

Let Your Business Plan Guide You WHAT EVERY ENTREPRENEUR SHOULD KNOW

By Edith Ingram

Business plans are not just for start-up companies or initial investments; they are useful for anyone considering the future and overall management strategy of an enterprise, including a law practice. A business plan is frequently called “a road map” as it provides much-needed focus and direction for business owners. Having a business plan will help you view yourself as an entrepreneur, attract more clients, and achieve your business goals.

Attorneys, like any other business owners, need to understand their goals and be able to effectively discuss their services, operations, target market, and marketing strategies. In addition, attorneys need to be able to determine what future plans (at least those in the next year) will be needed. Business plans differ for each type of industry and even the individual business, but all plans answer the same key questions. Writing a business plan requires research and

cannot be done from your “armchair.”

There is no fixed content for a business plan because it is determined by your unique goals and audience. A standard business plan is a start-up plan and should include the following:

- **mission:** core values/foundation
- **business description:** overview of the company
- **product/service description:** detailed discussion of what is sold
- **market analysis:** description of target clients
- **industry analysis:** description of what makes up and affects the industry
- **marketing strategy:** description of tactics used to promote the business
- **operations:** a mini standards and procedures manual
- **organizational structure:** description of management and personnel
- **financial plan:** a 3–5 year budget.

You should also discuss the business’s location, pricing, and

competition, along with its potential strengths and weaknesses. Finally, if you will have outside readers, add an executive summary—a description of the plan and its purpose and supporting documents, such as résumés, historical financials, further statistical data, sample contracts, and references.

The business plan is a “research paper” on your business, and your assignment is to determine whether your idea has merit. In order for this “research paper” to effectively tell you whether the business is feasible or not (whether it can produce adequate profit), it is imperative that you, the business owner, develop it and view it with unbiased eyes. Also, realize that this document is dynamic and that its many parts are interrelated. For example, determining and understanding your target market dictates the products or services you will offer, the rates you will set, and what marketing strategies you employ. Also, your mission statement keeps

you focused on the core values of your business and keeps you from being a “jack of all trades and a master of none.”

As you are developing your plan, try to answer these key questions:

- What is the true purpose of the business?
- What are the services offered?
- How do they benefit the client?
- Who are your target clients?
- Who is your competition and how do you match up?
- What are your financial goals?
- Where do you see the business beyond 3–5 years?

Review other business plans and seek the guidance of a specialist. View sample plans at www.bplans.com and www.businessplans.org. Business plan assistance resources include Women’s Business Centers (WBCs) and Small Business Development Centers (SBDCs). Seek out other small business organizations in your area.

The business plan is not written on stone; you do not have to live hard and fast by it. No matter how much research you do, there are still too many unknown variables that can affect your success. This is why you review



your plan regularly and modify accordingly. Successful entrepreneurs adapt, innovate, plan ahead, and persevere as they grow their businesses.

Edith Ingram is project director of the Central Alabama Women’s Business Center in Birmingham, Alabama, and may be contacted at edith@cawbc.org.

READY RESOURCES

- *Emerging Companies Guide: A Resource for Professionals and Entrepreneurs*. 2005 PC # 5070483.
- *The Lawyer’s Field Guide to Effective Business Development*. 2007. PC # 5110578. Law Practice Management Section.

To order online, visit www.ababooks.org.

Pushing Through to Partnership: Advice for Midlevel Associates

By Henry J. Noye

You are a self-motivated attorney who has successfully navigated the path to becoming a “valued midlevel associate” at a well-regarded law firm. You already know the importance of basics such as billable hours, client satisfaction, and seeking a

mentor. Now, in order get on the “partnership track” and move forward in your career, it is time to focus more on a winning mental approach than daily strategies.

I recently crossed the partnership threshold (not without my own set of challenges) and

understand that making the transition from midlevel associate to new partner can be daunting. Also, I am cognizant that times have changed and making partner is not the dream of every associate. Thus, “partnership,” for some, can also refer to the attainment of

your paradigmatic professional position.

I am frequently amazed by my friends and colleagues in the profession who become unnerved by the idea of reaching that next level, almost as if their prior accomplishments were not real. If you find yourself feeling this way, remember you are the same person that eschewed (some of) the parties to study as an undergraduate. You are the same person that dutifully studied for the LSAT when there was a litany of other ways to spend your free time. You

survived Civ Pro and Property (including the Rule Against Perpetuities)! And you passed at least one bar exam. So why should those feats help you now? It’s simple: you’ve demonstrated the ability to set and accomplish attainable goals. Now you just need to believe that, as it relates to your legal career, past performance is indicative of future success.

Thanks to the Socratic Method many law students spend three years searching for

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Money Talks

THE ROLE OF FINANCIAL EXPERTS IN LITIGATION

By David P. Bart

Financial experts can provide invaluable services in litigation matters, offering evidence and opinions to assist the trier of fact in understanding key issues. These experts can assist in areas that extend well beyond tax and accounting and into areas such as corporate finance, cash flows, business valuation, lost profits, and damage calculations. The types of professionals who analyze these topics are also quite varied and include accountants, business consultants, turnaround experts, fraud examiners, tax professionals, and others with specialized training. The fundamental questions affecting each specific litigation matter will determine the relevance and role of the professional needed in your case.

When searching for a financial expert, look for someone who possesses the relevant qualifications to reach their opinions. Accounting degrees, MBAs, and professional training offer a foundation, and relevant professional experience is useful. The following professional designations help to demonstrate the professional's special training and expertise: Certified Public Accountant (CPA); Certified Fraud Examiner (CFE); Certified Insolvency and Reorganization Accountant

(CIRA); Certificate in Distressed Business Valuation (CDBV); Chartered Financial Analyst (CFA); and Certified Turnaround Professional (CTP). These designations and the rules of their related professional associations distinguish the professional's work, define the ethical guidelines the person must follow, and present limitations on the nature and scope of the services that can be provided.



Prior to engagement, the attorney and financial expert should discuss and understand the answers to critical questions that can affect the disclosure of the professional to

opposing parties and the obligations to produce work product during discovery, including:

- Will the professional testify as an expert witness or act as a litigation consultant?
- Will there be fair and complete access to all pertinent facts, documents, and people from which to form an opinion?
- Does the professional have the appropriate background, qualifications, and expertise to render the opinion?
- Who is the client? A party in interest, the plaintiff or defendant, a committee representing a defined class or interest, or perhaps the committee attorney? Who will retain the professional—the attorney or the attorney's clients?
- Are any conflicts of interest present?
- How will the work impact other aspects of the case? Will the findings be revealed even if they jeopardize other matters?
- What is the venue and what are the expectations regarding rules of evidence and the use of expert testimony?
- What privileges are available to protect work product from discovery? Will the new Federal Rules of Civil Procedure regarding elec-

tronic discovery have any impact?

As a litigation consultant, the financial expert should investigate facts and circumstances, perform relevant analyses regarding key questions in the litigation, and educate the client and attorney about key findings. As an expert witness, the professional should educate the trier of fact about the issue at hand. A litigation consultant can shift roles and later testify as an expert. This commonly happens with consultants working on business viability, solvency, cash-flow forecasts, business valuation, and damages matters. That shift can have significant implications for discovery and potential testimony.

Communication with the financial expert is critical. Regular meetings help maintain a clear understanding between the attorney and the expert, and written reports document the work performed and provide a defined basis for evaluating the findings. Fee estimates and staged work can help prevent surprises. However, be careful of discovery implications for all written materials. And make sure the professional responsible for the expert opinion performs his or her own work and reaches his or her own conclusions.

Experts should be capable of explaining their methods, underlying data, procedures, ethical constraints, proper formats, interpretations, and ter-

minology. They should also be able to explain potential weaknesses and questions they may face. The basis for the expert's conclusions must be clearly understood by both the attorney and expert before trial to prevent any misinterpretations or surprises.

Above all, the expert must be honest and objective. If the expert is perceived as a "hired gun" or mouthpiece, he or she will not help the court or the client. An expert cannot simply "advocate." A good expert will break down component issues to determine a set of basic assumptions, inferences, and conclusions that can be drawn from the facts to reach an opinion. By working together, the attorney and financial expert can function as a team, focusing on the many issues present in complex litigation. Careful, analytical work persuasively presented in an articulate, forthright manner should lead to firmly supported expert opinions that can make all the difference between winning and losing the case.

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READY RESOURCES

- *A Litigator's Guide to Expert Witnesses*. 2006. PC # 5150306. General Practice, Solo, and Small Firm Division. To order online, visit www.ababooks.org.

Pushing Through

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the obscure details in case law. Understandably, then, many new lawyers employ the same tunnel-vision approach to their post-law school lives. A keen sense of focus is a good thing; however, it is also important to be able to "see the forest for the trees." This is true because a broader perspective helps you understand how valuable you are to your employer. By the time you become a midlevel associate, your firm will have invested tens of thousands of

dollars in your development, including summer associate activities, early work that had to be written off, and traditional mentoring efforts. Also, large, corporate clients want to maintain relationships with law firms that consistently select and develop outstanding legal talent. So remember that it is in everyone's best interests for you to succeed.

Finally, many young lawyers spend so much time billing hours that they lose themselves. In all aspects of life people prefer being around others who are well rounded, posi-

tive and, of course, good at what they do. So find and pursue that thing, an interest, hobby, or activity, that makes



you *you*. Then incorporate your passion into your profession. For example, a good midlevel lawyer who is also an amateur triathlete is better partnership material than a comparable lawyer with no nonlegal interests. You may have to work harder to invest in yourself and your career, but in the end it will be well worth it.

Beyond being hard working and knowledgeable, it is time to have confidence in your abilities, see yourself at that next level, and employ a winning mental approach to help you achieve your goals.

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READY RESOURCES

- *Stepping Up: Rising to the Lead Lawyer* (Audio CD Package). 2006. PC # CET06SURC. Center for CLE, Commission on Women in the Legal Profession, Section of Litigation, and Young Lawyers Division.
- *Making Partner: A Guide for Law Firm Associates*, Third Ed. 2006. PC # 5110576. Law Practice Management Section. To order online, visit www.ababooks.org.

Advocating for Success

By Bert S. Nettles

Forty years of practicing law has been great fun, and I am having more fun now than ever. I would like to share some suggestions for persuading judges and juries based upon my experience. For you transactional lawyers, think advocacy when I say judge or jury, as advocacy applies to dealings with the client as well. Every lawyer is an advocate, whether in the courtroom or the boardroom. Many of these tips will have relatively little to do with jury trials, as we try fewer cases these days. Most cases are disposed of on motion or through settlement. As a result, motion practice, with the attendant briefs and oral arguments, has become increasingly important.

Courtroom protocol. The basics of course include being on time (which means being ahead of time); standing when the judge or jury enters the courtroom; and standing when you address the court or jury. While addressing the court, preface your remarks with, "Your Honor," or something similar. Never interrupt the judge, but attempt to get the last word in where appropriate. Avoid the temptation to say, "I'll get back to that later," and give a direct answer immediately to questions from the judge. In addition to these time-old traditions, you should be courteous to everyone, particularly the administrative staff in both the judge's office and the clerk's office. They can help you or hurt you.

When making your arguments, be brief and to the point. Then, sit down. If the judge says she is ruling with you, or is inclined to do so, be quiet and refrain from continuing to argue a point you have already won.

Be aware of the double standard. More is expected of a lawyer from a big city or a large firm and of a lawyer representing an insurance company or any large institutional client. Accordingly, be better prepared than your adversary.

Due diligence. When dealing



with a judge, lawyer, or mediator you do not know, make inquiries. Take the time to send a quick e-mail within your firm or talk with a law school classmate. Brainstorm possible conflicts or ethical problems immediately. Seek the counsel of your partners as a sounding board. If it seems wrong, refrain from doing it.

Oral advocacy. Preparation is very important. We all remember at least one day in law school when we were called upon and unprepared. Being unprepared in court is unacceptable. Even if you are filling in at the last minute for a fellow attorney, take time to review the matter before you enter the court and be familiar with the principal cases.

If you have never met the judge, introduce yourself and your client before jumping into your argument. If possible, try to arrange to speak first. Often the judge will ask, "Who wants to go first?" So be prepared, and open with your strongest substantive argument and save the procedural arguments (i.e., statute of limitations) for last. When discussing case law, give a highlighted key opinion or two to the judge, with highlighted copies to opposing counsel. Even with opposing counsel making comments or interjecting and the judge directing questions to you, stay focused on your key points.

Written advocacy. As with oral advocacy, be persuasive and succinct. Many judges say they only read the first ten pages of briefs. Use a short but persuasive introduction explaining why

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your client should prevail. Use brief sentences, short paragraphs, and bullet points where appropriate. A poorly written motion or brief hurts your credibility on the legal issues, so be grammatically correct.

Anger management. Be aware you may have an angry judge or jury. Even when opposing counsel is unpleasant, do not

respond in kind; when you become angry, you lose your concentration. Also, even when you have been interrupted by your adversary, try to always direct your argument to the judge.

With discovery issues, quickly explain to the judge how you diligently and reasonably attempted to resolve these issues *before* the hearing. Remember that judges

dislike "wasting" their time with discovery disputes.

Always control your temper, and be professional and civil. If you receive an inflammatory motion or letter from opposing counsel, wait a day before responding. Letters often end up as attachments to pleadings to the court. It can be helpful

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YLD CALENDAR & CONFERENCES

- OCT. 17, 2007 OVERVIEW OF FEDERAL HOUSING PROGRAMS TELECONFERENCE
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- OCT. 25, 2007 HIPAA FUNDAMENTALS TELECONFERENCE
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- OCT. 30, 2007 NATIONAL LABOR RELATIONS ACT | CLEVELAND, OH
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- NOV. 7, 2007 WOMEN IN LAW LEADERSHIP ACADEMY | CHICAGO, IL
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- FEB. 7-9, 2008 2008 ABA YLD MIDYEAR MEETING | LOS ANGELES, CA
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Ethical Considerations for Federal Government Attorneys

By Dawinder S. Sidhu

On my first day as an attorney for a federal agency, I was surprised to learn that there are a number of ethical guidelines that significantly constrain the activities of federal government employees. If you are considering a government service job or already work in a federal office, be particularly mindful of the following ethical rules.

Generally, a federal employee must obtain approval prior to agreeing to teach, speak, write, or consult (even if on a voluntary basis) in any area that relates to the employee's official duties or that involves a prohibited source.

A federal employee is prohibited from soliciting political contributions from the general public even when off duty and is prohibited from wearing

political buttons while on duty or in a government building.

Additionally, a federal employee is prohibited from acting as an agent or attorney before any "agency . . . in connection with any covered matter in which the U.S. is a party or has a direct and substantial interest." For



example, a federal employee may prepare a friend's taxes but may not represent that friend in an audit before the IRS.

There is no expectation of privacy on a federal government employee's computer. Any electronic communications transmitted on that computer may be monitored and subject to public release under the Freedom of Information Act.

Generally, a federal employee may only make personal use of government resources for a *de minimus* amount. For example, calling a family member from work to briefly notify him or her that you will be late to a scheduled dinner or event would likely fall within the *de minimus* standard.

It may appear that the ethical rules federal government employees must follow, both in

the office and outside of it, online and off line, are quite restrictive. However, it is important to remember that as individuals working on behalf of the people, these rules help ensure that government employees do not abuse the public's sacred trust.

The ethical guidelines for each federal agency may vary, so consult your agency's ethics office for a complete and accurate list of applicable ethics rules.

Dawinder S. Sidhu is an attorney with the U.S. Department of Education in the Washington, D.C., area and a former law clerk to a federal district court judge. He can be contacted at dsidhu@gmail.com.

READY RESOURCES

- *Everyday Ethics for Government Attorneys* (Audio CD). 2005. PC # CET05EEGC. Center for CLE, Section of State & Local Government Law, Government and Public Sector Lawyers Division, and Center for Professional Responsibility. To order online, visit www.ababooks.org.

Advocating

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and therapeutic to dictate a response, but put it aside for a day or two in order to think about what really needs to be said. Otherwise, relatively unimportant side issues can overshadow your client's substantive strengths.

Good advocacy does make a difference.

Bert S. Nettles is an attorney with Haskell Slaughter Young & Rediker, LLC, in Birmingham, Alabama, and can be contacted at bsn@hsy.com.

READY RESOURCES

- *The Trial Lawyer: What It Takes To Win*. 2006. Paperback PC # 5310357; DVD/Book Package PC # 5310358.
- *The Litigation Manual: First Supplement*. 2007. PC # 5310264S.
- *Motion Practice and Persuasion*. 2006. PC # 5310355. Section of Litigation. To order online, visit www.ababooks.org.