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Advice from the experts and from lawyers in the trenches

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- Separating From a Firm
- Selecting Office Space
- Finding a Mentor
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The Personal and Financial Decisions Upon Which to Build a Practice

A family law practice, by its very nature, frequently requires the lawyer to take a close look at the personal and financial decisions of the client. This often includes developing a budget and formulating plans for future contingencies. Family law practitioners also often help the client make well-reasoned decisions about living space: can he afford to keep the house, how much space does she need based on the number of members in her post-divorce household, etc. The lawyer may also advise on “personnel” matters for clients: will it make sense to have a nanny, keep the same daycare provider, or employ a financial planner or house cleaner, etc. Most of us would feel as if we had not done our jobs if the client concluded his or her case with no real budget or plan for where to live, what insurance to obtain, or how to save for the future.

In this issue, the editors of the Family Advocate present that same kind of advice for space, budgets, personnel, and many other considerations for practitioners who are considering (or have taken) the step of opening a law firm. Whether you are a new practitioner or are transitioning from a larger firm, there will be important information for you. Even those of you who are settled in a long-term arrangement are likely to find the articles useful. When asked, an astounding number of practitioners admit that they have left to luck or chance many of the things they could and should have approached with a comprehensive plan in mind. Even if your sign is up and the doors are open—it is not too late to take a look at your methods of operation.

The first question for most people considering hanging out a shingle is “Should I Open a Family Law Office?” Ben Aguilar, who was among the first group of Diversity Fellows of the ABA Family Law Section, shares his first-hand experiences in leaving a small workers’ compensation firm to open his own family law practice. After doing some serious soul-searching about the kind of practice he wanted, Aguilar set out to handle the logistics of finding office space, doing a business plan, undertaking professional development, branding his practice, and seeking referrals. He shares the pros and cons of doing what he did and provides a list of what he wished he’d known beforehand.

For many lawyers, the decision to open their own office follows some period of practice in an existing firm. Stephen J. Conover addresses “Separating from the Firm.” He discusses your legal and ethical duties to the client. Although a departing lawyer generally hopes to take clients with him, this author advises that great care and caution must be exercised at each step throughout the process. He explains the ethical and legal rules and case law that apply generally and advises that, ultimately, both lawyer and the firm have an ethical and professional duty to do what is best for the client and to ensure that the legal matter continues to be handled properly. Law firms and lawyers that stay focused on this approach will honor the spirit of the profession and the letter of the law during these difficult transitions.

Siddhartha H. Rathod and Qusair Mohamedbhai share a checklist for writing a law firm business plan. These founders of a successful law firm have developed a method of realistic planning to maximize the chances of success. While every business plan may be different in some respects, they have shared a checklist for formulating a business plan that can be adapted to fit your own situation.

Kathleen Coble addresses which office

continued on page 4
space is best? After ten years on her own, Coble reflects on what she learned about the requirements of office space for a solo practice. She begins with a discussion of budget, defining what kind of firm you want to be and the type of clients you want to attract, which ultimately drives location and how much room for expansion needs to be built into the initial office. Next, she explains how to anticipate growth, functionality, and what equipment and other amenities you will need. She explains how to winnow your wants from your needs and encourages start-ups to consider a home office and a virtual office before settling on a more conventional option—office sharing or leasing your own separate office. She concludes with lessons from her own experiences.

Apart from handling client funds, there is the question of “How to Handle Your New Firm Finances,” which is addressed in the article by Paulette Gray. This article covers how to set up firm bank accounts, which kinds of accounts you will need, where to get start-up funds, whether to take credit cards, and offers a practical financial planning checklist.

There is risk involved in all phases of opening and operating a law firm, from unhappy clients to computer hackers to natural disasters and more. Thomas J. Kasper writes about “Risk Management for Your New Family Law Practice” and provides a sure-footed guide to avoiding malpractice and other disasters. Before a new lawyer takes that first case, some basic safeguards must be in place to protect his or her professional practice; secure client files and secrets; and preserve the law office premises, contents, and records in case of disaster. The article covers malpractice, renters’ and premises insurance; law office security; safeguarding client files; computer and file backup systems and redundancies; finding a mentor and another lawyer who can cover for you in emergencies; staying current with changes in the law; file retention and offsite storage.

A law practice cannot succeed without some plan for how to make its presence known and bring clients in the door. In an article called “To Market, to Market: Learning as you go,” Michael Ruttle shares his experiences and suggestions. This author was a second-year immigration lawyer in a very busy firm when his plans to break away were short-circuited by downsizing. Off he bumped on his own. He quickly learned to be his own billboard; that the best marketing moves are not always about money; that not every marketing effort will work, but when it does, one best be ready to dig in and get the work done, and done well. He advises anyone setting off on a solo practice to stay visible, stay relevant, take charge, and get creative.

Even before a law firm has its first paying client, plans should be in place for how to handle the client’s money and the law firm’s money. “Avoiding the Ethical Traps of Client Trust Accounts,” Mark Dubois and Pat King explain the basic ethical rules applicable to holding clients’ money. Although each state has its own rules, many of them begin as a version of ABA Model Rule 1.15. The authors discuss that rule, the most common ways lawyers get into trouble, and how to sidestep problems before they can occur.
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A Companion Workbook to Evaluating Evaluations

Custody Assessment Analysis System Workbook (CAAS)
A Companion Workbook for “Evaluating Evaluations”
by Jeffrey P. Wittmann, Ph.D.

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Should I Open a Family Law Office?

By BEN AGUILAR
Starting a family law practice is not for the faint of heart. There will be challenges along the way as well as very rewarding experiences. Whether you are launching your practice right out of law school or after working in a firm for a few years, the challenges and rewards will rise up to meet you on this road.

Since opening my solo family-law practice, trial and error has been my best teacher. I have experimented extensively and found what works for me and sometimes what needs to be done differently. But when it comes to running my own practice, I am, so far, very pleased with the results.

Being your own boss means making all of the decisions associated with your law firm. These decisions have the potential to impact how successful your firm will be as well as to ensure the future well-being of your clients. Planning for the present as well as the future is crucial to both. As you contemplate your own law practice, keep in mind the following practical issues as well as a few professional and personal decisions that must be made before you open your doors to the public.

I started considering a solo family-law practice in the late summer of 2012. At the time, I was working at a small applicant-side workers’ compensation firm in San Diego. I was learning a new area of law under the direct supervision of a very experienced attorney, but I found that dealing with seriously injured clients with severe physical and emotional needs was not the right fit for me.

After spending time meeting with our injured clients and learning about their stories and struggles, it became apparent to me that as a law-firm employee with limited decision-making authority, there was little I could do for them. In the span of six months, I saw clients lose their homes, lose their children to the state because they could not care for them, and face other devastating and life-altering catastrophes. I grew frustrated.

Receiving a paycheck every two weeks, having support staff, and not being the sole attorney of record on these cases are some of the benefits of being an associate of a firm, but these were not enough for me to stay. So I gave my two-weeks’ notice in early October 2012 and launched my own solo family-law practice.

Once my decision was made and my notice was given, the first order of business was to organize my contacts list. At that point, I was not sure how to use my contacts, but I understood the importance of having an organized list prior to opening my doors to the public. I opened an Excel spreadsheet and got to work. I chose Excel because of its flexibility and ease of interface with other applications.

The next order of business was to decide on office space. Many attorneys launching a new solo practice elect to have a virtual office that they operate from home or from their neighborhood Starbucks. I knew this was not an option for me. I have never been able to work or study at home or in a busy thoroughfare. I knew I needed more traditional space.

If you are looking for office space, I strongly recommend calling your law school friends and the career services office at your school; they likely will be able to put you in contact with other attorneys looking to share space. Based on my experience sharing space with 12 other solo practitioners, I strongly recommend an office-sharing arrangement with attorneys who are facing challenges similar to the ones you face. Having a support system composed of attorneys starting their own solo practices or attorneys who at some point in their careers were once in your position will serve you well. Their shared experiences and best practices will be invaluable. You don’t have to do this alone; find the right office mates.

Finding the perfect office space is not just about price, location, or proximity to the courthouse, it also is about the people you will be sharing your work/life/space with for the duration of your lease. Of course, implied in this recommendation is the assumption that you will be a responsible and capable professional. One bonus of selecting the right office space is the potential for cross-referrals with your office mates. Most of the attorneys in my office do not practice family law, therefore, when a colleague’s immigration client needs a divorce, she can responsibly make a referral to me knowing that I will take good care of the client.
Create a business plan and review it at least quarterly. Set goals and expectations, not only for your business growth, but also for your professional development. Review these goals regularly. At the end of each calendar year, I type all of my business, professional, and personal goals and expectations into a Word document saved to my desktop. I open this document regularly just to make sure I am doing what I need to do to meet my goals and expectations for this quarter or the year. Keep your list of goals and expectations in a visible place. Strategize and update goals and projections regularly. It is the lifeblood of your business.

Professional development is key to the solo. As a solo practitioner, you are responsible for staying current in the law and keeping up with best practices in your field. It is important to understand from the very beginning that professional development opportunities will help you create relationships with other attorneys, the public, and businesses in your community. These relationships likely will translate into more business for you. Attending conferences, seminars, CLEs, and volunteer opportunities will be crucial to the success of your business in many ways—not just the obvious—logging CLE credits for state bar certification.

Finally, a word about financial planning: you will incur expenses that you never even considered while working at a firm or during law school. You will need to spend money to make money. There is no way around this. It is nearly impossible to make money and grow your business without making an investment in professional development, supplies, books, and advertising.

When I started my solo practice, I did not have a budget for advertising. I had some savings, but I knew I had to be very conservative with my money because I did not know when I would start making money. Prior to having a budget for more traditional online and print advertising, I worked on developing a brand. I wanted the public and other attorneys in my community to associate my name with value, quality work, and a caring attitude.

Traditional advertising can be incredibly expensive, but there are a few nontraditional avenues that are free or inexpensive. As a new solo practitioner, this is where to start the branding process. Establishing and closely monitoring an online presence is important in the early stages of your practice. Prior to investing money in advertising, I made sure that I had an online presence on LinkedIn,
Avvo, and Facebook. Spend some time creating profiles on these sites. If you are not social media savvy or you are not into social media, find a friend or family member to manage this aspect of your practice. Take the time to claim your online profiles in the early stages of your practice. Once your law practice gets busy, it is easy to ignore or put off this very important aspect of running your firm.

Include information that will help you connect with clients on a personal level. For example, I studied abroad in Spain, Russia, and China; a number of potential clients have called my office and, after setting up consultation appointments, they ask me questions about my experiences abroad. These potential clients call me because I have a connection to a place they love, their place of origin, or because they know I will understand traditions and cultural aspects of their families.

Potential clients like reading about their attorney’s successes, professional development, community involvement, and, most important, what former clients have to say. Part of my branding effort includes being approachable and responsive to clients. To this day, I continue to answer my own telephone if I am at my desk. Clients comment on that and really appreciate being able to talk directly with their attorney when they call. A few months after I started my practice, clients began to write reviews of my services. It was apparent that open communication was something they valued. At that point, I realized my former clients were my best advertisement. To illustrate this point, I tell the story of one of my very first clients, a nurse at a local hospital. This woman was referred to me by a good friend, who found out about my practice only when she received an e-mail invite to my office open house. This particular client has become an unstoppable referral source for me. It appears that working in a hospital lends itself to learning about the personal lives of co-workers and patients. Every time my former client finds out that a co-worker or patient is getting ready to head to family court, she refers them to me for a consultation.

Never underestimate the reach of your personal and professional network. Over the past few years, I have had cases referred to me by family members, high school and college friends, colleagues, former clients, and the occasional random friend-of-a-friend who saw or read a blog post about a certain case that remotely resembled the facts of his or her case.

I am always interested in finding out how potential clients find me. This is a question I always ask clients during the intake process. It is very important to know where your clients are coming from as you definitely want to invest more time and money in whatever advertising is yielding the best return on investment. Bottom line: treat all clients—and potential clients—with dignity and respect, and they will become referral sources whether they retain you or simply meet with you for a consultation.

PROS OF GOING SOLO

Prior to deciding to go solo, I met with a few friends who are solo practitioners and asked them about the benefits
Another huge advantage of going solo is being able to decide whether to take a particular case. Learn to trust your gut about new clients.... As the owner of your own firm, you may turn away clients without having to explain to anyone why you declined to represent this person who was able and willing to pay for legal services.

and disadvantages of operating a solo practice. They all cited how much they enjoyed being in control of their own schedules. They emphasized how being able to set their own schedules had a positive impact on their work-life balance.

Community involvement has always been important to me. Unfortunately, while working at a firm, I had no control over deadlines or the cases assigned to me. This effectively prevented me from committing to volunteer activities. During my time at the law firm, I also had to limit my community service and other involvement in the local legal community.

Once I started my solo practice, I quickly returned to community service and volunteering. Now that I am in total control of my schedule, I can freely plan when I want to volunteer, when I can go on vacation, and whether I can make it to family events. My volunteer work in the community gives me great satisfaction and keeps me engaged in the practice of law and also informs my law practice as I have a chance to interact with the general public and learn about their legal needs.

Another huge advantage of going solo is being able to decide whether to take a particular case. Learn to trust your gut about new clients. Occasionally, during consultations a potential client asks a question that raises a red flag. The question leads me to believe that this person is likely to engage in conduct that ultimately will cause me to terminate the attorney-client relationship. It is no secret that some family law litigants attempt to use the court system to gain an unfair advantage or delay a process. As the owner of your own firm, you may turn away clients without having to explain to anyone why you declined to represent this person who was able and willing to pay for legal services.

Caring about your client’s situation is one of the most important aspects of whether to take a case. In the past, I have been asked to work on cases that would be detrimental to the rights of certain segments of society, namely nontraditional families. I am lucky to be able to turn away those cases that jeopardize rights and protections that should be afforded to all children and families, independent of their race, creed, religion, socioeconomic status, or sexual orientation.

For me, the advantages of going solo outweigh the disadvantages. However, every lawyer must determine whether the disadvantages are too burdensome based on their own personal and unique circumstances.

CONS OF GOING SOLO

No regular pay check every two weeks, no holiday bonuses, and perhaps no support staff in the early stages of your practice are some of the more obvious disadvantages of a solo practice. However, there are other considerations unique to the family law practitioner. Family law cases can be high-conflict matters, and family law litigants can be emotional, unreasonable, and blinded by the heartache associated with dissolving their families.

You will be the attorney of record in all of your cases and you must deal directly with each client until you are able to bring support staff on board. Keep this in mind as you consider whether to represent a new client. You will be the one and only person your client calls and e-mails when he or she needs answers. Some clients will be low maintenance, and you will see them only when you go to court. Other clients will need considerably more hand holding and will consume a lot of your time. Generally, the higher the conflict between the parties, the more time a client will demand from you. You can mitigate these issues by setting realistic client expectations from the inception of the attorney-client relationship and reinforcing that message throughout the case. Keep this in mind when you negotiate your retainer with these clients.

Given that you will be the attorney of record in all of your cases, you are responsible for making sure that all work is done properly, that the rights of your clients are protected, and that cases move forward without delay. This can result in long hours and weekend work, but this is not much different from working at a firm. As the business owner, you must work harder to retain desirable clients, but with a business plan in place, the right mentors at your side, and time set aside to develop your brand, you should succeed in growing your business as planned.
The practice of family law can be stressful. Some of your cases are likely to impact you in profound and personal ways. Caring about your clients and their problems is part of being a good lawyer and an ethical practitioner.

As a business owner, balancing your professional and personal life can be difficult. Over the past few years, I have tried a few different approaches to maintaining a healthy balance between personal and professional life. Some things work better than others, but I strive to find time for activities that take my mind off my cases and clients. Completely disconnecting for a few days is a great way to recharge and regroup. Find things that help you relax and make a point of engaging in those activities regularly.

On the administrative side of running a solo practice, it is important to create a process. You will know all of your clients, their stories, the procedural aspect of all matters, but once you bring an intern, secretary, or law clerk on board, they will have no idea how files are organized or how to prepare for trial or hearings. From your very first client, create a document that details the sequence of your law office practices and procedures and each step of the legal process. This will evolve over time and will be very useful as your family law practice grows.

Starting a solo family-law practice is certainly not easy. Growing your practice takes time and serious dedication. As a family law attorney, you will be providing legal opinions to your clients, but you also will be acting as therapist and friend. Be sure to find time for your family, friends, and the other things that bring joy and excitement to your life.

BEN AGUILAR is the owner and founder of the Law Offices of Ben Aguilar in downtown San Diego. His practice focuses on family law and immigration law cases. He is the current president of the Tom Homann LGBT Law Association and serves on the board of directors for the San Diego La Raza Lawyers Association and the local non-profit No Silence No Violence. Mr. Aguilar is also the co-chair of the San Diego County Bar Association’s Career Development Committee.

**WHAT I WISH I HAD KNOWN**

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[www.ShopABA.org](http://www.ShopABA.org)
The best investment a lawyer can make in starting a new law firm is planning it right. From a practical standpoint, once a lawyer decides to leave the current law firm, both the law firm and the departing lawyer should focus first on the rights and needs of the client. Unfortunately, economic and emotional issues often interfere and sometimes prevent them from acting professionally and concentrating on their fiduciary and ethical obligations.

The ethical and legal consequences of lawyer departures have received much attention over the last 25 years. They also have been the subject of formal ethics opinions from the American Bar Association (ABA) and state bar associations. What is clear is that there are few bright line rules when it comes to lawyers leaving their current firm. Lawyers who are considering such a move must think about a variety of issues as even the most conscientious effort to comport with fiduciary and ethical obligations can result in disputes and litigation.

ABA Formal Opinion 99-414 (1999) provides some guidance:

The departing lawyer also must consider legal obligations other than ethics rules that apply to her conduct when changing firms, as well as her fiduciary duties owed the former firm. The law of agency, partnership, property, contracts, and unfair competition impose obligations that are not addressed directly by the Model Rules. These obligations may affect the permissible timing, recipients, and content of communications with clients, and which files, documents, and other property the departing lawyer lawfully may copy or take with her from the firm.

The duties owed by a departing lawyer to the firm differ in each jurisdiction, depending upon the lawyer’s status at the firm and any written agreement between the law firm and the lawyer. As a result, every departing lawyer must review all existing firm agreements before charting the course of the separation.

Partners owe each other fiduciary duties not inherent in a standard employer-employee relationship. Describing the fiduciary duties inherent in a partnership, Judge Benjamin Cardozo’s opinion for the New York Court of Appeals in Meinhard v. Salmon, 164 N.E. 545 (1928) summed it up: “Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.” Failure to comply with these fiduciary duties can expose a departing partner to civil liability and professional discipline, along with the public humiliation that accompanies such disputes. In Graubard Mollen Dannett & Horowitz v. Moskovitz, 653 N.E.2d 1179 (1995), a departing partner was accused of fraud, breach of contract, breach of fiduciary duty, and unjust enrichment in connection with his departure from his firm. In its
discussion of the departure protocol, the court noted:
It is unquestionably difficult to draw hard lines defining
lawyers’ fiduciary duty to partners and their fiduciary
duty to clients. That there may be overlap, tension, even
conflict between the two spheres is underscored by the
spate of literature concerning the current revolving door
law firm culture.

Generally speaking, associates owe the law firm fiduciary
duties inherent in their employment relationship. The
term “associate” refers to a salaried lawyer-employee
who is not a partner of the firm. Typically, the law firm
pays the associate’s overhead, although the salary may
be based on a formula that accounts for an overhead
calculation. Another distinguishing feature is that the
firm, as an employer, has the right to control the associate
in the firm’s business. Given the associate’s employment
status and the supervisor’s right to control the associate’s
work, an associate functions as an agent of the firm. The
Restatement (Third) of Agency defines an “agency” as:
[T]he fiduciary relationship that arises when one person
(a “principal”) manifests assent to another person (an
“agent”) that the agent shall act on the principal’s behalf
and subject to the principal’s control, and the agent
manifests assent or otherwise consents so to act.

Once a lawyer decides to leave the firm, he or she should
focus first on the rights and needs of the client. There are
two essential parts of protecting a client’s interests properly:
(1) notifying clients of the move, and (2) disposing of
client files. Although these may seem straightforward, each
has innumerable nuances that can complicate what should
be a simple and seamless transition to the lawyer’s new
firm. A lawyer anticipating departure from a firm to open
a new practice must be familiar with the substantive law
in the jurisdiction and review the relevant ethics rules and
operative ethics opinions issued by the bar associations of
that jurisdiction.

PLANNING FOR DEPARTURE:
Who Can Know?

Generally speaking, partners may discuss a planned
departure with other partners and close colleagues without
breaching the fiduciary duty owed to the remaining
partners. While it may not be completely prohibited in all
jurisdictions, a better practice is for the departing lawyer to
give notice to the law firm before soliciting associates and
other employees. When a partner decides to leave a law
firm, clients should not be told in advance of the departing
partner’s notice to the firm. In effect, leaving a firm is a leap
of faith by the departing lawyer who hopes and believes that
clients will follow.

IMPLEMENTING THE PLAN:
Notifying the Firm

A departing lawyer should provide the law firm with
sufficient notice to facilitate an organized transition. There
is no single rule or method to determine the exact period
of time; instead, it depends upon several factors, including
the lawyer’s active matters and pending commitments.
Logically, notice should be given well in advance of a
planned departure. However, the departing lawyer should
be prepared in the event the law firm decides that immediate
termination is the appropriate response to his or her notice.
The key is for both the law firm and the departing partner
to avoid any conduct that would adversely impact any
client’s representation.

IMPLEMENTING THE PLAN:
Notifying the Client

Probably the most hotly debated topic on this subject is
when and how a departing lawyer may communicate with
a firm’s clients about the impending departure. Placing the
client in the middle of a tug-of-war between the firm and
its departing lawyer is certainly unprofessional and likely
unethical in most states. In a perfect world, the departing
lawyer and the firm should jointly notify clients for whom
the departing lawyer provided a direct and principal role
in the representation. The communication should be
informational in nature and not be an evident solicitation
for the client’s business. The notice should advise the
client that (1) the lawyer is leaving the firm, (2) the time
parameter for departure, and (3) the identity of the new
firm the departing lawyer is forming. In this arguably ideal
procedure, clients learn of the lawyer’s intended departure
immediately following the departing lawyer’s notice to
the firm, but with sufficient time to exercise choice. The
client has the option of staying with the firm or hiring the
departing lawyer’s new firm.

What is clear from ABA Formal Opinion 99-414 is
that the departing lawyer and the firm both have ethical
obligations to notify the firm’s clients of the departure:
When a lawyer ceases to practice at a firm, both the
departing lawyer and the responsible members of the
firm who remain have ethical responsibilities to clients
on whose active matters the lawyer was working to assure,
to the extent practicable, that the representation
will not be adversely affected by the lawyer’s departure.
This pre-departure notice to current clients is mandatory.
According to Formal Opinion 99-414, Model Rule
1.4—requiring a lawyer to keep a client reasonably
informed about the status of a matter—includes notifying
a client that the lawyer responsible for handling the client’s
matter, or “who played a principal role” in a current matter, will be departing the firm. Therefore, “[a] lawyer who is departing one law firm has an ethical obligation, along with responsible members of the law firm who remain, to assure that those clients are informed that she is leaving the firm.” Formal Opinion 99-414 defines current clients as “clients for whose active matters [the lawyer] is currently responsible or plays a principal role in the current delivery of legal services.”

Significant controversy surrounds Formal Opinion 99-414 and its approval of a departing lawyer’s unilateral pre-departure communication with the firm’s clients. This approach contradicts the well-established principles of fiduciary responsibility in some states. In response, several state bar associations have drawn distinctions with the ABA’s pre-departure notification of clients. The Connecticut Bar Association’s Committee of Professional Ethics in its Informal Opinion #00-25 (12/29/00) expressly declined to follow Formal Opinion 99-414. Instead, the CBA’s Informal Opinion #00-25 determined that pre-departure client notification is permissible: “[I]t is fact specific and requires flexibility.”

In 2006, the Florida Supreme Court observed with displeasure that the disputes between departing lawyers and their law firms were prioritizing lawyer and law-firm interests ahead of the interests of clients. Based on Florida’s Rule 4-1.4 (the duty of communication) and Rule 4-1.16 (duties upon termination of employment), the Florida Bar enacted Rule 4-5.8, which required a departing lawyer to negotiate in good faith with the firm for joint notification of clients, which effectively precluded the lawyer from advising clients of the departure before informing the firm.

In 2015, Virginia’s Supreme Court enacted Rule 5.8, which provides clear direction on two important issues related to lateral mobility. First, the rule states—as a matter of ethics—that neither a departing lawyer nor the firm shall contact a client prior to engaging in a joint effort to affect notification. This language resolved a common issue that often arose during lateral transitions: attempting to distinguish between timely notification to a client of a lawyer’s departure and “soliciting” the client’s work for the new firm in violation of fiduciary duties to the old firm. In Virginia, the departing lawyer and the firm confer about notification prior to informing a client of a departure and must apprise the client of all available representation options. The rule requires transparency and communication by and between the departing lawyer and the firm in advance of client notification.

Typically, client notification is expected to occur at the same time or shortly after the lawyer gives notice to the firm. Unless there is a serious question about the lawyer’s ability to represent a client’s interest once notice is given, it would seem prudent to refrain from notifying clients until after giving notice to the firm.

**HANDLING Client Files**

Since each client is free to discharge a lawyer and law firm at any time, the client also has the power to direct the discharged firm to transmit its files to the lawyer or firm of the client’s choice. A firm faced with the departure of a lawyer is essentially powerless to prevent the prompt delivery of the requested client file to the departing lawyer. The clients’ right to hire and fire their lawyers with or without cause remains the overriding ethics principle, and, therefore, the departing lawyer may ethically seek, at the earliest possible moment, the client’s authorization to remove files from the firm.

Even before the digital revolution, attempts to define what constituted the “client file” and what belonged in a client file was challenging. With the introduction of electronic storage, this definition gets even more complex. Electronic files can be problematic both in terms of sheer size and content. The task of defining what constitutes the “file,” to which the client has rights, remains problematic. Not all information used by the lawyer for the client falls within the “client file.” In addition to the usual items of correspondence and document originals, a firm’s client file may include drafts, internal memoranda, forms, notes of telephone conversations, and research notes, sometimes including the cryptic thoughts of a lawyer. With the proliferation of electronic input, such as electronic mail, the range of matters associated with client representation increases dramatically.

Both the departing lawyer and the firm have an ethical responsibility to protect their clients’ interests and to ensure that the clients’ matters are properly handled. Model Rule 1.16(d) requires that a discharged lawyer or law firm surrender papers and property to which the client is entitled. When confronted with a lawyer’s departure, until the client informs the firm how he or she wants the files handled, the firm must hold those files in accordance with Model Rule 1.15(a), which governs the safekeeping of client property. A firm that attempts to block a departing lawyer from gaining access to client files, or tries to frustrate a client’s transition of the files to the departing lawyer’s new firm, may expose the firm to litigation and perhaps its partners to discipline for violation of Model Rule 1.16(d) and Rule 1.15. In addition, while some states permit the firm to apply an equitable lien against the client’s files for unpaid legal fees, that remedy is very limited and often disfavored.

The departing lawyer may not remove client files without the client’s consent and, even when the client requests to transfer the file to the departing lawyer, the file should not be removed until the firm has been given notice and opportunity to copy the file. This opportunity to reproduce the client’s file prior to removal by the departing lawyer is less critical when the entire file or a portion of it is electronically stored. The departing lawyer only downloads
the data from the firm’s server, and the firm typically retains the stored client data. Two instructive disciplinary decisions on this point are In re Capples, 952 S.W.2d 226 (Mo. 1997), in which the departing lawyer was reprimanded for violating his duties to the former law firm and law firm’s client by removing files without client consent; and Maryland Attorney Grievance v. Potter, 844 A.2d 367 (Md. 2004), in which the court imposed a 90-day suspension on a departing associate who secretly removed two client files and destroyed the firm’s computer records for those clients, even though the departing lawyer believed he was acting in the clients’ best interests out of concern the law firm might act to thwart their choice.

In July 2015, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 471, which clarified the term “client file” when a client severs relations with a law firm. This opinion took the “end-product” approach, under which only the final document, report, or other work reverts to the client at the end of representation; drafts, notes, and other interim materials (i.e., conflicts checks, personal assessments, etc.) stay with the firm. By contrast, if the client changes lawyers midstream, the “client file” expands to include some of the materials “generated for internal law office use.”

In contrast to client files, in many states departing lawyers are free to take documents they created, such as legal research, memoranda, pleadings, forms, and templates. This principle applies equally to both paper and electronically stored data. From departing lawyers’ perspective, Formal Opinion #99-414 suggests that documents they had a role in preparing are their intellectual capital or property—not the firm’s—since those documents would not exist but for their efforts. From a professional responsibility standpoint, departing lawyers may generally take copies of documents they prepared either for client or general use without violating ethics rules. Briefs or pleadings filed in litigation, or transactional documents exchanged, are no longer the firm’s intellectual property by virtue of their possession by or accessibility to others. This is especially true as to documents filed in court (publicly accessible and searchable, etc., and copied electronically). The same principle applies to documents filed as exhibits to publicly traded clients’ SEC reports. The clients, not the firm, paid for them. With respect to forms, they are derived from documents used in client matters or used in countless representations with only slight modification.

However, firm-created documents and confidential items, such as billing protocols, may not be taken, absent an express agreement with the firm. The handling of client files and proprietary firm material has often been the genesis of litigation. For example, in Joseph D. Shain, P.C. v. Myers, 576 A.2d 985 (1990), the trial court found that the departing lawyers’ conduct of removing files from the former firm without the firm’s permission and taking the files to the new firm supported the finding of tortuous interference with contract.

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Leaving your home and hopping on the first bus or train you encounter could work if you don’t care where you end up, but it may not be the best move if you hope to arrive in Paris. The destination dictates all the things you need for a major trip, such as what to pack, accommodations, and transportation. Likewise, if you hope to start a successful law firm—and not just a shoestring operation that takes any case and any client who comes in the door—you need a business plan for realizing that goal.

A business plan provides an estimate of your start-up costs and revenue. It can help assess important things like whether you will need financing or how long it might be until you actually make any money. A business plan also is critical to securing a financial investment in your firm. Some lenders will not consider a loan or other financing without reviewing your business plan,

MOST PEOPLE WOULD NOT START A JOURNEY WITHOUT A DESTINATION IN MIND.
and others generally look more favorably on applicants who have one. And around your own kitchen table, spouses or significant others will react more favorably to the prospect of your starting a law firm when they see your plan and realize that some serious thought and realistic analysis is going into the process.

A business plan also helps create an effective marketing strategy. When you have taken the trouble to identify your target clients or case types, you can tailor your marketing to that goal. It also helps you anticipate potential problems. Will you need to add equipment or support staff if you attract more clients or more complex cases? Will your office space be workable as your practice grows or changes?

Drafting your business plan marks the point where you shift from thinking about starting a law firm to actually starting a law firm. It makes you think through the business aspects of a legal practice. For example, who will do your billing, bookkeeping, and collections? And, most important, a business plan increases your chance of success.

Components of a Business Plan

a. Executive Summary: You may create this last, but don’t overlook it. This may be the only part of the plan that lenders or other potential sources of financing actually will review.
   i. Summarize what the firm does—so that you don’t become an “any case that comes in the door” attorney;
   ii. Create a mission statement—a concise statement of the firm’s purpose;
   iii. Establish your major goals;
   iv. Create milestones; and
   v. Know where you want your firm to be in one, five, and ten years.

b. General Company Overview
   i. What makes your firm unique?
   ii. What are your strengths and weaknesses?
   iii. How are you going to practice law differently?
   iv. Who will be part of the firm (detailed lawyer biographies)?

c. Industry Analysis
   i. What can you control?
   ii. What is beyond your control?
   iii. Which firms are the leaders in your practice area(s)?
   iv. What are the technological trends in your practice area(s)?
   v. Are there changes in the law that will affect your law firm?
   vi. What type of demand is there in your practice area(s)?
   vii. Which factors do potential clients look at in selecting a law firm?
      (1) Price
      (2) Location
      (3) Experience
      (4) Competition

d. Financial Plan
   i. Project your expenses and revenue:
      (1) Year one, two, and three projections;
      (2) Assets—current cases and existing clients;
      (3) Supporting facts and numbers;
      (4) Biggest cost areas; and
      (5) Fixed vs. variable costs.
   ii. Determine your profit margin.
   iii. Analyze your current financial situation.
   iv. Detail your risks:
      (1) Is your potential income based on one client?
      (2) How much money do you need to live?
      (3) What are your start-up costs?

e. Marketing Strategies
   i. Create marketing goals with your intended client base/case type in mind;
   ii. Consider traditional marketing—print, online, referral services, others, etc.;
   iii. Determine where your referrals will come from; and
   iv. Relationships:
      (1) Suppliers;
      (2) Lenders;
      (3) Professional associations;
      (4) Community groups;
      (5) Other lawyers and law firms; and
      (6) Current and former clients.

SIDDHARTHA H. RATHOD and QUSAIR MOHAMEDBHAI are principals with Rathod Mohamedbhai LLC in Denver, Colorado. They can be reached at sr@rmlawyers.com and qm@rmlawyers.com.
Ten years ago, just a few months after I graduated from law school, I took a chance and hung out my own shingle. I had no clients and no money, but a deep commitment to practicing family law. My first office consisted of a fax machine plugged into our back bedroom wall, my cell phone, a laptop, and my couch, along with a P.O. box at a local mail center. In these ten years, I have had several different offices and office-sharing arrangements, and my partner and I now own a 5,000 square foot office that I share with five other lawyers (some of whom are my tenants). Wherever you are in the process of hanging out your shingle, in the practice of law, and in your financial life, there is an office out there for you.

There are several office types from which to choose. The main kinds of offices for lawyers are a home office, virtual office, and what I will refer to as a conventional office. Within the category of conventional offices, there are options to lease or buy and options to have an office by yourself or to engage in an office-sharing arrangement. All law offices require certain equipment and amenities, regardless of which type of space you choose. In addition, there are issues you may want to address, depending on the kind of practice you want now and in the future. It is important to have a list of these considerations before embarking on your search.

The first step in finding the perfect office for your new practice is determining your budget. Your office rent and overhead will comprise a large percentage of your monthly expenses. Thus, you need a workable budget before you begin. Some of the amenities or equipment you need may be included in an office-sharing or virtual-office arrangement, so take your wish list with you as you look at offices. Make sure that you are getting everything you need and you know how much you are paying for it.

In addition to budget, it is important to know upfront what kind of firm you want. A lawyer who wants to represent high-end clients and charge a top-market hourly rate will want a much different office than a lawyer who wants to represent middle-class people and do a lot of pro bono work. Think about the size
of your firm now and your goals for the future. Do you anticipate having employees? Do you want to or have you partnered with another lawyer? Do you plan to start small and add staff rapidly?

Your new office must meet your needs today and accommodate growth tomorrow. If expansion is anticipated, don’t commit to a long-term lease. If your goal is a one-year lease or a month-to-month arrangement, then know that before you spend time looking at offices that require a five-year commitment. Along with this assessment, consider what functionality your new office must have. Is this office just a place from which to send e-mails and get out paperwork or are you going to be holding depositions and mediations in your office? In the first scenario, you probably only need a chair and a place to put your computer. In the latter scenario, you may need access to multiple conference rooms.

After determining your budget, your plan for growth, and your desired functionality, consider equipment and amenities. All lawyers practicing family law need to have a computer; a printer; a telephone; Internet access; a website; a mailing address for receiving certified mail; document storage for physical and/or digital files; and convenient access to a fax machine, document shredding services, and a copier. In my experience, this is the minimum you will need to hang out a family-law shingle. You also need to consider where your office should be located both for your convenience, to attract the kinds of clients you want, and to be accessible to the courthouse. Potential clients must be able to find you and get to your office easily, which in most cases means accessible and free parking, too (unless you are in a metro area where public transportation will solve this problem). Your clients might be willing to pay for parking, but you can expect some grumbling if you don’t provide adequate parking at your expense.

In addition to these absolute office necessities, you likely will want a comfortable lobby area for clients to settle into and a friendly receptionist to greet them on the phone and upon arriving at your office. You also likely want fast Wi-Fi and access to a break room with a microwave and a refrigerator. All of these optional amenities factor into a very important question—what kind of impression do you want to make? What kind of atmosphere do you want to provide for yourself, your clients, other attorneys, and your employees?

Once you have answered these questions, have your budget, a list of things you need, a list of things you want, a good idea of the impression you want your office to make, the atmosphere you want to provide, and what kind of practice you want to have. Now it’s time to find your new office. Each type of office has its own pros and cons, so look at a variety before deciding.

There are two obvious benefits to the home office—its low cost and lack of commitment. If you start with a home office, all options are open to you because you don’t have a lease or other people depending on you. If you don’t yet know who you want to be as a family lawyer and are worried about making a years-long commitment right out of the gate, or you can’t afford deposits and other office-related expenses, a home office might be a great place to start. A home office also might be a good choice if you have family commitments, such as childcare responsibilities. If you are worried that hanging out your shingle won’t work and you may need to take a job with a firm, then you can’t beat a home office for flexibility and minimal investment. If you think you might want to partner with another lawyer, it is best to be unencumbered by a lease.

However, a home office can have significant downsides as well. Many lawyers find it hard to be efficient and productive at home, particularly if children are around during the day. For some lawyers, being able to work in your pajamas is not necessarily a good thing. Having clients know where you live and come to your home also is not ideal. Family law clients can be well meaning but many have difficulties with boundaries. You almost certainly will not be comfortable conducting depositions, mediations, or meeting with other attorneys in your home office. The functionality of your home as a law office is limited.

If you want to have clients and other professionals come to your home office, you must be diligent about keeping up appearances, cleanliness, and repairs on your home. When I worked from home, I did not want my home address on all pleadings, which is one of the reasons I got a P.O. box, and I did not want clients coming to my home. I juggled for a while, having meetings at other people’s offices and asking clients to meet me elsewhere, such as in coffee shops, but I soon decided that I needed to have a real office where I could meet clients and conduct meetings if I was going to practice law. If you are thinking about working from
home, consider whether you can dedicate part of your living space as office space (where you can meet people) and whether that area will have a dedicated entrance, rather than having clients enter the front door of your home. It is also beneficial to have separate telephone lines, voicemail, and a fax line that will not be used by anyone else in the house.

The term “virtual office” can mean many things, but it usually means you don’t have one place that is considered your office. Your office is wherever you and your laptop are at any given moment. To have a virtual law office, you do need to have at least a mailing address, telephone number, and fax number. If that is all you want to have, the financial benefits will be great. There are plenty of services out there providing those things at a reasonable cost, such as mail centers, Internet phone services that route calls to a specified number, and Internet fax services that send faxes to your e-mail. You will need access to a copier, scanner, and document storage, so research those services in your area.

In my experience, the most common virtual law office is usually provided by a large organization that rents out cubicles or offices to lawyers or other professionals on a fixed-fee, monthly basis. In most cases, you don’t have exclusive use of the cubicle or office, but rather a right to use some amount of space on a reservation system (although there certainly are organizations from which you can rent a dedicated office in a system like this). These organizations usually also provide access to conference rooms, a lobby, parking, fax/copy services, mail/package receiving, and a telephone-answering/message system of some sort. Depending on the group, Wi-Fi, a break room with access to refrigerator/microwave, storage, and other amenities also might be included. Most of these arrangements are like ordering from a menu—you can get as many or as few of these amenities as you want for a price.

Virtual offices offer many benefits. First of all, you are able to fix your monthly overhead, which is great for budgeting purposes. Second, there are not a lot of unknowns in the virtual office budget scenario, other than how much you will use the space in a month, i.e., renting space or accessing a reservation system. Depending on your financial status, you also can get a lot of nice amenities for a reasonable price, such as a nice entrance/lobby, a professional receptionist to greet people and answer your phones, and professional-looking, nicely decorated office environments. Some will provide shredding, refreshments for you and your clients, phone systems, and other conveniences. Virtual office space is available on a short-term or month-to-month basis, which provides some of the same flexibility as a home office if you are thinking about future growth or taking a job with a firm, etc. There also can be huge networking opportunities in virtual office arrangements. One local organization in my town (Austin) houses more than 8,000 companies and hosts networking events at least once a week. This is a great way to get your name out there to a lot of professionals.

The biggest negative of a virtual office for a family lawyer is that it is not really your office. Although there are virtual office arrangements with “dedicated” space used only by you, the usual scenario is that you do not have a door with your name on it through which clients or opposing counsel can enter and find only your things. If you engage in an “executive suite” arrangement, the name on the door and in the building directory is that of the organization that owns the site, not your firm name. In addition, you will have no say as to your office-sharing partners. These large environments may house thousands of other businesses. They can be noisy and not conducive to the concentrated work you are doing. The people working next to you or the people in the next conference rooms may be different every time. This makes anticipating and controlling your environment difficult.

For a young lawyer or someone just starting in family law, the home or virtual office can provide one huge benefit: no time committed to managing your office. An office can require a lot of time that is better spent building your practice in the early days. If you want to solely focus on building your reputation and docket in the first few months/years, home and virtual-office options will minimize your facility-management time.
There are two main types of conventional office arrangements for lawyers—office sharing and having your own office.

- **Office-sharing**—Usually office-sharing for a new lawyer involves leasing an office in a larger office suite catering to professionals. The key benefit of an arrangement like this is cost sharing for things that you might not want to pay for on your own, such as a good copier, storage space, computer network, receptionist or other staff, etc. You also are in a good position to fix costs (i.e., your expenses will not vary month to month), which is a good budgeting strategy when you first start out. Such arrangements also generally allow shorter lease commitments (usually one to three years), which for a new lawyer is preferable to buying an office or leasing individual space.

  Keep in mind some possible pitfalls in office sharing. (1) You probably will not have a say in terms of décor, impression, or shared staff, unless you share equally in the cost of the office or employee salaries, in which case you will have to go along or negotiate with the other occupants. (2) You likely will not have a say in space layout, which you could if you lease or buy an individual office. (3) You also may not be on the signage either inside or outside the building. If that is something you want, investigate your options as you search for office space.

  Another issue with office sharing is that it is important to get along with the other tenants. Having multiple businesses in one space usually involves a lot of different people and personalities. Get a feel for the people before you commit. Office-sharing arrangements usually involve proportioning costs for a variety of things among a group of people. Make sure you are clear about what you are getting and how much you will pay (if it is fixed) or how it is calculated each month. If you have a plan to grow your firm, find out how you may acquire more space over time and how and when you may lock in your right to do that.

- **Individual office**—Whether you are buying or leasing, you can always opt for your own office. Although this usually means you will carry more costs of things that could be shared, it also means you will have full control over the décor, atmosphere, staff, and quality of the amenities. You should expect to spend more time on facilities management if you have your own space, but you might also appreciate not having to deal with office mates, cost-portioning disagreements, or the like.

  If you are leasing your own office space, you may be asked to sign a long-term lease. In my experience, most individual offices are three- to ten-year commitments. There are usually incentives for longer leases. So if you are confident in your plan and can find appropriate space, signing a long-term lease may be beneficial. Be sure you have a solid business plan with reasonable expectations about growth and that the space you have selected meets your current and future needs. As with any lease, you want to make sure that the building entrance, grounds, parking, elevators, bathrooms, and other places your clients and employees will go are in good working order, are well-maintained, and don’t detract from the atmosphere and impression you are seeking.

  If you are considering buying an office, think about the upfront costs. First, you will need a down payment. Then, lag time for construction or the closing may force you to pay for two office spaces for a while. If you buy an office condo, which is what I currently have, you will be responsible for monthly condo assessments or dues, which cover the common areas, parking lots, grounds, and the like, as well as property taxes, insurance, mortgage, and construction costs. You also will be responsible for the repairs and upkeep of your condo. If you buy a freestanding building, you will have to maintain the grounds, parking lots, bathrooms, etc. Rather than paying condo dues, you will pay for all costs. On the plus side, you will be building equity in something, as opposed to just paying rent each month, and a landlord will not be able to kick you out of your office. Needless to say, buying an office is the longest-term commitment of any of the options discussed here and provides the least flexibility. You should expect to spend a lot of time managing your property and dealing with related issues. My own office-owning experience has been satisfying, but exhausting.
Impressions matter. Family-law clients come to you scared and stressed and want someone who will take care of them and their family. You need to care about the person who calls you for a consultation. You need to care about what that person is going to see when he or she first walks into your building. Keep those first impressions in mind when you shop for space.

Look “real.” Within your budget, do your best to look as established and professional as possible. A residential address does not make a great first impression, nor does a 1-800 fax/phone number, or a gmail address. A commercial address doesn’t cost that much more, even if it is a mail center, a fax/phone number with your home area code, and a domain name registered for your law firm where you can get e-mail. My first domain name was registered through Yahoo and included my e-mail address for less than $5 a month.

Know your office mates. In any kind of office-sharing environment, it is very important to know who will be in the office with you. It is amazing how much office mates can influence your practice, your reputation, and the impression your clients get.

If you are a young/new family lawyer, try to find space with an experienced family lawyer. Practicing with a seasoned lawyer offers many advantages, not the least of which is practical advice on running a successful business. Having someone close by to consult with on a moment’s notice is invaluable. That lawyer also can be a good source of referrals as well as a mentor. But again, before finalizing such an office-sharing arrangement, learn as much as you can about his or her reputation.

Know what you are committing to and what you are getting. Whatever lease or contract you sign, make sure you understand exactly what you are getting and how much it will cost each month. If something is going to be apportioned on a pro rata basis, know how it will be calculated and what your share will be. Most important—get it all in writing. If there is a calculation, include it in the lease. If you are getting access to six amenities, list each one along with its cost. You need your overhead to be predictable and workable and you want to avoid disagreements over money with your office mates or landlord.

Make sure your commitment is appropriate for your plan. A big stumbling block in searching for that first office is knowing how long to commit. Usually there are incentives for longer commitments, such as lower rent, free months of rent, and/or more build-out options. Landlords are more likely to do construction if you are committing to a longer lease. But, with more commitment comes less flexibility. If you don’t know whether you will want to continue after a year or whether your growth plan is realistic, shoot for a shorter commitment.

The process of hanging out your shingle is difficult, but well worth it. Buddy up to other lawyers you think are doing it right and ask a lot of questions. The best source of information about the practice of family law is other family lawyers, most of whom are always more than happy to help.

LESSONS LEARNED

Within your budget, do your best to look as established and professional as possible. A residential address does not make a great first impression, nor does a 1-800 fax/phone number, or a gmail address.

Know your office mates. In any kind of office-sharing environment, it is very important to know who will be in the office with you. It is amazing how much office mates can influence your practice, your reputation, and the impression your clients get.

Before you sign a lease, make sure you know who is there and what kind of work they do. Check them out a bit. Are they in a business that is loud, messy, or disruptive in some way? Are there other lawyers who have reputations for dishonesty or poor work product? Also, check with the landlord or leasing office to find out how tenants are selected. Your office mates will be a big part of your life and your practice.

KATHLEEN COBLE has been practicing family law for 10 years. She started her career by hanging out her own shingle three months after she graduated from law school. Kathleen graduated with a Bachelor of Business Administration from the University of Texas Business School in 1998 and worked as an accountant for five years before attending law school. She has studied many different business models for family law firms and meets with other lawyers frequently with the goal of improving the business performance of her colleagues’ firms.
How to Handle Your New Firm Finances

By PAULETTE M. GRAY

Start up funds
Many attorneys want to start their own firm, but doing so requires capital. If you are fresh out of law school, chances are you have a student loan to pay and minimal funds on which to survive. So how do you start your firm?

First, determine how much money you will need to open your office. Take into consideration the basics: bills, payroll, and a backup plan. You need to know what the monthly overhead will be to physically run your office, taking into account monthly rent, office telephone, cell phone, copy machine rental, postage, malpractice insurance premiums, accounting costs, etc. Be realistic in setting a monthly budget for these expenses and keep in mind that inevitably additional things will come up and cost you more money. Don’t panic, this is normal.

Next, figure out your payroll needs. Your support staff will expect a regular paycheck as will an associate. As owner of the firm, your staff should be paid before you get a paycheck. Determine salaries and what your monthly needs will be, and be realistic about your hiring requirements. Do you need a receptionist, a paralegal, and an associate? Or could you realistically get by with just a receptionist—or maybe just you? Take time to build your firm on a solid financial foundation, and then hire additional staff as needed.

Now that you have an idea of how much cash you will need on average each month, determine where to get the money. If you have savings of your own, you can certainly use those funds, but be realistic about how much you should spend. Do you want to deplete your savings? Probably not. Consider a loan from family members. If this is the route you take, make sure to put the terms of the loan in writing and actually make your loan payments as required. Remember to add these costs to your monthly expense budget.

Another option is to get a loan or line of credit from a bank. Remember, however, that a bank will be far less understanding than your parents if you skip a loan payment. Make sure you have sufficient funds to pay the loan back. This could mean taking a smaller salary a few times a year to remain afloat.

If, on the other hand, you are going into business with a partner, the two of you must reduce all financial and legal obligations to writing. Consider your best—and worst—case scenarios in terms of your respective obligations and plan accordingly. What will happen if you hit a dry spell and cannot make payroll? How will the bills get paid and by whom? What will happen if you have a great month? Should you take a bonus or retain the earnings? These types of issues should be addressed in your firm’s operating agreement, articles of incorporation, etc.

The needs of your firm cannot be ignored. Make sure you have enough money to pay your bills, your rent, pay staff, and then—if there’s money left over—pay yourself. As a general rule of thumb, it is a good idea to keep enough money in the business to meet six months of expenses just in case your business income slows for a brief period. There will be good months and bad months. It is your responsibility to budget.
Advertising
Before you advertise, read your state licensing board’s rules and restrictions. Some states limit the type of advertising you can do and the claims you can make in your ads (i.e., some states prohibit lawyers from calling themselves “experts” as this can be misleading to the public, etc.). Be sure to follow your state requirements. Making false and misleading representations in your ads can get you into serious trouble.

• Website: Given today’s technology, you must have a firm website. With a little time and effort, you can create one from a number of “build your own” options. Creating and maintaining your own website will save you money because you won’t have to pay an outside firm and you can update your site whenever you want. Your website need not be expensive or fancy with lots of bells and whistles. Too much information can overwhelm a potential client looking for quick answers. Consider including FAQs/Q&As that address the areas of law in which you practice.

Bank accounts
Knowing your state’s requirements relative to bank accounts and management of client funds is an absolute necessity. Before you go to the bank, do your homework. Are you required to maintain a separate account for client funds? Probably. Therefore, you need to open a trust account (or other client account that meets your state requirements) separate from your firm’s operating (expense) account and from your draw (payroll) account.

Keep client funds separate and apart from your personal (“draw”) account, especially if ownership of retainers and payments remains with the client in your jurisdiction. Some jurisdictions have different types of retainers, which can affect the ownership of the funds themselves. If there is one thing to know about handling firm finances, it is that you must know the rules about your duty to the client with regard to the client’s money. Do not assume that because a client paid you a retainer the money is yours to keep and spend as you wish. If the client fires you, you must refund the unearned portion of the retainer.

Finally, be aware of when you can transfer funds to your various accounts and when you have access to the funds in those accounts. If, for example, ownership of a retainer remains with a client until it is earned, you cannot access and spend those funds until you perform the work and bill the client for the work. Making frequent transfers among your accounts is asking for trouble. Send out your bills each month, figure out what you’ve earned, and then make a transfer from the client trust account to your personal (“draw”) account. Many lawyers get into trouble by spending and using money that does not technically belong to them.

Credit cards
Accepting credit cards is a necessity for most firms. Depending on the type of law you practice and the amount of your retainer, many people will be unable to afford your services unless they can pay by credit card. Remember, however, that transaction fees come with a credit card. You will need to determine whether your firm will “eat” the transaction fee as a cost of doing business or whether you will pass it along to the client. Generally, absorbing the transaction fee is best because clients view lawyers who pass along that charge as greedy. Your goal is to retain clients and grow your business. Overall, the benefit of being paid on a regular basis will likely outweigh the transaction fees you will incur.

Include biographical information (curriculum vitae) for you and other attorneys in your firm.

• Telephone book: This form of advertising may be on its way out given that most people today search online for services. If you include an ad in the local telephone directory, reevaluate the usefulness of the ad in six to nine months. Assess its worth. Consider the amount of money spent and whether you have reaped any benefits.

• Billboards/newspapers: Potential clients glance quickly at a billboard that includes only the basics: your name, address, telephone number, and areas of practice. A newspaper ad can have a bit more information, but likely also will be scanned quickly by potential clients.

When you meet with new clients, ask them how they found your firm. If your website is generating new business, invest the time and effort to maintain and enhance it. If you do not get any new clients from your ad in the telephone directory, cancel it and spend your advertising dollars elsewhere.
Billing and collections

- **Billing:** This is an area not to be ignored. If you do not bill your clients on a regular basis, they will not pay you on a regular basis. It really is that simple. Make it a priority to bill your clients every month. This keeps the client informed as to the status of the account and gives you an easy method to regularly track your accounts receivable. It also lets the client know what you are doing.

   Include language in your retention agreement that specifically addresses your billing and payment requirements. For example, you could send out bills on the first day of each month and require payment of the outstanding balance within 30 days. Your retention agreement also could include language informing your client that if payment is not received within 30 days, you may seek leave of court to withdraw as counsel in the case. Although this may seem harsh, it is a reality you must face or you will inevitably be left with long-delinquent or unpaid invoices.

- **Time slips:** Be certain that you and your staff know—and follow—the billing requirements of your jurisdiction. Require time slips to be entered contemporaneously with the work performed so as not to forget to bill. Determine whether the attorneys in your firm will enter their own time slips or support staff will do so. It is somewhat duplicative for an attorney to write out a time slip and then have an assistant enter the slip into the billing system. It will be more efficient for the attorney to enter his or her own time slip into the system as the work is done. Finally, make certain that the description for each time slip fully explains the work performed on behalf of the client and complies with your jurisdiction’s requirements in this regard.

- **Accounts receivable:** Keep an eye on your accounts receivable as these can easily sneak up on you. You are running a business. You are not a lender. Impress upon your clients that they must pay their bills or you will be unable to continue representing them. You cannot work for free, especially when starting a new firm.

- **Collections:** Consider whether to handle your collections in-house or to work with another attorney under a payment arrangement (i.e., the collections attorney takes a share of anything collected).

Accounting

Determine who will handle the books in your office. Regardless of whether you are a solo practitioner or a member of a new firm, you need to decide who has authority to sign checks to pay bills and to transfer funds from one account to the other. Additionally, you must be cognizant of your staff and be certain you can trust the designated person to responsibly handle the firm’s money.

In terms of accounting, it likely will be beneficial to you and your firm to hire an accountant. It will be more cost effective for an accountant to prepare your financial statements, your taxes, monitor your employment/payroll taxes, etc., than for you to do all of this on your own. This work can be very time consuming, and your doing it increases the likelihood of error. An accountant’s monthly fee is minimal and a good investment, especially when you consider the potential tax issues you could face and the time it would take you to resolve them.

Conclusion

Owning your own firm can be one of life’s most rewarding achievements. It takes a certain personality to hang out a shingle, but if handled efficiently and realistically, you should be able to reap the benefits of self-employment. Follow the rules and enjoy!”

PAULETTE M. GRAY is a principal with Gray & Gray LLC in Crystal Lake, Illinois.
If you are without insurance and are sued for malpractice, your hard-earned money may become elusive. Without insurance, your professional reputation and personal assets will be at risk. Malpractice insurance can help mitigate these risks. In shopping for coverage, call more than one carrier and ask for detailed written quotes. As you will find out, the rates you are quoted will depend on a number of variables, including
(a) how long you have been in practice; (b) whether you have had any claims against you in the past; (c) what type of law you intend to practice; and (d) how many different areas of law you intend to pursue. You also will need to address “prior acts” coverage if you have worked for other law firms prior to opening your doors.

If you have decided to take on only family law cases, inform your malpractice carrier. Multiple practice areas may mean higher premiums. Keep in mind that once you have informed the company of your plan, you must stick with it. Do not take on a lucrative medical malpractice case or an interesting case involving maritime law if: (1) you are not competent to handle it; and (2) you are not insured to handle it. If, for any reason, the case goes sour and you have to report it to your carrier, you likely will be denied coverage and your own personal assets may be at risk.

What seems obvious, perhaps is not: you also will need premises liability insurance. Most law firms rent space. Therefore, renters’ insurance covers the contents of the office, such as computers, desks, file cabinets, etc. If you own your own building, premises insurance will cover the building as well as the contents just as your homeowners’ policy covers your home.

REDUNDANCIES AND BACKUP PLANS
Plan for contingencies. Even a hardworking solo practitioner needs a day or two off from time to time and/or a few sick days. You will need a backup plan for whenever you must be away from the office. Find a trusted colleague who can cover your cases, check your mail, etc., during your absences — and promise to reciprocate when your colleague needs time off.

Given the advent of technology, most attorneys can keep in touch with the office by calling in or accessing e-mail directly on a smartphone. As much as possible, avoid scheduling important case conferences or court appearances when you anticipate being out of town on vacation or for other reasons, such as elective surgeries, etc. The law will not stop while you are away. Faxes or other correspondence may need immediate attention during your absence. If illness or other emergencies require you to be away for an extended period, you may need to hire additional staff to cover for you.

DISASTER PLANNING
Disaster can and does strike. Make plans to back up your files at an offsite location, such as Carbonite or another service. If a disaster wipes out your computer system and/or your paper files, at least you can recreate most, if not all, of them through this offsite backup system. Copies of most pleadings filed with the court can be obtained from the courthouse. However, documents, such as your memos, letters, etc., will be lost if your computer crashes or your office suffers physical damage due to a fire, hurricane, etc. Hope for the best, but plan the worst. Develop a law firm disaster plan and talk with your staff and insurance carrier about how to implement it.

TRAINING, CLE, AND MENTORSHIP
If you have little experience and are going out on your own, you need a mentor. Find an experienced attorney in your community who has time to mentor you. It is all well and good to have graduated from law school and passed the bar, but “the real world” requires practical expertise and competence, which in a lot of ways has nothing to do with how well you did in law school or on the bar exam. You need to know the law, the local rules, and you need to have an understanding of the community in which you work. Even within the same division, there are differences in how cases are handled from courtroom to
courtroom in the same building and in the same county. You need to have some practical mentoring in that regard. If you plan to be an attorney who appears in court, then go to court, sit and observe, and see how the judge you will appear before handles similar cases. While you are waiting for your case to be called, rather than reading ESPN magazine or playing with your iPhone, pay attention to what the judge is saying to attorneys or what attorneys are saying to the judge. Take mental notes so that when your case is called you will know how to act and what to say to the judge.

Most states have some CLE requirements. Consider the CLE hourly guidelines in your jurisdiction as a minimum for you in your new firm. Sign up for CLE programs in your field of practice and make them a regular part of your professional life. Do not wait until the last possible moment to find out what is available. Sign up for the e-mails from your local and state bar associations and the ABA. There also are weekly, quarterly, or even daily updates on case law, changes in the law, and upcoming CLE programs in your jurisdiction. These e-mail updates provide important information about the law of your jurisdiction. Whether you have been practicing for one year or forty years, the law constantly changes, the law always evolves, and there is always additional information to learn.

FILE RETENTION
Check your state statutes governing file retention. In most states, six to seven years is the statute of limitations for malpractice. Keep your files at least one year longer than the required minimum. From time to time, you will have a former client call for a copy of something you provided in the past. It is good practice to print another copy and mail it to the client if possible. When storage at your office is limited, rent an offsite storage unit. If that is not practical due to rental expenses or long distances between your office and the nearest storage site, you may be able to scan files and save them on a thumb drive, on a hard drive, or in an offsite server.

GENERAL CYA
Memorialize most, if not all, advice to the client in a follow-up letter or memo. This is particularly important when the advice involves statutes of limitations, deadlines for filing an appeal, or motions to reconsider, and the like. If you put it in writing to the client, then later when the client sues you for malpractice, you have backup documentation showing the advice given, that it was correct, and that it was timely.

PERSONAL SECURITY
When hiring staff, it is a good idea to check references. If an employee is hired or quits, change your office locks. Inform your staff of the rules governing attorney-client privilege and make sure everyone knows that any information acquired at the office cannot be shared outside the office.

As you set up bank accounts for your firm (see Gray, page 23), keep in mind that the fewer people who have authority to write checks on your accounts the better. If you are a solo lawyer and you really think you need three secretaries, give only one the authority to write and sign checks. Although you have carefully interviewed and hired your staff, review your own checkbooks regularly and make sure everything is in order. Associates do not need to have check writing authority. If they need a check for filing something with the court, they can request one from you or your office manager.

Keep your office and case files tidy and secure and don’t leave paperwork on your desk for clients and staff to see. Set up your office so that clients do not walk through your file room on the way to a conference room, the restroom, etc. Even honest and well-meaning clients might be tempted to peek at files left open on a desk, or worse, be tempted to take something that could put you at risk for a malpractice suit. Additionally, current clients do not want to see others’ or their own personal information lying carelessly around for others to see.

Keep file cabinets locked and your computer password protected. If someone is sitting at your desk, they should not be able to get into your computer unless they know your password. Similarly, keep your doors locked when your office is closed. Although you may want to work long hours and make lots of money so that your wildest dreams will come true, you will have to take a break from time to time to have lunch or even step outside for a breath of fresh air. Lock your door when you leave. Sounds like common sense? Yes, but if common sense was common, everyone would have it!

CONCLUSION
The practice of law can be fun and, ideally, profitable. With these security measures in place, your mind will be at ease. Instead of constantly worrying about security and liability issues, you can focus on why you went to law school: to advise clients, help the public, practice law, and make a living for yourself. FA

THOMAS J. KASPER is a principal with Buxton & Kasper in Crystal Lake, Illinois. He has concentrated in the practice of family law for 22 years. For the last seven years, he has been a partner in a two-person law firm practicing exclusively in the area of family law. Thomas J. Kasper is currently a vice-president of the Illinois Chapter of the American Academy of Matrimonial Lawyers.
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For any lawyer starting out solo, two traits are important: passion and grit. Cultivating these has helped me turn my “idea” for a law practice into reality. Although you can plan as much as possible beforehand, at some point, you just have to do it.

As a lawyer contemplating a solo practice, you may be at the point of asking: when is the right time to take that first step? In my case, I was a second-year immigration lawyer working in a very busy firm. It had not felt like a good fit for some time. My plan to leave within a few weeks was cut short by company downsizing. I thought to myself: maybe this is happening for a reason. Within a matter of weeks, I went from being unemployed to self-employed.

Your endgame

We all have different reasons for starting a business, and we all have an endgame in mind. However, no two visions are exactly the same, so we may go about it in very different ways. To quote Mike Tyson, “everyone has a plan ’till they get punched in the mouth.” As a new entrepreneur, you will constantly need to adjust and adapt. This is how we serve our clients better and grow a successful business.

Regardless of where you are in your legal career, once you take that first step out on your own, you will learn as you go. You will have overhead expenses, such as malpractice insurance, the cost of office space, staff (maybe), as well as other essentials. One thing you will find very quickly is that for your business to survive, you must have paying clients. Therefore, marketing will be an essential and ongoing part of your practice in terms of your time, money, and energy. The amount and the medium will differ depending on your geographic area, target demographic, area of law, budget, etc.

I have learned quite a bit since I started my immigration practice: much of it from my mentors, but a considerable amount on my own, too. The information that follows is what I wish I had known upfront. It is based on a plethora of trial and error, both experience and observation. As you begin your exciting new endeavor, I hope these tips will help you on your journey.

1. **You are your own billboard.** The sooner you embrace this reality, the better. Word of mouth is great free advertising; remember this at every networking event. More importantly, remember this when a driver cuts you off in traffic or whenever you are having a bad day. Above all, remember this when you are anywhere someone might ask who you are and what you do. Although we are all human, with lives outside of work—and none of us can be on call or at our best 24/7—as the human face of your law firm, you will need to be pretty darn close.

2. **It is not (always) about the money.** Marketing need not be expensive. It can be, of course, but it doesn’t have to be. If marketing is, by definition, just the action of promoting and selling your legal services, then you can do that yourself without spending a lot of money. However, you are just one person. Ideally, your marketing efforts will have a ripple effect, reaching an audience so vast that you could never have made personal contact with each individual potential client. There are inexpensive ways to reach your target audience, but seeing a return on your investment may take some time.

In my case, I followed my gut and designed a magnet for my bright orange Prius when my firm was in the very early stages. I had seen a personal injury lawyer do something...
similar, but I was not sure it would work in immigration law. Other lawyers tried to persuade me not to do it. They insisted it was “beneath” the legal profession. I found that argument bogus and decided to try it anyway. The lawyers in my community who thought it was unprofessional were not my target clients. After about two weeks of driving around with my $89 magnets, I retained a client who went on to provide two more paying referrals. It was a pretty nice return on investment for something so inexpensive.

3. **Not everything will work.** Trying a new marketing campaign is like going to Vegas. While the odds might be in your favor, it is a total crapshoot and you might roll snake eyes. Just as you should not place a bet if you can’t afford to lose, do not spend money on expensive advertising unless you can afford for it to fail. Start small.

   You might be a great lawyer, but that does not mean you know how to market your lawyering skills to the public. Marketing is a creative process that can be a fun aspect of running your law practice. Play with it. If you have always “dreamed” of seeing your name on a billboard or the side of a bus, a building, or TV, you can try it. But if you do not have a lot of marketing experience, you may not be able to afford a failure. You may spend thousands of dollars getting your message out there, but you won’t know how it will be received or interpreted until you try it. When your message works, you will see potential leads turn into actual clients. When that happens….

4. **Be prepared to get busy.** This is where your lawyering skills come into play. If you have poured your heart and soul into the right marketing campaign for you, be prepared to get to work. How will you know it is working? Complete strangers will start inquiring about your services on a more frequent basis. When people learn about you, they can hire you. That is when you can shift your focus back to what you learned in law school: being a good advocate for your client, writing motions, attending court hearings, communicating with opposing counsel, etc. Make sure you have systems in place to handle the work. Unclear about how to develop your systems? I highly recommend the book, *The E-Myth Attorney: Why Most Legal Practices Don’t Work and What To Do About It,* by Michael E. Gerber.

5. **Stay visible to stay relevant.** Whether you like it or not, social media is here to stay. More and more people are finding their lawyers online, rather than through print media. To ensure the long-term success of your practice, you must attract your share of this market. Our society is becoming more tech-savvy and tech-sophisticated. You need to be in front of all those eyes when they are looking at their computers, tablets, or smartphones. Constantly. That does not mean you should start tweeting: “getting divorced??? call my firm.” It means contributing to the social media paradigm by showing the world why you are the go-to person for your area of law in your location.

   Comment on news stories, current events, or share client success stories. Better yet, pay a college student to do it for you (but provide guidance and oversight) for relatively little money. When potential clients see your online comments on something near and dear to their hearts, you have planted a seed. They see your name and comment, they know you exist, and they know what you do. When they need a divorce lawyer or when a friend asks them for a referral, that seed may blossom into a new client for you. Avvo has been a great resource because it allows me to show what I know in my field. Facebook is also good, and many other lawyers I know have said the same thing. One thing to keep in mind when building your online presence is connecting

**When potential clients see your online comments on something near and dear to their hearts, you have planted a seed**

For example, link your Avvo profile to your firm’s Facebook page, which in turn can show a video on your firm’s YouTube channel showing you speaking at a bar association, which will display your firm’s website at the bottom, which will lead clients to call for a consultation, and so on and so forth. The goal is to be at the top of the search results when someone searches for, say “family lawyer in [Anywhere USA].”

6. **Get creative.** Marketing is where you get to flex your creative muscle. Designing logos that reflect your mission or coming up with a firm slogan can be a fun and enjoyable part of growing your practice. This is how you make your dreams come true. Come up with an idea, put it into play, and see what happens. Just remember, not everything will work.

7. **Take action.** In your own practice, you are the manager, entrepreneur, and craftsman. People cannot hear about you if you do not market yourself and your legal services. There is no way around this. But if you find creative ways to expand your business by meeting clients’ needs and expressing who you are, your practice will thrive just as you dreamed it would.
The quote at left may be the most succinct articulation of the importance the bar places on policing lawyers’ handling of client money. It is not an exaggeration to suggest that in most, if not all, state disciplinary systems, concern over the management of client funds is paramount, and strict enforcement of rules related to trust accounts is a primary focus of disciplinary resources. Lawyers must fully understand and comply with fiduciary obligations to their clients. Theft is not the most common cause of disciplinary problems arising from the mishandling of client property. Rather, many lawyers who wind up in disciplinary trouble over client funds or trust accounts are there because of easily avoided problems, such as sloppy bookkeeping, a failure to maintain appropriate records, lax oversight of office staff, and other easily avoided sins. Often the problem begins with a lack of understanding and appreciation of what a client trust account is, which rules apply, and what consequences can result from noncompliance.
Each state has its own set of disciplinary and administrative rules governing client trust accounts. Though many of them begin as a version of ABA Model Rules 1.15, there are many variations. Thus, refer often to your state and local bar rules on handling trust accounts as you begin your solo practice.

**WHAT IS A TRUST ACCOUNT?**

Generally speaking, a trust account, often referred to as an IOLTA account (Interest on Lawyers Trust Accounts), is a dedicated account maintained by a lawyer where the money of more than one client is kept. This can be money deposited with the lawyer for safekeeping, perhaps to pay anticipated expenses, proceeds from the sale of property, or, most commonly, as a deposit against bills the client will incur for services to be provided by the lawyer.

These funds must be kept separate from other money in the office, and the IOLTA account must be opened with a bank approved to handle such funds. (Your local bar association will have a list of banks approved for this service.) Although a lawyer is allowed to place a small amount of his or her own funds into the account to cover bank and administrative fees and expenses, keeping more than a *de minimus* amount of the lawyer’s own money in the account is considered commingling and is a serious ethical transgression. This prohibition arises out of basic fiduciary principles, which require the holder of funds of another to keep them separate so that they can be easily identified and to prevent those funds from being confused with funds belonging to the fiduciary, which may be subject to levy or garnishment.

Most states require IOLTA accounts to be registered with the bar. Interest earned on the money is sent to a bar office where it is used to fund legal aid and similar enterprises. Strict rules apply concerning recordkeeping and the management of the funds in the account. Some states have audit programs to enforce compliance and require banks to report overdrafts, which are usually then investigated by the bar. In virtually every jurisdiction, lack of attention to the proper use of these accounts can result in serious disciplinary enforcement.

**HOW, WHERE, AND FOR HOW LONG?**

Prior to taking possession of client money, a lawyer should consider how, where, and for how long the funds will be held. If the money will be held for a specific purpose, explain that in the fee agreement or in a separate letter so that both you and your client are on the same page with regard to where client funds will be held and when they will be released. If the money is a deposit against fees to be earned or expenses to be incurred, most state disciplinary rules require that the lawyer keep the money in a pooled client fund, IOLTA-registered, trust account. As fees are earned or expenses incurred, the account is debited.

If the debits are for attorney’s fees, the funds will be transferred as the work is done to the lawyer’s operating account from which they will be disbursed to pay firm operating costs and expenses including payroll. This transfer may be automatic or after client approval. Spell out in the fee agreement the terms and conditions under which IOLTA funds will be transferred to pay the client’s bill. It is also best practice to send the client an itemized bill before any funds are transferred, detailing the work done, the amount transferred to pay the bill, and the remaining balance in the account. If the debits are for client-related expenses, they can be disbursed directly from the IOLTA account to the client’s creditor, but again, only after the client has approved the payment or in accordance with prior written instructions.

If you accept credit cards to pay an advance on fees, be very careful in structuring transactions. Some lawyers have gotten into trouble when processing fees are charged against the client’s deposit, reducing the amount in the IOLTA account. Some states require the lawyer to pay these fees or discuss in the engagement letter whether the lawyer or the client will be responsible for them. Other times, credit card deposits, which are made directly to IOLTA accounts, are reversed at a later date, drawing funds out of the account, which includes monies paid by other clients. If you have decided to accept credit card payments, check with local ethics authorities as to whether your state has any rules or best-practice guidance in this regard. Some vendors, such as LawPay (https://lawpay.com/) have programs for credit card transactions that comply with state ethics rules.

Lawyer-earned fees must be removed from the IOLTA account promptly to avoid issues of commingling. Although disbursing client expenses directly from the IOLTA account is appropriate, disbursing earned fees directly to the lawyer’s own creditors is prohibited. Always disburse earned fees and reimbursements to the law firm operating account.

Sometimes funds held on behalf of the client are significant or will be held for an extended period.

**Spell out in the fee agreement the terms and conditions under which IOLTA funds will be transferred to pay the client’s bill**
In such circumstances, to avoid issues related to uncompensated taking, the IOLTA program requires the lawyer to determine whether the funds might generate appreciable interest income to the client, after taking into consideration applicable bank charges and fees as well as the administrative costs of the lawyer. If “appreciable net interest” is likely, consider establishing a single client interest-bearing account in which only that client’s money is held. Many banks allow this through a “hub and spoke” type account where separate sub-accounts of a single account can be set up to pay interest to the owners of funds in the account.

**MANAGING THE TRUST ACCOUNT**

When setting up a specific client account or when holding significant sums in an IOLTA account, remember that the FDIC only insures funds up to $250,000 per account. If the sums held are in excess of that, give serious consideration to setting up accounts in different banks. Alternatively, explore with your bank the use of a program called the Certificate of Deposit Account Registry Service (CDARS), which uses certificates of deposit in multiple banks to ensure that the entirety of the client’s funds are insured against possible bank failure. Further information on FDIC insurance coverage for IOLTA and other accounts is available at https://www.fdic.gov/deposit/deposits/. Set up a separate account for each client in your law firm’s bookkeeping system. These are commonly called client ledgers or journals. They can be maintained manually by using a simple bookkeeping program such as QuickBooks or as part of a more sophisticated law-firm financial system that also includes time receipts, billing, accounts payable and receivable, payroll, and more. Also keep a “general ledger” for client accounts and document deposits and withdrawals. Maintain a running balance for client ledgers and the general ledger.

Periodically, but at least monthly, reconcile these client accounts. This process, often called three-way reconciliation, simply requires that funds held for each client, as shown on the client-specific journals or ledgers, be totaled and compared to funds actually appearing in the general ledger for the client account and what is reflected on the bank statements for the client account. This process generally requires taking into consideration outstanding, uncleared checks and deposits that have not been credited to the account.

It is a good idea to keep a ledger accounting for the lawyer’s own funds as well, so that at a glance it is clear how much of the lawyer’s own funds are in the account. At any given time, but at least monthly, account for every penny of client money you are holding and identify the ownership of every penny actually in the account or accounts. Though this sounds easy, in reality it can be tricky and, as discussed below, can cause no end of trouble.

Maintain meticulous records of all trust account activity. This includes recording deposits that can be traced to individual clients and disbursements with backup documentation such as invoices. Many states have minimum retention requirements for these records, and the careful lawyer will know the rules and keep all required records.

**COMMON TROUBLE AND HOW TO AVOID IT**

The simplest and best place to start is at the beginning. If you have not taken a course on law office management or are not familiar with how to set up and maintain a small business, now is the time. Most bar associations offer periodic CLE classes on trust accounts and accounting and law office management. If this type of activity is not something you are familiar with or feel competent or confident doing, consider hiring a bookkeeper or accountant to help you set up and maintain the required records. Learn what is required and maintain at least the minimum records.

The lawyer of record in a case is responsible for the trust account. This is non-delegable. Thus, if you hire a bookkeeper or paralegal to assist with this work, do not delegate too much authority to that person. Only the lawyer should have signatory power over these accounts. The practice of using a signature stamp so that other employees can issue checks is frowned upon and may be prohibited in some states. Even if employees of the firm handle the bookkeeping, it is the lawyer’s responsibility to review and reconcile their work periodically.

Many lawyers and law offices have gotten into trouble when “trusted” employees have stolen from the firm. Keep in mind that ultimately the lawyer is solely responsible for the account. Claiming that an employee
managed the client trust account will be no defense against a disciplinary action brought for failure to properly oversee the account.

One common problem with management of client funds is failure of the lawyer to remove his or her earned funds promptly. Some lawyers do this to avoid creditors, estranged spouses, or taxes. Others do it to deal with cash flow for the firm or to create a source of funding during lean months. Still others use the client trust account to establish a “pillow” to prevent an accidental overdraft from triggering a bar association examination of the account. In addition to forming the basis of a disciplinary complaint for commingling, such practices foster sloppy financial management such as failure to do the monthly reconciliations and inadvertent spending of unearned client money.

A common cause of overdrafts is a lawyer’s failure to maintain a ledger for his or her own funds. As a result, the lawyer loses track of how much “earned” money is in the account and writes personal checks for expenses without the funds to cover them. When the lawyer unwittingly continues to write checks after his or her funds are exhausted, client funds are expended. This is a serious problem in itself and one that often triggers an overdraft in the account.

It is not uncommon at the end of a legal matter for the lawyer to retain small amounts of client money in the client’s individual ledger. Sometimes a client will not cash a refund check. Other times, sums for the recording of documents, etc., will remain in the account because the recording fees were paid from the operating account and the client’s ledger or journal was not properly debited for the expense. For these or other reasons, many firms find themselves holding tens of thousands of dollars of client money, which has accumulated over many years with no easy way of figuring out which funds belong to which clients. If the accounts are audited by bar officials, much time and money will be spent trying to sort out who owns what. It is far easier to do this once a month when the amount in dispute is small and the problems are easily fixed. Follow up at regular intervals, such as quarterly, and track down uncleared checks.

Finally, and perhaps most importantly, some lawyers get into serious trouble when intentionally or accidentally they use client funds to cover short-term operating shortfalls. Most bar disciplinary officials have no tolerance for this. In many states, the penalty for knowingly misusing client funds is disbarment. Though it is more costly and inconvenient, use a line of credit or other type of loan for cash-flow needs that cannot be met out of operating funds or firm cash accounts. Client money should never be used for any purpose other than client expenses.

**CONCLUSION**

Law office accounting, especially for the solo or small firm lawyer, does not have to be complicated. It does, however, require the lawyer to take fiduciary duties seriously, to make sure that required records are kept, that required procedures are followed, and that personnel are properly supervised and managed. Unlike some other disciplinary rules, the rules governing the holding and managing of client funds allow very little wiggle room. Penalties for violations are among the harshest.

Before starting a law practice, give careful and sober consideration to whether you are ready, willing, and able to follow the applicable rules scrupulously. If you have neither the time nor inclination to properly manage client funds as a prudent fiduciary, consider joining with another lawyer or a law firm that can do it.
Ethical Issues

- Playing by the Ethical Rules: Keeping You and Your Client on the Straight and Narrow, Fam. Adv., Vol. 33, No. 2 (Fall 2010) (PC51311003302, ABA FLS, $12.95).
- Litigating in Lean Times: Stepping Up to the Challenge, Fam. Adv., Vol. 36, No. 2 (Fall 2013) (PC51311003602, ABA FLS, $12.95).

Going Solo

- Elefant, Carolyn, Solo by Choice.
- Garfinkle, Marc, Solo Contendere: How to Go Directly from Law School into the Practice of Law Without Getting a Job.
- Practice Transitions, Fam. Adv., Vol. 30, No. 2 (Fall 2007) (PC51311003002, ABA FLS, $12.95).

Managing a Family Law Practice

- Chinn, Mark A., How to Build and Manage a Family Law Practice (includes CD-ROM). ABA Section of Family Law and LPM, PC5130140 (Price: FLS member—$54.95/nonmember—$64.95).

Marketing Your Practice

- Foonberg, Jay, How to Start and Build a Law Practice, 5th ed., (PC5110508/5110571PDF, ABA LPM) or 6th ed. ebook online.
- Client Handouts, Family Advocate Special Issues. See back cover for topics and bulk discount prices.
- To buy, visit www.shopABA.org

Trust Accounts

- Some states and bars have a Law Office Management Assistance Program (LOMAP) available to their members. For instance, see http://masslomap.org/ and http://www.azbar.org/professionaldevelopment/practice20/services/.
- The Washington Bar Association’s LOMAP program has a wonderful list of books and publications that include law office operations: http://www.wsba.org/Resources-and-Services/LOMAP/Lending-Library.
- Many state bar counsel or disciplinary counsel have helpful materials. For instance, see http://jud.ct.gov/sfc/how_to_reconcile.pdf... How to Conduct a Three-Point Reconciliation.

20+ Frequently Asked Questions About Divorce—in Spanish & English (PDF) (PC5130168PDF, ABA FLS, $24.95).
OTHER ISSUES to Consider

When addressing the rights of a departing lawyer, access to e-mail is an important topic that has generated a range of responses. According to the Philadelphia Bar Association’s Professional Guidance Committee, ethics rules permitted a law firm to review the departing lawyer’s post-departure e-mail to determine which e-mails should be forwarded to the departing lawyer and which related to current firm matters about which the law firm should be aware. In its Ethics Opinion 2013-4, the committee found that the departing lawyer did not have the right to insist that e-mails be forwarded to the new firm without allowing the current firm to first review all e-mails. In this situation, the committee found that to comply with various ethical duties and responsibilities to clients, “some degree of interaction with the substance of messages to [the departing lawyer’s] old e-mail address would, as a practical matter, be necessary in order for the firm to sort out its responsibilities to current clients, former clients, those clients who have elected to follow [departing lawyer], as well as to third parties.” However, the opinion also noted that the firm had an obligation to forward immediately to the departing lawyer all e-mails related to client matters that the departing lawyer was handling. The committee also opined that automatic reply messages must include the departing lawyer’s current contact information.

Conclusion

In a lawyer’s departure to form a new law firm, one guiding principle is that exercising great care and caution during each step of the process will likely make a difficult situation a little less complicated. Law firms and lawyers that honor the spirit of the profession and the letter of the law will find appreciative clients during the difficult period of transition. Given the differences in law and ethics opinions in the various jurisdictions, however, a lawyer contemplating departure to open a new firm would be well advised to focus on the interests of clients and to comply with his or her fiduciary and ethical obligations.

STEPHEN J. CONOVER represents lawyers and law firms in their day-to-day compliance with Rules of Professional Conduct, including guidance on confidentiality, conflicts of interest, fees and engagement agreements, and lawyer advertising. Mr. Conover regularly advises local and national law firms on malpractice prevention and risk management, and counsels lawyers on sensitive ethics, professional responsibility, and business matters. In addition, he provides guidance to lawyers and law firms in their management of partnership agreements, lawyer departures, lateral hires, mergers, and dissolutions.

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Prior to graduating from law school, I knew that owning my own law practice was my ultimate goal. The question was “How do I achieve it?” In law school, I had benefited from a networking group of solo practitioners who had formed The Illinois Association of Independent Attorneys (IAIA). As the only law student in the group, I was welcomed with open arms and assisted in organizing and arranging all that was needed to get my law firm up and running. This was just the beginning.

After being sworn in to the Illinois Bar, the real work started: organizing bank accounts, creating a website, getting a phone number, finding an office, trying to market the firm, refining my areas of practice, and so much more. The hardest part was all the research and time devoted to managing these mind-numbing, essential details that would be the foundation of my firm and its success. Once the basics were in place, the million-dollar question was constantly on my mind: “Where do I find clients and how do I help clients find me?”

This is where networking and utilizing the knowledge of others really helped.

Reaching out
Networking requires special skills that most people undervalue and underutilize. Even today, after five years in practice, I am still honing my networking skills and instincts. While I was building my firm, I was keenly aware that time was money. If I wasn’t finding clients, I wasn’t making money. At the same time, if I wasn’t networking, I wasn’t finding clients. As I transition into more of a managing partner role, my central focus is on networking and growing the firm.

My recommendation to all new attorneys or newly ventured solo practitioners is to network in the areas that matter most to you. Identify your client base and find a group of individuals who has access to that base.

In addition to networking, marketing is also a huge piece of the puzzle. Marketing is multifaceted. When you start a firm with limited funds, it is difficult to know where to begin. I regret using the Yellow Pages. Although some individuals still turn to the telephone book, it screams “outdated.” Today most potential clients search for a lawyer on the Internet. The Internet has become the main vehicle for reaching potential clients. Having a website, writing a blog, and marketing online are the foundation blocks of most modern law firms. New technology has overhauled our lives and our marketing efforts. Learn how to use the Internet and the powerful new tools that have emerged from it. It can be a great marketing equalizer between your small firm and much larger ones.

As you network and build confidence using the Internet to market your practice, don’t overlook word of mouth. Your clients should always be your best marketing tools. One of the most important things you can do is provide a high level of service to your clients. Many firms overbill clients, take every client that comes through the door, and don’t pay attention to the bigger picture. It’s not always about making money now; it’s often about longevity. Happy clients will make your firm grow. Happy clients will tell other people about you, which in turn will make you money. So, its not about finding that one gold-plated client, its about treating every client with respect, providing excellent service at a reasonable cost, and delivering high-level legal services.

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Nominations for Jean Crowe Pro Bono Award Due May 20, 2016
The Jean Crowe Pro Bono Award Committee seeks nominations of outstanding attorneys who have made significant contributions to family law clients on a pro bono basis in their communities.

Nominees should be those who “never say no,” who mentor young attorneys, who have represented family law clients in underserved areas/populations, and/or who have represented clients in complex or lengthy family law litigation.

A $1,500 cash prize will be given to the pro bono or public service organization of the winner’s choice, and the winner will receive reimbursement for travel expenses of up to $1,000 to attend the Family Law Section’s Award Luncheon at which the Pro Bono Award will be given. For more information, visit http://shopaba.org/probono.

Trial Advocacy Institute
July 9–16, 2016, Boulder, CO

The 29th Annual Family Law Trial Advocacy Institute was held July, 11–18, 2015, and the ABA Section of Family Law was pleased to partner once again with the National Institute for Trial Advocacy (NITA) to put on this nationally renowned week-long training program for family lawyers. If you were not able to attend this year, be sure to apply to attend in 2016. Check the section website for updates and registration information.

Portland Conference Recap
Fabulous downtown Portland, Oregon, served as a phenomenal setting for the Section’s Fall CLE Conference October 14–17, 2015. There were 18 CLE sessions, including six assisted reproductive technologies (ART) programs.

Two hundred and fifty registrants and their guests enjoyed a Wednesday evening rooftop Welcome Reception at The Nines Hotel, a Thursday evening reception hosted by BNY Mellon Wealth Management at the historic Pittock Mansion, and a Friday evening dinner with dancing at Coopers Hall, a former auto repair shop converted, in the spirit of ultra-cool Portland, to an edgy and popular restaurant. The conference also served as the setting for meetings of the Section’s 35 committees and editorial boards.

The Section of Family Law thanks the CLE Committee, co-chaired by Candi Peeples and Michael Mosberg, the Sponsorship Committee, co-chaired by Henry DeWoskin and Jennifer Brandt, and the Host Committee, consisting of local Oregon attorneys Tonya Alexander, Conrad Hutterli, Andre McLain, Shelly Perkins, Kathy Root, and Laura Schantz for their hard work.

Call to Law Students for 2016 Schwab Essay Contest Entries
Enter the ABA Section of Family Law’s 2016 Howard C. Schwab Memorial Essay Contest. Request your entry number by April 15, 2016. The postmark deadline for entries is April 29, 2016. The competition, designed to further law students’ interest in family law, awards first, second, and third-place monetary prizes. Winning entries are published on the Section of Family Law’s website and may be included in a future issue of the section’s scholarly journal, Family Law Quarterly. Visit http://shopaba.org/schwab for contest rules, deadlines, and submission requirements.

Section of Family Law Calendar
For details and registration, visit www.shopaba.org/famlawevents

2016

Spring CLE Conference
May 11–14, 2016
Atlantis
Paradise Island, Bahamas

30th Annual Family Law Trial Advocacy Institute
July 9–16, 2016
NITA National Education Center
Boulder, Colorado
Joint project of the ABA FLS and National Institute for Trial Advocacy

2016 ABA Annual Meeting
August 4–9, 2016
Marriott Marquis
San Francisco, California

Fall 2016 CLE Meeting
October 19–22, 2016
Fairmont Le Chateau Frontenac
Quebec City, Canada

In Portland—First Row, Seated, left-to-right: Bobbie Batley, Virginia Dugan, Linda Elrod, Kathy Hogan, Tim Walker, Anne Marie Jackson, Greg Ortiz, Kendra Randall-Jolivet, Lori Colbert, Candi Peeples, Sam Schoonmaker, Peter Walzer


Photo: Peter Walzer
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