

**SETTING UP A LAW PRACTICE**

## **STARTING YOUR OWN MATRIMONIAL PRACTICE**

### **I. *THE THREE KNOWS***

- **KNOW** yourself
- **KNOW** the law
- **KNOW** your Plan

### **II. *JOIN AND CONNECT***

- **YES**, matrimonial focused associations/committees
- But, bigger “yes” for connections with *non* – matrimonial contacts (e.g., Bar Association committees for estate, trial advocacy, tax, personal injury, etc.)
- Two ways – and only two ways – TO GET clients/business
  - a) direct connection with client (yes, internet inquiries count)
  - b) indirect referral from “other” sources
- Announcements (“hard” vs. email)
- Discover and then “Mine” Referral Sources (see III below)

### **III. *THE CLIENT/REFERRAL “DISCOVERY” PROCESS***

- Not science; but art
- No one size fits all; but creativity and imagination rule
- This is area where knowing yourself pays dividends
- Use contacts hiding in plain sight:
  - a) college and law school alumni associations
  - b) other lawyers
  - c) friends and family
  - d) other “professionals” (e.g., your personal banker; your insurance agent; your tax accountant; your personal trainer; your yoga instructor; the kids’ pediatrician, etc.)

- **Creating Contacts**
  - a) **4 "P's": Personal connections, Publish, Public forums, and Push yourself**
  - b) **3 magic words: "Can I help?"**
  - c) **2 magic words: "Can Do"**
  - d) **1 magic word: "Me"**
  - e) **1 ½ magic words: "Me-dia"**
    - **Social media**
    - **"Hard" media**
    - **Press release**
  - f) **Uber-word: CREATIVITY**

**IV. *LEARNING CURVE* (Theory: "Experience" is not just about years out of law school!)**

- **Watch other lawyers**
- **Walk into court rooms to observe**
- **Read cases**
- **Take courses/CLE**
- **Do not ignore *pro bono* opportunities**
- **Speak to lawyers and judges**
- **Expect (and don't be discouraged by) mistakes**
- **But never make the same mistake twice!**
- **Primary goal in this phase of your career: to *earn* client, peer and judicial  
R-E-S-P-E-C-T**
- **Secondary goal: to get your name "out there"**
- **Tertiary goal: to productively fill in hours waiting for clients to call**

## V. *INFRA-STRUCTURE*

- Office?
- Part-time office?
- Shared office?
- Home office?
- Accountant/banker (*e.g.*, setting up operating, escrow/IOLA accounts, maintaining proper records, filing and retrieval systems, etc.)
- Forms (retainers, net worth statements, etc.)
- Supplies/business cards/website
- Hardware: phone system, voicemail, legal research (*e.g.*, library or Westlaw, or both) computer, I-pad/laptop?
- Staffing considerations

## VI. *POST-CLIENT CONTACTS*

- Birthday cards
- "Check-in" emails (*e.g.*, follow-up regarding settlement entitlement/obligations, *i.e.*, "Did you request proof of his getting life insurance?" "Did the art get sold?")
- Holiday party?

## VII. *REALITY CHECK*

- Is your "Plan" still on target?
- Expansion challenges
- Timing challenges
- Inherent, time honored, conflict: business versus profession? . . . [or both!]

## VIII. *LONG TERM GOALS*

- Lateral hires
- Co-counsel relationships
- Merger
- Acquisition

**IX. OVERARCHING CAVEAT**

Being your "own boss" is as illusory a reason for considering this career path as it is just plain nonsense

X. (Only because I am a divorce lawyer, do I get away with a heading entitled):

**SECOND(!) OVERARCHING CAVEAT**

It is not enough – not nearly enough – that because you consider yourself to be a "people person," you can expect to achieve both professional satisfaction and financial success in this field

Smart legal marketing for attorney entrepreneurs.

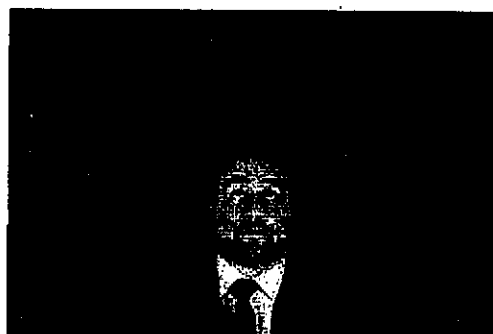
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June 27, 2013 /

# Ten Tips for Starting Your Own Law Firm

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On two different occasions I started my own law firm. The first time after I had been out of law school a total of 18 months. The second time a little over two years ago. In today's blog post I wanted to go over 10 things that I have learned about starting your own solo law firm practice:

**(1) Plan Before Launch - But Don't Delay:** For sure it is necessary to put in quite a bit of preparation prior to making the leap and starting your own practice. But I have found that some lawyers get caught up in the preparation stage so long that they never launch. Get what you need to start your practice: a website, a computer, a printer, a scanner, and practice management software, and get going.

**(2) If You Have the Funds, Get a Quality Website:** The first time I started a law practice it was 2005 and having a great website wasn't that important. But then again, soon after starting my practice in 2005 I went out and got a yellow pages ad - something I would never do now.

No matter your practice area, your clients are going to want to learn more about you, your law practice, and what you can do for them by visiting your website. Your online presence is today's storefront. If you throw up a cheapo website it reflects poorly on your law practice. If possible, get a mobile responsive website that is easy to read and use on mobile phones and tablets. You won't regret investing your website. For all of my websites I have used Rowboat Media.

**(3) Keep Monthly Overhead Low:** When I first started a law firm I was coming from a mid-sized firm of about 25 lawyers and about 30 staff members. When it came to law firms, this was all I knew. So when I created my own solo practice, I tried to copy what I had seen - a much larger law firm.

This was a mistake. Bigger firms are not even in the same universe as solo practices. The biggest difference is money. The bigger law firm has much more of it. When starting your own practice it can be tempting to want to create a smaller version of the larger law firm you just left. Avoid this at all costs. The first time around I brought on a lot of staff and

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upgraded on two different occasions to a larger office. All this did was stress me out and require that I work night and day just to meet payroll.

Initially, keep things simple. Limit expensive costs like office space and staff. When I started my solo law practice the second time I operated out of a home office with three "virtual" offices where I could meet clients. This reduced my monthly overhead tremendously.

Next, I didn't hire any staff. I know in some practice areas this is simply not possible. But I started out with a virtual receptionist at Call Ruby and handled the administrative stuff on my own. It meant a lot more work for me, but it was nice not having to cut a big check for payroll and rent.

Eventually I moved up to a contract paralegal who helped with specific jobs, and then I moved to a full time staff person. I also moved into a permanent office two years after starting my practice. Growing slowly the second time around has made a world of difference and kept the growth of the practice slow but steady.

(4) **Keep Your Marketing In-House:** Of course I am going to say this. The entire purpose of the JDBlogger blog/podcast is to teach attorneys that you can market your practice through blogging, podcasting, and social media and not pay thousands of dollars per month to SEO consultants.

If you aren't familiar with content marketing such as blogging then follow this blog and take the time to learn what it takes to create a quality blog for your law practice. If you are consistent, I know you will find out what I did, that you can bring in all the work that you can handle simply by being helpful and writing articles that answer the questions you get day in and day out.

(5) **Don't Do Print Advertising:** Print advertising like yellow pages, billboards, and newspapers/magazines are super expensive and I haven't seen them to be particularly effective unless you have the cash flow to do this on a huge scale. If you have the budget to put of dozens or billboards all over town it may get a return that makes this worth your time and money. On the other hand, if you are thinking of throwing up a single billboard along the freeway, you will likely find the only result is that you are a few thousand dollars lighter than you would otherwise have been.

(6) **Buy a Fujitsu ScanSnap IX500 Scanner and Ditch the Copy Machine**

Technology makes starting your own practice so much less expensive than it used to be. One of the largest expenses in many offices is the copy machine. Initially, if you buy one the cost will be several thousand dollars, and even if you lease you are looking at a large monthly payment.

Then comes the service plan - and you have to get the service plan because it will, without fail, breakdown. A lot. This adds another huge payment to the monthly pile of bills.

You can avoid a copy machine by purchasing a good scanner and a printer. I recommend (as do several lawyers) the Fujitsu ScanSnap IX500 Scanner. It is blazing fast, scans both sides of the page, and makes scanning all of your files very easy. I simply scan documents as the come in each day and then if I need a copy I can just print one. Often whoever needs the copy can just be emailed the pdf copy and save you the time, toner, and paper.

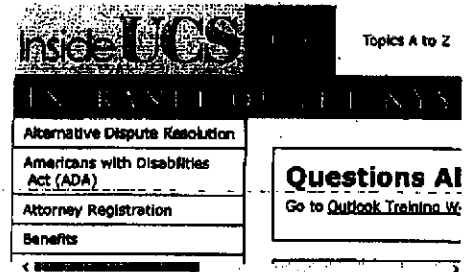
(7) **Buy a Fujitsu Scanner and Ditch the Fax Machine**

Like the copy machine, technology has made the fax machine unnecessary. Again, I scan everything in the office and then if I need to fax something I use a service called MyMaxEmail. This service is very cheap at \$20 per month and allows you upload pdf's from your computer and send them as faxes and also allows you to receive faxes directly to your computer.

Sep 25 2014 JDB 060: How to Quickly Create Youtube Videos to Market Your Law Practice

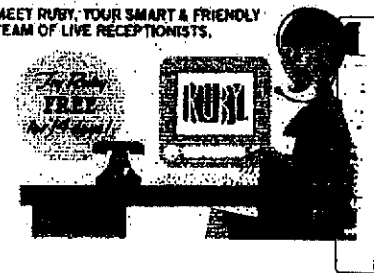
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### Using Apple Podcast App



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**(8) Purchase eBook Versions of Your Statute Books and Legal Manuals**

Basically anything in print is going to cost you a lot of money. I remember when I reached the one year anniversary of my law firm the first time around I bought myself an entire set of Arizona Revised Statutes. Price tag: \$5,000! And little did I know, I also received a \$600 bill every January for the updates.

Most legal books can now be purchased in ebook form. Get yourself an iPad and purchase as many of your manuals in an ebook format. You will always have them with you, they are often very searchable, and the overall costs is much less expensive as are the updates.

**(9) Use Cloud-Based Systems: Another area where you can increase productivity and reduce cost is through the use of cloud-based systems when it comes to practice management software and data storage.**

In the old days you would be required to spend thousands of dollars for a decent law practice management software. On top of that you would be required to spend more money on yearly service packages.

Now you can get online cloud-based systems that have all the bells and whistles at a fraction of the cost. And they are mobile so you can access them from anywhere (which means you can work 24/7 - hooray!). I use Rocket Matter and over the last two years have found it to do everything I need in a practice management system, and it only costs about \$70 per month.

**(10) Innovate: One the greatest - if not the greatest - thing about being a solo or small firm attorney is the flexibility you have. You can change the way things have always been done, incorporate new technology to meet the demands of your clients, and adapt your business to the way you like to do business.**

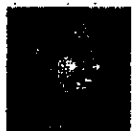
Because things don't have to be run through a committee you can try new systems out, incorporate different practice areas, and accommodate to meet the needs of your clients like no big law firm could ever do. Don't be afraid to try new things. Educate yourself on new technologies and how your clients incorporate them into their business or lifestyle and then see what you can do to make the decision of hiring you all that much easier.

Innovation is the fun part of running your own business. Embrace it.

It is rare that I run into a lawyer who hasn't at least thought of opening up their practice. It is not for everyone. Independence comes with its own stresses and difficulties, but it does provide a level of freedom (and by this I don't mean freedom from hard work) that you can't get working for someone else.

\*Note - some of these links are affiliate links. This means that I get a commission if you decide to purchase an item by clicking on the link above. It won't cost you a penny more. Please note that I don't recommend any product that I don't personally use and have found to be very useful/reliable.

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## PRACTICE RESOURCES

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### STARTING A PRACTICE IN NEW YORK

*Are you considering opening your own firm? Are you a recent law school graduate just starting out? Are you considering leaving your place of employment and starting your own practice? New York State Bar Association Law Practice Management resources can help you start, build and grow your firm.*

*Starting up a solo or small firm has its own unique financial, technical and practical concerns, but beginning a practice also has its own set of rewards, fulfillment and accomplishments. To maximize your chances for success, you must have a plan. Whether you are considering a change or whether you are a recent law school graduate, Law Practice Management CLE programs will help you explore your options. From choosing a business entity to choosing office space and attracting new clients, get practical and useful tips to help you succeed.*

*Starting a Practice in New York / Going Solo  
"One of the best CLE programs at NYSBA."*

This program provides an overview of what it takes to own your own practice. From choosing a business entity to choosing office space and attracting new clients, get practical and useful tips for starting a practice in New York. Focusing on solo practice, program topics include: setting up bank accounts; general accounting information; tax concerns; setting up IOLA accounts; client retainer agreements and intake forms; collecting payments; leaving your old firm; handling referral business; the ethical issues of using the internet to market your practice; social media considerations; increasing your list of contacts; and much more.

[View the program archive online, on demand.](#)

### CHECKLIST FOR STARTING A PRACTICE IN NEW YORK STATE (PDF)



**Starting Your Own Practice in New York | Basic Business Skills for Starting and Running a Successful Practice**  
**Color Brochure**

This program sells out each year and based on member feedback we are pleased to offer the program as an online, on demand CLE.

[Download the program archive.](#)

**Recent programs on Starting a Practice in New York available on demand**

***Get the information you need and earn MCLE credit***

• **Starting Your Own Practice in New York | Video and Materials Online, On Demand**

From choosing a business entity to choosing office space and attracting new clients, this program provides practical and useful tips for starting a practice in New York. Focusing on solo practice, topics include: choosing a legal entity, working from home, office equipment, choosing a practice area, work-life issues, finding clients, time management, managing and organizing your practice, marketing your solo practice ethically and effectively and much more.

**Starting a Practice in New York | Video and Materials Online, On Demand**

Topics include: Choosing a Business Entity and Creating and Financing Your Law Practice – What You Need to Know, Attorney Escrow Accounts, IOLA and Ethics, Insurance Considerations, The “Virtual Law” Office – Practical Considerations/Reality, Organizing Your Practice – The Importance of Creating Systems and Procedures, Leveraging Technology in Your Practice, Basic Human Resources – Questions and Answers, Marketing Your Practice – Ethical Considerations

**Building a Successful Practice | Video and Materials Online, On Demand**

Program covers an array of topics from controlling paperwork to managing employees. Speakers will help you move forward with growing your business. Topics include: Business Considerations: Grow, Merge, or Stay the Same, Practicing Ethically, Billing and Collection, Using the Internet and Social Media to Build Your Practice, Hiring Associates, Paralegals, and Support Staff

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**NYSBA SOLO/SMALL FIRM RESOURCE CENTER**

*Comprehensive resources for attorneys in solo or small firm practice in New York State - everything from marketing advice to sample engagement letters, insurance information to business continuity planning, work-life balance to selecting software and hiring staff.*

▣ [Review the Report of the Special Committee on Solo and Small Firm Practice](#)

▣ [Review the Report of the Task Force on the Future of the Legal Profession](#)

## **INFORMATION ABOUT ESCROW ACCOUNTS AND IOLA**

### **Attorney Escrow Accounts - Your "must have" book**

*Attorney Escrow Accounts* comprehensively covers the most common situations where attorneys handle client funds and discusses the legal and ethics issues encountered in handling clients' funds. The Third Edition provides an expanded discussion of related issues and updated case and statutory law, as well as a more comprehensive appendix featuring relevant statutes, rules and ethics opinions.

## **TECHNOLOGY RESOURCES FOR YOU AND YOUR PRACTICE**

Enhance the efficiency and lower the cost of your practice with special discount programs for NYSBA members. From insurance and financial services to discounted office products, your NYSBA membership gets you dramatic savings on important services for all your practice needs.

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## **MARKETING YOUR PRACTICE AND BUSINESS DEVELOPMENT**

Information and programs on attorney advertising, ethics and business development

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## **JOIN THE LAWYER REFERRAL AND INFORMATION SERVICE**

Join the Lawyer Referral Service ([www.nysba.org/joinlr](http://www.nysba.org/joinlr)) and add your name to the list of attorneys receiving referrals from the State Bar. Contact Eva Valentin-Espinal, Lawyer Referral Coordinator at [evalentin@nysba.org](mailto:evalentin@nysba.org), for eligibility.

The LRIS staff receives more than 100 calls per day from members of the public seeking legal assistance. These calls are screened by our staff to elicit pertinent information regarding the nature of their legal problem. Callers that would be more appropriately helped by other organizations, such as other bar referral services, legal aid societies, or governmental agencies are given contact information for these offices.

Callers needing the advice of an attorney, and who can afford to pay a private attorney, are referred to LRIS panel members on a rotating basis. They are told to expect a ½ hour in-office \$35 consultation fee, and to be sure to mention that they were referred by the New York State Bar Association's Lawyer Referral Service. After the initial consultation the attorney sets their own fees.

Attorneys are notified by e-mail when a referral has been made. A hard copy of the referral with follow-up questions is mailed to both the client and the attorney.

\*Participating attorneys must have an office in one of the following counties: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Ontario, Orleans, Oswego, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, Yates.



For more information about Starting a Practice in New York, contact Katherine Suchocki, Director, Law Practice Management at 518-487-5590 or [ksuchocki@nysba.org](mailto:ksuchocki@nysba.org)

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# Checklist for Starting a Practice in New York State

The New York State Bar Association created this list to be a starting point in your research if you are planning to start your own law practice in the State of New York. It is not all inclusive and many items may require research or consultation with another professional, such as a CPA. If you feel something is missing, or is included that should be omitted, give us your feedback at [lpm@nysba.org](mailto:lpm@nysba.org) and we will improve it for the next version.

## I. Planning/Budgeting

Review the new NY Rules of Professional Conduct  
([www.nysba.org/ethics](http://www.nysba.org/ethics))

Write a marketing and business plan

- Projection of gross receipts
- Projection of overhead and expenses
- Projection of net receipts
- Cash flow projections
- Projection of hours worked
- Marketable experience
- Setting fee to make a profit
  - Written fee agreements
  -

## II. Marketing Plan/Practice Development

Determine who, at least initially, would be your target clients

Limit your areas of practice

Consult books, CLE materials, and websites to determine what needs to be done to start a practice and whether you have the financial resources to do it.

Advertising

Yellow page ad

Website

TV, radio, billboard

Office signage

Sign up for Lawyer Referral Service

Firm brochure

Client newsletter

Join civic organizations

Produce community seminars

Speak at CLE programs

### **III. Forms of Practice**

Before starting to practice (or advertising your practice), you must choose an organizational structure for doing business: (1) sole practitioner, (2) limited liability partnership, (3) professional corporation, or (4) professional limited liability company (PLLC). Consult the services of a professional accountant to determine which organizational structure is best for your new firm.

### **IV. Office Space/Location Considerations**

#### Office building

- Image, upscale, informal
- Square footage
- ADA considerations
- Parking
- Services, janitorial
- Expansion opportunities
- Renovation needs
- Guarantee/other terms required by landlord

#### Location

#### Office sharing

#### Renting, leasing

#### Purchasing/buy into a law practice

#### Working from home

#### Conspicuously post Statement of Clients' Rights in office

([www.nysba.org](http://www.nysba.org))

Obtain general office liability insurance (may be required under office space lease) and ascertain other business insurance needs.

### **V. Accounting Needs**

Discuss with accountant the tax consequences of various firm entities and financial planning

Set up accounting procedures

Quarterly and annual tax returns

Payroll services

Bank and trust accounting systems/reconciliation procedures

Software compatible with accountant

### **VI. Start up Costs/Credit Sources**

Highly suggested that enough cash or a line of credit be available to cover start-up costs and at least the first six months to one year of operating expenses plus personal living expenses

#### Sources of credit

- Local bank/Credit union
- Personal, business loan
- Home equity, home reference
- Line-of-credit to be drawn upon as needed
- Lease, equipment loans
- Family loans/private investor loans
- Personal savings

Develop revenue, expense, cash flow and capital expense budgets, including start up costs, deposits, etc.

Determine need for line of credit on firm credit card

### **VII. Bank Accounts**

Trust account (separate account, see rules [www.nysba.org/lpm](http://www.nysba.org/lpm))

Business operating account for expenses/payroll

Short term savings

Safety deposit box

Firm credit card

Investments

Checks, deposit slips, endorsement stamp

Set up account to accept credit cards

Retirement plan

Develop a procedure for handling advance payment of fees by clients

### **VIII. Technology**

#### Software selection

- Word processing
- Time and billing/accounting
- Calendaring and docketing
- Conflicts checking
- Case management
- Document assembly
- Office Suite Software
  - Word processing
  - E-mail
  - Spreadsheet
  - Presentation software (such as PowerPoint)
  - Others
- Virus protection for computers
- Voice recognition
- Other specialized or practice specific software



#### Hardware

- Computers
  - Operating system
  - Off-premises back-up system
  - Lease or purchase
- Printers
- Network/Firewall
- Scanners
- CD-ROM
- Laptop computer
- Personal Digital Assistant (PDA)

### **IX. Office Equipment/Services/Supplies**

Fax machine  
Photocopier  
Scanner  
Shredder  
Dictation equipment/Voice Recognition Software  
Internet service provider  
E-mail address  
High speed internet access or DSL line  
Telephone system  
Equipment/answering machine  
Voice mail/manual message system  
Answering service  
Local and long distance carrier  
Conference calling  
Music on hold  
Cell phone/service  
Pager  
Postage scale/mail equipment  
Establish UPS and Fed Ex accounts  
Office furniture for lawyer(s), staff, reception area, file cabinets, conference room furniture, carpeting and area rugs, book shelves, artwork/office decorating needs  
Office supplies, paper, envelopes, pens, staplers, file folders, etc.  
Business cards, announcements  
Order public information brochures from the Bar for clients  
Advise Office of Court administration of firm name and address  
Create office forms- new matter/new client, retainer, post matter evaluation forms, fax cover sheet, etc.  
Determine need for on-line databases, library materials  
Develop employee policies and handbook, if necessary

## **X. Library/Legal Research**

- Online legal research provider
- Purchase new or used law books (keep the cost of supplements in mind)
- Local law library
- Law school library
- Court libraries
- Internet research
- CD-ROM
- CLE textbooks

## **XI. Office Systems/Procedures**

- Develop office manual/operating procedures manual
- Standard procedures/policies for practice
- Personnel policies/benefits
- Implement a conflict checking program
- Docketing, calendaring, tickler system
  - o Computerized (dual-system is highly recommended)
  - o Manual
- File organization
  - o Alpha/numeric
  - o Centralized/decentralized
  - o Opening file procedures
  - o Closing file procedures/retention/storage/destruction
  - o Document maintenance
    - Offsite- safe deposit box
    - Computer backup
    - Fireproof files
- Forms used in practice
  - o Client interview form
  - o Engagement/non-engagement letters
  - o Standardized client/new matter intake forms
  - o Written fee agreements
  - o Practice specific checklists
  - o Billing statement form
  - o General client correspondence, notices, etc.
  - o Client survey form after conclusion of representation
  - o Termination letters
- Client billing procedures
  - o Regular monthly statements even if no amount is due
  - o Detailed time entries
  - o Expense billing (to be detailed in engagement letter)
    - Costs to be billed
    - Legal assistant time/paralegal time
    - Telephone expenses

- Duplicating expenses
  - Computerized legal research
  - Mailing costs
  - Others
- Collections policy
- Credit cards for payment
- Client relations policy
  - Setting appointments, introducing staff
  - Returning phone calls, e-mail messages
  - Client intake form/survey at conclusion of representation
  - Keeping clients informed
    - Send copies of work, documents
  - Communicating fees
    - Clear discussion about fees
    - Written fee agreements/engagement letters
    - Open discussion about billing disputes
  - Accounting procedures
    - Bank account reconciliation
    - Cash flow statement
    - Accounts receivables/payables
      - Aging review
    - Expense approval system
    - Counter signature required on checks
    - Others

## **XII. Insurance Protection**

Malpractice insurance

- Limits
- Deductibles
- Tail coverage/prior acts exclusion

Workers' compensation

Health plan

Car insurance for business use

Property (liability, wind, fire, earthquake, etc.)

Loss of valuable documents

Life insurance

Business interruption

## **XIII. Personnel**

Legal Assistant/paralegal.

- Full-time
- Part-time
- Temporary

- Hours, flex-time
  - Sharing personnel with other professionals while preserving client confidences and secrets
  - Training
- Employee benefits
- Vacation, holidays
  - Sick leave
  - Overtime policy
  - Medical insurance
  - Retirement plan
  - Others
- Secure I-9 forms, W-4, confidentiality agreement, employment applications, etc.

#### **XIV. Miscellaneous**

- Order Post Office box (if needed)
- Build a forms file
- Become a Notary
- Develop a disaster plan for your office, files, computer, etc.  
([www.nysba.org/businesscontinuity](http://www.nysba.org/businesscontinuity))
- Develop a plan for you illness, incapacity or death  
([www.nysba.org/planningahead](http://www.nysba.org/planningahead))
- Join the New York State Bar Association, if not already a member  
([www.nysba.org](http://www.nysba.org))
- Change address with the Office of Court Administration
- Submit ethical questions to the New York State Bar Association  
([ethics@nysba.org](mailto:ethics@nysba.org))
- Join a local bar association
- Develop a network of other lawyers to call upon for assistance



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## The GPSolo Guide to Opening a Law Office

Vol. 31 No. 1

By Jocelyn Frazer, Nerino J. Petro Jr.

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So you are thinking of opening your own office? Before you take this bold step, you need to ask yourself: Are you prepared? Do you understand the challenges that you face? Do you understand yourself? Being a sole practitioner entails more than just being good at the law and understanding how to file a complaint or argue before a judge. You also have to understand how to start and run a business. To succeed, you must be a savvy business person, negotiator, and bookkeeper all while being a good lawyer.

### Realistically Evaluate Your Situation

First, you need to understand yourself. Are you an entrepreneur? Are you willing to take a risk? Have you considered what it will take to run your own office by thinking about your budget, equipment, marketing, and keeping your doors open while you build your practice? Can you balance a checkbook and deal with demands on your available funds? Do you see yourself as a self-starter, comfortable with managing competing demands, multiple deadlines, and doing it all yourself? Or are you more of a social animal, feeding off the energy of others and most effective where you have a team approach to various tasks? Your personal attributes will help direct you into the right type of practice and setting. Think about the type of environment that will make you most effective. Will you function best as a true solo with no support staff, or would you benefit from a less solitary office with someone to assist you from the first day?

### About GPSolo magazine

GPSolo magazine is published six times a year (January/February, March/April, May/June, July/August, September/October, and November/December) by the ABA Solo, Small Firm, and General Practice Division.

GPSolo is devoted to themes of critical importance to your practice. Each issue contains articles exploring a particular topic of interest to solos, small firms, and general practitioners, as well as articles related to technology and practice management. And to keep you up to date, each issue contains five *Best of ABA Sections* digests, reprinting the top articles published by other ABA entities that will be of the greatest interest to you.

- Visit the ABA Solo, Small Firm, and General Practice Division
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You must be realistic and honest with yourself. Critically evaluate your strengths and weaknesses. It isn't enough simply to know the law and have the desire to share your knowledge. To run a successful law practice, you must have, or at least be willing to learn, strong business skills. You will need to possess the ability to take the appropriate actions, on a day-to-day basis, to initiate and sustain the progress of your business. You need to be prepared to forgo regular paychecks, work harder than you ever have before, and not only be a lawyer but also be a person. You need to recognize that solo or small firm practice is not for everyone.

### **Develop a Plan and Get Some Advice**

If you are still undeterred and are satisfied that you have the necessary business acumen, you will need a clear vision of what you want your practice to be and an idea of how you are going to get there. Is this a temporary solution to a current situation? Are you hoping to grow your firm to include multiple support staff persons and, perhaps, other attorneys over time? Or possibly start a series of satellite offices? Do you eventually hope to join another existing practice? Do you intend to run a general practice or specialize in only a specific area? Are you an innovator, dreaming of revolutionizing the practice of law?

Next, think about the types of clients you want to attract. Who are your ideal clients? What are the attributes they possess that make them likely prospects for your assistance? Think of identifying your ideal prospect as being able to spot a zebra in a herd of horses: When you know what you are looking for in prospective clients, they will stand out from others.

If you believe that solo practice is the right choice, then you need to decide what this practice will look like and develop a plan to build it. The plan doesn't have to be 30 pages with subsections and appendices; it can be as simple as a single piece of paper at this point. If you take the time to write down your vision—where you want to be in six months, one year, and five years—it will help you focus your ideas. Knowing where you want to end up makes reaching your destination easier.

Now you need to develop a solid business plan that will drive many of the other decisions that you make in starting up. Having an idea of the area of law you intend to practice, the nature of the work that will entail, and who are your target clients will help complete other sections of the plan as you write it. Identifying your ideal client will also help you develop a marketing strategy to attract that business and form the basis of your financial plan. Things you will need to consider when drafting your business plan include:

**1. What type of entity will you use for your practice?** Today, you have a number of choices when it comes to how you structure your law firm. The two primary considerations when determining an operating structure are (1) what is the best structure to shield

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Institutions and individuals not eligible for ABA membership may subscribe to *GPSolo* for \$135 per year, \$145 for residents outside the U.S. and its possessions. Per copy price for members and nonmembers is \$20. Requests for subscriptions and back issues should be made to the ABA Service Center at 800-285-2221 or by mail at 321 N. Clark St., Chicago, IL 60654-7598.

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yourself from personal liability (not including malpractice) and (2) which structure best addresses the foreseeable tax consequences of your practice? Think through the liability and business implications of the various entity types that are suitable for your practice, whether a sole proprietorship, partnership (if you are going into practice with another attorney), PC, SC, Law Corp., P.A., LLC, or some other recognized form of limited liability incorporated entity.

Take the time to get some accounting advice to help you determine the operating structure to select. Talking to an accountant before you select the entity type can save you money as your practice becomes successful.

Determine whether there are any restrictions on the type of structure that you choose. For example, there may be statutory restrictions in your governing rules that prevent you from partnering with non-lawyers or using an LLC or other form of limited liability entity as a way to avoid personal liability.

**2. What will you need for an office?** Most start-up businesses are faced with financial choices to make when getting off the ground. One of the major decisions is whether or not you can practice initially out of your home or if you will need dedicated office space. While having dedicated office space is nice if you meet regularly with clients, being able to forgo this expense when you start can make a huge difference to your bottom line and the start-up capital you will require. Working from your home is a good way to keep your overhead low in the start-up phase. This also allows you to focus your budget on critical items such as a marketing plan and acquiring the necessary technology to make you effective and efficient.

Consider whether you want to work from home, at least initially, or develop more of a "virtual" office. (For more, see "Launching a Virtual Law Firm.") You may want to lease space from an executive office suite provider such as Regus (regus.com), Premier Business Centers (pbcenters.com), or Instant (instantoffices.com); establish a more traditional office in a commercial building; or share an office with another attorney or firm. Ask yourself whether you need a dedicated office in the traditional sense or whether other options may work while you build your client base. Obviously, it is less expensive to work from home, but security or professional isolation may be a concern for you. Some lawyers arrange to meet clients at the courthouse, at the client's home or business, or at a local coffee shop (confidentiality is obviously a concern with this approach). Others make arrangements with attorneys or other businesses to rent conference rooms from these established offices on an as-needed basis. The reality is that there are many creative solutions to this and no single right answer.

If you do decide that you need a physical office, how much space do you need? Where do you want to be located? Different areas of

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practice may also impact where you want to be. With a litigation practice, you may want to be close to the courthouse or near public transit to make access easier for you or your clients. If you are focusing on transactional legal work, perhaps you want to be located in the suburbs or other areas so as to be more accessible to where your clients work or live.

Determining how much space you need is not an exact science. If you are working from your home, your space needs are different than if you are renting space elsewhere, and where you will be meeting with clients will influence this decision as well. If practicing from your home, you need dedicated "work" space as differentiated from your "living" space—not only to preserve your mental health but also to meet the ethical requirements of safeguarding client information. The differentiation is also important for tax purposes. To claim a home office deduction, the Internal Revenue Service (IRS) requires that you must regularly and exclusively use a part of your home as your principal place of business. (For more, see [1.usa.gov/1duAA6i](http://1.usa.gov/1duAA6i).)

If you determine that your practice needs distinct office space outside your home, you need to determine if there will be a meeting room available, kitchen or break room, storage space, and room for an assistant if you need one. Think in terms of square feet when considering office space. If you will meet with clients in your office, it should be larger than if you will meet with clients in a conference room or other location. If you plan to have an assistant, how many square feet should be reserved for this person? You also need to remember that your costs will generally be based on the amount of space you use, so the larger the space, the higher your rent will be. (About.com has a number of useful articles to help you plan for your office space needs: [abt.cm/1duBcZJ](http://abt.cm/1duBcZJ) and [abt.cm/1du8kbw](http://abt.cm/1du8kbw). A helpful worksheet created by Guidance Corporate Realty Advisors can be found at [bit.ly/1duBnUP](http://bit.ly/1duBnUP). Another useful resource can be found on the How Stuff Works website: [bit.ly/1duBz6l](http://bit.ly/1duBz6l).)

Check your code of professional conduct to understand your obligations with respect to protecting client confidentiality and space-sharing arrangements.

**3. What will you need for technology?** Think about what you really want to accomplish and what your comfort level is with technology. The possibilities in terms of equipment and applications are virtually endless. As with everything else, know your objectives and your limitations. Unless you are very tech savvy, you should get some advice from an expert. Think about how much you want to do yourself and how much you are capable of maintaining. At the very least, you need a telephone, Internet access, computer, something to back it up, and probably a printer. Key programs for word processing, timekeeping, billing and accounting, e-mail, contact, and calendar management would also



furniture, equipment (computer, software, scanner, copier, printer, telephone, fax, filing cabinets, postage scale and meter), and potentially tenant improvements will depend on your practice setting. (See "Start-Up Tech for Any Budget" for more.) Consider to what extent your smartphone or tablet can substitute for a landline, laptop, copier, or scanner—at least for a while. Consider whether you will purchase, lease, or rent your office equipment (this is probably something to discuss with your accountant). Other operating expenses associated with start-up will continue on a regular, recurring schedule: office supplies, license, membership and insurance dues, utility expenses for heating, cooling, water, garbage disposal, insurance, taxes, etc. They need to be included in your budgeting process.

The information in Table 1 (Sample Expense Calculation) is needed to help you determine what you are going to charge for an hourly rate, if that's how you will bill.

Table 1. Sample Expense Calculation

Expense	Monthly	Annual
Rent	\$300	\$3,600
Utilities	\$150	\$1,800
Telephone & Internet	\$100	\$1,200
Business Insurance	\$50	\$600
Malpractice Insurance	\$200	\$2,400
License and professional memberships	\$100	\$1,200
Staff	\$200	\$2,400
Advertising	\$100	\$1,200
<b>Totals</b>	<b>\$1,200</b>	<b>\$14,400</b>

When you've established your hourly rate, you need to divide your monthly fixed expenses by this hourly rate to determine the minimum number of hours you will need to bill simply to cover your fixed expenses. Using Table 1's monthly total of \$1,200 and dividing it by an hourly rate of \$150 per hour would result in the calculation shown in Table 2 (Number of Billable Hours to Cover Fixed Expenses).

Table 2. Number of Billable Hours to Cover Fixed Expenses

Monthly Billable	Hourly Rate	Number of Billable Hours
\$1,200	\$150	8.00

Therefore, you would need to bill a minimum of eight hours each month just to cover your fixed expenses. If you're not sure what an expense will be, you can often discover approximate amounts easily by talking to fellow attorneys, getting price quotes from service providers, and making an educated guess in some circumstances. This number is not meant to be exact but to give you an idea of what you'll need to make just to cover your fixed expenses. You will have expenses above these for such things as office supplies, mailing, and copy expenses, and no amount was included for equipment or other purchases. These will also have to be taken into consideration. Generally, for such things as office

equipment and technology purchases, you will create a budget and spread it over two to five years.

With a view to the image that you want to create, decide how you want to convey that image to your target audience. You also will want to spend some time developing a website—this doesn't have to be extensive at first, but it is a very important element in your marketing plan and requires time to design.

There are a number of resources to assist you in creating a marketing plan for your firm. Your initial plan can be as simple as a single page with the marketing efforts you will make daily, weekly, monthly, and annually. If you are starting a new practice and do not have an existing base of clients, marketing your firm will be critical to early success. You may want to include hiring a legal marketing provider in your budget. Firms such as AttorneySync ([bit.ly/1a7iik9](http://bit.ly/1a7iik9)) provide manuals for creating a marketing plan. You can also see a number of sample marketing plans for lawyers at [bit.ly/1a7ipwe](http://bit.ly/1a7ipwe). Stephanie Francis Ward's helpful *ABA Journal* article "50 Simple Ways You Can Market Your Practice" (July 1, 2013, [bit.ly/1a7iAYa](http://bit.ly/1a7iAYa)) provides some great tips for marketing your practice.

### **Regulatory Requirements**

Check with your local bar association to determine the licensing requirements that have to be met.

Depending on your location, you may or may not be required to belong to your state bar association or legal society. However, all jurisdictions require that you maintain your license with the regulatory arm of the U.S. Supreme Court. States such as Wisconsin, Oregon, and others make membership in the state bar association a mandatory requirement to practice law there. This is also true for Canada and their law societies (their equivalent of our state bar associations). You need to ensure that you comply with the regulatory requirements for the jurisdiction(s) where you will practice. If you are going to use a limited liability entity such as an LLC, you may also need to register the entity as well as yourself. It is these same regulations that will determine whether or not you must maintain errors and omissions (E&O) insurance. In the United States, we commonly refer to this as malpractice insurance.

The majority of states in the United States do not require mandatory malpractice insurance, but a growing number do require that lawyers disclose whether or not they have malpractice insurance. In many states, to limit malpractice liability between lawyers in a firm operating as a limited liability entity, the firm must maintain malpractice in the amounts set forth in the rules of the jurisdiction. For example, Wisconsin Supreme Court Rule 20:5.7 ([bit.ly/18WeKVJ](http://bit.ly/18WeKVJ)) requires a firm of one to three lawyers to maintain a combined indemnity and defense cost coverage of \$100,000 per claim and \$300,000 aggregate combined indemnity

and defense cost coverage per policy period. So make sure to check with your local rules to ensure that you are in compliance. (For more, see "Attorney Malpractice Insurance: Who's Got Your Back?")

It is also important to understand the qualifications you have to meet if you want to operate a trust account. If you are going to accept funds for advanced fees or costs or funds that belong to someone else other than yourself, you will need to establish a trust account. This is often referred to as an IOLTA (Interest on Lawyers Trust Account) account. You will find the requirements in your rules and may have a state organization that operates these accounts, such as the Wisconsin Trust Account Foundation, Inc. ([wistaf.org](http://wistaf.org)), or the Florida Bar Foundation ([flabarfindn.org/iota](http://flabarfindn.org/iota)).

Determine whether your municipality requires you to obtain a separate business license.

You will also need to consider whether there are any rules that restrict you in terms of business/mailling address requirements or obligations with respect to how you name your firm and whether you need to register a trade name. Review your code of professional conduct in terms of advertising guidelines. (For more, see "Ethics Perils of Opening a Law Office.")

In addition to professional liability coverage, there are many other types of insurance that can protect you and your practice in various circumstances. Depending on your personal situation, consider the applicability of the following:

- Public liability and/or tenants liability coverage
- Property insurance (all perils)
- Auto and home (business use)
- Business interruption, valuable papers
- Life and short- and long-term disability insurance
- Fraud coverage

You will also need to obtain your Employer Identification Number (EIN), sometimes referred to as a Taxpayer Identification Number (TIN), whether you operate as a sole proprietorship or a PC, LLC, or other limited liability entity. In the United States, you can apply for your EIN online on the IRS website at [1.usa.gov/18WhpPa](http://1.usa.gov/18WhpPa).

### **Solo, but Not Alone**

Starting up a new business is an exciting and also somewhat daunting process—like everything else in life, being your own boss has its rewards and its headaches. It is important to develop a network of other professionals to whom you can turn for support. And probably most important of all, find a friend, a mentor, or a sounding board that you can rely on for objective feedback—or just a shoulder to cry on. There is also a great wealth of information available through the ABA and your state bar association or law society. Be sure to leverage the resources available to you at your local law practice management program or practice advisors.

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**TITLE:** FALSE STARTS

**AUTHOR:** David B. Saxe

Editor's note: In a composite memoir -- synthesizing people and events -- David B. Saxe, a New York Supreme Court justice, recounts the early days of his career.

**TEXT:**

It had been over 20 years since I saw him last, but when he entered my robing room late one Wednesday afternoon for a pre-trial conference, I recognized Jack instantly. He had a lot more gray hair than when I worked for him, and was considerably heavier, but he still wore the same cheap sports jackets and outlandish ties that he bought at Subway Sam's on 14th Street. The glasses were the same, too: horn-rimmed and tied around his neck with a tattered piece of cord.

Jack was directed to the plaintiff's counsel's chair by the court officer; his colleague, another veteran, from one of the well-known firms representing insurance carriers in personal-injury cases, sat across the table. When Jack placed his worn, frayed file on the table, aged papers and documents spilled out.

Although I recognized Jack immediately and the yellow note-of-issue card bore out my identification, either he did not remember me or was feigning ignorance.

I met Jack when I decided, after a couple of years of working for other lawyers, that I wanted to work on my own. The only problem was that I had neither money nor clients, nor the immediate prospect of either.

One day, while doing my ritualistic reading of the *New York Law Journal's* classified section, I was drawn to an ad squirreled away under "Help Wanted." "Space for service," it read, "excellent location; near all courts; overflow available; call BA-7. . . ."

I called the number right away and was told to come see the advertiser that evening. I was directed to one of those cavernous buildings on lower Broadway that housed enough lawyers to populate a small state. I took the elevator to the 12th floor and then walked down a dirty, dimly lit corridor toward the office. The door was locked, so I pressed the buzzer and the door opened.

It was after six. Although lights were on and I could hear voices, I stood in the reception area of the suite for a long time before I heard anyone approach. The furniture -- a couch and two chairs -- could have come from the lobbies of those grand old apartment houses along the Grand Concourse in the Bronx. The water cooler was empty and the carpet was in such bad condition that the Salvation Army wouldn't have accepted it.

Something inside me said, "Leave now." If I was disgusted, what would a client think? But I didn't have any clients, so I stayed.

In a moment, Jack appeared, and without even shaking my hand, he told me to follow him into his office.

There were law journals from the beginning of time strewn around; papers and Redweld folders were everywhere; the wallpaper was badly torn. By comparison, the reception area was hospitable. Nevertheless, I needed an affiliation and was pleased when Jack began to explain the proposed arrangement right away, rather than engage in one of those silly conversations that older lawyers sometimes have with younger lawyers interviewing for a job.

"Here's the deal," he said. "You work for me 10 hours a week. In return you get a room, which I'll show you. You can make local calls, and the receptionist will take your incoming calls. On your own work, you have to pay us for photocopying and you can't use the secretary that I share. If you need anything of your own typed, you can subscribe to Mollie's Typing Service. A few guys around here use them. They pick up every afternoon around 4:30.

"If any of the work you're doing for me takes over 10 hours to finish, we can work out an arrangement -- say, \$ 20 or \$ 25 per hour, something like that. Believe me, that's better than I did when I was your age. Are you interested?"

"Yeah, sure," I said. "I want to start my own law practice and this seems like a good way to do it."

"Good. I'll show you your office," he said.

I followed Jack and came to a windowless room. Had it been a prison cell, it would have violated Judge Lasker's minimum space requirements for Rikers Island. And it didn't really have a regular door, just the kind of swinging gate you find in an old-fashioned saloon. I had the strange feeling that it had been a broom closet until Jack's entrepreneurial spirit got the better of him.

But I was not about to be deterred by insignificant matters. Monday, I arrived ready to undertake my responsibilities to Jack and to my future clients, whoever they might be.

When I arrived for work I found Jack sitting in my chair.

"Can you take a deposition?" he asked.

"Sure," I replied, thinking that my two prior experiences made me an accomplished examiner.

He handed me a slip of paper on which was written the name and address of a law firm.

"Be there at 11 o'clock. Here's the file. Our client was a pedestrian. It's a knockdown case. They're taking her deposition first; she'll meet you there. You'll depose the driver right afterward. Any questions?"

"No," I said, and began to quickly review the file, making various notes.

For the next two hours, I reviewed every piece of paper in the file and wrote a list of categories and subcategories that I thought worthy of inquiry. At 10:50, I walked across City Hall Park to the law offices.

The defendant's attorney asked me if I would agree to the "usual stipulations." Not knowing what unusual stipulations were, I quickly agreed. The defendant's attorney wanted to know, it seemed to me, the most minute details of my client's life. The deposition wasn't even half over

by five, so we agreed to continue it the next morning. It went just as slowly the next day, finishing with a lunch break at about 3:30 p.m. I eagerly began my examination of the defendant, which must have been initially interrupted at least five times by objections by the defendant's attorney.

"Your question is irrelevant," he boomed. "I'm directing my client not to answer."

"No, it's not," I stammered. "Anyway, have your client answer and your objection will be preserved."

"Don't tell me how to practice law," he sneered.

"Let's call the Special II judge," I said. "We can get a ruling."

"Do what you want," he said.

I went into the hall and asked a secretary if I could use the phone and was able to reach the judge's secretary, who confirmed my statement. I guess my adversary knew what the ruling would be, but just wanted to unsettle me. Anyway, he continued to object and make speeches but eventually let his client answer. The deposition ended on Thursday around 1 p.m., and I spent the rest of the day carefully summarizing the relevant parts of the examination. All told, the deposition had taken 22 hours.

I spent what was left of the first week waiting for clients to call.

On Tuesday of the second week Jack came into my office with some sheets of paper with scribbling all over them and some financial forms.

"Can you draw up a will?" he frowned. "It's for a good client of mine -- a very wealthy guy. He feeds me a lot of work, so it's important that it's done right. I think he wants some trusts set up, too. If you need some forms, ask Harry Gross in the next suite. We refer business to each other, and he's an expert in estates."

"Why don't you just have him do it, then?" I asked. "I've never done more than a simple will."

"What are you, crazy?" he responded. "If I sent this guy next door, Harry would wind up with all my p.i. work."

I looked over his notes for a while and, not finding them particularly illuminating, I walked into Jack's office. "Look, Jack, I need to interview these people. I can't tell from these notes what they want."

"O.K. I'll call them up but when they come in, I'll do the talking; just write out the questions you want answered."

Anyway, between the interview, my research and my drafts, I had a pretty good version on Jack's desk by Friday afternoon. I had spent 20 hours and had done, I thought, a pretty good job on the will.

I entered the number of hours in my little notebook and waited some more for clients to call.

During the third week Jack handed me a messy Redweld folder.

"Ever do a closing?" he asked. "I represent a guy who's buying a travel agency. The closing is Thursday. Here, take care of it. Go over to County Lawyers; they have some good form books there. Try Rabkin and Johnson."



"Can I get in there?" I asked. "Are you a member?"

"Just act like you know where you're going," Jack said. "If you do, they'll never stop you."

I spent most of a day and a half drafting the documents. The closing was at a lawyer's office on 42nd St., since our conference room had already been rented out to two lawyers. The closing itself lasted no more than four hours. I prepared the closing statement when I got back a few hours later. All told, I spent about 19 hours.

Finally, during the fourth week of my employment with Jack, he asked me to do some research on the validity of Dominican Republic divorces. Research was not Jack's forte -- he didn't even subscribe to the New York Supplement. But a well-researched answer was necessary to advise a new client, I thought. I once again went to the County Lawyers' library and began my research. The result was a detailed and complete memo that I was quite proud of. Between that research and two or three visits to court to conform some orders, I worked 25 hours on Jack's work that week.

With the first month over, I now had a chance to assess my new career and the financial emoluments that lay just ahead. Now, it was true that not a single client of my own had entered my office. But Jack's work kept me pretty busy. So, I calculated my entitlement.

The first week, I racked up 22 hours. I owed Jack 10 hours so I was entitled to compensation for 12 hours at the rate of \$ 25 per hour, or \$ 300. For the second week, my work on the will took up 20 hours. I calculated, therefore, that I was entitled to \$ 250.

The third week, when I took care of the corporate closing, was a light week -- only 19 hours -- so Jack would only have to pay me for nine hours, or \$ 225. And finally for the fourth week, I logged in 25 hours on the research project so I could bill for 15 hours, or \$ 375.

All told, I figured that he owed me \$ 1,150 for the four weeks I had been there. Not bad, I figured, with the "free" room and a chance to build my own practice. That evening I typed up a detailed version of my time and efforts, and the next morning I walked into Jack's office, sat in the one chair that wasn't broken and presented him with my bill.

"What's this?" he said.

"It's a compilation of the time I spent on work for you this month," I said. "You remember our arrangement, don't you?"

"What arrangement?" he asked.

"Look, Jack, stop kidding. You said you would pay me \$ 25 an hour for any work I did for you over the 10-hour weekly minimum."

"Oh, yeah, but I wanted you to consult me before you started billing me like a law firm. What's this 22 hours for an EBT?" he said.

"You're right: It's a lot of time, but I couldn't help it," I said. "The other guy asked endless questions, and you know I had to prepare, too."

Jack roared, "I'm not paying you to learn how to take an EBT! And 20 hours for a will. What kind of jerk do you think I am? I told you, you should have just gone next door to Harry's office, borrowed a couple of forms and pieced them together. That would have taken you five or six hours at most."

"But Jack, there were some difficult tax questions involved," I said.

"Nothing so serious that it should have taken the time you put in, or that you say you put in," he sneered. "What do you think, I make money on these wills?" He looked down at my time sheet. "This closing -- it says here you spent 19 hours," he said. "How could you have done that when all you had to do was hold the guy's hand?"

"That's not so, Jack. I had to do most of the drafting. I had to keep running over to County Lawyers. You know, if you had some books here, I wouldn't have to be over there all the time."

"Yeah," he said, "if I had books here, you probably would be giving me a bill for double the amount that's here. And research, 25 hours, what kind of bull is this. You should have done a few minutes research. That would have been enough. I'm not paying you to write law review articles."

I stood my ground. "You owe me \$ 1,150, Jack. I might be willing to take a little less, but I did everything that's down on that paper; in fact, I did work I didn't even bill you for."

"Stop it," he said. "You didn't even give me the 10 hours a week you were supposed to. You owe me money. I gave you a room in a suite and you're trying to stiff me."

"You're a real crook," I said. "I'm getting out of here."

"Get the hell out," he roared. "And don't make any calls."

A few weeks later I found a normal job. My sour experience with Jack faded into memory. From time to time, however, I would scan the classified page of the *New York Law Journal*, and through the years I noticed Jack's ad appear with some degree of regularity. "Space for service," it trumpeted. "Guaranteed overflow; well-appointed suite."

I didn't give it another thought until I saw Jack that day at the pre-trial conference. After the conference was over and the two lawyers were given a trial date, I asked the insurance company lawyer if he minded if I spoke privately to the plaintiff's lawyer on another unrelated matter. "Not at all, Judge."

Jack looked at me quizzically as his colleague left the room. "Do you remember me?" I asked. Jack looked startled. "I worked for you over twenty years ago."

"You worked for me?"

"Yes," I said. "And I see you still have your ad running." I held up a page of the day's *Law Journal*.

"It's always been hard to find the right person," he said. "How long did you work for me?"

"I worked for you for four weeks."

"Four weeks," he repeated. "What happened?"

"Well, you said I should have finished your work more quickly than I did. I felt I put in the time it took to do the work and that you should have paid me for it. In fact, I remember that I did a complicated will for you and you said I shouldn't have taken so much time, but should have just copied a few forms in someone's office."

"Oh, I remember you," he said. "You took it too seriously."

"Too seriously?" I said.

"Yeah, yeah. It's a business. If I had wanted an associate, I would have hired one. You didn't

understand that. You really weren't ready to be on your own; you still wanted to work for someone else who had regular clients. That wasn't what I was looking for."

After a pause, he added, "But it's too bad it didn't work out. You know something? With me getting the business and you doing the work, we could have been big -- real big."

**GRAPHIC:** Illustrations 1 through 3, no caption, GARY GIANNI


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\*48 ATTORNEY PROFESSIONALISM FORUM [FNa1]

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**To the Forum:**

I'm not sure if what follows is an appropriate question for the Forum, but I'll ask it anyway.

I think that many **matrimonial** lawyers are dissatisfied with their **matrimonial law practices**. I know I am. In my opinion the dissatisfaction is understandable, because we deal with clients who, for the most part, are unhappy, hurt, scared, vulnerable, insecure, angry and even vindictive.

I have taken an informal survey of my fellow **matrimonial** attorneys and find that many are unhappy as well. I heard one colleague say, "It wouldn't be a bad field, if I didn't have to deal with clients." Another example: A prominent attorney who was lecturing at a CLE program reviewed the rule that prohibits **matrimonial** lawyers from having sex with their clients. He then added, "Have sex with them? I don't even want to speak with them." You get the idea.

I know that there are some **matrimonial** lawyers -- a minority, I believe -- who profess to love their work. What is their secret?

Sincerely,

Dissatisfied

**Dear Dissatisfied:**

Your question is very appropriate. There are indeed **matrimonial** lawyers who enjoy their work. Does that mean that each returns home happy every night? No. If you are going to work on difficult problems and with clients who are suffering, you have to expect frustrations. On the other hand, the non-monetary rewards can be greater than in other areas of practice.

Without pretending that each item would be endorsed by every **matrimonial** lawyer, what follows are certain procedures and approaches that may prove helpful.

Don't be afraid to charge an initial consultation fee. If you are doing your job correctly, the client will gain a great deal of valuable information at the very first meeting. Why should you give that away? The response to the bill will also help you weed out clients who are not willing to pay a reasonable fee for your services.

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Make it clear to the client that you are a "straight shooter." Tell him or her that you will always be honest, and that you expect the same. If that message is favorably received, the client will always tell the truth to you -- and to the court -- even when it pinches. Point out that this is in his or her own best interest, since credibility with the court depends on consistent honesty. If doubts about this appear, you can refuse to take on clients who are looking for an attorney to advance their agenda, irrespective of the truth. Even if a dishonest client slips through, you will be able to remind the client of this conversation when he or she asks you to do something improper. In a similar vein, you might be reminded by the client about something you said yourself; so if you wish to stay on the straight and narrow, assume that each client is tape recording every conversation the two of you have, in person or on the phone.

Give the client a realistic appraisal of expected results. Consistent with what is mentioned above, the client should always be told the truth, even if it is something he or she doesn't wish to hear.

Once the case is underway, don't think that your job is to get as big a piece of the pie as possible. Rather, your goal should be a fair settlement. You can point out that seeking more than a fair settlement will increase costs and reduce the size of the pie the client ultimately will receive. You can even draw a circle and indicate to the client that he or she should want to keep the lawyers' piece of the pie as small as possible -- because as that piece grows, the client's share shrinks. This can alert you to those individuals who are vindictive. They are the ones who would rather give you the money than their spouses.

Clients should always be reminded of the benefits of reaching a fair settlement, as opposed to going to trial. They should be told that when they reach a settlement, they know what they have and what it will cost. On the other hand, most clients cannot afford a full trial, or the risks of an adverse result. Tell clients that when they go to trial one of three things will happen: the client will be unhappy, the spouse will be unhappy, or both will be unhappy. This often results in an appeal process which can take years, and lead to even more expense and uncertainty.

The foregoing approach to cases also helps your relationship with your fellow attorneys and the court. Perhaps more important, a reputation for fairness will benefit all of your clients.

Now for the law office maintenance/cash flow practical side.

You may be thinking that all of this weeding out of vindictive or dishonest clients, and an emphasis on fairness as opposed to take-no-prisoners litigation, may not leave enough clients to earn a living. However, that fear is not borne out by the experience of older \*49 practitioners who have lived by these precepts. Many have been matrimonial attorneys for decades, and have not had any difficulty in supporting themselves and their families. Even if you do have to sacrifice some money along the way by refusing to take on individuals who will clearly be problem clients, isn't it worth the price to get up in the morning and look forward to going to the office?

With regard to payment of bills, retainers can be placed in escrow and monthly client bills paid out from that source. Placing retainers in escrow is controversial. A number of prominent attorneys in the matrimonial field have expressed the view that if the law were changed to require this they would no longer do matrimonial work because they live off their retainers. However, it can work, and here are some of the advantages:

Virtually all law offices have cash flow problems from time to time. On a Thursday, when you know you need an influx of cash by Friday, you may be tempted to take a case you would ordinarily turn down. If you know the retainer will go into escrow, you have eliminated the temptation.

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If you are sharing your fee with another attorney, you will only remit his or her share after the fee is earned.

Clients may be more willing to put up larger retainers because they have the assurance that the money remains theirs until it is earned. Any unused portion of the retainer will be refunded to them at the end of the case or their termination of the attorney's services.

One caveat: you must have the client's consent in writing to acknowledge the escrow arrangement, and that the retainer remains his or her money until fees are earned. If you fail to obtain that statement, you are commingling your money with other clients' funds in the escrow account. This is a serious violation of the Lawyer's Code of Professional Responsibility, DR 9-102. The client's consent should appear in the retainer agreement.

After receiving a large retainer, don't be disappointed if the client and his or her spouse reconcile; be happy for them. Remember that when you refund the unused portion of the retainer that it was always the client's money, not yours, and so isn't coming out of your pocket.

As far as the day-to-day contact with clients is concerned, don't be tempted to "duck" calls. Even if you have a voice mail system in the office, pick up your own phone unless you are presently engaged with another client, or working on something that requires your undivided attention. This does not mean, of course, that there won't be calls you would love to avoid. However, keep in mind that if you consistently want to duck a particular client you know you have a problem. It would be better to ask that client to come in and see you, without charge for that appointment. You can then work together to address the problem in your relationship. You can then resolve the situation, either by coming to an understanding and going on with the case, or by ending the relationship by having the client hire other counsel or, if necessary, by your formal withdrawal.

Keeping clients informed should never be an issue. At the first consultation tell the client you are conscientious about returning calls and responding to e-mails, but that if you are on trial you can't always get back to them the same day. You are required to provide the client with copies of all documents that come into and go out of your office.

If you make a mistake, admit it. If the client has sustained a loss as a result of your mistake, make good the loss. You will have turned a negative into a positive. It should also be noted that if the mistake is the result of not keeping up with developments in the field, you should endeavor to remedy that situation through appropriate Continuing Legal Education programs. It should go without saying that if you don't acquire the skills you need to practice in this field and do not keep them up to date, you will feel insecure and unhappy.

As a final matter of professional practice, civility is a must -- even if others are not always civil to you.

To close on a more personal level, it is obviously true that practicing in this field is not a 9-to-5 job, but it shouldn't be more than, say, 60 hours a week. You need time with your family and personal pursuits to avoid burnout, so build that into your week. And take vacations -- you need them to recharge your batteries.

It is to be hoped that these few suggestions will be of some help. Don't forget that handling a matrimonial case in a professional and skillful fashion will mean that you have helped someone during a very difficult period.

The Forum,

by George J. Nashak, Jr.