

## Understanding Franchise Law

By Leslie D. Curran

Few franchise law practitioners come out of law school plotting a course to help the next great franchise system expand globally. Most likely, this is because few new attorneys and law students have ever even heard of franchise law or understand what franchise attorneys do on a day-to-day basis.

Franchising is a business model that companies use to expand their brand or system. A franchisor is a company that has developed a system and name and grants a third party the right to operate a business under the system and name in exchange for the third party paying certain fees. The Federal Trade Commission (FTC) and a number of states have enacted legislation that regulates the sale of franchises and the relationship between the franchisor and its franchisees. A franchise practice representing franchisors generally focuses on advising franchisors on regulatory requirements, drafting franchise agreements and related agreements, counseling franchisors on day-to-day issues that arise

in connection with working with franchisees, and counseling franchisors on dispute-related issues.

Before addressing laws and regulations that are unique to franchising, franchise attorneys often find themselves advising companies on corporate and trademark issues. For example, a company considering franchising may wish to form a new entity to offer franchises and must decide what type of entity to form, how to organize it, and what organizational documents are necessary. Because franchisees buying into a system will want the unrestricted right to use the name and mark used by the system, a franchise attorney will work with the franchisor to obtain federal registration of a trademark.

Franchise attorneys must become familiar with the patchwork of federal (FTC) and state laws that require franchisors to disclose certain information to franchisees before a franchise is sold. The disclosures are included in a disclosure document, which is similar to a prospectus for a security. The FTC Rule, promulgated in 1979, did not preempt more protective state laws, and fifteen states enacted laws that regulate franchise sales. Among other things, the state laws require some additional disclosures and prohibit certain agreement provisions (i.e., choice of law, choice of forum, governing law). Eleven states require franchisors to submit a copy of the disclosure document to the state regulatory authority for review and approval before the franchisor can sell franchises in that state. These states are known as “franchise registration states.”

In addition, eight states require that all advertising of franchise offerings be filed with the state before use. Most of these states place restrictions on the types of claims that can be made in the advertisements (such as the franchisor cannot refer to the franchise as a safe investment).

Because the purchase of a franchise often involves a substantial investment of capital by the franchisee, a number of states have also enacted laws to protect the franchisee and its investment. These laws are referred to as “franchise relationship laws” and restrict, among other things, termination of the franchise relationship, refusing to renew the franchise agreement upon expiration, and transfer of the franchise. For example, under many of these laws, a franchisor is prohibited from terminating a franchise unless the franchisor has good cause and has provided the franchisee an opportunity to cure.

Franchise practitioners spend a considerable amount of time drafting and negotiating agreements between the franchisor and its franchisees and between the franchisor and third parties, such as vendors and suppliers. The franchise agreement between the franchisor and the franchisee is the cornerstone of the franchise relationship and is likely to be in place for a number of years. While no two franchise agreements are identical, most include provisions such as the grant of a trademark license, the right to operate the franchised business, payment of fees, terms of the rights granted, limitations on how the franchisee can use the franchisor’s trademarks, operational standards and specifications, restrictions on products and services that the franchisee may offer, reporting require-

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## Seven Essential Steps When Starting Your Own Practice

By Elisabeth Porter

After five years carrying a heavy caseload at the Office of the Public Defender in West Palm Beach, Florida, I decided to take all that I had learned and start my own practice. My first year “flying” solo has been challenging, but also very rewarding. I offer my fellow fledgling solos the following advice for successfully starting your own practice.

**1. Be prepared for the investment.** My friends warned me that I would need plenty of startup capital. During this economic recession, larger, more established law firms with plenty of capital seem to be weathering the storm, but criminal defense lawyers like me have had trouble finding paying clients. My startup capital was essential to making it past my first quarter as a solo.

**2. Ask the experts for help.** While friends can be a great resource, it’s often best to rely on the experts for advice on starting your business. I started by calling the Florida Bar’s Law Office Management Assistance Service (LOMAS) and received a comprehensive checklist with all the information I needed to start my own practice. Contact a similar entity in your state, and take advantage of the free online resources of the ABA General Practice, Solo, and Small Firm Section ([www.abanet.org/genpractice/resources/](http://www.abanet.org/genpractice/resources/)).

**3. Establish your business.** I sought advice on how to incorporate from an accountant who was referred to me by a successful business owner friend.

For me, the best option was to incorporate as a professional association, and I did so with no problems. The accountant even provided the advice for free!

Next, I went to my long-time bank and opened a small business account. They waived the monthly fees for me (another freebie!). I had worked in small businesses before and knew what was required before I went in to meet with the manager, who was very positive about my practice’s possibilities, even in this down economy. I will not be able to obtain a line of credit for the first two years due to the credit crunch; however, I was able to obtain a business credit card.



**4. Market yourself.** I met a public relations professional who specializes in law firms through the Florida Association of Women Lawyers. I asked her about media opportunities, and she suggested that I establish my own Web site, which I did for less than one hundred dollars. When I was creating my Web site and business cards, I asked the Florida Bar about

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information, visit  
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forums/franchising](http://www.abanet.org/forums/franchising).

# Snap, Snap

## PHOTOGRAPHY FOR THE CREATIVE YOUNG LAWYER

By Kristi L. Bergemann

Sometimes it can be difficult to find ways to be creative when you are a lawyer. Judges don't want to read a brief written like a masterful novel or hear an oratorical tour-de-force in the courtroom. And your clients and superiors probably don't want to pay you for such prolific creativity when you can likely be a more effective advocate with a concise

argument focused on the brass tacks of the case. However, if you have a love of photography, as I do, there are many opportunities for you to explore your creative side if you take advantage of being a lawyer.

Get started by putting your research skills to good use in finding the right photography equipment and services for your interests and aptitude.



Test cameras to see which one is right for you. An expensive DSLR (digital single-lens reflex camera) might not be the right choice for you if you are a busy attorney with little time to learn all of its functions. Search the Internet and magazines for interesting products and services, such as Web sites that allow you to have your best photographs stretched onto canvas. Have some made and hang them in your office to remind you that you are talented and creative when you are experiencing a moment of writer's block. Plus they are great conversation pieces in getting to know your colleagues and clients.

Once you've found what you need, start snapping photos whenever you can! If you travel for business (or while volunteering for the ABA), make some time, even if it is only ten minutes while walking between your hotel and a deposition site, to take some shots. Most cities

have iconic landmarks and open spaces that aren't too far off the beaten path that make perfect photography subjects no matter what the conditions (e.g., weather, lighting, crowds). If you are fortunate enough to be able to blend business with pleasure, take some vacation time during your trip and explore. Before you travel, visit the city's visitor bureau Web site and request a travel guide. Most Web sites also have a list of attractions and a calendar of special events. While in town, pick up the tourist publications and entertainment newspapers. They often mention more unknown attractions that can make the best photograph subjects. Sometimes the best subject is the most unexpected.

After a busy week at work, make time for yourself and focus (pun entirely intended) on photography. Plan an outing to take pictures in your own city for a couple of hours, even if you just walk around your neighborhood (great exercise too!) and take pictures of pretty flowers in yards. Or set aside some time to download the pictures you have taken in another city and edit them so that they will look their

best. Save and archive them in a way that will allow you to reminisce while looking at them for years to come. Or print some of those snaps on your printer or at a local store and spend some quality time sharing them with family and friends.

Finding a creative escape from your daily life as an attorney is just the snap of a shutter away! Plus, the advice in this article doesn't apply only to photography. Whether you are a poet, a painter, or a performance artist, plan to let your artistic nature soar from time to time. After all, judges, clients, and superiors all benefit from their involvement with a happy, relaxed, and well-rounded attorney, even if your next novel is not welcome in the courtroom.

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### READY RESOURCES

■ *The Reflective Counselor: Daily Meditations for Lawyers*. 2008. PC # 1620072. Center for CLE and Section of Litigation. To order online, visit [www.ababooks.org](http://www.ababooks.org).

### Franchise Law

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ments, default, termination, post-termination obligations, restrictions on competition and disclosure of confidential information, and procedures for dispute resolution.

Finally, as with any business relationship, there is a dispute resolution component to a franchise practice. Franchise litigation attorneys typically deal with claims such as violations of franchise sales laws or franchise relationships laws, misrepresentations during the franchise sales process, failure to pay amounts due, failure to make required refunds, and failure to provide support. Franchisors typically try to control litigation somewhat with contractual provisions that require the franchisee to submit certain claims to mediation or arbitra-

tion or require the franchisee to litigate only in a specific forum.

Perhaps the most rewarding part about being a franchise attorney is working with businesses on a broad basis to solve a wide variety of legal issues as companies expand. For a new attorney considering a legal practice that focuses on helping emerging and mature businesses succeed, this might be the right niche!

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### READY RESOURCES

■ *Fundamentals of Franchising*. Third Ed. 2008. PC # 5620126. Forum Committee on Franchising. To order online, visit [www.ababooks.org](http://www.ababooks.org).

### Your Own Practice

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their current advertising rules for attorneys. Although it took them a couple of weeks, they answered all of my questions, and I am confident that my Web site will meet any new Florida Bar requirements. Make sure to seek similar advice from resources in your own jurisdiction.

**5. Research, research.** Once you're on your own, it's time to get your own subscriptions to legal research services. There is a huge debate right now over what is the best research tool on the market. Many lawyers have chosen to cut back on Westlaw or other subscription services due to the high costs and are opting for Fastcase offered by the Florida Bar because it's free. However, Westlaw recently offered me a very low introductory price with two

months' free service. Research the options available in your area.

**6. Establish your office.** The main business expense that most small firms face is office space and phone service. No one in this day and age can run a business without phone service and Internet access. As I'm still establishing my practice and cannot afford to rent the office space I desire, for now I rely on friends with businesses allowing to me to use their conference rooms. I sometimes meet with clients in my home office, a simple room adorned with the requisite law books and degrees. I hope that as business improves, I will be able to move into a formal office shortly. The good news is that the commercial real estate market is great right now, and everyone I know who rents office space is renegotiating!

**7. Reap the rewards . . . but keep working.** I was very happy when I successfully helped my first client as a solo practitioner. I am still looking for that big client, but the small clients will help pay the bills for now. It's important that I get my name out there to promote my new business, so I attend as many networking events as I can. I took pride in being photographed with Judge Mark E. Polen at the Palm Beach County Bar Association Judicial Reception. I network online by regularly posting on the Florida Association of Criminal Defense Attorneys DefenderNet list serve. Finally, I volunteer for Legal Aid because it makes me feel good to help others and I gain additional experience and contacts to help grow my business.

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# How to Conduct Yourself in a Courtroom, Even While Under Attack

By Jennifer Wu

Stepping into a courtroom can be daunting for the first time. Whether you are stepping up to cover for a colleague in a routine status conference or arguing before a panel of judges in the appellate court, there are basic rules of conduct that every good attorney should follow:



- **Know your case inside and out**, including its procedural history. If you are seeking specific relief, be prepared to articulate your reasons in a concise manner.
- **Know the rules**, including the rules of procedure, local rules, and the judge's standing order. If you know the rules of engagement, you are better prepared to advocate on behalf of your client.
- **Be respectful at all times.** Common courtesy and civility go a long way when dealing with the judge, the judge's staff, and opposing counsel. It certainly will affect your reputation and credibility as an attorney.

Even if you are armed with all the information you need to represent the interests of your client, the unexpected may happen, and you will have to think on your feet. Early in my career as a litigator, opposing counsel in a case made a reference to my age and lack of experience during arguments on a motion to dismiss. This is my advice on handling this type of attack:

- **Do not take the comment personally.** Oftentimes, personal attacks reflect a weak position. As I listened to my opposing counsel's argument,

my first reaction was outrage. I thought to myself, why should my level of experience matter?

- **Collect your thoughts.** Do not make any personal, disparaging comments in return. Remember that you are an advocate for your client and that you are there for your client, not yourself.
- **Respond to the issues in the case.** Instead of responding to an irrelevant comment, respond to the issues in the case. In my situation, I simply explained why opposing counsel's argument had no merit. On the rare occasion where a comment is particularly egregious, you may have no choice but to address it. If you decide to go this route, remember to be respectful at all times. Although you must stand up for yourself, you must conduct yourself in a professional manner.

Coming to the courtroom prepared, staying calm, and keeping an eye towards civility will allow you to not only effectively deal with opposing counsel and judges, but also to effectively represent your client.

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## READY RESOURCES

- *Incivility: An Insult to the Professional and the Profession* (Downloadable article). 2008. PC # 51901013703PDFA06. Tort Trial and Insurance Practice Section.
- To order online, visit *ABA Practice Essentials: Articles* at [www.ababooks.org/articles](http://www.ababooks.org/articles).
- *The Last Thirty Days Before Trial* (Audio CD Package). 2008. PC # CEL08TLTC. Center for CLE and Section of Litigation.
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## Two Questions Your Law Firm Web Site Must Answer (and Ten Ways It Can Go Wrong)

By Matthew Butterick

Attorneys know the importance of argument. And your law firm's Web site is the opening statement about why a client should hire you. Does your Web site answer these two basic questions?

**1. Can you do the job?** (Do you have the skills to solve their legal problems?)

**2. Will you do the job?** (Can clients trust you to deliver?)

Surprisingly, many law firm Web sites do not. Here are ten common ways a firm's site can go wrong:

**1. Failure to update.** Outdated information looks sloppy. It

also potentially violates your local ethics rules, which usually prohibit deceptive statements in public communications. Keep your Web site current. If you can't, reduce the content to a manageable level.

**2. Ignoring the client's perspective.** Clients usually call attorneys after a problem has arisen (e.g., an arrest, an injury, marital infidelity). Look at your Web site not with the unconditional love that your mother would, but with the anxiety and fear that clients often have. If you were in their shoes, what would put you at ease?

**3. Pictures of real estate.** Epidemic numbers of law firms lead

off their Web sites with photos of office buildings or conference rooms. What is this supposed to communicate to clients? "We need your business because our rent is so expensive"? You can do better.

**4. Boilerplate text.** Ready-made Web site designs for attorneys are popular. If you use one, replace the boilerplate text with your own material. Platitudes like "We're uniquely focused on client service" and "our law firm is unlike any other" only make you seem generic and insincere.

**5. Disregarding attention span.** You're a busy person, right? So are your Web site visitors. So get to the point. Don't

load your Web site with useless extras (e.g. introductory Flash animations). And keep your text blocks short. Remember that the next attorney on a client's list is just one click away.

**6. Burying your contact information.** Don't spoil the moment when a client is ready to call you. Make it easy by putting your contact information in a consistent location on every page.

**7. Ignoring marketing.** A Web site isn't worth much if nobody visits. Don't spend all your time and money on the Web site and nothing on Web site marketing. Get your URL out into the world.

**8. Relying on SEO shortcuts.** Search engine optimization (SEO) consultants promise to move your Web site into the top tier of search results. Some SEO consultants offer solid, practical advice. But search engines are always adjusting their ranking systems to defeat abusive

or shady SEO techniques. If an SEO offer sounds too good to be true, it is.

**9. Blogging.** Like puppies, blogs are easy to acquire but expensive to maintain. Most attorneys would be wise to avoid blogging and invest that time in other marketing activities. The one exception is if you have a practice interest that's very narrow or unusual; in that case, your blog might plausibly fill a gap. But the world doesn't need another DUI-defense blog.

**10. No Web site at all.** These days, having no Web site is like having no voice mail. It's a basic client expectation. Even one page with your name, address, and phone number is better than nothing. Trust me—this Internet thing is poised to really take off in the next few years.

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