



**Small Office Management for the Legal Professional**

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### **I. INTRODUCTION**

This paper offers a basic discussion of small firm organization and management. I hope I can pass on a few tips to keep others from making the same mistakes I've made (not that there have been many).

### **II. INTRA-OFFICE MANAGEMENT**

#### **A. General Office Management**

Establish how your office is going to be run. This sounds simple enough, but you must have a plan for managing case files, dealing with clients, accounting

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and time management, managing business functions, and handling employees. Write these procedures down and have them in place before you start your law practice.

Have a good office manager to run your office. Do not leave the day to day management of the office to the partners - attorneys are busy people, and they want to spend their time practicing law, not ordering more light bulbs. They don't want to mess with the little details, so have someone in charge of this.

Another added advantage of having an office manager is he or she can be the go-between and the buffer between the staff and the partners - someone with authority to whom the staff can vent without bringing the partners into the mire.

It's also much more cost effective to have an office manager - you don't want the \$300/hour partner worrying about the broken ice machine.

### **B. Law Office Organizational Structure**

If you are considering a solo practice, you are probably a free spirit and don't want to submit to the will of others or don't have the patience for the inefficiency or bureaucracy of a big firm or government practice. Typically, people like you - creative types - are not very organized.

But in order to get through law school and pass the bar exam, you've already mastered some organizational plan or strategy. Although you might not believe it, the bar exam did prepare you for the practice of law. So you know how to organize, now you just have to apply it to your business.

Here's the bad news: unless you owned a small business before, you have never organized anything like your "practice." You are going to be amazed at how hard it is and how much you don't know, even though you are licensed to practice law. The most important skill you learned in law school is how to find information.

You are going to get to put that skill to use in more ways than you could have imagined. You need to research, plan, and implement a practice management strategy that will work for you and your employees. This organizational plan will take years to fine tune, and will constantly evolve. Understanding this from the beginning is the first step to success. So the next time you are alone looking in a mirror say out loud "I understand that planning and implementing a practice management strategy is a lifetime commitment. It is like getting married or having a child. I understand that and I am committed to work on it like it is a marriage or a child for which I am responsible." Maybe if you say it out loud you will believe it - and do it.

#### **1. If you are not organized, you are sure to commit malpractice (or at least your clients will think you did)**

I should not have to tell you, but I will. The bottom line is this. If you don't keep an organized calendar and you don't calendar deadlines, eventually you will probably commit malpractice.

#### **2. Clients expect lawyers to be professional and business-like.**

If you are organized, and responsive, and responsible, you will appear to be professional. Theoretically, as a lawyer, you are a professional. However, if you do not act like a professional, how can you be a professional? Always act in a professional manner, in all aspects of your life. You should dress like a professional, talk like a professional, and always treat everyone in a respectful manner.

#### **3. Time is Money**

It is an old cliché, but very true, especially in the legal business. You must really apply this law of life to your business. You must figure out what your time is worth then figure out what each and every activity you are doing is really worth. Is it worth it to be setting up your own filing system? Maybe yes, since

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a business consultant might charge \$150/hour. Is it worth it to actually do the filing? Probably not, when you can pay a college student \$8/hour to do the filing for you.

This cliché is also true when managing your billable hour. If you are organized, it will be easy to make the transition from one client to another without losing billable time making the transition. It is easy to bill 8 hours in a day when you work all day on the same brief for the same client. It is hard to bill 6 hours in a day when you work for 8 different clients, respond to phone calls, review and respond to emails, review mail, and give general advice.

### **a. Why reinvent the wheel?**

When organizing your practice, make sure you consider how you are going to save those documents that are created over and over again. It could be as simple as creating a form file, it could mean creating subdirectories for each client with the type of documents, or it could mean investing in some law practice management software that databases your documents when you create them.

A commonly used integrated system with a document management component is pclaw.

PC law allows you to index your document by document type and include a description, matter, date created. There are other software programs out there too, including Perfect Law and Abacus Law. The good thing about going with a program used by a lot of people is that it is likely you will find help from an unlikely source, other users.

### **b. Maximize your profit margin**

Working smart, understanding your worth, and using document management software will maximize your profit margin. Obviously you have to do what you can to cover your expenses, but don't forget to always be looking forward. As you grow, are you really going to have time to "work" your cases as you know you should if you are managing your office and filing your pleadings in your cabinet? Smart business people maximize their profit margin as early as possible. Be smart. Spend money when it will make your business more efficient, which will allow you to maximize your ultimate profits.

## **4. There is life outside the office**

Remember a lawyer is what you are not who you are. You will be a better lawyer if you are a happy lawyer. Don't you like your kids or spouse or friends? Take time for yourself, if you don't you will not be practicing law for very long.

## **C. Law Office Management Principles**

### **1. Work on your practice, not for your practice**

Working on your practice, not for your practice is the tag line for the principles laid out above. Work smart - bill time and market your practice. Only you can do those things. For the things that a \$10/hour file clerk can do, hire a part time file clerk to do it. If your business is volume driven, like some personal injury practices, have a staff member gather the initial information before you agree to see the client, and have a check list of items for the staff to do automatically.

### **2. Everything you need to know you learned in kindergarten**

A lot of what you need to know about running your own business you learned in kindergarten. The book this is based on by Robert Fulghum sets out the basics.

Those basic skills of kindness, caring, compassion, and courtesy will take you a long way with both your staff and your clients.

## **D. Office Systems and Procedures**

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It is important to have a document managing system, but just as important is to have a system establishing how your whole office is to be run. Every law office needs a plan about how it is going to manage cases or client files, how it is going to deal with clients, how it is going to handle its accounting and time management, how it is going to manage business functions, and how it is going to manage its employees. These plans should be in place before you open your door.

### **1. Systems to Manage Case Files**

Law firms need case and client management strategies primarily because these tell the staff what to do. Even if you are the only staff to speak of, you are going to need direction on how to keep your files when your biggest concern is researching legal arguments for the benefit of your clients.

A law firm cannot expect its staff to "just know" what to do. Staff need to be told what to do and how to do it. You must decide, do you want a client file to be one folder with multiple subparts? Do you want a case file to have an individual file folder for each type of document, i.e., pleadings, notes, correspondence, etc.?

If you don't make decisions about how to manage your case files, you are never going to be able to find anything when your staff is not around. If you spend an hour looking for a document or file on a Saturday, you have wasted an hour that should be spent billing your client or with your family or friends.

### **2. Procedures to run your office**

You also need procedures to run your office, both basic office procedures (how do you want the phone answered, do you want messages taken or do you want it to go to voicemail) and employee procedures (how many vacation days does an employee receive), before you hire an employee. Too often employers hire someone and then make decisions as they go. This is a bad idea; it is not good for staff morale. For just a moment, put yourself in the shoes of a person who is working in a new office with no policies and procedures. As an employee, you are only going to do what is asked of you.

From the perspective of the employer, you want those new employees to help you understand what should be done. However, if you don't ask them to do this, if you only tell them - answer the phone, put people in my contacts, take messages, etc., that is all they are going to do. Not only do policies and procedures improve staff perspective of an employment experience, but they provide expectations for an employer about how an employee is going to behave. And, most importantly, they provide expectations to measure your employees, so if an employee is not performing as you would like, you have a basis to relieve them of their duties.

### **3. Challenges to Handling the Workload**

No matter how many billable hours one's timesheet shows, there are no more than 24 hours in a day. The day could be beset by a host of demands including marketing, administrative, training, production, interruptions, new clients, new cases, health issues, and demands brought by new opposing counsel. These do not include non-office demands or time wasted. A well organized and proactive system keeps the day for the attorney focused in the direction that the attorney chooses to focus.

### **4. Systems to Increase Productivity**

#### **a. Intake Systems**

One of the most important systems you will have is an intake system deciding which people actually get to have a portion of the day that you have allotted for productivity. You may receive many calls but a well-organized firm has a method of separating the wheat from the chaffe in terms of clients.

#### **b. Practice Systems**

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One important avenue is determining which types of cases the firm will take. Will it take every personal injury case, or those above a certain limit? Every case of employment discrimination, or one in which there are independent witnesses? Are there changes in the law in our primary area that we will have the ability to take advantage of?

### c. File Organization

How will the file be organized? Are there uniform colors for file folders? How will parts of a file be organized?

### d. Work Assignment

How will each case be handled, and who will handle certain aspects of the case? Will the case stay with the attorney who has the closest connection with the client, or will it go to the person that can handle that subject area best? In addition which support staff member will handle certain aspects of the file?

### e. Administration

What policies will be set for the firm? Will the firm have the Wednesday before Thanksgiving off? Who will handle the e-mails, the phones, billing, and training?

### f. Marketing Management

What type of marketing will the firm engage in on a systematic basis? What type of objective measure is there of performance? Are client referral sources contacting on a regular basis, or is marketing only performed when business is slow? How many new cases, new clients are the firm receiving on a weekly/monthly basis? Are there patterns that are developing that reflect changes necessary in marketing? Are we keeping contact with former clients?

### g. Financial

This is a lot more than is there money in the bank this week so bills may be paid. Rather how much do we anticipate receiving in the next two weeks. Are client's bills being sent on a regular basis, every two weeks? Are there written fee agreements in every case before beginning to work on the case? Are there evergreen agreements in the retainer? What is the fee being charged on an hourly basis? What are the costs that are anticipated? Is the client paying outside costs that exceed a certain minimum? Are the firm's costs increasing? Is everyone completing a time sheet on a timely basis using unified entry systems? Do these time sheets include all time, including times that are administrative? Are we accurately tracking photocopies and postage and assigning them to the correct client? Is there a way of lowering some of our costs without sacrificing any services to the client?

### h. Human Resource Management

How does the staff work with each other? Are there people who can move up within the office? Are the staff members meeting expectations? Are we objectively tracking the productivity of each staff member? Is the staff fairly compensated? Are they correctly classified for FLSA purposes? Is there a system in place that properly deals with overtime and worker's compensation issues?

## **5. Avoiding Systems that Increase the Burden**

Any system that uses the inappropriate personnel or too many resources would increase the burden. Therefore, for example, a policy to have two people copy and collate materials from a hearing when one person could just as effectively do it would increase the burden. Similarly, things which could lead to different results; for example, two different people in charge of screening potential clients could increase the burden.



**6. Timekeeping and Billing Basics**

It is fundamental that every person no matter his or her role or the type of law practiced keeps track of time. In personal injury cases, in the event you are awarded fees in a demand for judgment, the time records become critical for determining a reasonable attorney's fee. Likewise, you will want to know how much time was expended on issues that could have gone elsewhere.

It is essential that each person keep track of time on a uniform method. Whether time is done by hand or by computer, it is essential that it is done for each case file administrative issue that exists. If the time is entered on a computer, then it makes matters much easier for the bookkeeper. In addition, one person should be appointed as the compiler of the time sheets, to ensure that each person's time records are turned in regularly, preferably daily. There is ample time and dollars lost by a staff member's failing to record phone conversations on a time sheet or failing to record expenses.

When billing is the lifeblood of the firm, it is essential that billing go out timely and regularly. Some firms bill monthly, some every two weeks, some split client lists so half are billed on the first and half on the 15<sup>th</sup>. But it is essential that billing go out as close as possible to the planned time and preferably earlier. Also, there is nothing wrong with billing as soon as a matter is finished. The sooner you bill, the sooner you have a chance at receiving fees.

**E. Systems Set Up and Management**

Hire a professional. Unless you are an accountant, you must hire an accountant to set up your quickbooks and/or billing software. Do not try to learn Quickbooks on your own. This will take valuable time away from billing clients, marketing your practice, and spending time with your kids. You need professional help when establishing your accounting and billing programs.

**F. Filing Systems, Organization and Keeping Time**

Use a dual paper and database system. We rely heavily on hard copy files and red roped folders for case management. Use different colored binders for general case information, correspondence, medical records, pleadings, and discovery. Major documents from discovery and correspondence should be scanned into the database as a PDF or TIF file to ensure full access to that document, and depositions should be ordered with electronic copies that can be uploaded into the firm database for easy access. This is especially helpful in motions practice - the evidence is easily accessible and on hand for quick reference. And it's easy to print those documents out and attach them as exhibits.

Color coding is very important. Pick a color system and stick to it. For example, print faxes on yellow paper and drafts on green paper - it makes it very easy to find things within a file. Create a filing system that is all about color.

Put pleadings in manilla folders, put negotiated agreement/contracts in orange folders, put expert information in yellow folders, put research in purple folders.

If you create a color coded system and stick to it, you will be able to identify items within your file in a matter of moments.

Summation, a case management program, is an excellent program for document management. I used it for one extremely large case we handled with several other firms. However, Summation is expensive so think it over before you invest in it.

**1. Which Clients to Take**

You must truly decide on which clients will be accepted. Under the Pareto Principle (originally as 20% of the people controlled 80% of the wealth) 80% of your revenue is generated by 20% of your clients. If so, then why are we working on files for the other 80%? What if we were able to replace this 80% with ones like the first 20%, and then we would have the clients and an increase in income.



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The application here is an important one; we need to take stock of who we have let in as clients, and need to get rid of the bad ones, and not take in any that fit within the characteristics of the "bad" clients.

There are many ways to measure clients in terms of personality, case value, payment, expectations, type of law, and source of referral. One can measure the clients, see common patterns, and weed the firm of them. For the future one wants to take clients that would score well under this scale. In this way, one is working for a client who is going to pay. Once you have put in some of the other systems and are utilizing your time wiser, then you are on your way to proper management of a small law firm.

### **2. Case Workup From Start to Finish**

First you start with your PNC - potential new client. You can either reject that client or take her case. If you reject, go ahead and document the reject and keep your reject letter on file. Just keep a file of rejects for this.

But let's say you like the case and want to take it. Then you assign the client a case number. We have an extensive numbering system in place. The number will be assigned to that client within the database and on the hard copy files. Now you are ready to start working the case. As you work it up - file suit, conduct discovery, prepare for trial - copies of everything go into the hard copy file and into the computer, either as a word, wordperfect, or PDF document. Once the case settles, the paralegal assigned to that case is in charge of getting that case off the case list and moving the hard copy files into storage. You must lease weatherproof cold storage for keeping your old files - you will have x-rays, DVDs, videotapes, and the like in your files and these must be protected. An attorney must also maintain complete records for five years after termination of the representation of that client, and you may have to keep medical information for even longer.

## **G. Managing Firm Personnel**

### **1. Law Practice Policies and Procedures**

Most new legal practices are like most new businesses the primary focus is short term survival. As a result, most procedures and practices develop on an as-needed basis, often implemented with little or no reflection. Over time these procedures and practices become written policies or defacto "unwritten" policies. It is not unusual for these policies and procedures only to receive attention and/or reflection when problems arise or when someone in a position of authority seeks to improve efficiencies or other changes within the firm.

The majority of persons entering the workforce in a legal practice are not entering a new legal practice, but are entering an existing practice and has an existing way of "doing business." At the same time, new staff members bring their life experiences to the job, including any prior experiences within the law practice.

This may include a whole set of law practice and procedure experiences. And except for the occasional employee who seems to always be asking a thousand questions about how to do every little thing, most employees will make numerous independent decisions that may or may not be consistent with past practice, including law practice procedures.

Within the context of these realities a commonly asked question arises; should our firm reduce any of our law practice policies to a written format? Clearly most firms would be better off reducing some of their practices to writing. The reality is that written policies are more often the result of conscious reflection and mutual agreement amongst a law firm's principles, as opposed to "unwritten" and often "unspoken" policies and procedures. Written policies are also more likely to be correctly communicated to staff than verbally transmitted policies and practices, particularly over time.

On the other hand, it is impractical to reduce all practices and policies to writing. It may be unrealistic to believe that most law firms will dedicate the time and resources to develop and maintain a complete set of up to date law practice policies and procedures. It is also counterproductive to develop and implement

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more policies and procedures than the firm can communicate, monitor, and enforce.

Therefore the number and topics covered by written law practice policies and procedures necessarily will be governed by the nature of the particular legal practice. For example, larger firms with multiple locations and multiple practice areas would likely benefit from a greater number of written law practices and procedures than a single lawyer practice with one assistant at one location, in a practice that has a singular focus.

The Texas Rules of Disciplinary Conduct for Attorneys provides a good starting point for developing law practice policies and procedures, Confidentiality, conflict of interest, and handling client funds are examples of subjects where law firms can find themselves in a bind absent proper oversight. Once developed, each law practice policy and procedure must be clearly and repeatedly communicated, and each must be monitored and enforced. Finally, policies must reflect changing times, experiences and circumstances.

### **2. Personnel Policies: What Works and What Doesn't**

Three of the biggest errors organizations make in developing and implementing personnel policies are the following: 1) the personnel policies are not fully supported by the leadership of the organization; 2) the policies are not tailored to promote success for the particular business; and 3) the policies do not promote the goal of hiring and retaining the most qualified staff.

Sample personnel policies abound. However, it is naive to believe that successful organizations simply adopt entire sets of personnel policies implemented at other successful organizations.

Personnel policies work best when they are consistent with the goals of the organization and the values of the organization's leaders. If the firm has a mission statement, personnel policies should be generated consistent with that statement.

Basic personnel policies reduced to writing should include legal basics; name those policies that are either legally required or those that enhance the legal options available to the firm. Such policies include explanations of employment status, such as at-will statements, explanations concerning exempt or non-exempt status, as well as categories that will establish eligibility for benefits. Pay practices should be identified, such as pay-dates, what time is considered hours of work for purposes of calculation of overtime pay, details regarding pay upon termination, and the like. Workplace harassment policies, nondiscrimination policies, policies regarding reasonable accommodation, internal appeal processes, family/medical leave policies are other policies that should be explicitly set out in writing for employees.

Beyond legal basics, policies should focus on subjects that enhance the operation of the firm and enhance the hiring and retention of the best staff available in the marketplace. Work rules, performance standards, and a disciplinary system are common examples of policies that enhance the operation of the firm. Again, upper management of the firm must be amenable to enforcement of standards established in work rules, performance standards and the like, or these policies will not work.

Common examples of policies that can serve to promote the hiring and retention of the best workforce include policies regarding promotions, benefits, and pay increases. Policies that work for the law firm in this area are those benefits, pay increases, and promotions that actually best reward the employees that the firm wishes to retain, not those employees that just do not want to leave.

The establishment of a performance review system can both enhance the operation of the firm and enhance the hiring and retention of the best staff available in the marketplace. Unfortunately, good performance review systems require time and skill to develop and improve. Many employers also lose much of the potential value of their performance review systems because they provide inadequate training and preparation time to those responsible for conducting reviews.

Whether a policy is mediocre or great, it is of little utility unless it is well communicated. Communication includes sending and receiving. The business world is filled with wonderful personnel policies hidden in manuals that no one reads.

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Policies that work must be concise, clear and sent to staff in a manner and frequency they will absorb and understand.

### **3. The Hiring and Firing Process**

Two words help simplify the hiring and firing process: job description. Since hiring and firing decisions result in the greatest number of employment-related legal claims, quality written job descriptions can be valuable road maps that can minimize a law firm's legal exposure to worker claims.

Quality written job descriptions will identify the essential functions of a position, along with the skills that relate to success with those functions. Environmental aspects of the job should also be set forth in the job description.

Examples of environmental factors might include the obvious, such as "working in an enclosed, windowless cubicle office environment with other staff members."

Other environmental factors may include "flexible work hours on demand" or "overnight travel." Meaningful job descriptions also reflect reality.

Hiring works best with an established protocol, a protocol that best meets the needs of the organization and results in hiring the best available candidate. Employment applications are common, however, many employers ask for information that is never used in the hiring process. Employment applications should be tailored to recover information to be used in making the hiring decision, nothing more, nothing less.

Is the retention of unsolicited resumes of value, and if so, for how long do they have value? Do we interview every applicant or what will our standards be for conducting interviews? How many interviews and how many interviewers will be involved in the process? What do we want to learn about candidates during the hiring process and what are the best tools for getting this information? These are all protocols that add direction to the hiring process, can be altered in a reasoned way in order to become more effective, and provide an outline for fair and legal basis for making employment decisions.

The job application process is also a public relations opportunity. Today's job applicant could be tomorrow's client or client referral source. A poor set of hiring and interview procedures can have an opposite impact. The hiring process should treat all persons with dignity and respect, and should leave the impression of honest treatment.

Records regarding hiring should be maintained for at least one year. Notes taken or gathered during the hiring process should relate to the job description.

Firing ends the employment relationship; it allows the business to continue in a more productive way. In a sense a firing is a failure of the business; that failure being either misidentification of the to-be-fired employee as a qualified job applicant or a failure to properly identify job requirements and motivate the employee. Terminating employees after investing time and resources into their development is an expense, just as searching and hiring a replacement is an expense. And while terminations frequently have emotions tied to them, for legal and business reasons termination actions need and should not be vindictive, dishonest or demeaning.

A good job description coupled with sound workplace policies that are well communicated should make staff members who are not making the behavioral standards well aware that their employment is in danger. The goal should be that termination conferences should be little more than confirmation of what the to-be terminated employee already knows.

Many employers utilize a system of progressive discipline, although none is required by law. This is based upon the principle that everyone, even good employees, make mistakes and that employees should be given the opportunity to improve upon their shortcomings before losing their jobs. Unfortunately, many progressive discipline programs are dysfunctional and serve only to put off inevitable terminations.

Progressive discipline systems that work require an investment by the employer to insure employees who fall short understand what is required going forward. Properly performed performance evaluations can serve an employer. These systems also require an honest evaluation as to whether the employee has any real chance

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at success and requires the substandard employee to make a serious commitment toward reaching the behavioral standard.

Too many employers retain substandard employees for far too long. This situation not only causes business problems, it raises legal issues. What caused the employee to be terminated at this time if they have not engaged in any actions inconsistent with their past 15 years of behavior? The practice of retaining substandard employees too long frequently starts in early employment. Many employers have initial hiring periods, but few use them effectively. If the available data indicates that the new employee is not succeeding to the level that meets expectations at the end of the initial training period, the better practice is to end the relationship at that juncture. This allows the law firm to proceed under its plan without having to implement "compensation" techniques to work around the substandard employee. It also allows the new employee to quickly reenter the job search without a significant break in time and before they become dependant on the wages and benefits provided with the firm's employment.

While much has been written as to the best time and day of the week to terminate, there is nothing persuasive to suggest any time of day holds magic. Termination should occur when it needs to occur. Delaying termination only serves to distract attention from the true cause of the termination decision.

Since terminations have a serious impact on the affected staff member, and as a termination decision can create significant legal exposure, lower level managers should not be permitted to terminate employees unilaterally. In fact, employers would be best off requiring terminations be approved at two levels above before being executed.

Terminations are best carried out in person by the manager making the decision.

The meeting should be brief, honest, and to the point. Feedback should be permitted. Termination conferences are not the appropriate time to attempt to boost the morale of the terminated employee, as such efforts are either viewed as disingenuous or mislead the staff member to believe that termination was not appropriate.

Post-termination actions are also important aspects of the termination process.

How will job references be treated? Many organizations require that all requests for job references be addressed from a central source and strictly prohibit managers and other agents of the business from giving job references, including a prohibition against "personal" references.

Post-termination income issues, such as severance and unemployment insurance, often arise. Severance pay is most common when separation is not due to the staff member's action.

Unemployment compensation eligibility is governed by state law. Terminated employees are generally entitled to unemployment compensation. Persons terminated for "misconduct," as that term is used within unemployment insurance statutes, and who are not available for work, are the exceptions. Appeal tribunal hearings held in unemployment compensation claims involve testimony under oath.

This testimony can be used in other legal proceedings between the employer and employee, and therefore these hearings should not be approached in a cavalier fashion.

### **4. Total Quality Management**

Total Quality Management (TQM) is a management philosophy that has its origins in the manufacturing sector and arose in the 1980s as America adopted terms such as "rustbelt" while it reexamined itself in view of the new competition from Japan.

The core concept of TQM is that "quality" is a process that can be managed. TQM could be viewed as one of many passing management fads. Recently, however, it has enjoyed a resurgence in popularity and never really disappeared during the past 20 years.

Since quality is a process, processes within an organization require management; i.e. policies and procedures relative to providing legal services must be established and managed. It is given that processes must be managed and improved under TQM. This involves defining the process, measuring process performance, reviewing process performance, identifying process shortcomings, analyzing

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process problems, making a process change, measuring the effects of the process change, and communicating both ways between supervisor and user.

TQM is a proactive form of management; it shies away from being reactive. The ability to quantify, i.e. measure, as also core to TQM programs. At first blush this mean appear to be the antitheses of traditional law firm practice. However, once law firm mangement appreciates that the focus of this program is only the quality of legal service provided to clients, th concept does not seem quite as foreign.

There are twelve principles of TQM: (1) quality can and must be managed; (2) everyone has a customer and is a supplier; (3) processes, not people, are the problem; (4) every employee is responsible for quality; (5) problems must be prevented, not just fixed; (6) quality must be measured; (7) quality improvements must be continuous; (8) the quality standard is defect free; (9) goals are based on requirements, not negotiated; (10) life cycle costs, cycle costs, not front end costs; (11) management must be involved and lead, and (12) plan and organize for quality improvement.

The ten steps to TQM are: (1) pursue new strategic thinking; (2) know your customers; (3) set true customer requirements; (4) concentrate on prevention, not correction; (5) reduce chronic waste; (6) pursue a continuous improvement strategy; (7) use structured methodology for process improvement; (8) reduce variation; (9) use a balanced approach, and (10) apply to all functions.

TQM can provide direction to a law firm's activities, not just law firms that are in trouble, but also law firms that lack direction into the future.

### **5. Exercises in Human Resource Management**

Organizations that wish to move beyond the status quo relative to human resource management typically begin by examining where they are or examining where they want to be. Initial exercises may well include the exploration or reexamination of the firm's mission, as well as establishment of a three to five year plan with a specific set of goals. These exercises should involve the leadership of the firm, are best run by a facilitator and need to be conducted in an allotted period of time free from interruption.

### **6. Working from Home**

Whether or not you allow someone to work from home at least some of the time depends on your trust level with the employee and that employee's job description. Associates work a lot, and are expected to do a significant amount of research and writing - so it may be easier to allow an associate to work from home than say, a paralegal. How much work can your paralegal do if they work from home two days a week? This is hard to gauge - and again, it depends on trust. Some tasks cannot be done outside of the office, others can.

More important is focusing on making the office accessible from home - if you can allow people online access to the office network/servers, this encourages your employees to do more work in general. If your paralegal can access the case file in the database from Starbucks, he will probably end up putting more work into the case than if he had to run up to the office on a Saturday to put discovery requests together for Monday morning.

### **7. Believe in your employees**

After you establish what to expect, you must trust your staff do do thins for you. Having a staff member that is not working ot their full potential because you don't give them exciting or challenging work is bad for business. Lawyers are notorious for being complete control freaks - stop doing this. If you believe in your employees and their ability to perform, you will probably get exponentially more done.

### **8. You don't have to do it all**

While you have to review it all, you don't have to do it all. In fact, it is ill advised for you to spend your time drafting and updating both office and staff policies and procedures. You need to be spending time marketing and billing within

## **Small Office Management for the Legal Professional**

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your practice. Don't lose sight of the forest because you are too busy looking at the trees. You can't be successful and enjoy that success without actually working on making your practice better and trusting staff to handle day to day work that is not increasing your bottom line.

### **H. Office Equipment and Leases**

So should you buy that copy machine or lease it? How about that computer? Or that desk?

Generally you should use the same analysis here as you would for a car - there are pros and cons to leasing, so what's more important to you? We lease things that tend to break or need a lot of maintenance - like copy machines and phone/internet systems. We buy computers, furniture, and anything else that will have a lasting value and doesn't need constant maintenance.

Contract out with an independent contractor to maintain our servers and other computer equipment. You definitely need an IT person, but with a small firm you don't need him or her to be in-house - outsourcing is the best solution.

On cell phones - do NOT just start paying your employees' cell phone bills because they use the phones for work. Buy the phones you need for your business, assign them to employees, and manage the phones on a corporate account through the firm. On the office lease, remember that it is very expensive to move, whether you are a private individual or a business. An office space should be leased anywhere from three to five years at a time - you don't want to move every year, but because the market changes rapidly you don't want to be locked in for longer than five years. And remember that when you do move, everything must be redone - the phone system, the computers, the servers, everything.

### **I. Office Image**

You must be perceived as a professional office. You cannot work out of the back of your house forever - if you want your firm to be successful, you must project an image of success. Office your firm in a nice part of town, keep your office clean, invest in nice fixtures and furniture, and keep your employees neat and professional-looking.

### **J. Maintaining Interrelated Businesses**

1. Document Retrieval/Summary Companies - not a bad idea
2. Court Reporting Companies - illegal!

### **K. Referrals**

Remember that under the Texas Disciplinary Rules of Conduct for attorneys, you cannot simply pay for or give gifts for referrals. And under Rule 1.04, as amended in 2005, if your referring attorney is not in the same firm, the division of a client's fee must be in proportion to the professional services performed by each lawyer or made between lawyers who assume joint responsibility for the representation. Furthermore, your clients must consent in writing to the terms of the referral arrangement prior to signing on with you - it is best to put these terms in the client contract to clear up any confusion that may occur.

## **VIII. FINANCING AND MONEY MANAGEMENT**

### **A. Case Financing and Tax Issues**

My practice is plaintiff-based, so I work on contingency fees, but the case financing and account issues I am going to discuss will apply to any firm.

#### **1. Managing Your Accounts**

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In my firm, we have two accounts - the IOLTA [Interest on Lawyer Trust Accounts] account, and the operating account. The IOLTA is our trust account. Under Texas Disciplinary Rule 1.14(a), an attorney must hold funds belonging in whole or in part to another (1) separate from the lawyer's own business and personal property; (2) in an account marked "trust" or "escrow."

Under Rule 1.14(b), when an attorney receives property in which a client or third party has an interest, the attorney must promptly notify the client, promptly deliver the property to the client, and upon request give a full account to the client. If any ownership dispute arises between client and attorney, then under Rule 1.14(c), the disputed portion must be kept separate pending an accounting and severance, and any undisputed portion must be distributed appropriately.

The IOLTA Program, which was established by the Supreme Court of Texas in 1984, calls for attorneys to pool short-term and/or nominal deposits made on behalf of clients or third parties. IOLTA became mandatory as of July 1, 1989. The earned interest is designated for nonprofit organizations that provide free civil legal aid to the poor. The funds that qualify for the IOLTA account are: (1) settlements; (2) recovered verdicts in PI cases; (3) real estate closings/earnest money; (4) pension and profit-sharing funds; (5) funds to pay legitimate claims against a client; and (6) any funds not belonging to the attorney. Generally your bank hands the IOLTA interest off the government, relieving you of the burden of having to keep track of the interest.

In our firm, all settlements and verdicts go into the IOLTA account first, and all those funds are assigned to case numbers on our books. This way we know which funds were deposited for the Smith case, which for the Collins case, and which for the Jones case. This is done so when a client comes back two years later and asks for records, we can hand them over without any confusion and we know exactly which case received money and which didn't, and how that money was distributed. KEEP PRISTINE RECORDS OF YOUR CLIENTS' FUNDS.

The operating account is used to pay the bills. Checks for fees and expenses to be reimbursed are cut from the IOLTA account, where the money is first deposited, and put into the operating account. All case expenses are paid out of the operating account, including expert fees. All client expenses come out of the operating account as bills, and are coded to the particular client. All this is done for record-keeping purposes - if you pay expenses out of the IOLTA, the record keeping gets too messy. It also allows you to see where your money is going - you should never have extra money laying around in the IOLTA account. Money in the IOLTA always belongs to somebody, and if you have extra leftover then you did something wrong. Money for court costs goes into IOLTA first as well, and then is paid into the operating account. Even referral fees are put into IOLTA first, because that way you can keep track of the particular case you received the fee for. It just makes everything simpler.

It's also a good idea to look for a bank that will help you out - one that won't charge you extra fees, or for wire transfers, or for statements - banks like having that IOLTA account because at any given time, at least for our firm, it may have \$2 or \$3 Million in it, and banks get to use that money to lower their loan/deposit ratio. Use that as leverage when bargaining with the bank.

### **2. Billing Systems for the Small Office Environment**

Billing is more critical to the success of a small law firm. In addition, billing has the ability to be more flexible. In a small law firm, past due notices can be sent out easier and more efficiently than in a larger firm. Still, billing is comprised of accurate and contemporaneous time recordings, inputting those time records into a system and editing the bill. It is recommended that a small firm use a billing program for this since once the time records are entered they can be transformed into a bill with little additional effort. In addition, the program would contain client information that is important for envelopes and mailings. Again, one person should be in charge of the final bill and gathering the time records. Billing should be done as soon as the matter is complete and definitely every two to four weeks.

### **3. Budgeting and Account Management**

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Once a good billing system is in place and here is a cash flow, it is much easier to manage the moneys that will need to be expended. There are fixed costs of a firm and these will be constants each month. Of course, like any business the firm should prepare a budget of what it anticipates in expenses and income, and compare it to the actual sum. Like any business, if the expenses are exceeding the income, then either the expenses must be decreased or the income needs to increase. Without having a budget in place, one would not have an accurate picture of the firm's health.

In addition the listing of the expenses gets one to evaluate what expenses are truly necessary. The mere creation of the budget could save the firm several hundred dollars more a month.

In addition, the firm should be working with a business plane, what its goals and objectives are and how it is going to get there. In that way, each person is not just an individual, but part of a team attempting to reach a goal. The goals and objectives should be measured in objective sums and the progress could be seen on a monthly basis. If the firm is starting to stray off the financial course from the goals, then some tweaking can be performed to "right the ship."

Perhaps the firm wasn't taking in the right mix of cases in the goals or it spent too much on something that did not turn out. But looking at monthly performance of income, expenses and billing gives the firm an idea of where it is heading and where it needs to go.

### **4. Taxes**

In my firm, taxes are a huge headache. This is because in a Plaintiffs' firm you cannot write off your case expenses - your expenses are treated as accounts receivable, because you are telling the government you expect to get that money back. You can write off the expense if you lose the case, and if you win it or settle it that means when the money DOES come in it is tax-free (in a manner of speaking). But in the meantime, at the end of the year, you must pay taxes on your outstanding expenses. You only get the benefit of the money that's stuck in the glass of expenses when you close up shop.

At the end of the year, print out your expense list for open contingency cases. If you know the case is a dog - one on which you are unlikely to be paid, let those case expenses go, because you will be taxed on money you will never receive - it's a waste.

#### **a. Choosing a Business Entity**

On January 1, 2006 the Texas Business Organizations Code passed by the 2003 Texas Legislature went into effect. The Entity Code is a codification of all the existing Texas statutes for nonprofit and for-profit private entities. The statutes included are the TBCA, Texas Non-Profit Corporation Act, TMCLA, Limited Liability Company Act, TRPA, TRLPA, Texas Real Estate Investment Trust Act, Texas Uniform Unincorporated Nonprofit Associations Act, Texas Professional Corporation Act, Texas Professional Association Act, Texas Cooperative Associations Act and all other existing statutes governing private entities.

The Texas Business Organizations Code applies to all entities organized after that date. Existing entities will be governed by the existing entity statutes until January 1, 2010 unless the entity elects to be governed by the new Entity Code prior to that date by filing with the Secretary of State. Many filing fees have been changed or added as of the January 1, 2006 effective date for the Texas Business Organization Code. When referring to fee schedules issued by the Secretary of State please be cognizant of the January 1, 2006 date.

Each entity is presented in this outline as using a calendar year end. This is the required year end for individuals and professional service organizations. Some professional organizations may elect non-calendar year end. Subject to payment of earnings requirements and other calculations required by the Internal Revenue Code and the related Regulations. Each entity is presented using its "default" filing status under the Internal Revenue Code. Entities may elect under Internal Revenue Service regulations to take advantage of the "Check-the-box" regulations which allow entity to elect tax treatment other than the default treatment.



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- **Sole Proprietorship**

Generally considered easiest to form and to manage. No additional federal tax return.

**Annual Filing And Deadlines:**

- Schedule C with Form 1040, U.S. Individual Income Tax Return due April 15 following end of tax year.
- Payments to qualified retirement plans are due by the filing deadline in order to be deductible on the previous year return. RETIREMENT PLAN CAUTION: Certain types of retirement plans must be established before year end in order to qualify for tax deductions.
- Form 940 - annual unemployment tax return (if sole proprietorship has employees) due January 31 following end of tax year.
- Forms W-2 and 1099's (if required) are to be distributed by January 31 following end of tax year.
- Retirement plan return - Form 5500 (if required) - due by July 31 following end of tax year.

**Quarterly:**

- Estimated tax payments  
Due April 15, June 15, September 15 (during tax year), and January 15 (following tax year). Amounts must include estimate for self-employment tax and federal income tax.
- Payroll taxes (if there are employees) Forms 941 and Texas Workforce Commission Reports are due April 30, June 30, September 30 (current tax year) and January 31 (following tax year).  
(Payroll tax deposits dates for employee withholding vary based upon the amount of money withheld. You may be a monthly, semimonthly or more frequent depositor depending upon the amounts withheld).

- **General Partnership**

Requires additional tax return filings but no additional registration requirements. Flow-through entity. Partnership passes through income to partners. Partners report income and pay taxes. Entities other than individuals may be partners in a general partnership.

**Annual Filing And Deadlines:**

- Form 1065, U.S. Partnership Return of Income is due by April 15 following end of tax year. Forms K-1 are distributed to Partners reporting their allocable share of partnership income.
- Payments to qualified retirement plans are due by the filing deadline in order to be deductible on the previous year return. RETIREMENT PLAN CAUTION: Certain types of retirement plans must be established before year end in order to qualify for tax deductions.
  - Form 940 - annual unemployment tax return (if partnership has employees) due January 31 following end of tax year
  - Forms W-2 and 1099's (if required) are to be distributed by January 31 following end of tax year.
  - Retirement plan return - Form 5500 (if required) - due by July 31 following end of tax year.

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### **Quarterly:**

- Payroll taxes (if there are employees) Forms 941 and Texas Workforce Commission Reports are due April 30, June 30, September 30 (current tax year) and January 31 (following tax year).  
(Payroll tax deposits dates for employee withholding vary based upon the amount of money withheld. You may be a monthly, semimonthly or more frequent depositor depending upon the amounts withheld).

### **Partners Filing Obligations:**

- Estimated tax payments due quarterly (see Sole Proprietorship) if individuals. Partners are subject to self-employment tax.
- Report Schedule K-1 income on Schedule E of Form 1040 if individual.
- See entity type outline for non-individual partners.

- **Registered Limited Liability Partnership (General Or Limited)**

Additional federal income tax return filing (partnership return) and annual registration fees to State of Texas. Flow-through entity. Partners report their share of income and pay taxes. Entities other than individuals may be partners.

### **Annual Filing And Deadlines:**

- Form 1065, U.S. Partnership Return of Income is due by April 15 following end of tax year. Forms K-1 are distributed to Partners reporting their allocable share of partnership income.
- Payments to qualified retirement plans are due by the filing deadline in order to be deductible on the previous year return. RETIREMENT PLAN CAUTION: Certain types of retirement plans must be established before year end in order to qualify for tax deductions.
- Form 940 - annual unemployment tax return (if partnership has employees) due January 31 following end of tax year
- Forms W-2 and 1099's (if required) are to be distributed by January 31 following end of tax year.
- Retirement plan return - Form 5500 (if required) - due by July 31 following end of tax year.
- Annual registration (with fee) to Texas Secretary of State (governed by formation date).

### **Quarterly:**

- Payroll taxes (if there are employees) Forms 941 and Texas Workforce Commission Reports are due April 30, June 30, September 30 (current tax year) and January 31 (following tax year).  
(Payroll tax deposits dates for employee withholding vary based upon the amount of money withheld. You may be a monthly, semimonthly or more frequent depositor depending upon the amounts withheld).

### **Partners Filing Obligations:**

- Estimated tax payments due quarterly (see Sole Proprietorship) if individuals. Partners are subject to self-employment tax.
- Report Schedule K-1 income on Schedule E of Form 1040 if individual.
- See entity type outline for non-individual partners.

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- **Limited Liability Company / Professional Limited Liability Company**

Generally files federal partnership tax return. Flow-through entity. Members report their share of income and pay taxes. In addition, LLC/PLLC's are subject to Texas Franchise Tax which is reported and paid at the entity level. Entities other than individuals may be members of an LLC/PLLC.

### **Annual Filing And Deadlines:**

- Form 1065, U.S. Partnership Return of Income is due by April 15 following end of tax year. Forms K-1 are distributed to members reporting their allocable share of company income.
- Payments to qualified retirement plans are due by the filing deadline in order to be deductible on the previous year return. RETIREMENT PLAN CAUTION: Certain types of qualified retirement plans must be established before year end in order to qualify for tax deductions.
- Form 940 - annual unemployment tax return (if LLC has employees has employees) due January 31 following end of tax year
- Forms W-2 and 1099's (if required) are to be distributed by January 31 following end of tax year.
- Retirement plan return - Form 5500 (if required) - due by July 31 following end of tax year.
- Texas Franchise Tax Report is due May 15 following end of tax year. (First annual report is due following the first anniversary date of organization. Subsequent year returns are due May 15.) The Texas Franchise Tax is assessed as the greater of 4.5% of earned surplus (generally same as taxable income on federal return) or .25% of taxable capital (equity).

### **Quarterly:**

- Payroll taxes (if there are employees) Forms 941 and Texas Workforce Commission Reports are due April 30, June 30, September 30 (current tax year) and January 31 (following tax year) (Payroll tax deposits dates for employee withholding vary based upon the amount of money withheld. You may be a monthly, semimonthly or more frequent depositor depending on the amounts withheld).

### **Members' Filing Obligations**

- Estimated tax payments due quarterly (see Sole Proprietorship) if individuals. Members are subject to self-employment Tax
- Report Schedule K-1 income on Schedule E of Form 1040 if individual
- see entity type outline for non-individual partners
- **"C" Corporation**

Files a federal corporation income tax return. Taxes are paid at the corporate level. Shareholders are paid a salary which is reported them on a W-2 for reporting on their personal tax returns. In addition, Corporations are subject to Texas Franchise Tax which is reported and paid at the entity level. Entities other than individuals may be shareholders.

### **Annual Filing And Deadlines:**

- Form 1120, U.S. Corporation Income Tax Return is due by March 15 following end of tax year. A "C" Corporation is a "Personal Service Corporation" and pays income tax at a flat rate of 35% of taxable income.

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- Payments to retirement plans are due by the filing deadline in order to be deductible on the previous year return.  
RETIREMENT PLAN CAUTION: Certain types of retirement plans must be established before year end in order to qualify for tax deductions.
- Form 940 - annual unemployment tax return (if LLC has employees has employees) due January 31 following end of tax year
- Forms W-2 and 1099's (if required) are to be distributed by January 31 following end of tax year.
- Retirement plan return - Form 5500 (if required) - due by July 31 following end of tax year.
- Texas Franchise Tax Report is due May 15 following end of tax year. (First annual report is due following the first anniversary date of organization. Subsequent year returns are due May 15.) The Texas Franchise Tax is assessed as the greater of 4.5% of earned surplus (generally same as taxable income on federal return) or .25% of taxable capital (equity).

### **Quarterly:**

- Payroll taxes (if there are employees) Forms 941 and Texas Workforce Commission Reports are due April 30, June 30, September 30 (current tax year) and January 31 (following tax year).  
(Payroll tax deposits dates for employee withholding vary based upon the amount of money withheld. You may be a monthly, semimonthly or more frequent depositor depending upon the amounts withheld).

### **Shareholders Filing Obligations:**

- Shareholder should receive W-2 from corporation. File Form 1040 by April 15.

- **"S" Corporation**

An S Corporation is a Texas Corporation that has made a formal election with the Internal Revenue Service to be treated as a flow-through entity. A federal S Corporation income tax return is filed which reports income that is passed-through to the shareholders. Shareholders report this income on their personal tax returns. With very limited exceptions, shareholders must be individuals. Shareholders generally are paid a salary. In addition, S Corporations are subject to Texas Franchise Tax which is reported and paid at the entity level.

### **Annual Filing And Deadlines:**

- Form 1120 S, U.S. Income Tax Return for an S Corporation is due by March 15 following end of tax year. Forms K-1 are distributed to Shareholders reporting their distributable share of corporate income.
- Payments to retirement plans are due by the filing deadline in order to be deductible on the previous year return.  
RETIREMENT PLAN CAUTION: Certain types of retirement plans must be established before year end in order to qualify for tax deductions.

- Form 940 – annual unemployment tax return (if LLC has employees has employees) due January 31 following end of tax year
- Forms W-2 and 1099's (if required) are to be distributed by January 31 following end of tax year.
- Retirement plan return – Form 5500 (if required) – due by July 31 following end of tax year.
- Texas Franchise Tax Report is due May 15 following end of tax year.  
(First annual report is due following the first anniversary date of organization. Subsequent year returns are due May 15.) The Texas Franchise Tax is assessed as the greater of 4.5% of earned surplus (generally same as taxable income on federal return) or .25% of taxable capital (equity).

**B. Quarterly:**

- Payroll taxes (if there are employees) Forms 941 and Texas Workforce Commission Reports are due April 30, June 30, September 30 (current tax year) and January 31 (following tax year).  
(Payroll tax deposits dates for employee withholding vary based upon the amount of money withheld. You may be a monthly, semimonthly or more frequent depositor depending upon the amounts withheld).

**C. Shareholders Filing Obligations:**

- Shareholder should receive W-2 from corporation. It is preferable to pay wages to S Corporation shareholders to minimize Texas Franchise Tax exposure.

Report distributable share of income and expense from K-1 to applicable schedules of Form 1040 (Schedule E, Schedule A, etc.)

**b. Some Factors to Consider in Choice:**

- Liability risks and cost of insurance
  - Have you evaluated your professional liability insurance needs?
  - Certain entities (LLP's) have insurance or financial responsibility requirements that must be met .
- Number of owners
  - With more than one owner the sole proprietorship is not an option
- Profit and loss sharing allocations
  - If firm is to have equity and non-equity owners some type of partnership allows for the most flexibility in allocations.
- Number of employees

- Employee benefits
  - If maximizing employee benefits to the owner is an important element some type entities work better than others

## **B. Payroll**

If you're smart, you will outsource your payroll management. If you don't already know how to run payroll, then hire it out because you will get in trouble with the IRS and the Texas Workforce Commission. There are all kinds of reports and forms you must file on a regular basis. Do not pretend you know how to do all this if you don't. Quickbooks is a great program and they provide full payroll services. If you don't want pay some unpleasant penalties, have them handle it for you.

## **C. Lines of Credit**

How do you get a line of credit? Build a relationship with the bank. Find a smaller bank, one that has a bank officer who's willing to talk to you. You do need to have financial strength to set up a line of credit - ours is based on our fee/expenses projections for the year. They look at these and then lend to us based upon that number. That money then goes into the operating account to pay expenses and bills.

## IV. CLIENT RELATIONS

### **A. Fee Agreements**

In my firm we have a stair-stepped contingency fee agreement - 30% if we settle before filing suit, 40% after suit is filed, and 45% after appeal. However, I recommend against stair-stepped contracts like these because they can lead to an appearance of impropriety. The client may end up asking you why you decided to file suit so early in the game, was it just to get that higher fee? Even the appearance of propriety just isn't worth it.

### **B. Malpractice**

Be organized, be responsible, be on time. Be careful with your clients' money. Communicate effectively with your clients. Manage client expectations in a realistic fashion. Don't sleep with clients. Don't overcharge. Do these things and you won't commit malpractice.

### **C. Client Management**

As an attorney, you must communicate to the client the realistic expectations for the case, the status of the case, and the strategizing and negotiating the issues.

However, different attorneys handle clients in different ways. I myself rarely contact a client unless a major issue, like a settlement offer, comes up. Al Ellis, our Of Counsel, keeps in constant contact with his clients and updates

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them on nearly everything in their cases. Tex Quesada, my law partner, is somewhere in the middle on this. Everybody has their own thing that works for them. However, the most common reason a client files a complaint with the bar is failure to communicate with the client regarding the status of a case - always make sure you return a client's phone call. Remember your current clients are also the source of your future clients - litigation success and word of mouth referrals come will bring in that next big case.

### **D. Case Review**

We review our case lists several times a year to flush out the old cases and decide which cases need greater attention. Every two weeks we also print out a list of cases by the date the statute of limitations runs, to make sure we don't drop the ball on filing a case. The paralegals are responsible for getting old cases off case list. You must get those old cases off the list and into storage.

## **V. MARKETING**

One of the best things about the practice of law is that it is ever changing and fiercely competitive. One way to level the playing field is to have a personal networking and marketing strategy.

The first step is making a decision as to where you want to go and how much of your resources are you willing to dedicate. Do you want to expand the client base or are you changing practice area. Are you changing your employment or physically relocating. The scope of the project will impact the plan. However, in any networking/marketing program, the basics are the same. Networking and marketing at its heart is nothing more than letting your family, friends, clients, and in turn the general community know of your capabilities. Properly done networking will reinforce your current relationships and lead to new ones.

As with any campaign you need to develop your talking points. You need to be able to communicate to your mother, the guy at the gym and your most important client your current objectives. Depending on where they fit in the plan, the plan will also dictate the level of detail that you communicate. So what are your talking points? Networking has basic elements. Your friends, your family, and your clients cannot refer you work unless they actually know what you do. You have to invest the time to communicate this information. If you represented a client on an employment matter, do they know your other areas of expertise? They do not know unless you tell them. If you are planning a significant career change, the same basics apply. If you are contemplating a change, but for personal reasons there are confidentiality concerns, you need to be particularly circumspect about your talking points and who has the information.

### **A. The Zone Offense**

Think of your marketing efforts in terms of an offense based on zones. The time and resources you have to allocate to the project will dictate the zones you attempt to target. Zone one is always the easiest. It is close friends and family. Zone two is clients, friends and other lawyers who are aware of your practice and who can be in a position to recommend you as counsel. Zone three is individuals with whom you have had contact in a group forum. They do not have personal knowledge of your actual work habits and ethics but have a general knowledge concerning you as an attorney. Zone four is everyone else. These are the individuals you can contact either via the internet, mass mailing, other campaigns addressed at larger groups. It is always stressed that it is better to target groups that have more of an interest in your area of practice. Zone four campaigns obviously require a great deal of thought, effort, and finances.

#### **1. Update Your Client Contact Database**

A contact database helps you keep track of current and former clients and other individuals that could be of assistance. This can include law school alumni, friends

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in a business community, friends in civic groups, etc. Do not forget to include members of industry groups, former co-counsel, and opposing counsel. Former opponents can be good sources of referrals. The zone concept can be very helpful in organizing the information.

### **2. Targeted Contacts**

Depending on the plan, and considering the zone that you want to reach, you then need to plan and make targeted contacts. Use your updated contact database. Move from the immediate: personal phone calls, personal e-mails asking for the right time to call, to personal letters. You can then move on to disseminating written materials you have selected but again, focus on the nature of the contact. Focus on the zone. Are you targeting a move, or long term or short term clients? Different strategies will apply. Your practice may depend more on a presence in the general community. What are you doing to maintain that presence? What are you doing to build on same? Target and calendar those contacts. If the relationship is on a more personnel level, schedule routine meetings, particularly involving meals. But again, target and calendar the contact.

### **3. Don't Just Join, Do**

Review your memberships in groups be they bar, civic or charitable. How do they fit into the plan? Do not give up on groups to which you are devoted, but make sure you add groups that can add value and fit within your marketing plan. In turn schedule speaking and writing engagements with the groups, again with the concept of how it fits in the plan. Do not turn down the charitable group that needs to learn about Physician Directives, but if you have a criminal practice, just consider how it fits in the strategy. To really be part of the networking marketing strategy, you have to communicate what you do, and in giving of your time, the presentation will fit in with the plan.

### **4. Bar Activities**

As part of your plan review what Bar activities would logically fit within that plan, be it section memberships, networking with members of that section, attending or speaking at Bar related functions relevant to your area of practice.

### **5. Update Your Resume**

You need a current experience focused resume. This is simple, but absolutely vital. It is also another opportunity to go back to key members of your database and ask them for input on the resume.

### **6. Written Materials**

It is imperative that you have updated business cards. Consider whether your targets need large print or an additional language. If you are hesitant on giving out your home number and cell number to the general public, consider having two sets of cards. Also consider whether or not to use push cards or brochures. Brochures can be effective, but can be expensive. You may want to put together a more basic "push card". Just as in politics, a push card simply emphasis bullet points about an individual's "campaign". You are on a personal campaign to sell yourself. You may want to consider whether or not a push card would fit within your perimeters.

Also try to be consistent with your firm letterhead, business cards, and brochure, and don't change the look of these too often. Make sure firm changes, such as personnel changes, are reflected in your letterhead, etc.

### **7. The Internet**

The Internet is a valuable resource both for learning about current and prospective clients, marketing strategies, industry groups, and other valuable information. There is also a great deal of information at present on how to create



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web sites, and the pros and cons of blogging. You also need to consider how e-mails and/or list servers fit in your plans.

### **8. The Web Resume**

You may want to consider creating a web resume. As we all know web sites do not have to be extraordinary to attract attention, but they do have to convey accurate useful information. With the resources now available on the web you might want to consider a personal web site resume. You could post information about your credentials and go into more detail concerning your experience. You might also post, papers and other information that might be helpful to prospective clients or employers.

### **B. Visit Your Clients**

This may sound very simplistic, but if you are going to depend on repeat business, you need to meet them and if possible do so at the client's place of business. It is absolutely key to take this step and meet your clients and their staff. A day out of the office is a good investment.

### **C. Client Surveys**

Be it informal or formal, client surveys can be very vital on a number of fronts. You need to know how they found you. This is a great way to ascertain if your marketing efforts are yielding fruit. Consider adding survey questions to your regular intake or conflicts checks. You can then do to follow up at the end of the representation.

#### **1. Referrals**

As part of the survey process you need to know if the client was referred to you and by whom. You then need to take appropriate action with respect to the referring party. Be that as simple as a thank you note, or an appropriate small gift, regardless of your area of practice you need to make sure that those referrals are there. Referrals need to be acknowledged.

### **D. Ethics and Marketing**

Always be mindful of the impact of the State Bar of Texas rules on advertising on any marketing efforts. I won't go into the extensive limits in the Texas Disciplinary Rules on attorney advertising - that is best left to experts on the subject. However, remember that you cannot advertise for your firm, mail out brochures, or put up a website without prior state bar approval - all your advertising must be pre-approved, and most attorneys don't realize this. So far, stating that you are a Texas Monthly Super Lawyer had not been a problem with the state bar. However, the Committee on Attorney Advertising in New Jersey has banned advertisements in New Jersey describing attorneys as "Super Lawyers," "Best Lawyers in America," or similar comparative titles. So be careful of this in the future.

## **VI. PROFESSIONAL RESPONSIBILITY**

### **A. In General**

The Texas Bar and the Supreme Court set forth the Texas Disciplinary Rules of Professional Conduct. These rules MUST be followed. The preamble to the TDRPC states in part:

"A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

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As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the clients legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the clients position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's affairs and reporting about them to the client or to others.

In all professional functions, a lawyer should zealously pursue clients interests within the bounds of the law. In doing so, a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Texas Disciplinary Rules of Professional Conduct or other law.

A lawyers conduct should conform to the requirements of the law, both in professional service to clients and in the lawyers business and personal affairs. A lawyer should use the laws procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyers duty, when necessary, to challenge the rectitude of official action, it is also a lawyers duty to uphold legal process. . . .

The Texas Disciplinary Rules of Professional Conduct are rules of reason. The Texas Disciplinary Rules of Professional Conduct define proper conduct for purposes of professional discipline."

### **B. Your Claims Must Have Merit**

Rule 3.01 states:

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

The comments to the rule are clear:

" The advocate has a duty to use legal procedure for the fullest benefit of the clients cause, but also a **duty not to abuse legal procedure**. The law, both procedural and substantive, affects the limits within which an advocate may proceed. Likewise, these Rules impose limitations on the types of actions that a lawyer may take on behalf of his client. . . However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change. . . [a] **filing or assertion is frivolous if it is made primarily for the purpose of harassing or maliciously injuring a person**. It also is frivolous if the lawyer is unable either to make a good faith argument that the action taken is consistent with existing law or that it may be supported by a good faith argument for an extension, modification or reversal of existing law. . . It is not frivolous, however, merely because the facts have not been first substantiated fully or because the lawyer expects to develop vital evidence only by discovery. Neither is it frivolous even though the lawyer believes that the clients position ultimately may not prevail." [Emphasis Added].

### **C. Delay for Delay's Sake is Unacceptable**

Rule 3.02 prevents dilatory practices by stating:

In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

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As the comments to the Rule state:

"Dilatory practices **indulged in merely for the convenience of lawyers** bring the administration of justice into disrepute and normally will be unreasonable within the meaning of this Rule. . .The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay undertaken for the purpose of harassing or maliciously injuring. The fact that a client realizes a financial or other benefit from such otherwise unreasonable delay does not make that delay reasonable." [Emphasis Added].

### D. Playing Fair

Under Rule 3.04, a lawyer shall not:

(a) **unlawfully obstruct another party's access to evidence**; in anticipation of a dispute **unlawfully alter, destroy or conceal a document or other material** that a competent lawyer would believe has potential or actual evidentiary value; or counsel or assist another person to do any such act.

(b) **falsify evidence, counsel or assist a witness to testify falsely, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity** contingent upon the content of the testimony of the witness or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

- (1) expenses reasonably incurred by a witness in attending or testifying;
- (2) reasonable compensation to a witness for his loss of time in attending or testifying;
- (3) a reasonable fee for the professional services of an expert witness.

(c) except as stated in paragraph (d), in representing a client before a tribunal:

- (1) habitually violate an established rule of procedure or of evidence;
- (2) state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness;
- (3) state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused, except that a lawyer may argue on his analysis of the evidence and other permissible considerations for any position or conclusion with respect to the matters stated herein;

(4) ask any question intended to degrade a witness or other person except where the lawyer reasonably believes that the question will lead to relevant and admissible evidence; or

(5) engage in conduct intended to disrupt the proceedings.

(d) knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal except for an open refusal

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based either on an assertion that no valid obligation exists or on the clients willingness to accept any sanctions arising from such disobedience.

- (e) **request a person other than a client to refrain from voluntarily giving relevant information** to another party unless:
  - (1) the person is a relative or an employee or other agent of a client; and
  - (2) the lawyer reasonably believes that the persons interests will not be adversely affected by refraining from giving such information.

[Emphasis Added].

The comments to these rules make clear that while one can advocate on behalf of one's client, there the system must be fair and competition proper. Indulgence in legal games at a client's expense will not be tolerated.

### E. Conflicts of Interest

Under Rule 1.06

- (a) A lawyer shall not represent opposing parties to the same litigation.
- (b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:
  - (1) involves a **substantially related matter** in which that persons interests are materially and directly adverse to the interests of another client of the lawyer or the lawyers firm; or
  - (2) **reasonably appears to be or become adversely limited by the lawyers** or law firm's responsibilities to another client or to a third person or by the lawyers or law firms own interests.
- (c) A lawyer may represent a client in the circumstances described in (b) if:
  - (1) the lawyer reasonably believes the representation of each client will not be materially affected; and
  - (2) each affected or potentially affected client consents to such representation after **full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.**
- (d) A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute.
- (e) If a lawyer has accepted representation in violation of this Rule, or if multiple representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more

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representations to the extent necessary for any remaining representation not to be in violation of these Rules.

- (f) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct.

As the Comments state:

### "Loyalty to a Client

Loyalty is an essential element in the lawyers relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer must take effective action to eliminate the conflict, including withdrawal if necessary to rectify the situation."

### "Conflict with Lawyers Own Interests

Loyalty to a client is impaired not only by the representation of opposing parties in situations within paragraphs (a) and (b)(1) but also in any situation when a lawyer may not be able to consider, recommend or carry out an appropriate course of action for one client because of the lawyers own interests or responsibilities to others. . . [i]t is for the client to decide whether the client wishes to accommodate the other interest involved. However, the clients consent to the representation by the lawyer of another whose interests are directly adverse is insufficient unless the lawyer also believes that there will be no materially adverse effect upon the interests of either client. See paragraph (c)."

### " Full Disclosure and Informed Consent

Disclosure and consent are not formalities. Disclosure sufficient for sophisticated clients may not be sufficient to permit less sophisticated clients to provide fully informed consent. **While it is not required that the disclosure and consent be in writing, it would be prudent for the lawyer to provide potential dual clients with at least a written summary of the considerations disclosed.**" [Emphasis Added].

### "Non-litigation Conflict Situations

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyers relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree."

## F. Prohibited Transactions

- (a) A lawyer shall not enter into a **business transaction** with a client unless:
  - (1) the transaction and terms on which the lawyer acquires the interest are **fair and reasonable** to the client and are **fully disclosed** in a manner which can be reasonably understood by the client;
  - (2) the client is given a reasonable opportunity to **seek the advice of independent counsel in the transaction;** and

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- (3) the **client consents in writing** thereto.
- (b) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as a parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, **except where the client is related to the donee.**
- (c) Prior to the conclusion of all aspects of the matter giving rise to the lawyers employment, a lawyer shall not make or negotiate an agreement with a client, prospective client, or former client giving the lawyer **literary or media rights** to a portrayal or account based in substantial part on information relating to the representation.
- (d) A **lawyer shall not provide financial assistance to a client** in connection with pending or contemplated litigation or administrative proceedings, except that:
  - (1) a lawyer **may advance or guarantee court costs**, expenses of litigation or administrative proceedings, and **reasonably necessary medical and living expenses**, the repayment of which may be contingent on the outcome of the matter; and
  - (2) a lawyer representing an indigent client may pay **court costs and expenses** of litigation on behalf of the client.
- (e) A lawyer shall not accept compensation for representing a client **from one other than the client** unless:
  - (1) the client consents;
  - (2) there is no interference with the lawyers independence of professional judgment or with the client-lawyer relationship; and
  - (3) information relating to representation of a client is protected as required by Rule 1.05.
- (f) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement to guilty or nolo contendere pleas, unless each client has consented after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the nature and extent of the participation of each person in the settlement.
- (g) A lawyer shall not make an agreement prospectively limiting the lawyers liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.
- (h) A lawyer **shall not acquire a proprietary interest in the cause of action** or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
  - (1) **acquire a lien** granted by law to secure the lawyers fee or expenses; and
  - (2) contract in a civil case with a client for a **contingent fee** that is permissible under Rule 1.04.

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- (i) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member of or associated with that lawyers firm may engage in that conduct.
- (j) As used in this Rule, business transactions does not include standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others.

[Emphasis Added].

### **VII. CONCLUSION**

I hope this paper gets you started on your journey as a small firm practitioner. I've tried to include my own advice and the advice of others on every topic I can think of, but there will always be something that comes up that won't be in any guidebook or manual. But you can handle it, seriously. Just take a deep breath, remember YOU CAN DO THIS, and you'll be fine. Good luck!