MINNESOTA LAWYERS MUTUAL
INSURANCE COMPANY

LAWYER'S GUIDE TO STARTING A LAW PRACTICE

A MALPRACTICE INSURANCE COMPANY'S PERSPECTIVE

Connecticut DC Illinois Iowa Indiana Maryland Massachusetts Minnesota Nebraska
North Dakota Ohio Pennsylvania South Dakota Tennessee Virginia Wisconsin

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Introduction

So you're thinking about starting your own legal practice. You may be on the path to a very exciting adventure and a fulfilling career. But, before you dive in, you should know what you're getting into and make sure you have the tools necessary to be successful. There's more to running your own law practice than simply providing superior legal service. Not only do you need to know how to file a complaint, but you also need to know how to establish and run a business. In this paper, we will guide you through the basic and immediate questions you will need to address when you decide to start your own law firm. At the end, you will be able to leverage the information found in this paper to create your own business plan. Remember, if you fail to plan, you plan to fail.

Develop a Business Plan

Creating a business plan forces you to think about and evaluate your resources as well as your strengths and weaknesses. The business plan should and can be a roadmap to success. A written business plan is also essential if you are seeking loans or any other financial resources for your practice.

Whether your business is large or small, a start-up or long-established, developing a business plan enables you to:

- Make the crucial business decisions that focus your activities and maximize your resources.
- Understand the financial aspects of your business, including cash flow and break-even requirements.
- Gather crucial industry and marketing information.
- Anticipate and avoid obstacles your business is likely to encounter.
- Set specific goals and measurements to assess progress over time.
- Expand in new and increasingly profitable directions.
- Be more persuasive to funding sources.

Although you are probably itching to simply get an office and start helping people with their legal needs, it is essential that you stop and think through the basic questions on starting a law firm, or any business for that matter. These questions include choice of legal entity, business structure, banking, insurance and office space. These basic requirements form the infrastructure of a successful legal practice. Other questions that must be addressed in your business plan include:

- What is the purpose for establishing your firm and what are its goals?
- What will your start-up costs be?
- How will you form your firm, including the name, type of entity, ownership and location?
- What types of clients will you expect to attract?
- What types of matters will you expect to handle for them?
- How much income will you will need to generate in order to pay ongoing operating expenses, repay loans you may be taking out, and generate a reasonable profit for yourself?

If you are a new law school graduate, you will necessarily have different answers to these questions than an established practitioner who is contemplating a shift to solo practice. Even the experienced practitioner with established clients and a proven fee structure may still find surprises in the results of a preliminary business plan.

Choosing a Business Entity

There are several different entity structures to consider when forming your law firm. These include sole proprietorship, partnership, limited liability company, or professional corporation. There are pros and cons to each of these entities and, as a result, you should consider several factors before choosing which entity structure is right for you.

The most important factor to consider when choosing which entity is best for you, is what personal liability protections will your choice of entity provide. Generally, you can protect yourself from personal liability by forming either a limited liability company or professional corporation. If you choose to operate as either a sole proprietorship or general partnership, you could be personally liable for all liabilities of the firm.

Tax implications must also be considered when choosing the right business entity. Thus, you should consult an accountant prior to choosing your business entity. This will help ensure that you have considered all the possible tax consequences associated with each type of business entity. For example, a LLC has flow through taxation which means that there is no corporate “double tax.”

With a LLC you can avoid double taxation. When a corporation earns a profit, it is taxed at a special corporate rate which is similar (but not identical) to personal income tax rates. For the owners of a corporation to spend their profits, they must take the profits as dividends. The owner is taxed a second time on receiving the dividend. Hence, double taxation. A LLC can completely avoid this double taxation by choosing to organize as a pass-through entity. Thus, an owner of a LLC only pays tax once, at their personal income tax rate.

Naming

Naming your new law firm can take on a variety of forms. It can simply be a list of the attorneys working at the firm or it can describe your practice. Examples include "Scott Law Office" or "Lakeville Area Personal Injury Law Firm." Although using the last names of the attorneys that practice in the firm is the traditional naming technique, it is by no means the only acceptable naming method. Trade names are acceptable, but the name must not be false or misleading.

If you conduct business under a name that is different from the full, true name of your practice, be sure to file a certificate of assumed name with the Secretary of State.

Finally, bear in mind that you must also use the correct business entity designation at the end of the name.

In addition, the ABA Model Rule 7.5 also includes the following for naming a legal practice:

- If you have an office in more than one jurisdiction, you must identify lawyers in the office that are not licensed to practice in the jurisdiction, if applicable.
- If one of the attorneys in your law office also holds a public office, you cannot use his/her name in the name of your law firm while he/she is not actively practicing with the firm.

You cannot imply that you practice in a partnership or other organization if that is not true.

How and When

The Secretary of State web sites have forms available for business incorporation. In order to engage in the practice of law, your business entity must be subject to the state business regulations. The costs to establish your business entity are relatively nominal. There is a small fee to file articles of incorporation (corporation) or articles of organization (limited liability company). Also, be sure to remember to file your initial report with the Office of Lawyer Professional Responsibility (OLPR) along with the initial fee.

Liability limits are not retroactive, therefore, it is highly advisable to complete and file all paperwork prior to opening the doors for business. The OLPR filing and corporate filings are not necessary before business is transacted. However, if you conduct business prior to completing the paperwork, you may not be able to take advantage of the liability protections available under the various business entities. If corporate/OLPR filings are not completed prior to the beginning of business of the new law firm, business is transacted as a sole proprietorship or general partnership, thus there are no limited liability protections.

Adding Partners

If you will be practicing with another attorney in your law office, it is advisable to enter into a partnership agreement. Although there are "standard" partnership agreements, the partnership agreement should be tailored to meet the individual needs and concerns of the attorneys in the new law firm. It is recommended that each attorney consult a business law attorney for specialized legal advice.

Law Office Facilities

After you have identified your practice area and practice characteristics, you must consider how and where you will office. Offices can run the gamut from nearly ready for occupancy to shells that must be wired, finished, and furnished. Executive suites offer professional space that's ready to go. On the other end of the spectrum is shell office space that must be built out. This, of course, requires additional capital expense and a long-term commitment. The following offers some pros and cons of various options:

Law Office	PRO	CON
Home/Virtual	Probably the least expensive office location. Having a home office allows you to tend to child care or elder care, you do not have a commute to work and it provides you a very flexible lifestyle.	Difficult if you meet clients in person. Can be very isolating and lonely.
Executive Suite	You can move right in and start work immediately. Usually all you need to provide is your own computer. It's usually "plug and play." There are minimal upfront costs — you do not need to purchase a desk, chair, printer, fax machine, telephone system, etc. You can usually enter into short-term leases and most executive offices are flexible if you need more space or want to relocate to another area.	Executive offices are more expensive than a traditional lease. It is shared space in the sense that you will share a receptionist, support staff, common areas, etc.
Shared	Shared offices can be very cost effective. You may be able to find a great deal on space that would otherwise sit empty. The shared space may also provide conference rooms, administrative services and larger equipment such as copiers. Also, there may be an opportunity for referrals if the law offices complement one another.	You will need to take additional steps to ensure that your practice is differentiated from the other legal practice in the office suite. In addition, you will share common areas and you cannot control the atmosphere (quiet, few distractions, etc.).
Lease	You will have your own space and you control it. You can furnish it anyway you like, control the atmosphere and have privacy.	You will need to furnish the office completely and you may have to do repairs and/or upgrades. Upfront costs will be high.
Buy	All of the benefits of leasing an office, but you may also realize appreciation on the property.	Buying an office is often the most expensive route. It is more difficult to change in the future if you need more space, want to relocate or if you end your practice.

Start-Up Costs & Capital

It is important to accurately estimate the start-up costs of your law firm before you set out. The costs that you need to consider are the:

- start-up costs to actually start your practice – furniture, computer, office supplies, etc.
- recurring costs – rent, Internet service, telephone service, advertising, etc., and
- cost of living for the first few months while your new firm is in its infancy.

In the hypothetical example below, the start-up costs for one attorney to start a new law firm are approximately $6,000-7,000. Adding an additional attorney to the firm will cost approximately $4,000-$5,000. Each attorney will need furniture, computer equipment, office equipment, office supplies and miscellaneous items. Please note, however, that this figure for start-up costs includes only one-time costs or costs that must be expended before beginning business. It does not include operating expenses until revenue begins.

Start-Up Cost Summary

	Attorney #1	Additional Attorney(s)	Support Staff
Furniture	$1,771	$1,771	$539
Computer Equipment	$2,571	$2,112	$1,298
Office Equipment	$1,598	$149	$149
Office Supplies	$674	$656	$656
Miscellaneous	$183	$108	0
TOTAL	**$6,797**	**$4,796**	**$2,642**

The most important rule to remember when considering sources of capital is to remember that the ABA Model Rules of Professional Conduct prohibit any arrangement where one would share profits with a non-lawyer. This means that you cannot have angel or venture capital investors and your friends and family cannot have an equity interest in the firm unless he/she is a lawyer licensed to practice law. You may not grant stock, stock options or any other ownership rights to any non-attorney as a means of raising funds or otherwise.

Although all you may want to do is jump in and start helping people with their legal needs, you have to stop and think about finances. The bottom line is that you need money in order to start your own law firm. In addition to the start-up costs associated with starting your own firm, you probably have student loans to repay; mortgage and car payments. There are several methods to finance your new law firm. These methods include personal savings, bank loans, and loans from family or friends.

Insurance

You should have malpractice insurance in place before you begin practicing law in your new law firm. The best advice we can provide is do not practice law without malpractice insurance

There are many types of insurance coverage to consider for your new law firm. The most important of which is malpractice insurance. You should have malpractice insurance in place before you begin practicing law in your new law firm. The best advice we can provide is do not practice law without malpractice insurance!

In addition, professional liability insurance carriers such as Minnesota Lawyers Mutual Insurance Company (MLM) can be a valuable resource for many office procedures and systems. MLM has online resources and experts on staff offering advice and recommendations for conflict searches, calendars, document retention, disaster recovery, and much more.

It is important to understand that most malpractice insurance policies today are claims-made policies. This is different than other types of insurance and the kind of policies that most people are familiar with. Under an occurrence based policy, the policy that is in place at the time the incident occurred is the policy that responds to the claim. Whereas, for claims-made policies you must have a policy in place at the time the claim is made for an act that occurred during the policy year or during previous years if specific prior acts coverage is provided. If you have been practicing law prior to purchasing a claims-made policy for your new firm, you should make certain that prior acts coverage is included in the policy purchase.

Some factors that may affect insurance premium pricing include area of practice, years of practice, location and track record of the attorneys in the firm. Lawyers that practice in real estate, divorce, personal injury and patent law have a higher likelihood of being sued for malpractice. Also, attorneys that have had any previous claims or bar disciplinary actions will usually have higher premiums.

In addition, if you are leasing office space, you will likely be required to carry property insurance as well. Be sure to carefully review your lease agreement to ensure compliance.

Other types of insurance coverage to be considered include business interruption, general liability, vehicle, and personal property insurance. Also, contemplate whether you should consider health, life, and disability insurance for yourself if that won't be provided as part of your employee benefits. Most state bar associations offer group discounts for members. For more information on the purchase of a certain insurance contact your state bar association. Most associations offer its members insurance programs at a group rate.

Setting Up Fee Structures

The writings on legal billing (most often alternative billing) list as many as 14 different fee structures, but many of these are various blends of the basic fee structures. There are seven basic fee types: contingent, fixed, hourly, incentive, retrospective, (true) retainer, and statutory.

Fixed Fees

Fixed fee structure is where the attorney charges the client a flat rate for the work performed, regardless of the time it takes to complete the project. For example, an attorney may charge a client $1,000 for a divorce or $1,000 for a business agreement. Providing a fixed price for legal work is one way of adding value to the service. Anecdotal evidence suggests that clients prefer a fixed price even if it is slightly higher than an estimated price based on an hourly rate. Another variation on the fixed fee is sometimes referred to as a "retainer" fee structure. The attorney can charge a flat fee for making him or herself available and providing legal work on demand.

Contingent Fee

A contingent fee arrangement is where the attorney represents a client in a matter and is paid only if and when the client recovers monetary damages. This fee structure is used almost exclusively in litigation and predominantly in plaintiff's cases. The attorney pays all of the out-of-pocket expenses of the case and is paid only if the client recovers a monetary award. The contingent fee does not however have to be used only in litigation. There are many ways to use the contingent fee in transactional matters. For example, a bonus is paid if the matter is concluded by a certain prescribed date. In these instances, it is imperative to be very clear about what the contingency is and how it is triggered.

Hourly Billing

The hourly billing method is probably the oldest and most common fee structure. In this fee structure, the attorney charges the client an hourly rate for all services performed for the client.

Incentive Fee

The incentive fee structure is a "reverse contingent fee structure" of sorts. It is a way of using the "contingency" fee structure for defense work. For example, if you and the client agree that the client faces an exposure of $500,000, you could structure a fee agreement that would provide for hourly billing plus a "contingency" bonus of 10% of the amount for which the matter settles under $500,000.

Retrospective Fee or "Quantum Merit" Fee

In this type of fee structure, the client and attorney set the fee at the end of the matter when the outcome has been determined. It should take into account the outcome of the matter, the work involved in achieving the outcome, the business needs of the attorney and the expectations of the client. This fee structure is not often used today.

Retainer

A retainer is a pre-paid amount paid by the client at the beginning of a matter or general representation that the attorney draws against as services are performed. The "retainer fee structure" is used to mean the fixed fee structure for recurring work. For example, an attorney performs services for a small corporation, covering preparing annual minutes and routine phone calls throughout the year. The small corporation may pay the attorney a "retainer" each month (i.e., a fixed fee) for those services. Some clients (often wealthy individuals) may pay the attorney a retainer to have the attorney available and provide services on demand.

Rates & Billing

Beyond the market's influence on the pricing of legal services, a lawyer is subject to the ethical restriction that fees must be "reasonable" (ABA Model Rule 1.5).

Chances are you already have at least a few years of experience, so you have some idea of what your time is worth. But the move to a solo practice or small firm may change the type of clients you attract, even if you will be bringing some current clients with you. For many solo and small firm lawyers, the majority of their clients are individuals or small businesses, for whom legal services consist almost entirely of commodity work.

You will have to set up a fee schedule based on what you perceive their needs to be, and be ready to change it as you receive feedback from your clients and learn more about what the real costs (to you) of producing these services are. Fee structures and rates form an integral part of the client service you provide and are an important part of your marketing efforts, as well as providing the underpinning of economic viability for your firm.

Reasonable fees can, however, vary widely. The real determinant is what the client thinks the service is worth. The client's perception will be significantly influenced by communication – as you listen to the statement of the problem, analyze the legal issues involved, outline a case plan, and discuss the possible outcomes. More value will be perceived if you clearly understand the real problem (ask careful questions to show that you are listening and to clarify your understanding) and encourage your client to make cost/benefit analyses as the case plan is developed.

The keys to collecting payment are receiving payments in advance, careful client selection, and efficient and timely communication with your client. Be clear with your client about your fees, have a written fee agreement and address potential fee problems at the outset.

Charging Costs to the Client

Another question you must address is whether or not to charge clients for expenses such as support staff time, copies, travel, phone calls, and postage. There are two schools of thought: one, that this is now more fair than allocating a percentage of the overhead to every case uniformly; on the other hand some believe itemizing these costs simply irritates clients and are too costly to track and bill.

It is important to differentiate court costs from office expenses. Court costs include filing fees, medical reports, depositions, expert witnesses, jury fees, etc. Be sure to know and follow the ethics rules on covering costs.

Engagement Letters

Be clear and upfront about all costs and fees. Engagement Agreements are good tools to use especially when they contain the following elements:

- **Scope of Responsibility.** Set forth the responsibilities the attorney/ firm will undertake for the client. Consider ABA Rule 1.2 which addresses the ethical implications of defining and limiting your scope of representation. It is also appropriate to set forth those responsibilities that the attorney will not undertake. For example: Will you handle the appeal; who will do the sub S tax election filling, you or the accountant; will you handle the worker's compensation claim or only the personal injury claim, etc.?

- **Client Identification.** Identify the client and address issues of maintaining confidential communication with the client, as opposed to third-parties who are close to the matter by familial or financial relation. If the client is a corporation, make clear that you do not represent the individuals.

- **Conflict of Interest.** Determine from the outset if there are any conflicts that should be evaluated, discussed and disclosed. If there is a conflict, determine whether you can ethically take on the representation with disclosure and the client's consent. Even if you can ethically take on the representation determine whether you want to from a headache standpoint. In some cases it may be appropriate to make disclosure of the nature and impact of the conflict in your engagement letter (i.e., representing corporate client not individuals forming the business). In other cases where the conflict is more complex, it may be more appropriate to make your disclosure in a separate letter to the client.

- **Client Responsibilities.** The client must provide all relevant case information, witnesses, case documents, costs and expenses. You should also advise the client of their duty to continue to update you with all relevant or changing information, including their duty to stay in touch with you, be responsive, and provide you with current contact information.

- **Attorney's Responsibilities.** The agreement should identify the services the lawyer will undertake for the client but should remind the client there are no guarantees of success.

- **Fees and Expenses.** Fees and expenses including what will be charged and when and how the client is expected to pay should be clearly set forth in the engagement agreement. This should also include discussion of any advance that is required, how it will be applied to the fees and costs and whether or not there is an expectation that the advance be replenished during the representation. Typical costs and their rates should be detailed in an attached cost schedule. This should cover expert and court reporter fees as well as other types of expenses the client will be expected to pay.

- **Termination Provision.** The agreement should include provisions for either the client or the lawyer to terminate the representation. Regarding the lawyer's rights there should be a termination provision for failure of the client to pay fees and expenses.

- **Identification of Case Staffing.** To avoid client frustration and attorney burnout, advise the client of the various roles of staff on the case that will be available to them. Advise the client how best to contact you and the staff.

- **File Retention Policy.** The engagement letter should include a provision that explains your firms file retention policy, including how long the file will be available to the client after closing. If your firm is using electronic storage, then length of retention may not be an issue, but it may be appropriate to discuss whether the client wants the file in an electronic format upon the conclusion of the matter.

Billing Clients

Billing statements make a lasting impression on your clients. Treat the disbursement of bills as you would any other work product. Be sure to carefully create and proofread all bills prior to distribution. If a client receives an erroneous bill, he or she may question the lawyer's ability to handle their legal case.

At one time, accepting credit cards was considered unprofessional. Doctors, dentists, CPA's, architects, and other professionals not only accepted them but prominently displayed signs indicating acceptance of credit cards. Lawyers finally joined the others in accepting credit cards. The new school of thought is that new lawyers should be eager to accept credit card payment instead of chasing clients for monthly payments. The percentage you pay is a cheap price compared to the costs of bookkeeping and bad debts.

Be sure to be very careful about trust account payments utilizing credit cards. If you take a credit card for a payment that belongs in the trust account, be sure to reimburse the credit card discount so that the trust account balance reflects the full amount paid by the client. Also, Visa/MasterCard regulations expressly prohibit acceptance of credit card payments for bad debt. Do not accept credit card payments in bankruptcy cases or for collections. Set up an account solely for credit card payments and disburse payments from the account into your regular business or trust account as appropriate.

Handling Client Funds

When opening your own practice, a common first question is "what bank accounts do I need?" Generally, you will need a business checking account and an IOLTA trust account. Do you really need an IOLTA trust account? The Lawyer's Professional Responsibility Board states:

"If you do not receive any settlements on behalf of clients, you never receive advance fee or cost payments from clients, and you are never asked to hold other funds on behalf of clients, then you may not need a trust account. The better practice, however, is to maintain a trust account to accommodate those times you do need one. Many banks are willing to waive their service and transaction fees on IOLTA trust accounts, so costs are negligible."

Avoiding Malpractice Claims

In this booklet, we have guided you through the basic issues that you will need to understand and address in order to successfully start your own law firm. We hope you will be able to leverage the information found in this booklet to create your own business plan. In closing we offer the same general guideline to avoid the risk of malpractice in your journey:

- Screen clients carefully.
- Trust your instincts regarding clients.
- Make sure your fees are clearly outlined.
- Follow your client's instructions.
- Communicate regularly with your client.
- Maintain an accurate file with as much detail as possible.
- Maintain a calendar system for deadlines and be sure to regularly monitor such system.
- Be careful about accepting cases outside of your area of expertise.

Trust account violations were a relatively small percentage of client complaints but a relatively large percentage of disbarments and discipline (FS). As part of an arrangement between the IOLTA body and the banks, the LPRB must be notified by the bank if any instrument is drawn on an account with non-sufficient funds or there are other problems with the account. This may lead to an investigation even if there was not a complaint by the client. You must know and follow the rules for Interest on Lawyer Trust Accounts (IOLTA).

Client Files

Proper maintenance of client files is a critical administrative function within a law office. A client file containing work product, client history, and critical correspondence is a valuable item which must be effectively organized and maintained.

Numerous malpractice claims have resulted from lost files or misplaced documents, which were, of course, largely preventable had an organized internal filing system existed. Malpractice prevention aside, organized files are cost effective and efficient, both for the firm and client.

Devising an effective records and file management system requires exploration of the following issues: initial physical file organization, centralized vs. decentralized filing, file documentation, periodic file inventories, file closing and file retention and destruction.

There have been many changes in recent years regarding digital technology systems and lawyers have more options than ever when choosing how to create and retain client files. Systems involving scanning paper and storing files electronically are now available at affordable rates. With the right tools and systems in place, a law firm of any size now has that option. Every law practice, regardless of size, should establish a uniform file organization system, applicable to both litigation and non-litigation files. From a risk management perspective, standardized files reduce the chance of lost or misplaced documents. From an operations standpoint, standardized files are very efficient and reduce the amount of time spent searching through other firm members' files for documents, trying to figure out their method of organization.

Initial file organization sets the standard for effective file maintenance. Right or wrong, competence is associated with organization; and client perception is crucial to malpractice claim avoidance and client retention. If clients must routinely wait on the phone or in attorneys' offices while attorneys and secretaries frantically search through files for documents located either in file cabinets or on computers, competence is questioned.

File Retention

Client file retention and destruction is not an exact science, which is why attorneys are generally reluctant to destroy files. As a result, files that have experienced no activity in twenty years consume valuable and expensive storage space when, in many instances, the files could have been destroyed. The length of retention will frequently depend upon your respective states' statutes of limitations with regard to legal malpractice.

The safest file retention policy for an attorney is to retain client files indefinitely. With today's imaging and electronic storage technology, this may not be as infeasible as once thought.

Rules 1.15 and 1.16 of the ABA Model Rules of Professional Conduct relate to client files. Rule 1.15 requires that the attorney maintain complete records of all properties of a client and Rule 1.16 requires that the attorney return all property the client is entitled to receive upon termination of the attorney-client relationship. Neither rule, however, addresses how long an attorney must retain client property and whether it is permissible to destroy client files.

Assuming, however, that it is impractical to retain client files forever, when determining your file retention policy, consider the following factors:

- Statutes of limitation for legal malpractice
- Statutes of limitations for ethics complaints or grievances (applies only in certain states)
- Minor age of majority
- Appeal periods
- State and federal statutory retention requirements, such as federal tax requirements
- Future need for information, e.g., federal estate tax return to determine tax credits

You should consider your own need for the file in the event of a malpractice claim. Many insurance carriers mandate that the attorney retain client files for a defined period of time. Be sure to check with your malpractice carrier for more information on establishing a file retention policy.

Finally, you must provide notice to your clients of your file retention policy. Notice can be given to the client in the retainer agreement or at the end of the representation.

Docket Control System

It is essential that you implement and use practice management or docket control system software. Docket control system software is often included within practice management software. Do not begin practice without having a docket control system in place and knowing how to use the system. It is standard practice to have a dual calendaring system. Your firm should have a central calendaring system and you, or your assistant, should also maintain a backup calendar of critical dates.

Conflict Searches

A conflict of interest can adversely affect a lawyer's judgment, loyalty, and ability to safeguard the interest of a client or prospective client. Loyalty and independence of judgment are essential to the effective representation of a client. In fact, they are fundamental to the health of the lawyer/client relationship. A conflict of interest may make it impossible to exercise the essentials of loyalty and judgment.

The problem surrounding conflicts of interest are complicated by the fact that conflicts of interest are subtle. There are no hard-and-fast rules to avoid many conflict of interest problems. The rules that do exist are not absolute, and contain conditions, exceptions and discretionary factors.

Although evidence sufficient to establish a violation of the Rules does not necessarily establish a cause of action for legal malpractice, courts look to the Rules of Professional Conduct with increasing frequency for guidance in considering issues of conflict of interest in disqualification and legal malpractice cases.

The ABA Model Rules of Professional Conduct should be reviewed with regard to a conflict of interest check. In addition, state rules should also be reviewed since there are different requirements that apply.

To avoid conflicts, be sure that you do not discuss confidential information with a prospective new client before conducting a conflict of interest search. You must develop and maintain a database that is used to identify potential conflicts of interests. Be sure that the conflicts system is used by everyone in the firm, have a designated staff person responsible for maintaining the database and make certain that everyone is properly trained on using the conflicts system.

Practice Forms

Bar associations have pointed out that 70-80% of grievance files against lawyers are due to a lack of communication. In short, lawyers' lack of communication increases the risk of malpractice, making access to practice management documents essential for an efficient and effective practice.

The use of form documents is essential for an efficient and effective practice. You will need to determine a list of your most frequently used documents. Depending on the nature of your practice, this list may be include template complaints and answers, document request forms, interrogatories, partnership agreements, articles of incorporation, template resolutions, purchase agreements, or license agreements.

You should also be sure to have client relations forms ready and available before you take your first client. These forms include client intake form, engagement letter, retainer agreement, billing and collection policy, conflict waiver letter, disengagement letter, non-engagement letter and file closing letter.

Emergency Planning

Failing to develop and implement a plan to protect clients' interests in the event of death or disability not only raises ethical issues but can result in increased exposure to malpractice. Missed deadlines and failing to complete tasks in a timely matter will certainly lead to claims.

Ironically, the death of an attorney may not always shield him/her from disciplinary matters. There are many examples where lawyers have been disciplined for the neglect of client matters owing to the ill health or personal problems of the lawyer. In rare cases, even deceased lawyers have been sanctioned.

Lawyers who have failed to make preparations to protect their client's interests in the event of the lawyer's death or disability are sometimes sanctioned, both in the hope of encouraging other lawyers to make such preparations, and to restore confidence in the bar, though the sanctions would obviously have no deterrent effect on deceased lawyers.

It is essential that you prepare for a crisis in your practice. There are two components to emergency planning. The first is taking steps to avoid technology outages or unexpected disruption to your law practice and the second is having a plan to cover your clients if you are disabled.

Technology

In order to avoid lost data and lost time spent, you must regularly back up your computer(s). This is so important, we will repeat it again. You MUST regularly back up your computer(s). Do not sleep until your computer is backed up. Also, be sure all computers are plugged into an uninterruptible power supply with surge protection. Finally, make sure you are using up-to-date hardware and software. You should consider replacing any computer that is older than three years.

Disability

You need to develop an emergency plan with another lawyer to temporarily take care of your clients in the event you experience an unavoidable crisis such as a medical disability or even your untimely death. The planning attorney should have a written office manual that contains key details regarding the practice such as: (a) names, addresses, phone numbers and job descriptions of support and other key personnel (office sharers, of counsel attorneys, office manager, secretary, bookkeeper, accountant, landlord, malpractice carrier and other insurance brokers – disability, life and property), the personal representative and other important contacts; (b) location, account numbers and signatory name(s) for business and trust accounts; (c) location and access information for safety deposit box and/or storage facilities; (d) computer and voice mail access codes; and (e) location of important business documents such as leases, maintenance contracts, business credit cards, client ledgers and other books and records relating to the business and trust accounts.

Client Relations

Successful client relations are the key to a successful legal practice. It doesn't matter how well you can run the administrative aspects of your practice – if you can't retain clients you are doomed for failure. On the positive side, happy clients refer you to others who then become happy clients that refer you to others. Here is a checklist to ensure you have good client relationships and to avoid malpractice claims:

- **Screen clients carefully.** If you have a bad feeling about a client, don't accept the project from the client. Be careful about accepting cases outside your area of expertise.

- **Set realistic expectations with your client.** Don't over promise. Don't ever tell your client they have a slam dunk case if they really do not. Don't tell your client you will send something to them tomorrow and not deliver on that promise.

- **Make sure your fees are clearly outlined.** Be certain that your client understands the basis of your fees.

- **Communicate regularly with your client.** Call your client. Make sure that your clients are informed as to the status of their case. Make sure you promptly return phone calls.

- **Make time for your clients.** Treat your clients as you would like to be treated. Don't make them wait at their meeting, don't interrupt your meeting with your client unless it is urgent, and explain things so that your client understands. Never give your clients the impression that you are too busy to meet or talk to them.

- **Maintain an accurate file with as much detail as possible.** Maintain a calendar system for deadlines and be sure to regularly monitor that system.

- **Admit a mistake.** If you make a mistake, tell your client the truth. Most clients are willing to forgive a mistake but are not willing to forgive trying to cover up a mistake.

- **Bill with detail.** The more detail that you include with your bill, the more likely the client will understand the level of effort involved. Clients have a difficult time paying $1,000 for "Research" without further explanation.

- **Say thank you.**

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