b) of the D.C. Rules of Professional Conduct permits attorneys to practice in business organizations where non-attorneys have managerial authority or a financial interest as long as (1) the

[14] Legal Ethics Committee Opinion No. 254 states that law firms organized as limited liability companies, limited liability partnerships, or professional limited liability companies are not limited to using those designations as the last words of their formal names, and may alternatively us the abbreviations LLC, LLP or PLLC.

business organization provides only legal services, (2) the non-attorneys undertake to comply with the Rules, (3) the attorneys undertake to be responsible for the conduct of the non-attorneys and (4) the foregoing conditions are in writing.

Rule 1.8(g)(1) of the D.C. Rules of Professional Conduct prohibits an attorney from prospectively limiting his or her malpractice liability. Since the PC, LLC and LLP statutes mandate that attorneys who commit acts or omissions of malpractice are personally liable for those acts, none of the PC form, LLC form or the LLP form can shield a lawyer from professional liability claims.

A D.C. Bar member may practice in the District of Columbia as a partner or associate of a law firm headquartered outside the District that is organized under the law of a state as a "registered limited liability partnership" or as a "limited liability company"[15]

Ultimately the choice of a business entity is a decision you should make with your accountant, CPA or other financial and legal advisor. Selection of an entity can create taxable events. There are a variety of business entities to choose in the D.C. Code. More information is available from the District of Columbia Regulatory Affairs (DCRA) which serves the function of the secretary of state in D.C. There are registration and annual fees associated with the creation and maintenance of an entity in D.C. Know why you need to establish as a particular business entity. Otherwise, you can launch and remain a sole proprietor until there is a practical reason to create an entity. A sole proprietor obtains an employer identification number from the IRS. Income and expenses from a sole proprietor lawyer are filed on Schedule C of the federal tax return. Sole proprietors also pay quarterly taxes.

[15] Legal Ethics Committee Opinion No. 235.

Do you need a D.C. business license? What about the FR 500?

The District of Columbia government does not require attorneys to have a business licenses to practice law or open a law firm. Professions that are separately regulated are exempt.

A law firm located in D.C. is, however, required to complete the FR 500 Form.

This form requires that you identify your business code. The Business Code for attorneys is 541110.

Tax ID Number

You should obtain an Employer Identification Number (EIN) number for your firm. It is widely recommended that you do not use your own social security number when opening your business checking account. In fact, the banks typically require that you have an EIN when opening a business checking account.

Get an EIN click here.

Malpractice & Insurance

The D.C. Rules of Professional Conduct do not mandate that a D.C. Bar member have professional liability insurance in order to practice in D.C. D.C. Rule 1.8(g)(1) bars a lawyer from prospectively limiting his/her professional liability.

Therefore, it is strongly recommend that a lawyer have adequate professional liability coverage. Here are some facts and questions every lawyer should know and ask about malpractice and malpractice coverage. If you're unsure of the terms of your policy or what they mean, speak to an attorney or insurance professional.

You may recall that in the District of Columbia, the PC, LLC and LLP statutes specifically mandate that attorneys who commit acts or omissions of malpractice shall be personally liable for those acts. Additionally, having no coverage, inadequate coverage or hoping that an umbrella policy will cover professional malpractice is a bad idea. Umbrella policies typically exclude professional liability claims. It is in the best interest of the lawyer and the lawyer's client for the lawyer to have malpractice insurance.

How do you select the right insurance for your law firm? Here is a checklist to assist you with the selection of your malpractice insurance carrier:

Is your malpractice policy a claims made policy? Claims made policies cover claims that are made during the policy period. This differs from an occurrence policy, which covers any claim that was made as a result of an occurrence (i.e. the alleged malpractice) that took place when the policy was in effect.

Most homeowners and car insurance policies are occurrence policies, and those are the policies with which most people are familiar. But claims made policies are common for malpractice. If your policy is a claims made policy, once you become aware of a potential problem or claim, you should immediately advise the insurer. Failure to advise the insurer may mean a loss of coverage.

Does your policy have a prior acts date? This date may limit the claims covered by your policy even if the law firm becomes aware of the claim during the policy period. If the alleged malpractice occurred before the prior acts date, it won't be covered. If your policy contains

such a provision, you will need to determine whether the date involves the whole firm or specific lawyers.

Do you have 'tail' coverage? This is important if you are switching carriers and don't have prior acts coverage with the new policy. Some insurance companies offer free tail coverage if the lawyer has been insured a certain number of continuous years. Ask if the company provides free tail coverage.

What are the exclusions to your policy? Doing work for free for friends or family? Acting as a court appointed guardian ad litem? Taking on work in a new practice area that hasn't been previously disclosed to your malpractice carrier? Check your policy to see whether these items are covered under your policy. Does the policy you are purchasing cover all of your practice without exclusions for particular cases or practice areas? Does your policy's definition of professional services fit your firm and what it does?

Are you covered for all claims of malpractice, including those instituted as a result of a collections claim? An often-cited reason why malpractice insurers don't like their policyholders to institute collections claims for unpaid fees is that the client often retaliates by instituting a malpractice claim. Sometimes those claims result in scrutiny of your billing procedures or the clarity of your communications with clients about your fee structure.

Are you covered for other activities related to your law practice, such as a real estate lawyer acting as a title agent, or any lawyer acting as a member of a board or bar association? If you work as a court appointed Guardian Ad Litem, are you covered by your policy? Does your policy provide coverage for responding to a bar complaint?

How much do you know about your malpractice carrier? Don't choose a malpractice carrier based upon price/premiums alone. Is your insurer financially strong, reliable and experienced?

Will you have the opportunity to choose or approve counsel should a claim be made against you? Your policy may give your malpractice insurer the exclusive right to choose the attorney or firm that will represent you.

Are your policy limits sufficient? What is the size of the potential judgment or value of the typical case or transaction being handled by the firm? If the numbers are high, you might want to consider higher limits. Consider the firm's assets to ensure that you're sufficiently protected.

Are your defense costs and expenses outside of the policy limits or included? Defending a malpractice lawsuit can be expensive. Do defense costs reduce your coverage? Determine whether your policy limits include defense costs as well as liability limits. Review your deductible and be sure you know what it applies to - expenses or indemnity or both?

Having a malpractice policy isn't enough- make sure you know what that policy covers and where you may be vulnerable. Read your policy and get professional guidance if necessary.

The D.C. Bar Member Benefit for malpractice insurance is with USI Affinity.

The obtain competitive quotes, a list of small firm friendly, non-member benefit agents can be obtained on request to PMAS@DCBar.org

If you are thinking about an *Of Counsel* relationship, notify your insurance carrier, read your policy and take a look at Considering 'Of Counsel' in the January, 2012 *Washington Lawyer*.

CHAPTER THREE: THE LAUNCH

OFFICE SPACE

Where and how will you operate your firm? There are options available to the D.C. lawyer for cost effective and professional office space. Where and how you work is an element of your professional image. Focus on your client's needs, expectations and experience. Affordability, location, décor, convenience and parking are just a few of the considerations you must take into account as you make your choice.

Home Office: The most cost effective office space can be the use of a home office. Technology has made the use of a home office a practical and professional method of doing business. With cloud-based applications, management systems and electronic documents and communication, it may be practical and efficient for you to start and grow your business from your home. D.C. does not have a physical office requirement. If your home office is in a jurisdiction where you are not barred, that jurisdiction's rules pertaining to unauthorized practice of law may apply to you and a home office arrangement may not be a viable option, particularly if you hold yourself out publicly as working from the home office. An office-on-demand with an address in D.C. may be a solution.

Office-On-Demand: A cost effective office space option can be an office-on-demand arrangement. There are many choices available in D.C. metro area. An office-on-demand[16] allows you to have a professional office address and the use of a professional office space and services on an as needed basis. Most office-on-demand vendors provide office services in a package or a 'la carte manner. The DC Bar has a member benefit with Carr Workplaces.

Click here or call 1–877–301–2093 to see the current specials for D.C. Bar members.

Below is a checklist of issues to consider and questions to ask the office manager if you are considering a lease agreement in an office-on-demand setting:

A. How am I charged for services - on an a 'la carte basis or is there a package of services available?

B. How does the service's charge for incoming and outgoing fax compare with using an e-fax service that is mine and separate from the virtual office? Click here to compare.

C. Can the service e-mail incoming faxes as an image file?

D. Besides the services that I buy, what additional services are available and at what charges?

[16] Office-on-demand is also known as "executive office" or "virtual office". It typically involves a contract or lease and provides office space and services as needed and generally in "turn-key" fashion. It is popular because it is often much less expensive than a traditional lease that gives 24/7 access to space and/or services. A "virtual office" can also mean a law firm that provides legal services either exclusively or partially through a website. It may or may not have a physical presence.

E. If the service publishes names of tenants, such as on a tenant board in the building lobby, can I get my name displayed and at what cost?

F. How will my phone calls be handled? Can I take my calls but refer them to the service as needed? Can I give instructions on how a particular caller is to be handled? If the service takes a call, can it be sent to my cell or my voice mail? Can I get a wav file emailed to me of my voice mail messages? At what cost?

G. If the service provides my phone and fax numbers, can I take them with me if I end the lease? If so, at what cost?

H. What options are there for me to obtain my mail? Is my mail held securely and confidentially until I receive it? What is the fastest, most secure method and what will it cost? If you FedEx my mail to me using my FedEx account, how will you protect my account information to be sure it is not used for another tenant?

I. If someone walks into the service without an appointment and asks for me, how is that person handled? Will I be called? Does this generate a charge on my account?

J. What is the average stay of a tenant at the office-on-demand facility?

K. Can I schedule appointments and see clients off normal hours and on weekends? If so, how do I get access to space and how will I be charged?

L. What policies, procedures and security are in place to protect the confidentiality of client information?

M. If I use fax, copying or scanning services, is the data read by the machine saved or in any way accessible to anyone else, or is it deleted immediately?

N. Is a schedule of open office/conference room space available on line and can scheduling be done on line? How are cancellations handled?

0. I operate a paperless office. Will the office-on-demand interact with me in a way that supports my paperless system?

P. Is a written notice of intent to cancel the lease required? If so, what are the terms?

Q. If I terminate the lease, how is mail handled and am I charged for that?

R. If someone walks in and asks for me after I have terminated services, how is that handled?

S. If the facility is closed because of a holiday or weather related issue, may I still access the space for work related purposes?

Shared Office Space: Sharing office space is another way to reduce the cost of running your law office. Connect with attorneys who perhaps have different practice areas or work in your practice area that they may refer to you and consider an office sharing arrangement. This can allow for the sharing of staff service and expense as well as office equipment. Another possibility is leasing or subleasing space and services from a larger firm that may have available space. You may not always find that this kind of office arrangement is publicly advertised therefore it is recommended that you contact a larger firm directly to see if it has available space.

Individual Office Space: Renting your own space is another option. This option, while typically more expensive, can provide the autonomy you desire to create the office environment you envision for your business without the interference of anyone other than your landlord. You will typically incur the cost of the space, common areas, your own office equipment, office furniture, utilities, communication systems, décor and receptionist and staff services.

Owning Space: The most capital-intensive option is purchasing your own office space, furnishings and systems. Typically you may have to secure a bank loan to exercise this option. Most professionals establish themselves before they consider buying office space and systems. Some firms have purchased more space or a larger building than initially needed and leased space to other professionals until they grow into the purchased space.

Whichever option you select, remember to think about the experience of the client. Your space, location, and decor should be consistent with your firm's image and mission. Consider how and where you will be keeping client files. Is your office a safe and secure place for client property? Will you be accessible? Do you need a street-level presence?

BANKING

You will likely need at least two bank accounts for your law firm. The operating or business account is for earned fees and for the payment of law firm expenses. You will pay yourself and staff from this account. If you receive funds in advance for fees or expenses or client funds in connection with a representation, you will need a D.C. IOLTA (Interest on Lawyer Trust Account) which is a special type trust account required by D.C. Rule 1.15.

Advance fees or expenses that you receive before you perform work or incur the expense that are IOLTA eligible (sums that are nominal in amount or will be held for a short period of time) are deposited into your D.C. IOLTA. As you do the work for the client, you earn the advance fee and them move it into your operating account according to the terms of your fee agreement. Your D.C. IOLTA is a pooled trust account with the interest owned by the D.C. Bar Foundation. Your bank will send the interest to the D.C. Bar Foundation, which funds pro bono legal services. More information on Trust Accounting is in Chapter Five of this Manual.

If you receive advance fees, expenses or client funds which are not nominal in amount or are not going to be held for a short period of time, such that the fund will generate net interest as described in D.C. Rule 1.15(b), you will need to open an interest bearing trust account. Only one such fund should be deposited into this non-IOLTA trust account unless you want to create an interest-tracking task.

A trust account of any type must be opened at a bank that is trust account compliant in D.C. Those banks are listed here.

Banks handle fees for law firm checking accounts is different ways. Be sure to ask how account fees are charged. For example, if you order checks when you open an operating or trust account, the bank will likely charge your account for the check fee. Some banks have sophisticated digital banking platforms that allow you to login from your computer and transfer funds between accounts. Some banks want law firm business and are especially small firm friendly. Your experience in opening an account will often be consistent with how the bank performs for you.

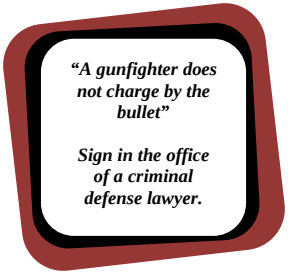
Setting Fees

A lawyer's fee shall be reasonable according to D.C. Rule 1.5, and this rule sets forth factors to be considered in determining reasonableness of a fee. The fee must be reasonable throughout the representation and not just at the beginning.

In most practice areas, there is a range of fees from a high to a low for the same or similar services and knowing this range gives you some sense of the going market rate and represents the factor described in D.C. Rule 1.5(a)(3). In many cases, most fees in the range of high to low are arguably reasonable and there can be many reasons why a lawyer would position him/herself in the high or low part of the range.

But backing into your fee based upon what other lawyers charge is an inadequate analysis. Unless you do a cost analysis of your legal service, you will not know if you are on course to earn profit from your effort.

You need to know the value of a productive hour in your office. A productive hour is the sum that ensures that your professional and personal expenses are paid. If you want to make a profit, you will need to add an amount to the productive hour in order to create your fee and then apply D.C. Rule 1.5 to be sure it is reasonable. Now, let's calculate your productive hour.



The productive hour calculation

Here is the lawyer's productive hour calculation. Let's say that a lawyer needs to generate $200,000.00 in annual revenues to pay her/himself, all office expenses and a staff person. Based upon working a 50-week year and eight productive, billable hours five days a week, an hour is worth $100.00.

$200,000.00 / 50 weeks = $4000.00 $4000.00 / 5 days = $800.00 $800 / 8 hours = $100.00

But who can be productive and bill eight hours a day? The lawyer who is also managing a business, handling the marketing, and perhaps the office administration, filing, cleaning and errands will be considered very productive if that lawyer has on average from three to four productive hours a day performing legal problem solving for which the lawyer will be paid by a client. If you consider that a lawyer is more likely to have four hours a day, five days a week of productive and billable work, a productive hour is worth $200.00.

$200,000.00 / 50 weeks = $4000.00
$4000.00 / 5 days = $800.00
$800 / 4 hours = $200.00

And remember, that $200.00 applied against on average four hours a day generates sufficient revenue to pay the lawyer and the office expenses. If the lawyer's compensation is simply enough to meet the lawyer's personal expenses, there is no profit factored into a $200.00 productive hour. If the lawyer is billing and collecting $200.00 an hour, the lawyer is simply breaking even.

If the lawyer desires to profit from operation of his/her law firm, a sum must be added to the value of a productive hour to allow for profit.

Whether you charge for your time and expertise by the hour, on a flat fee basis, on a success or contingency basis, or some combination of these or other methods, each hour you are at work and being productive can be assigned a dollar value.

If you need to generate $300,000.00 as a lawyer to pay yourself and your office expenses and staff, and you can be productive and bill at least five hours a day, five days a week, for fifty weeks each year, that hour is worth at least $240.00.

$300,000.00 / 50 weeks = $6000.00
$6000 / 5 days = $1200.00
$1200 / 5 hours = $240.00

The lawyer's productive, billable time determines the lawyer's income. Whether the lawyer consciously incorporates profit into the lawyer's price and then how the lawyer spends the rest of her/his time determines the future.

When you address the question of a price tag for the value you bring to your client, consider the following:

The savings from risks avoided are sometimes unknowable;

Benefits to the client vary over time and may be unknowable;

Effort is not value;

Judgments of value are personal and require experience.

We have a time management spreadsheet you may request from PMAS@DCBar.org. Monitoring your time and knowing on what you spend your time is the single most important thing you can do to determine what your fee should be. The fee that you charge a client to solve a problem must take into consideration the value generated for the client, the time it takes you to problem solve as well as other cost involved with solving the problem. The effort you put in, or don't put in, is not necessarily value. The client values the result and the experience.

When setting fees you must also avoid the appearance of greed. The public perception of lawyers is that we are motivated by greed. Conventional wisdom says that our fee arrangements are simply a way of emptying our client's pockets into our own. Hence, it is best to ensure that your fee agreements do not support this misconception. There are a few ways that you can avoid the appearance of greed.

1. Do not over dramatize facts;

2. Do not unfairly attack the opposition;

3. Do not exaggerate claims;

4. Refrain from being inappropriately aggressive.

5. Do not take advantage of a client.

6. Do not place punitive terms in your fee agreements.

Surveys we discuss during the Basic Training sessions show that the public questions the honesty of the legal profession and does not think that it contributes to the good of society. Your job is to make sure that your client's experience is the opposite of what surveys show they expect it to be. Exceed your client's expectations. Be accessible, responsive, informed, and provide good service. If you do, you will stand out and be remembered.

Competition

Back in the day, small firm lawyers primarily competed for business with other small firms and to some extent with mid and large firms. Today our competition is no longer limited to fellow lawyers. We must now compete with companies that provide legal problem solving to clients for nominal fees like Legal Zoom and Rocket Lawyer. These websites are able to commodify legal services for very low prices. How can the small firm lawyer compete? There are ways you can make your business model competitive and profitable:

1. Be efficient and use paperless systems. Develop a workflow where you touch paper once;

2. Use alternative fee agreements. Develop limited scope, flat fee problem solving;

3. Turn any repetitive event into an automated event. Use *theformtool.com* to automate repetitive Word document;

4. Focus on service, value and the strength you have over your competition. Good lawyering cannot be reduced to an inexpensive form on the internet. Good lawyering and true problem solving is a creative, informed thought process that considers the client as a living, breathing human being and not just an order form associated with a credit card number.

Requiring payment in advance is often a characteristic of a competitive, efficient small firm. Getting paid upfront means you only have one thing to worry about and that is solving your client's problem. Law firms that require payment upfront typically do not

have collection problems. Advance fees and expenses must be handled properly and in compliance with D.C. Rule 1.15:

Advance Fees

Criminal defense and bankruptcy lawyers have traditionally required a client to pay a flat fee in advance before the lawyer begins work for practical reasons. Many lawyers are adopting this business model because of its inherent advantages. Requiring an advance fee is an effective screening mechanism.

In the District of Columbia, all advance fees, whether flat or hourly, are considered client property until earned by the lawyer. This is the result required by D.C. Rule 1.15 and by *In Re Mance*[17]. This means that if a client pays a lawyer $5,000.00 to defend a felony in D.C. Superior Court, the lawyer deposits the $5,000.00 into the lawyer's D.C. IOLTA[18] and prepares a fee agreement that describes how and when the advance fee will be earned.

In Re Mance is an important case for the small firm lawyer and can be found here on the D.C. Court of Appeals website.

There is also a D.C. Legal Ethics Opinion, No. 355, providing guidance about the advance fee issue.

The fee agreement must clearly and explicitly set forth how the advance fee will be earned over the course of the case. A lawyer can always wait until the conclusion of the legal matter to consider the advance fee earned and to then transfer it from the IOLTA to the lawyer's operating account. This is often not practical when the legal matter goes on for months or years and the demands of the law firm

[17] 980 A.2d 1196 (D.C. 2009)
[18] Interest on Lawyer Trust Account (See D.C. Rule 1.15(b))

require regular cash flow. If the lawyer does not want to wait until the matter is fully concluded to consider the fee earned, then the lawyer and client must agree upon an earning mechanism that is then set out in the fee agreement. If may be that portions of the advance fee are earned when stages of work are completed or when events occur in the case. The lawyer and client might agree that the earning mechanism for earning a $5,000.00 advance fee will be the hourly rate of $300.00, but that the client will never pay more than $5,000.00. However the lawyer and client agree to handle the advance fee, it is important to remember that the fee must be reasonable throughout the representation, that frontloading is forbidden[19], and that any unearned fee or un-incurred expense must be returned to the client.

Rule 1.15(e) says that advances of unearned fees and un-incurred costs shall be treated as property of the client until earned or incurred unless the client gives informed consent to a different arrangement. *In Re Mance* gives some guidance to this so called "different arrangement" which is also called "waiver of entrustment". If you engage in what many consider to be the high risk practice of "waiver of entrustment", you must have the informed consent of your client who must understand and agree to the following:

1. Advance fees normally are entrusted because the client's money is safest in the lawyer's IOLTA;

2. Un-entrusted fee will be treated as the lawyer's property in that they can be spent of operating expenses even though they belong to the client;

[19] Frontloading is the practice of "earning" a disproportionately large portion of an advance fee. See *In Re Mance*.

3. Lawyer must explain the service to be provided. This is typically covered in the scope of representation provision in the fee agreement;

4. Lawyer must work for the fee to keep it. There is no such thing as getting paid for doing nothing;

5. Lawyer must timely refund any fee not earned; and,

6. Un-entrusted fee is subject to the lawyer's creditors. In other words, the client's money in the lawyer's operating account is at risk and vulnerable to the lawyer's creditors.

While there is no rule or case in D.C. as yet that clearly establishes all conditions of "waiver of entrustment", it would seem the above are at minimum required by a reading of *In Re Mance*, *In Re Martin*[20], the D.C. Rules of Professional Conduct, and D.C. Legal Ethics Opinion, No. 355.

What client in their right mind would agree to allow his/her lawyer to put the client's funds in an account that is subject to the lawyer's creditors? Do you really want to have this conversation with your client? And if you engage in "waiver of entrustment", will you be able to timely refund any unearned fee if the client terminates you? The failure to refund unearned fee was some of the underlying conduct sanctioned in *In Re Mance* and in *In Re Martin*.

The small firm lawyer who engages in "waiver of entrustment" is on thin ice.

[20] In Re Kenneth A. Martin, (DCCA No. 11-BG-775 Amended 2014)

Summary on Advanced Fees

1. Fee must be reasonable at the beginning, ending and throughout the representation;

2. Set a fair and reasonable earning mechanism in the written fee agreement;

3. Deposit advance funds to the IOLTA;

4. Withdraw earned fees according to the terms of the fee agreement;

5. Return any unused/unearned portion upon termination of attorney client relationship.

CHAPTER FOUR: FEE AGREEMENTS

The essential elements to a bullet proof fee or engagement agreement between a lawyer and a client are the following:

First, have an immediate conversation with the potential client about fees, how you work, your ground rules, the client's expectations, what you expect of each other, and how you will communicate. Do not rush this exchange. Allow for the free flow of information. Arrive at an understanding and say it out loud.

Second, assuming you have an understanding and intend to proceed into a lawyer/client relationship, prepare a written fee agreement or engagement letter that does the following:

A. Defines in detail the scope of the work. Explain what you are going to do and if appropriate, tell what you are not going to do. For example, if you are going to undertake the defense of someone charged with a crime, but you are not going to sue the police over the search and arrest, state that clearly in the agreement;

B. State the fee to be charged. Explain the rate or basis of the fee in detail and give examples where appropriate. In the case of an advance fee, incorporate an earning mechanism so that it is clear when you have earned the fee and when it is moved from trust to your operating account;

C. Describe the expenses that the client is to pay. In a contingency fee case, detail the client expenses and state whether the client must pay the expenses regardless of the outcome of the case;

When you have not regularly represented the client, the above three elements are required in a written fee agreement or engagement letter by the District of Columbia Rules of Professional Conduct.[21] If the case involves a contingency fee, a written agreement is required as well as a writing that accounts for the outcome of the matter.[22]

When must the fee agreement be created? D.C. Rule 1.5(b) says it should be communicated to the client in writing before or in a reasonable time after the representation begins.

It is of course the best practice to use a written fee agreement in every case, that the lawyer and client sign it, and that it address in clear, simple language these and other issues such as:

D. Fee arbitration: In D.C., a lawyer may have a provision in a fee agreement that any fee dispute be submitted to the D.C. Bar Attorney/Client Arbitration Board ("ACAB") provided the written agreement informs the client that counseling and a copy of the ACAB' s rules are available from the ACAB staff and provided the client consents in writing to the mandatory arbitration.[23] When the client requests arbitration of a fee dispute, the lawyer must arbitrate.[24] If the lawyer requests arbitration, the client may elect to participate.

E. Detail what is expected of the client: explain what cooperation is needed and expected. Explain how you will communicate and what the client can expect regarding phone calls, email, letters and meetings.

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[21] Rule 1.5(b)
[22] Rule 1.5(c)
[23] D.C. Bar Legal Ethics Opinion 218, which should be read before drafting an arbitration provision. http://www.dcbar.org/for lawyers/ethics/legal ethics/opinions/opinion2 I 8.cfm
[24] D.C. Bar Rule XIII(a)

F. Address your right to withdraw and the client's right to terminate the relationship.

G. Describe your intention to use an associate, paralegal, or contract lawyer and how you will charge for this assistance.

H. Make clear that you are not guaranteeing a result, and receive an acknowledgement from the client that no result is promised.

I. Address how, when the representation ends, you will deal with the client's property and the file. The file belongs to the client with one exception.[25] If the client does not request the file, the lawyer must retain it for at least five years.[26] Consider copying or scanning the file if the client requests the file, and if the lawyer retains the file for five years, allow in the agreement for the right to destroy the file. Depending on the case and nature of your practice, it may be wise to keep a file longer than five years, or to routinely scan the file and return original documents to the client.

J. Put a limit on the time period for the client to sign and return the agreement. Especially when time is of the essence, insist that in order for an attorney/client relationship to proceed, a signed copy of the agreement must be returned by a specific date. Calendar that date and if the individual continues to be nonresponsive, confirm in writing that no agreement has been reached.

As with any well-drafted agreement, clear, simple language that details the terms and gives examples will go a long way to avoiding disputes. For example, consider the following:

K. If the representation involves litigation, does the scope of the work cover an appeal? If you are excluding an appeal from the

[25] Rule 1.8 (i) -under certain circumstances, unpaid for work product may be retained by the lawyer.
[26] D.C. Bar Legal Ethics Opinion 283.

scope of the representation, make it clear that negotiating a new agreement will be necessary for an appeal.

L. How will the selection and payment of an expert witness or investigator be addressed?

M. If it is a flat or fixed fee case, state precisely what will be done for the flat or fixed fee and whether the start of work is contingent on the fee being paid. If it is an advance fee, explain how you will be charging against the advance fee and what happens or is expected of the client when the advance fee is exhausted. This is the earning mechanism and determines when fee is moved from the trust to the operating account.

Explain that any unearned fee will be returned. Fee advances and costs are the property of the client until they are earned or incurred unless the client gives informed consent to a different arrangement.[27]

N. If it is a contingent fee, explain how the fee will be calculated in the event of a settlement or collected verdict. Is the fee calculated against the gross settlement or verdict, or are expenses paid or reimbursed before the fee is determined?

0. It is best to explain that unearned fees and un-incurred costs will be placed in your trust account and withdrawn as earned and incurred.

P. If you are billing on an hourly basis, it is best to explain how your time on all aspects of the case will be billed by giving examples, such as preparation for a hearing, research and investigation, drafting a motion, taking a deposition, and examining records. Explaining in detail in the bill itself what you are doing and

[27] Rule 1.15(e); In Re Mance, 980 A.2d 1196 (D.C. 2009)

the result you are obtaining can help the client understand the process and be less likely to question the bill. If you intend to charge a minimum billing increment for phone calls and letters, it must be stated in the agreement.[28]

Q. Detail how you will cover both inside and outside costs. Inside cost examples are postage, copying, and long distance charges. Outside cost examples are filing fees, messenger expenses, process fees, and court reporter charges. If you intend to pay all costs and pass them onto your client in the bill, explain this in detail. If you elect to have the client pay all outside costs directly, this must be set out in the agreement.

R. If the lawyer pays the costs and disbursements related to prosecuting a case with a line of credit, the lawyer may pass the cost of the line of credit on to the client provided the client has been informed in advance and agrees, and provided the expense is reasonable and the lawyer has maintained a separate accounting. The costs must be directly attributable to the client and not simply overhead expense.[29]

S. It is advisable to explain your billing practices and state when the client can expect to receive the bill, who to call with questions, and when payment is due.

T. The agreement should have space for both the lawyer and client to sign and date the agreement and each should have a signed original.

Disengagement or termination with the client should be memorialized in most circumstances by a letter stating that the legal

[28] DC Bar Legal Ethics Opinion 103
[29] DC Bar Legal Ethics Opinion 345 http://www.dcbar.org/for lawyers/ethics/legal ethics/opinions/opinion345.cfm

representation has ended. When the matter is complete, send a letter that:

A. Thanks the client for the opportunity to have been of service and state that the case is over and no further work will be performed. Explain why;

B. Addresses the return of client property and how the file will be handled. See paragraph I above;

C. Acknowledges any other terms or conditions of the ending of the relationship, such as a confirmation that the client elected not to appeal a final order;

D. Address the status of fees and payment.

Non-engagement letters are also important. If a potential client does not hire the lawyer and does not sign the engagement agreement, or, if the lawyer declines the representation without preparing an engagement agreement, it is advisable to confirm this fact in a letter with the following elements:

A. Using simple, clear language, state that you are not accepting the case and will not be the lawyer for the individual;

B. You may or may not want to explain why, but if you state a reason, it is best to be straight forward;

C. Resist the urge to comment on the merits of the case. In fact, you may want to state that the fact that you are declining the case is not a reflection on the merits of the case;

D. Where appropriate, encourage the person to seek other counsel, but unless it is obvious, avoid giving advice on any time limitation that may be applicable;

E. It may be appropriate to send the non-engagement letter by certified mail, return receipt, or in a manner to guarantee and document delivery. Retain the letter in a filing system so that you can find it if necessary years later.

This informational checklist is provided as a service of the D.C. Bar Practice Management Advisory Service. It is not endorsed by the D.C. Bar Board of Governors. Please consult the D.C. Rules of Professional Conduct when drafting your letters and/or agreements.

Effective June 16, 2014, the District of Columbia Superior Court allows paid and pro bono lawyers to enter temporary appearances in the Civil Division, Probate Division, Tax Division, Family Court, and Domestic Violence Unit.

Download Administrative Order 14-10 with sample forms.

Download a sample Limited Scope Fee Agreement.

A Word version may be requested from PMAS@DCBar.org

CHAPTER FIVE: TRUST ACCOUNTING

In the District of Columbia, a lawyer's responsibility for client funds is governed by the D.C. Rule 1.15. Under this rule, client or third party funds in the lawyer's possession (trust funds) as a result of a representation must be placed in a trust account.

For example, this means that advance fees, sometimes called "retainers", must go into a trust account and probably a D.C. IOLTA.

IOLTA stands for *Interest On Lawyer Trust Account.* Client funds that are nominal in amount or expected to be held for a short period of time, and thus will not earn interest income greater than the cost incurred to secure such income, are to be held in a D.C. IOLTA account in a compliant bank.

The IOLTA account is opened by the lawyer completing the D.C. IOLTA Account Registration Form and submitting the form to a D.C. IOLTA compliant bank.

The title of a D.C. IOLTA account shall include the name of the lawyer or law firm that controls the account and the words *D.C. IOLTA Account* or *IOLTA Account.*

Interest earned on the pooled trust funds in a D.C. IOLTA account goes to the D.C. Bar Foundation to fund pro bono legal services. A D.C. IOLTA account uses the Bar Foundation's tax identification

number because the Foundation is the beneficial owner of the interest.

The determination of whether client funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each lawyer or law firm operating the account. (See Rule 1.15, Comment 5) Because interest rates are so low at this time (1% to 2% or less), most advance fees are IOLTA eligible.

When opening the IOLTA, you will name it on the registration form. "IOLTA Account" or "DC IOLTA ACCOUNT" must appear in the account name. For example "Daniel M. Mills DC IOLTA Account" or "Howrey PLLC IOLTA Account" would be acceptable names were those actual law firms.

Exceptions to IOLTA

If you are licensed in another jurisdiction, have an IOLTA account and principally practice there (51% or more of your case income is from that jurisdiction), you do not need a D.C. IOLTA. If you are licensed and principally practice in D.C. and have a D.C. IOLTA, you will not need an IOLTA in any other jurisdiction where you practice according to D.C. Rule 1.15 (b) and Comments 3 & 4.

If a tribunal (court) directs a lawyer to deposit an otherwise IOLTA eligible sum into some other type account, the lawyer should follow the direction of the tribunal. In other words, a court order can trump Rule 1.15(b).

Using Credit Cards with Trust Accounts

Law firms in D.C. can accept earned fees and advance fees by credit card.[30] The acceptance of credit cards for advanced fees does however, present its problems. Many lawyers are unaware of the chargeback risk. A chargeback occurs when a consumer using a credit card makes a report that the charge is unauthorized or fraudulent. The credit card company may place a hold for the disputed fund amount on the lawyer's bank account. A chargeback can freeze all client funds held in the trust account at the time the chargeback takes place. For example, if you have billed the client for your services and have withdrawn their entire advance fee, should a chargeback occur and a hold be placed on the trust account, the hold would restrict the funds of other clients. Be sure to discuss the chargeback issue with your bankcard merchant and review the provisions of your agreement with the merchant. You may also make a request that your bank not honor a chargeback without a retrieval request. While chargebacks are rare for lawyers, they can be a problem. Read more on this topic in Chapter 6 on Electronic Payment Process. Using a lawyer focused processor like LargeCharge.com or LayPay.com is helpful.

Trust Account Record Keeping

D.C. Rule 1.15(a) requires that you must keep complete records of your trust account transactions for a period of five years after the termination of the representation. It may be wise to keep these records longer than five years because there is no statute of limitations on a Bar Complaint.

[30] http://www.dcbar.org/bar-resources/legal-ethics/opinions/opinion348.cfm

What are complete records? The rule of thumb is that if Bar Counsel cannot follow the money trail based solely on the records you have kept then your records are not complete. "Complete Records" tell the full story of how the lawyer handled the money and whether the lawyer followed the Rules"[31]

"The reason for requiring complete records is so that any audit of the attorney's handling of clients funs by Bar Counsel can be completed even if the attorney or client, or both, are not available." [32]

To keep complete records of trust account transactions indefinitely, a law firm should scan and have backed up digital files of at least the following: bank statements, client ledgers, account ledgers, underlying documentation for all trust account transactions, and income and expense documentation for all funds into and out of a trust account. Because the rule does not define "complete records" and because *In Re: Clower* makes it a fact sensitive issue, error on the side of having more records and documentation than you may need to establish what happened to client funds. Create it, maintain it and scan it at the time of the transaction. Every entry in the trust account should have supporting documentation in your office.

Bank Statements

It is imperative that you personally and timely review your bank statements. As your practice grows you may find the need to delegate tasks to staff members. The initial review of your trust account bank statements is one task that should never be delegated to a staff member. You or a responsible lawyer in the firm must be the first set of eyes to examine your bank statement when it is

[31] In Re Donald A. Clower, 831 A.2d 1030, DCCA 2003
[32] See Id. at 1034

received from the bank each month and to make sure it is consistent with your records. Others in your firm can work with your trust account. You are responsible for making sure the work is done properly. Your thorough and timely review of the trust account should include making sure your bank statement reconciles with your trust account ledger and client ledgers and that all funds were properly managed.

D.C. IOLTA Registration Form: This is a one–page, 51.80 KB PDF document
Download and save now.

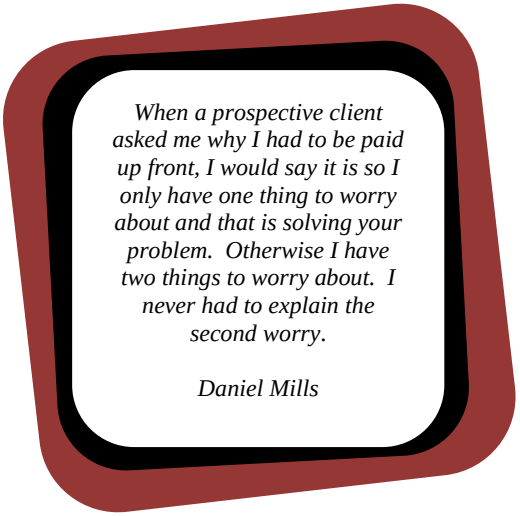
Many banks use this form, however, it is best to complete and take the form with you when you open an IOLTA account, then forward it to the D.C. Bar Foundation. Do *not* send it directly to the Bar or attempt to fill it out online.

View the list of D.C. IOLTA compliant banks**.**

Beware of scams involving trust accounts. Read This Scam Alert Went Unheeded.

CHAPTER SIX: BILLING PRACTICES

How does the small firm lawyer get paid? The best way to assure that we are paid for the professional problem solving that we do is to only take on clients who pay us and up front. We are advocates of the *Zips Dry Cleaners model* for the law firm: *no inventory, nothing perishable, and payment up front.*[33]



There are two essentials for the process of being paid for professional problem solving. The first is that we create incentive for our client to pay us either now, before we do the work, or as we do the work. We create incentive by showing value and by demonstrating that we offer a valuable service. The second essential is that we have a highly functioning system for informing and educating the client about the problem solving we are doing and that asks for payment. This is also known as the billing process. The process should avoid angering or annoying the client. It should also make it easy for the client to pay.

There are two truths about being paid for problem solving that are important to acknowledge now. The first is that there is a moment in

[33] *The Washington Post*, May 31, 2009, G1-3; www.321zips.com

time when the client really needs us. It is at this moment that the client's need for us is at its highest level. Over time the need usually wanes and with some it vanishes all together. The second truth is that clients read what we send them about what we do and what they owe us. They may not read much else we send them but they read the bill. If you can time the request for money to the height of the need for your services, you are likely to get paid. If the need vanishes all together or worse yet, if it is replaced by indifference, resentment, confusion or anger, you are not likely to get paid.

Value & Need

When our value and the client's need come together, it is a wonderful time to talk about money. This is why the criminal defense lawyer is paid up front at the first meeting or two and before things really get going in the case. As gunfighters of the West were not hired and paid by the bullet, criminal defense lawyers are not hired for a little defense. When need and value match, the criminal defense lawyer is all in and the flat fee paid upfront covers a trial, plea or any other resolution, which the lawyer is instrumental in bringing about.

There are times when matching value and need is not so simple. For instance, an estate-planning lawyer with a 30-something single client is a whole other dynamic. The client thinks she is immortal and does not really have a problem in need of a professional solution. Matching value with need here is much more a process of educating about need. Some prospective clients simply don't know they have a problem in the making.

To match value with need we must have an in-depth understanding of our ideal client's problem recognition process. If you are not well versed in the process of your client in recognizing the problem that he will ultimately bring to you, then start asking and listening. Understanding your ideal client's problem recognition process is key

to matching value and need. Unless you know what your ideal client needs and when he needs it, how can you position yourself to be valuable to that ideal client?

Most lawyers make the mistake of believing that our competency is the primary issue in the potential clients mind. Although it is a consideration, most often the client presumes that we are competent. The primary issue on the mind of the client is whether we can solve their problem in a manner they can afford. Ultimately, if we solve their problem and make sure the client understands how well we solved their problem, then they will truly understand our value and hopefully tell others about us.

How good a job do you do manifesting value to your client both at the peak of their need for a solution and throughout the problem solving process? If you are able to manifest value well, then your marketing machine will be funneling to you the clients you want and your problem solving process will be turning out happy clients who sing your praises. Your problems will change from collecting accounts receivable to keeping up with demand for your services.

While it is best to collect fees upfront and when need is typically greatest for our solution, we also recognize that there are practical reasons why this is not always possible. We may not be that good or comfortable discussing the topic of money with our clients. However, this is an area where we can easily improve. As part of your initial client interview it is imperative that you explain in detail your billing policies and practices, including any additional expenses for which the client may be responsible. Discuss your fee agreement and thoroughly explain your expectations of your client. Provide your client with realistic expectations of the potential cost for solving their problem. If you give a low-to-high range as an estimate, the client often only remembers the low figure and frequently sees it as a certainty.

Sometimes it's just our belief and approach that has to change. One of my favorite partners had his secretary say to each prospective client when she would schedule an initial consultation " *Tom said to tell you to bring your checkbook."* Clients hired Tom because he was an attack-dog lawyer. He knew their need was highest at that first meeting. That's why he would say, if he wanted the case, "*Get out your checkbook"* when it was time to close and get a signed fee agreement and upfront fee. This direct approach won't work for everyone, but it's a place to start. A variation can be found for every practice area and every prospective client.

Other practical reasons why we take on clients without full payment upfront are that not all clients can afford that method. Some may be unwilling, and other times we don't know how much money the problem solving will require. In these instances we need a system.

What are the elements of this highly functioning system for informing and educating the client about the problem solving we are performing that gets us paid?

How to Setup and Run a Billing Process

The billing process is a communication system. It has many aspects. It begins with making sure you are compliant with all aspects of the Rules of Professional Conduct for any jurisdiction in which you are barred, and in particular the rules on fees, fee agreements, communication, marketing, confidentiality and handling money.

All communication you do with the public and prospective clients is a part of this system and should be primarily focused on marketing to or communicating about the problem you solve rather than talking about yourself. You make yourself much more relevant to a prospective client meandering through her problem recognition process when your marketing is all about the problem. You are matching your value with her need. Marketing about the problem you solve is a credibility builder that works much better than talking about yourself.

So assuming you have attracted the prospective client you want who can and will pay for your problem solving ability, the next essential element of the billing process is the fee agreement. At its essence, the fee agreement clearly defines the problem you are going to solve (scope provision), it sets out the fee and basis for payment, and it covers how expenses will be handled.[34]

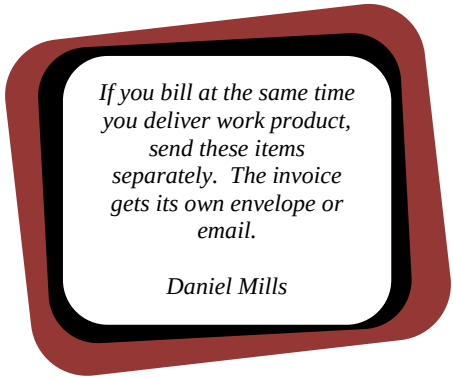
Never miss an opportunity to explain how the fee agreement works and how services will be provided, money will be handled, explanations will be given, questions will be answered, invoices will be issued and what, precisely, is expected of the client. Talk it out in detail. The client needs to know how you work, how you charge, how invoicing occurs, and how they pay.

It is, of course, absolutely essential that you precisely follow the oral and written description of how your billing system operates.

[34] Scope, fee and expenses are the mandatory elements of the Maryland and D.C. Rule 1.5 of the Rules of Professional Conduct for each jurisdiction.

Make the Entry Now, Not Later

If your fee is earned on the basis of recorded time, make the entry immediately after you complete the work and not later that day, during the week or at the end of the month. The entry must be made while the effort is fresh in your mind. How detailed should you invoice be? Make the entry as though your client was sitting across the desk from you and you were explaining what you did, why you did it and how it helped the client. [35]



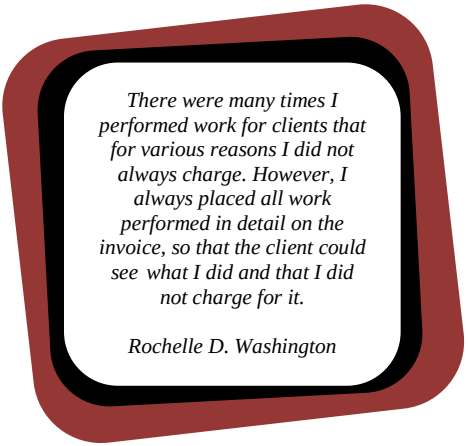
If you are not in the habit of making time entries immediately after performing work, this may be a difficult transition for you, but it necessary for several reasons. The conventional wisdom is that you will record more accurately all your time if it is entered immediately after the work is performed. If you wait until the end of the day, week or month, memory will not be as good and work will be missed.

While capturing all work is important, a more important reason for contemporaneous entries is that the content will be better and the time entry accurate and fair. The content will be better because the work is fresh. The opportunity to talk to your client in the entry will

[35] Evaluating the many and varied software applications that make time and billing more manageable is beyond the scope of this article. Which application is best is a fact sensitive inquiry. A list of some of the many options is at the end of this article in the Appendix. Thanks to Nerino J. Petro, Jr. of the State Bar of Wisconsin for compiling this list.

more likely lead to a better explanation of the work. If something took you longer than it should have because you were distracted during the work, your entry is more likely to be fair and accurate if made immediately after the work is performed. So as you are entering time and activity, visualize your client and explain what you did, why it was necessary and how it helped when appropriate.

Bill your clients promptly and consistently. Establish a system where you bill, weekly, bi-weekly, monthly or bi-monthly. Whichever arrangement you choose be consistent so that the client can stay informed and you can ensure that your clients always have sufficient funds to continue solving their problem.



Review the invoices before they are sent to the client and conduct the review from the mindset of your client. If you see entries that would puzzle, annoy or offend you as the client, make the necessary changes. Have trusted non-lawyers working in your firm review the invoices with you.

Invoice Appearance is Important

The invoice form itself should be professional in appearance and easy to navigate. It should be called an *Invoice for Services Rendered* or *Statement for Services*. It must be clear that it is a bill with an amount to be paid. The firm's Employer Identification Number should be stated on the Invoice. Your client's name and

address and well as yours should be displayed. The Invoice should contain the date it is sent to the client. Time worked, expenses incurred and subtotal amounts should be set out clearly with the total amount owed setout clearly at the bottom so that the client knows how much to pay.

Terms should be clearly reflected on the invoice so that the client should know when payment is due, how to make payment and whether there is a discount for early payment or penalty for late payment. If you can receive payment electronically, describe how that feature works and how the client may make use of it.

Traditionally the bottom or end of your invoice should be a clear statement of how much is to be paid and any applicable terms[36]:

Payment Time:	15 days	30 days	60 day	75 days
Adjustment:	-5%	0	+5%	+10%
Adjusted Amount Due	$950.00	$1,000.00	$1,050.00	$1,100.00

Send the invoice by email or snail mail based upon your office's best practice and your client's need. You should make clear in your fee agreement that invoices will be sent by electronic mail if you decide

[36] Interest rates may be regulated by your jurisdiction's applicable law.

to use this method. There is a trend in the profession to communicate with clients almost exclusively by electronic mail however, hard copy, snail-mailed invoices are often perceived as more professional. Emailed invoices, making use of PDF format, work best for clients who are comfortable with receiving invoices in this manner.

To regulate cash flow, the time entry must occur as near as possible to the action performed and billing must occur on a regular schedule. When billing at the end of a flat fee event that is completed, if you have not already been paid, the invoice should issue immediately upon completion of the project. When accounting for time on a regular, monthly basis, invoices must go out as close to the same time every month as possible. For clients who are billed quarterly or on another time basis, the invoice must go out immediately at the end of the cycle. The cycle must be consistent with the fee agreement and your oral discussion with the client of the billing process.

Here are some suggestions and guidelines that may work for you:

1. Personalize the invoice – use actual names when referring to your client and others. Never call your client the *client* in the invoice;

2. Resist billing entries of more than two hours for anything done in your office. Break the work into multiple events for entry;

3. Total up small entries and don't nickel & dime your client in the bill;

4. When the invoice is larger than normal, consider giving some explanation in addition to the invoice itself. For example, explain in a letter or personal note what occurred and include it with the bill.

5. Review prior invoices to make sure it does not appear to your client that you are charging for work already performed. For example, when we bill for research, if we don't explain in detail what we researched and why, it can appear that we might be repeating something already performed and perhaps paid for by the client.

6. Make sure the client knows she/he can talk to you about the bill. Any time an issue arises on your end regarding the billing process, address it now. Avoiding the issue never adds to the solution. You are far more likely to collect a past due amount if you call the day after payment is due as opposed to sending a *nice* letter sixty days later.

7. With some clients, it can be productive to give them a call or email that their bill is on the way.

Electronic Payment Processes

And for those of you who take payments electronically or are thinking about it, this can add an element of convenience for you and the client, however there are matters of concern. A client sits across the desk from you, having just told you an epic tale of woe and wrongdoing. You sympathize and know you can help her, but it's sure to be a long and stressful case, and you don't want to spend your time chasing down payments. You steel yourself and quote her

an advance fee of $15,000. "I don't have that much," she says in dismay. "But I have this card…" Do you send her packing? Do you refer her down the street to a cheaper attorney who offers payment plans? Or do you pull out your smartphone and confidently swipe the deposit into your trust account? Accepting electronic payments can make it easier and more likely to get paid, but savvy attorneys must choose from the growing number of digital options with their eyes wide open.

Digital payment is a client convenience. Instead of mailing a check, going to the bank, or even hitting up friends and family for a loan, clients can pay your legal fees quickly and easily in a matter of seconds. Electronic payment can mean clicking on a lawyer's digital invoice. Or giving credit card information over the telephone. Or even swiping a card in the attorney's smart phone. It can also mean simply stating your name - if your appropriately "apped" cell phone is within a few yards of the attorney's payment machine. All of this convenience means a higher likelihood that the client will make the payment; and the use of credit means it's more likely they are *able* to make the payment.[37]

The Pros & Cons. The resulting benefits to the vendor (you) seem to weigh heavily towards accepting electronic payments. First off, you don't get "the check is in the mail" excuse. As noted above, the client may be able to "afford" more than otherwise, since in most cases electronic payment means paying with credit. Since clients can pay more up front or can even give you permission to charge their card periodically, you don't have to waste time and anxiety acting as your own collection agency. Instead of having to wait or call the bank to verify that a check is good, with credit cards you should know right away whether funds are available.

On the other hand, the race is neck and neck between checks and credit cards in terms of how long it takes to actually get the funds in

[37] See DC Legal Ethics Opinion 348, which discusses the acceptance of credit cards.

your account: while it used to be that checks took longer to clear, in our increasingly high-tech financial system you can either slide the check through a digital processor hooked up to your computer or simply take a picture of a client's check, send it to your bank through an app, and have it clear in 24 hours.[38] Still, longer holds may be placed on larger-amount checks and, in an economy increasingly devoted to credit and convenience, any attorney who wants to increase their cash flow should at least consider offering the option of electronic payment.

Before you click "Order Now!" on the first ad for a credit card processing machine, you should be aware of several issues triggered by the use of credit cards, both through traditional card processors and through the various alternative payment companies like PayPal, Square, and Level Up:

• As an attorney, your first issue should be knowing where the money goes: is your credit card processor linked to your operating account or your trust account? If the fee is already earned, then of course a deposit into your operating account is just fine. If your client is paying an "advance fee" (not earned yet) and the link is to your operating account, even quickly transferring the money to a trust account won't save you from a disciplinary charge of commingling. [39]

• How much do you typically charge and how will that work with any per-day payment limit set by the credit card or processing company?

[38] Many banks now provide this service, including several large ones, including USAA, Citibank, Chase, and Bank of America. See, for example, Chase's Mobile Check Deposit App: https://www.chase.com/online/services/checkdeposit.htm
[39] DC Rule of Professional Conduct 1.15

• There are security concerns, including how and where you store the clients' credit card information or whether your email,[40] computer, or online payment system can be hacked.

• Transaction fees: wire transfer fees, monthly credit card processing fees, discount fees, account analysis fees, authorization fees, batch fees, chargeback fees, equipment costs, and termination fees.[41] How will they impact you and how will you handle them?

• And where do these fees come from? If they are to come from the client, that fact must be conveyed up front.[42] Which account are they charged to? If the client isn't going to be paying those charges, then they must be debited from the lawyer's operating account. Unfortunately, most credit card processing services link all transactions (including fees) to just one account, with the exception of several that cater specifically to attorneys, as discussed in more detail below.

The Charge-Back Risk. An issue that deserves special mention is the possibility for "charge-backs." Most credit card companies now make it easier than ever for customers to request a charge-back, with no required preliminary notice to the vendor and the money being automatically withdrawn from the vendor's account and put on hold until the dispute is resolved. Then the burden is on the vendor (the attorney) to prove that the transaction was valid and, meanwhile, the money is at least temporarily gone.

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[40] Even if payment information is not sent by email, an unsecured email system could allow hackers access to financial information transmitted through your computer (either directly by accessing your files or indirectly through "ghosting" or "key-logging").

[41] Not all companies charge all of these fees, separate them out, disclose them or even call them the same thing.
Be a savvy shopper!

[42] See DC Legal Ethics Opinion (LEO) 348 for the view that such an arrangement is permissible and for more
information on what notice the attorney must give to the client.

That's bad enough of course, but the real problem comes when the charge-back is made after the money is "earned" and transferred to the lawyer's operating account and even spent. Thus, other clients' money may be withdrawn by the credit card company, leaving you at risk for a disciplinary complaint[43] or even civil suits from the other clients.[44] There are a variety of companies that are attempting to address the problem of charge-backs, with several of those being the same companies focusing specifically on attorneys.

The Process. Attorneys can accept electronic payments the same way as any other vendor - that is to say, a surprising and rapidly expanding variety of ways. You can use equipment provided by a credit card processor to either manually enter the card information or slide the card through a reader attached to a stand-alone machine or hooked up to your computer. Usually this is accompanied by a signature from the client on a credit or debit slip,[45] which the attorney should keep in case a dispute arises as well as for tax purposes.[46]You can even take the card information over the phone or in person and then "call it in" to the processor without the need for signatures or even paper.[47] Some companies now provide attachments to your smart phone so you can simply slide the card, wherever you may be, for uploading of the transaction.[48] As with

[43] see DC Rule 1.15, Safekeeping Property.
[44] While the quickly changing landscape of digital financing is not at all settled in our DC ethics rules, LEO 348 takes the view that any agreement with a credit card company that allows for such charge-backs to the IOLTA account is a per-se violation of Rule 1.15. PMAS (PMAS@DCBar.org) has sample forms in which the client waives charge-back.
[45] Or even a “finger-signature” on an iPhone or iPad, which can be saved digitally for your records.
[46] It used to be that a vendor had to make a carbon copy of the credit card and send in the signed slips to the processor in order to get paid, but in the digital age that is no longer required.
[47] Note that this practice has its own obvious problem if a dispute arises as to how much or whether a charge was authorized
[48] Current examples of companies that provide this service include Square Up, Intuit, and Pathway Payments, though the field of competitors is likely to grow more crowded in coming months. PayPal just recently added this service, with a free reader provided to new vendors.

most everything else nowadays, the client can also pay online through an attorney's website using credit cards or payment intermediaries such as PayPal or one of its dozens of competitors.[49] With the advent of "Near-Field Communications" (N.F.C.) it is now possible for a client to simply tap or waive their smartphone and your processing machine will pick up their information.[50] If that wasn't enough, you can generate a temporary QR code (see image below-left) which the vendor's scanning equipment can read and process, but which does not contain any specific account information that can be compromised.[51] And of course, while not commonly thought of as an "electronic payment," the digital uploading of check images for quick verification and payment, as mentioned above, carries with it some of the benefits of credit card speed without the risk of charge backs.[52]

This service is a D.C. Bar member benefit: www.lawpay.com

[49] For a sample list of companies that provide this type of service (as of Feb. 2014), see http://venturebeatprofiles.com/company/profile/paypal/competitors

[50] E.g., Google Wallet and Square.

[51] Level Up is probably the best known example of this so far.

[52] You will still have to deal with the issue of “availability” of funds versus validity of the payment itself. As noted elsewhere, you can only be sure that the check is ultimately valid after your bank has submitted it for collection to the issuing bank and received verification.

CHAPTER SEVEN: CLIENT RELATIONS

A client wants a lawyer who can be trusted. Are you a trust builder? There are many ways to establish trust with your clients. One of the most important is to understand what is on your client's mind and the process that brought the client to you. How did your client figure out he had a problem that required you for its solution? How does the client relate to the problem? What did your client do to educate herself about the problem? The more you know about the problem you solve and how it impacts the client, the more empathetic you will be. Empathy builds trust. It is not enough to know the technical, legal solution for the client. You must understand how the client is intertwined with the problem.

First, you want to implement a policy and procedure for your firm for the selection of good clients. Define what "good client" means for your firm. "Good client" should mean "ideal client" or the kind of client with the problem you enjoy solving. Employ discretion. Vet potential clients. Be selective and do not be afraid to say "no".

There is a tendency for small firm lawyers to accept as a client anyone who walks in the door. This often leads to the lawyer over-promising and under-delivering and a thus client who does not trust the lawyer. Unhappy clients can keep us from working on the best cases that really need our talents. Our days then are spent putting out fires. This cycle often starts with the lawyer who says "yes" when he should say "no" to the prospective client.

The most successful and satisfied small firm lawyers are those who have a narrowly focused practice area, who are expect in that practice area and who limit their problem solving to clients with problems that the lawyer knows precisely how to solve and enjoys the process. The clients of these lawyers are generally happy, satisfied, trust their lawyer and frequently tell others of their good experience.

Your goal when attracting and interacting with clients is to 1) solve their problem and 2) develop a referral source. Here are steps for building strong client relationships:

1. **Empathetic listening**: You must not only listen carefully to your clients but you must also develop empathy. Try responding to your client in a manner that demonstrates you truly understand their problem. Great listeners have the ability to make people feel completely understood and recognized. Phrases like "That must have been very difficult for you" or "I can understand how you felt as you did" show understanding. Try to restate what they have told you and validate their concerns. If you do not understand your client's problem then ask for clarification. Once you believe you have reached an understanding with the client, reflect and then summarize what they have told you. Always defer from passing judgment on your client. Click here for an explanation of the difference between empathy and sympathy.

2. **Address expectations and problems**. Ask about the client's expectations. Don't assume you know what the client expects from the representation. Talk about what can and cannot be accomplished. Be upfront about what you can do for them and what the possible

outcomes are. Do not create false expectations or mislead the client in believing that you can achieve their desired outcome if you know it is not possible. Being honest with your client about the extent to which you can solve their problem builds trust.

3. **Explain and educate the client**: Clarity is key. Use language and communication methods the client understands. Avoid legalese. Be sensitive to such issues as culture, gender, language, age and religion.

4. **Be selective**: Make sure that you are competent to handle the problem presented by the potential client and that you can do so efficiently. Does the case fit in your firm's plan? Is this your practice area and are you able to manage the case with your resources. Determine the appropriate fee and make sure that your client has the financial resources to finance the case to conclusion. When you are selective and well within your area of competency, it is much easier to exceed a client's expectations.

5. **Set boundaries**: Educate the client on what they can expect from you. Specifically, ensure that they know your policies for billing, communicating, setting appointments and case status updates. Consider creating a *General Information for Clients* document like that found in the Appendix at page __.

6. **Provide Great Service**: Follow the policies that you provided to your client. Return calls in the same day or in no less than 24 hours. Never avoid a client because you don't want to be the bearer of bad news. Deliver on promises. Meet deadlines. Be on time for meetings.

Educate your staff about client service. Memorize names. Demonstrate that you truly care about them.

When you need to close with a potential client

Make sure that you are meeting with the decision maker[53]. For example, if you are dealing with a couple on estate planning or a family in an injury case, determine who will likely make the decision to hire you for the project. While you cannot ignore the other person or persons, you need to persuade the decision maker to say *yes.* This closing process has ten steps:

Thinking: Think through from start to finish who you are meeting with and what you will say. Understand the problem you are being asked to solve. Address the problem as you speak to the potential client, and demonstrate you can solve it.

Opening the discussion: Begin by asking how you can help. Then, set the agenda: "I'm going to ask you some questions about your situation to learn a little more about it. I'm going to explain the solution that I represent for you. I'll give you a recommendation based on what I've learned about your circumstance. Then we will see if we

want to form an attorney-client relationship. Does this sound ok with you?"

Needs Assessment: This is where you ask questions about the potential client and her/his circumstance: when you

[53] An intent to close presumes a ***yes*** answer to the following questions: do I know how to do the work efficiently and promptly; is the fee appropriate and reasonable; do I understand the client's needs and expectations: and, am I prepared to see this project through to the end?

answer the following questions with respect to the potential client and the problem you may solve, you will have a good start - who, what, when, where, why and how. Listen to the answers. Follow up as needed.

Summarizing the potential client's needs: Restate your understanding of what you learned in the needs assessment. It is reassuring for the potential client to hear you mirror her/his concerns, issues, problem and the solution sought. The person knows that you have heard them. It goes something like this: "To summarize, I understand that you ... " Then, end with: "And do I have that right? Is there anything else?"

Stating the solution that you bring to the problem: This is where you tell about your ability to solve the potential client's problem. This does not need to be a long speech. A confident statement that you possess the skill, knowledge, ability and experience to solve the problem is sufficient. Avoid guaranteeing a result.

Explain the solution process: What should the potential client expect to happen? What is known and unknown?[54] If you have a very specific solution to propose, do it now: where you see a

possible solution that the potential client may not know about, state it now. Don't guess or over sell, but if your skill and experience tell you there is a way perhaps only you see to an end, mention it here.

Recommendation: This can range anywhere from telling the potential client there is nothing that can be done, to referring them to

[54] "There are known knowns. These are things we know that we know. There are known unknowns. That is to say, there are things that we know we don't know. But there are also unknown unknowns. There are things we don't know we don't know." --Donald Rumsfeld, February12, 2002

another lawyer, to proposing that you solve the problem. Whatever it is, make a recommendation.

Justify and Close: If you want this business, then tell the potential client you are the right person to solve their problem and ask for the business. "You have a difficult situation and it is exactly the kind of work that I do. I am experienced at this and I know how to solve your problem. I would like to work for you. We need to get started and I'll show you the agreement that defines our relationship." You need to ask for the business and assume that you will get it until you hear otherwise. However, make it very clear that you cannot start work until the client and you have signed the agreement.

Follow-up and Referrals: If the person takes the agreement with them or says she/he will get back to you, follow-up in a reasonable amount of time. Make sure they know that you are not working on the problem until the attorney-client relationship is established. It may be prudent to set a deadline in some situations.

Start Now: If you are hired, begin work immediately and in the presence of the client. This makes a very favorable impression on the client when you begin work immediately and before they have even left your office. If you are not hired, send a letter thanking them and confirming that you have not been hired and are not working on the problem.

In some circumstances, you may want to tell the person that you are accepting new clients and would welcome them to refer potential clients to you. Be positive, direct and non-apologetic in bringing a

potential client into your office. If you are not comfortable with closing, practice until you can do it without equivocation.

When to Decline a Case

Knowing when to say ***no*** to a potential attorney-client relationship is important. Declining a case is just as important as knowing when to say ***yes***. In the early stages of your firm, you will find that it takes some time to build your client base. You may have the pressures of overhead expenses looming and find that you are anxiously waiting for the next client to call or walk through the door. Never let this anxiety and pressure cause you to make a less than prudent decision concerning client selection. This can be difficult when the potential client is sitting before you with an open check book. During these times it is vital to your firm's future that you learn to avoid certain clients:

1. The Serial Litigant: This person is always involved in some kind of litigation or may have even fired his/her previous lawyer or lawyers. They are often good at hiding important facts from you.

2. The Chronically Angry Client: This person will most likely never be satisfied with your services or any outcome you are able to achieve for them. You will eventually be a target of their anger.

3. The Rude Client: Clients that are rude can make the attorney/client relationship difficult. They may be demanding and always need to speak and deal directly with you and refuse to communicate with your staff. The rude client is often a big consumer of your time and attention.

4. The Liar: The dishonest client can misstate or withhold information and make your work very difficult. They can leave you unprepared to properly represent or defend them by not being forthcoming will all of the case facts. Unless you have an innate sixth sense about the truth, it sometimes just takes time and experience to get a sense of who is truthful and who is not truthful. Even experienced lawyers get fooled.

5. The Unrealistic Client: This client wants an outcome that is unobtainable. If they cannot accept your guidance, you will end up with an unsatisfied and angry client.

6. The Very Cheap Client: Clients that ask lots of questions about fees and expenses and who want to help with the case or work in your office to reduce the fee are potentially trouble. Make sure that your client has realistic expectations about the potential cost of their case and that they have the resources to continue the matter to conclusion. If the client complains or hesitates about the fees, you will most likely have difficulty getting them to pay their bills.

The Problem Case

Unfortunately there will be times

when you find yourself working for a client you should have never accepted. The client may have initially appeared to be a good client. However, the relationship has now changed. In the mist of the case you suddenly find that:

1. You are no longer

problem solving for the client in your practice area.

2. Your client is now running the show.
3. You are not earning what you are worth.
4. Your client may be treating you badly.
5. You are helping out a family member or friend and things are now "too close."

In these times you may need to consider firing the client. If you are involved in litigation this may not be an option. Please refer to D.C. Rules of Professional Conduct 1.16, which addresses the issue of termination of the Attorney/Client relationship. Click here for more information

When your client may want to fire you

It rarely feels good to be fired by a client. Be careful that you don't invite the termination by the way you work. For instance, your client could fire you if your office is messy or disorganized. We must be mindful of the message sent by the appearance of your office. Think from the perspective of your client when you walk in your office. Are clients' files exposed? Can the client overhear your staff or you discussing another client's case? Is your office clean and professional and free of smells of food? These are red flags to clients about your ability to manage your practice:

Do not forget your client's name? You should never be so busy that you do not recall who a current client is or remember their name.

This greatly diminishes the feeling your client needs to have that you care and are empathetic with their problem. How can you truly be concerned about the well-being of your client and the outcome of the case if you cannot remember their name at the appropriate time?

Speak plain language to your clients. Lawyers often find themselves using terminology or legalese that is only understood by

other lawyers. Remember your client is not a legal professional and needs things explained in simple, concise, understandable terms.

Review your invoices. As we discussed in the section on billing, review your bills. The client may not read most of the things that you send to them but they do read the bill. One mistake on your part and they will forever scrutinize your billing. Your error may be completely unintentional but it can lead a client to believe you are just finding ways to take their money.

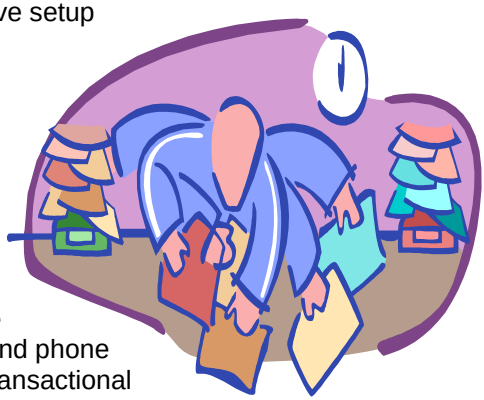
Never avoid or ignore your clients. You may have bad news to deliver but you don't know how. Perhaps you do not have an answer to a question posed to you. Or maybe you have just become too busy in your practice and you fail to communicate with your client. Failure to communicate is one of the more common mistakes lawyers make that can quickly lead to a client firing you and more importantly a complaint with the Office of Bar Counsel. Give your client status updates in writing.

References

"Going Though Withdrawal"

CHAPTER EIGHT: OFFICE MANAGEMENT

To be profitable, competitive and organized, you must have uniform office management systems. Systems help avoid bar complaints and negligence claims. If you have created a business plan for your firm, then you probably have setup management systems.



Creating Systems

What systems should you have in place to properly run your firm?

Paper handling: How will you open new files, handle mail/fax correspondence and phone messages? What about transactional documents and pleadings? If you are creating a paperless system, your goal should be to touch the paper only once.

Client files: Does your file include a client information sheet,, fee agreement, case notes, telephone messages, a correspondence log and an expense log. Depending on your practice area your file may need additional items. Create a case management system and method to perform conflicts checks. There are a variety of software programs available for your case management needs or you may create a master log in an Excel or Word document. Establish a file numbering system. Keep both an electronic and hard copy of the client file. Everything you create is a part of the client file from yellow sticky notes, to email, text messages and the pleadings and instruments. Be sure to associate all such items with the electronic and paper file.

Time Management & Calendaring: Establish a calendaring system for important court dates, deadlines and meetings. Make sure your staff is properly trained on the use of these systems. Use time management applications to keep a written log of your time while you work. A popular system is www.time59.com Many malpractice insurance carriers will expect you to have two to three calendaring systems. If you use Outlook for calendaring and docket control, be sure to back it up regularly to a separate drive and consider regularly printing your calendar and scanning it to a PDF as an extra backup system.

Invoicing & Handling Money: Create a billing system that is easy to use. Determine if you will need a bookkeeper or accountant for the maintenance of your bank accounts or if you will keep track of the accounts on your own either manually or by Quick Books or another system. Consider how you will handle accounts receivable. Create a monthly budget and review your operation regularly for profitability analysis. Are you setup to make a profit or are you simply surfing cash flow?

Establish Office Policies and Procedures: You will need policies on client relations. Clearly set forth how you will communicate with clients, provide updates and return calls. Establish a uniform procedure for how to open and handle files both hard copy and electronic. Create pricing policies and checklists for how to handle common legal procedures.

Productivity and Technology

Your business will be profitable to the extent that you are efficient and able to keep overhead to a minimum. With planning, creativity and technology you can increase productivity and be competitive. You will have to spend some money to make money. Here are productivity ideas for small firm lawyers:

1**.** Evaluate all areas of your office that clients see and occupy. Ask yourself if you would hire a professional that worked in like space. Get someone you trust to give you a second opinion. If the consensus is that your office and work area send a bad message, clean it up and make it appealing to clients. Consider everything that can be seen, heard, touched and smelled.

2. If you have multiple parties and are having trouble getting everyone contacted by phone to set an event*, try* ***Google.docs*** as a solution. Let's say you have three or four depositions to set and three or four lawyers involved in the case that you must contact and schedule. Go to http://docs.google.com and create a new document or spreadsheet with the name of the witnesses and possible dates for the depositions. Using the lawyers' email addresses, circulate the document or spreadsheet for each lawyer to indicate availability. It eliminates the phone calls and speeds the process. You will first need to open a Google account at https://www.google.com/accounts and take the tour to get an explanation how this helpful process works. It's simple and effective. You may also use a scheduling application like: http://www.vcita.com/software/online_scheduling

3. When you are meeting with a new client and you have been officially retained, ***start work immediately*** on the case in the presence of the client, even if it something small. Let the client see you begin the case or project by directing a staff member to open the file or prepare a letter. If you still dictate, dictate a letter or memo in the presence of the client. Enter the client's contact information into your contacts list or database. Open the file on your laptop and create a checklist. Convey the message that you are immediately at work for this new client.

4. Find a person you trust and have this person call your office as a potential client and also ***come into your office as a potential client*** and evaluate how he or she is greeted, how the office looks, and the overall impression that is made by your staff and the physical surroundings. Is your sign old, faded and in need of painting? Are

the magazines dated? Does your waiting area turn people off? Does the person who answers your phone and greets persons coming to your office seem genuinely interested or distracted and hurried? Get an objective evaluation of your office function and take corrective actions. This is especially important if you are in an office-on-demand environment and staff changes occur.

5. If you want to make a great impression, keep a client happy and get a good reputation for being accessible and a good communicator, ***call a client before he or she calls you***. On a weekly basis, set aside fifteen to thirty minutes and call a client with whom you have not spoken for a while and just check in and see how he or she is doing and make a status report. Maybe it's a case where you are waiting on a ruling and the judge is taking a long time. Maybe it's a case 'where you are waiting on a trial date or some other event. The work is done, and you may not have contact with this client again for months. Give this client a call, tell him or her you were thinking about him or her, give a brief update, assure that all is well and move on to the next call. You will stand out against the common rap on lawyers that says we are inaccessible.

6. Build a positive reputation in your community by being known as a ***committed volunteer***. For example, if you litigate and are in and out of the courthouse on a regular basis, get trained as a guardian-ad-litem and get appointed by a judge to represent the best interests of a child or an adult. It can be demanding, time consuming work, but it is rewarding in ways you will never expect. Judges and court staff will have a new respect for you, you will meet many people and make many relationships. The good you will do will be uplifting, and someone who really needs your help will benefit.

7. Remember that sending an e-mail or fax does not guarantee that it has been received. Train your staff to read the fax transmission notice to confirm that transmission was successful. Have a system in place for your assistant to ***follow-up*** by phone, especially where the mail or fax communication is time sensitive.

8. Regularly ***check your email spam*** filter to be see if important email was snagged by the spam filter.

9. ***Make use of*** the drag and drop feature in ***Outlook*** to drag an email to the calendar to schedule a new event or to contacts to create a new contact.

10. If a primary purpose of your website is to market your legal services, ***know where your website is positioned*** in Google, Bing, Yahoo, MSN and any other search engine when a potential client using common search terms is trying to find a lawyer like you. If you do not show up high on page one of Google and the other search engines, optimize your website for the search engines. Learn about search engine optimization: http://static.googleusercontent.com/media/www.google.com/en/us/webmasters/docs/search-engine-optimization-starter-guide.pdf

11. ***Use Google Analytics*** to evaluate your website and its interactive ability with potential clients: see, http://www.google.com/analytics/

12. Opportunity to ***collaborate with clients*** abounds today. It is possible to work on files and projects directly with your client, to upload documents and make case developments readily available. This facilitates good communication. Less time is spent on the phone and in meetings and less money is spent on delivery charges. Investigate Adobe Connect, Basecamp, Prolaw's built-in extranet, MS SharePoint, Zoho or GoogleDocs.

13. Laptops, tablets and smart phones are easily stolen. Consider the consequences if yours was stolen and you had confidential client information in many files. ***Encrypt your laptop***. Windows XP Professional and Vista have encryption features. It is also possible to buy an encryption utility at www.securikey.com or www.pgp.com. For a Mac, see http://mac.sofotex.com/Security/File Encryption/

14. ***Get an evaluation*** of the productivity of your office by contacting Dan Mills or Rochelle Washington, in the Practice Management Advisory Service at the District of Columbia Bar. Call 202-626-1312 or email us at PMAS@DCBar.org

15. ***Learn more about starting & growing a law office***. Sign up for our Basic Training and Beyond Program or the Successful Small Firm Practice Course at: PMAS@dcbar.org.

Download Ten Essentials for Small Firm Management.

Download Growing Your Law Firm with D.C. Bar Member Benefits.

CHAPTER NINE: MARKETING FOR SMALL FIRM LAWYERS

How to Find the Business You Want

If you have ever gone fishing, then you know the basic rule of attracting clients. A fish resists being caught, but the fish needs to eat. If use the right bait, you are more likely to catch the fish than if you have the latest equipment and the fastest boat. Bait to the fish is the problem solving value you offer to the potential client. The client is far more interested in the value of your services than in being sold on hiring you as a lawyer.

> ***By demonstrating that you understand the client's problem and have the solution, you build credibility.***
>
> ***Daniel Mills***

Identify your problem solving value

Your first task in connecting with clients is to identify the problem solving value you offer for a potential client. If, for example, you define your value as being a family law attorney with a focus on representing the mother or father in high conflict child custody cases, then you must figure out a way to package that value and get it before those persons who may have need of those services. The value that you offer must then be communicated to those with the problems you solve.

Is your service valuable to only a few people scattered throughout the United States, or is it valuable to many people located within the State or County where you work. How far do you want to cast your net for clients? How do you put your message before your clients?

If your value allows you to communicate it within a twenty-five mile radius of your office with an expectation of getting your message in front of enough potential clients, then you have defined, to some extent, your geographic target market. Every lawyer has a target market with some manner of geographic definition. An immigration lawyer can have an international geographic definition. A lawyer handling only traffic cases may have a very local geographic definition.

Another key to marketing is knowing how your client relates to the problem that he or she will bring to you for solution. The more you know about the problem and your client's problem recognition process, the more effective your marketing will be. What alerts your client to the problem? Where does your client go for information about the problem? Does she consider trying to solve it on her own? What if you could message to your prospective client at their earliest awareness of their problem?

While you may know well how to solve your client's problem, how much do you know about how they experience it before they are in contact with you? How are they experiencing the problem before they decide to think about how a lawyer might help them? The more you know about the problem and your prospective client's process with it, the more relevant you marketing messaging will be.

For example, if you are an estate planner and your ideal client is a young professional couple, you will understand that this couple may not have much of a relationship with their estate planning issue until they begin planning their family.

The issue of who takes care of their baby if they cannot may be the first time they process the issue that can ultimately bring them to you. If you market to this problem – *who takes care of your children if you cannot* – you make yourself much more relevant to this ideal client than if you talk about yourself and your credentials.

Another key to marketing is messaging about the problem you solve for your ideal client. This makes you relevant to this person and builds credibility. How do you do this? You create content about the problem – you provide information (not legal advice) about the problem and the solution – and you communicate it regularly and in methods designed to be seen and heard by your ideal client.

So, without much effort, we have narrowed our focus on the problem solving value that we want to communicate to certain people within a defined geographic area. But there is another step very necessary in the process of identifying the client you wish to serve. What will you charge for the value you offer?

Will you charge what your competition charges, will you undercut your competition with the hope of getting market share, or will you take a different approach and decide what you want to make in the coming year, how much you want to work and then extrapolate to an hourly rate or fixed fee for the services you offer. Pricing the value your offer further defines the client you hope to serve. Know that clients love fixed fees and transparency.

Clearly identifying the value that you offer to a client and the price you will charge drives you toward the ideal client group you hope to serve. How, then, do you connect with a person within that ideal client group so that this individual can decide to select your service?

Connecting with the client

As the source of the service you are in a position to connect with a prospective client every day. Your mindset must be that you are the best or among the best at providing value for the potential client. Your message is conveyed in one-to-one encounters when you are asked what it is that you do. In our culture, for better or worse, work often defines us, both to ourselves and to each other.

"What do you do?" It may be one of the most frequently asked and answered questions of our time. If your answer is simply that you are a lawyer, you have missed a chance to really connect with a potential client. If your answer reveals the value of your service- "I help people who are in crisis"- you begin to connect in a more organic way. This theme of value and service can be conveyed in any medium you chose to facilitate the connecting process.

However, before you throw money after marketing and think that you will connect if you out shout your competition, create a powerful thirty-second message designed to engage a potential client. Be prepared to talk about the value of your service in easy to understand terms without using legal terminology and as an integral part of this message, begin it or end it with a question that reflects your interest in the person you are engaging.

This is the core process of connecting with potential clients. This is marketing in its basic element. If you cannot engage on this level then it will be difficult for you to be successful as a small firm lawyer serving people. For some, it comes naturally. For others, it must be practiced, sometimes with a coach, and it can be learned and constantly improved upon.

Contact the Practice Management Advisory Service to help you with this process.

The elements of connecting

Before any money is spent on any form of professional advertising, the following process is necessary:

1. Create need for your service by focusing on the problem solving value of what you do;

2. Learn all you can about the process your ideal goes through in realizing they have a problem which will require a lawyer for its solution;

3. Create information about the problem and its solution;

4. Message this information in methods designed to reach your ideal client;

5. Be a respected, high-caliber person to generate confidence in your target market;

6. Generate quality in all that you do so that your reputation becomes well known in your target market;

7. Become an expert in your service area and be known to your target market as an expert;

8. Become known as a respected leader in ways that are reflected in your target market;

9. Become known as a resource of information;

10. Become known as an innovator, a fresh idea person who takes action;

11. Maintain high standards- *walk your talk* in every way.

From this point of departure, the decision as to a medium to convey your message becomes more natural. It is said that fifty percent of all marketing works- the challenge is knowing which fifty percent. For the solo or small firm lawyer starting out or on a tight budget, there are many choices.

What medium for your message?

Your focus must be on becoming known as a valued authority. You do this by the following:

1. Write about what you do and look for opportunities to get in print;

2. Speak about what you do and look for opportunities to get in front of people with your message;

3. Make the internet a tool to talk about your value;

4. Become a real contributor in an organization or cause;

5. Stand out. Figure out a way to rise above the din and to be a little different in a positive way that brings you attention;

6. Whenever you are doing the above, be sure to tell where more information can be found about you. Refer to your website or be ready to give a card or brochure.

Here are a few, more traditional methods of connecting with clients:

1. Prepare a mailing list and send announcements that are consistent with the value of your service;

2. Develop consistency with all marketing from your business card, through your stationery, to your website and newsletter. Use a consistent logo that is tasteful or at least the same font, paper and colors throughout your written and digital product and imaging;

3. Write or advertise in smaller, community or neighborhood based newspapers;

4. Get on programming or advertise on public radio and TV and cable TV;

5. Regularly publish a newsletter that is either completely or predominantly created by you and directed exclusively at your target market;

6. Create effective and tasteful websites and use internet marketing.

Any conscious effort to connect with potential clients takes thoughtful study. There are many resources available to help lawyers reach their target market. Studying how other lawyers connect is useful.

Using websites to connect

If you want to create one or more websites or improve your existing site, click here for good information on the basics of starting a website.

A brief word about website connecting is important here. A great website won't do much for connecting if no one can find it. *Search engine optimization* is necessary so that your site gets traffic. Experienced web designers know about this so be prepared to ask about it. Click here for an explanation about *search engine optimization,* see the following:

https://static.googleusercontent.com/media/www.google.com/en/us/webmasters/docs/search-engine-optimization-starter-guide.pdf

Click here for an example of a lawyer seeking meaningful contract work who has defined her value to her potential clients and is addressing her target:

A unique and successful approach that can be adapted to small firm lawyers in various stages of development is represented by the technique of Ben Glass, an injury lawyer in Fairfax, Virginia, who also operates a professional marketing business. Examples of the Glass approach are contained in the following websites and lend themselves to a variety of practices.

http://www.greatlegalmarketing.com/

http://www.vamedmal.com/

http://www.bobbattlelaw.com/

http://www.injurytriallawyer.com/

http://www.fosterwebmarketing.com/attorney-website-design-client-roster.cfm

Finally, if you have done the above and are completely focused on the value you are offering, click here for fifty ways to market suggested by an ABA.

Two things to do right now

Here are two things to do right now to begin or further your connecting efforts:

First, create a detailed list of all your contacts including friends, family, business and social. Use Outlook or software like it to maintain this information. It can form the basis of your connecting network and it will be a prized asset in getting the clients you want.

Continuously add to this contact list as you meet new people. Building and growing a network is vital to the growth of your firm.

Second, create a system for finding out and tracking the source of your clients. Always ask why the person has contacted you. Find out who is sending you potential clients and thank them. Learning how people find you will help you know what connecting efforts are effective.

But don't stop with just learning who referred a prospective client or how he or she might have found you. Ask questions designed to learn about how your client processed the problem they are bringing to you. The answers to the *who, what, when, where, why and how* of your ideal client's problem recognition process will have two beneficial results for your firm.

First, it will help you develop a strong client relationship. Your client will feel heard and understood. Second, it will inform your marketing initiatives. Your messaging will reach your ideal clients early in their problem recognition process and when they start thinking about a lawyer, you will be the natural choice.

A Final Word

Effective marketing is a long-term process. There is no silver bullet for immediate success. Your marketing initiative must be a part of your business plan and it is necessary to work on marketing as though it is one of your best clients – you give it regular time and attention, you listen and you learn. Keep your focus in the right place. Marketing is not about you. It is about the problem your solve for your best client.

Jump Start Marketing

The following is a check list of actions and activities designed to quick start a marketing campaign for a small firm lawyer when no or minimal marketing has been occurring and where limited or moderate funds exist for marketing:

1. Organize the names, addresses, telephone numbers, email addresses and website addresses of the following persons and organizations with whom you may do business or who may refer potential clients to you. This information should be kept in a word processer or spreadsheet that you can use to generate letters, newsletters and envelopes. It is best to keep the data in Outlook or a similar program:

a. Family

b. Friends

c. Professionals you know

d. Existing clients

e. Targeted potential clients

f. Persons and organizations with which you do business

g. Educators with whom you are well acquainted

h. Business persons with whom you are well acquainted

I. Religious persons with whom you are well acquainted

J. Others in a position of being able to send you business

2. Clearly identify your ideal client and target market. In order to accurately focus your marketing effort, you must know the characteristics of your ideal client and how you find and address these persons and/or organizations.

3. In a short paragraph or less, clearly define the problem solving value you offer to your ideal client and target market.

4. Create a newsletter and send it to everyone identified in paragraph 1.

5. Unless you have a steady supply of new clients from one or more sources in paragraph 1, an effective, fresh and relevant web presence is essential. Ideally, you should have an interactive website that is established by one who fully understands search engine optimization. A web presence that can generate leads for you can be created in the following ways:

a. Hire the Herndon, VA. based www.networksolutions.com

b. Do it yourself at www.godaddy.com

c. DIY at http://www.yola.com/

d. DIY at www.justia.com

e. Write a timely, relevant column in conjunction with your practice area and designed for your target market that appears on or in conjunction with your website (blog). *See http://wordpress.org*

e. If you have moderate or significant money to spend, hire one of these website marketers to develop and run your web presence:

www.fosterwebmarketing.com

http://consultwebs.com

www.nextclient.com

g. Educate yourself about the social networking sites and develop a presence on www.Linkedin.com, www.Facebook.com , www.JDSupra.com and other like sites.

6. Once each week, call six persons listed in paragraph 1 who sometimes or could potentially refer business to you and ask if there is anything you can do to assist them or to send business their way.

7. Track the source of new business. Thank referral sources. Concentrate on what is working to generate business.

8. Work significantly on marketing every day for sixty days and then regularly thereafter even if you are busy. Effective marketing is a focused, sustained and consistent effort. Start-and-stop marketing is ineffective and wasteful.

9. Satisfied, existing clients and former clients are a key source for new business. Direct your marketing efforts at them.

10. Develop a referral system with a few, key professionals.

11. Attend appropriate and relevant events and network. Make yourself available for speaking events. Be involved in D.C. Bar activities, Sections, voluntary bar associations and in other professional organizations

12. Write about developments in your practice area in order to establish yourself as the expert and the person to see and publish your articles, make them available through your website in exchange for a potential client's contact information, use the material in a newsletter, and publish it in your blog.

13. If you have a consumer-based practice, write consumer friendly articles that contain useful information for potential clients and publish them as described in paragraph 12.

14. Self-publish a book about your practice area that establishes you as a trusted advisor.

See http://wordassociation.com/publisher.htm

15. Advertise in small, local publications designed to reach neighborhoods, school or religious populations.

16. Re-design your business card to include your professional photo, email and website address. *See* www.vistaprint.com or www.moo.com

17. Engage in meaningful volunteer work that puts you in contact with sources of new business.

18. Identify no more than ten potential new clients or client types, a detailed plan to make regular contact with them, and launch the plan.

19. Once you are retained by a new client, give the client a folder with your contact information on the front to use for papers during the representation. Have it contain information about your practice area(s), your newsletter, and more than one business card.

20. Make absolutely certain that all areas in which you greet and meet with clients and potential clients reflect a positive image of you and your work. Have your office and office systems evaluated by someone you trust to obtain objective feedback on the impression created when someone contacts you by phone or enters your office.

Newsletters for Marketing & Network Building

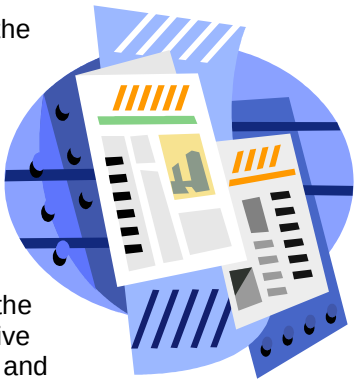
The Law Office Newsletter as a Marketing Tool

Creating a content rich newsletter for your law office can be an effective marketing technique. The better the product, the better the response. You can create your own newsletter and market it to clients and potential clients for the cost of paper, envelopes, postage and your time. In the alternative, the newsletter can be conveyed digitally, either as an email or PDF attached to an email.

Tell Your Story in the Newsletter

Identify why someone should hire you. Provide information about the problem you solve. Differentiate yourself from your competition. Communicate your firm's focus and the benefit you provide in the newsletter. Tell what meaningful specifics describe your work; tell how you are different; and, state your mission. What value do you offer if you are retained?

Here are the Mechanics of Creating a Newsletter



Most major word processing programs have a template for creating a newsletter. You can use the template or make your own. If you Google *newsletters for lawyers* or related terms, you will find examples of newsletter services as well as law firm newsletters posted on line or through websites. However you elect to proceed, clients appreciate getting newsletter content that is clearly coming from you and not a "canned" style of newsletter. If you write and edit your own newsletter, you will be amazed at the material that is at your fingertips and at the positive feedback you receive. If you contract it out, read and approve every word before it goes out. Never allow your firm to be associated with content you have not read and approved.

Study examples and create a two-page newsletter using your word processing program that talks about the problem you solve, recent developments in your practice area, you and your professional focus.

The key to a successful newsletter is to give value to the reader. Have something valuable to say. If you are in a consumer related practice, discuss recent statutes or cases that might affect the reader.

Make it simple and to the point. If you are researching an issue for a case, create a paragraph or two summing up the status of the law and making it relevant for many readers. If an area of law interests you, or is a hot topic in the news, write about it and give some commentary.

Use your contacts list for names and addresses for your newsletter. Your contacts list should contain all contact information for your clients and potential clients. Don't forget to mention your staff, website, any foreign languages spoken, and perhaps the volunteer work that you do in the community. The positive results come from regularly publishing your newsletter on a fixed schedule. Commit to a schedule and stick to it. The newsletter is a long-term commitment. Benefit builds overtime.

Business Cards

The use of business cards is one of the most common ways that professionals exchange information with new contacts. Your business card will usually be the only thing you leave with someone after an encounter. Be creative with your business cards. Describe your practice area on your card and include a professional photo to be more easily remembered by your contacts.

Always keep your business cards handy. Every time you leave the confines of your home or office there is the potential for a networking opportunity. Remember to keep your business cards in a safe place to avoid unnecessary wear and tear on them as you carry them around with you.

Consider having different business cards for different purposes. If you regularly network with a particular group or organization, develop a card with a relevant message for that marketing effort.

Finally it is recommended that you do not use glossy or a slick surface business cards since many people write notes on cards to help them remember when and where they met someone. Ink smears on glossy cards.

Social Media

Social media networking and marketing can be very effective, is usually free or low cost, but takes time and effort to learn the correct technique. There are a variety of opportunities to share information through social media outlets such as LinkedIn, YouTube, Facebook, Twitter and many others. Create an informational video that can be posted on your website and various social media outlets. The use of video on your website typically increases your placement in search engines providing you with more visibility on the internet.

If social media is a new experience for you, explore social media marketing videos on YouTube or www.lynda.com You can also hire a professional like Tasha Cooper, www.upwardaction.com to help you with a social media initiative.

References

YouTube How to videos

http://www.youtube.com/watch?v=H_95jIdwMr0&feature=related

YouTube Examples

How to apply for a work visa

How do I file bankruptcy

How to file a legal separation

Video Tools

www.pixability.com

www.fairfaxvideostudio.com

www.oginski-law.com

http://lawyersvideostudio.com

www.photosbyevelyn.com

For an example of an effective marketing campaign from logo to blog check out The Medina Law Group website and blog

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FREQUENTLY ASKED QUESTIONS ABOUT NEW JERSEY MEDICAID

Posted on January 30, 2014 by Victor Medina

1.3 million New Jersey residents are currently receiving Medicaid benefits. Additionally, as a recent article explains, the initiation of the Obamacare health exchange caused a 35 percent surge in new Medicaid applications. As more New Jersey residents are added to the Medicaid rolls, it is important that they understand the basic principals of coverage. Below are answers to some of the most frequently asked questions concerning New Jersey Medicaid.

Is there a limit on how long I can receive Medicaid long-term care?
No. Fortunately, there is no limit placed on how long a qualifying individual can receive Medicaid benefits. Most commonly, individuals will receive Medicaid benefits for multiple years of care, and the benefits will cease at his or her death.

I've been approved for benefits, when will they begin?
The timeline for Medicaid applications and benefits can vary greatly. Individuals should inquire as to the anticipated timeline when submitting their initial application for benefits. Potentially, benefits may begin up to 3 months prior to the approval of an application.

What if I don't apply?
If you are denied benefits, you are not barred from re-applying. Speak with an attorney about the process of Medicaid planning. Through Medicaid planning, a person can carefully arrange his or her assets so that he or she will qualify for coverage.

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← What Do Heirs Want More Than Money?

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