

GOING SOLO: BIG BUCKS & NO BOSS!?!

The Nuts and Bolts of Opening Your Own Law Office



The Nuts and Bolts Of The Law Office

By: Jim Calloway, Director
Oklahoma Bar Association
Management Assistance Program

© 1998, 2000, 2004, 2005 Oklahoma Bar Association

Visit Jim Calloway's Law Practice Tips Blog at <http://jimcalloway.typepad.com/>



*Management
Assistance
Program*

The Nuts and Bolts Of The Law Office

*By Jim Calloway, Director
Oklahoma Bar Association
Management Assistance Program*

(Author's note: This is a compilation of several papers, some dating back to the late 1990's. They have only been lightly re-edited and so the reader may find some out-dated language and some redundancy. Nevertheless, I wish I had had this document available to me when I first opened my own law practice.)

What's the best thing about being a solo practitioner? Perhaps it is the freedom to do what you want, make decisions for yourself, set the hours you want and take only the cases you want.

That sense of freedom and empowerment will stick with you for several days, maybe even weeks, after opening your solo law practice.

Then reality sets in.

In many ways, the beginning paragraph above is absolutely true. You can docket your child's Little League game in the early afternoon and attend it with no explanations required to anyone. But, saying that a solo practitioner has no boss is somewhat humorous. In many ways instead of having a single boss, the solo practitioner has a hundred or more bosses. The "bosses" include every client and the landlord who expects to be paid rent, along with all of the other providers whose fees for services constitute your overhead. Sure you can set your own hours, unless the judge says a case will be heard on a set day and time. Sure you can do whatever you want with your business time and personal time. But most things you want to do with your personal time cost money, which is only available if you devote an adequate amount of business time to practicing law.

The true solo practitioner, with no employees, wears many hats- all the "hats" there are for the business in fact. They are management and labor. They serve as the Chief Executive Officer, the Chief Financial Officer, the Chief Information Officer. They also serve as the file clerk, the errand runner, the receptionist, the secretary and perhaps even the janitor. When the true solo practitioner is in court or in conference with a client, all other business operations are closed because there is no one else available to handle them.

Many solo practitioners will soon decide that they need to hire a secretary, whether full time or part time. Although the lawyer is technically the "boss" of the secretary, in reality adding staff adds to the lawyer's responsibilities and duties, chief among these being paying the secretary and making tax deposits timely. Hopefully a

good secretary will allow the lawyer to produce much more work generating more income than the costs for the secretary.

The goal for hiring a secretary should not be just to make the lawyer's life easier. The law practice is a business. The goal therefore is making money. Staffing decisions should be made to facilitate that goal. Some lawyers would take umbrage at the statement that a law practice is a business. They would maintain that the practice of law is a profession. In fact, you can, in many quarters, start a rousing debate over whether lawyering is a profession or a business. Most of these discussions focus on the perceived loss of professionalism, congeniality, camaraderie and trustworthiness between members of the bar.

Whether there is in fact a decline in the professionalism of lawyers and whether there are too many lawyers in society today are subjects for discussion in another forum.

The answer to the business versus profession debate appears very clear, at least to this writer. Simply put, today the practice of law is a profession which must be operated like a business.

Operating a law firm like a business does not necessarily mean squeezing every penny out of clients, nor demanding that every billable tenth of an hour be compensated.

In fact, the application of some types of business principles to a lawyer-client relationship may cheapen it and demean it, transforming what used to be a confidential personal relationship of trust into a mere commodity. If one shops for a will like shopping for an automobile or a new pair of shoes, then eventually lawyers are reduced to the role of a vendor instead of a professional advisor. The client perceives all lawyers services as the same and price becomes the only important factor. Whether you have advised them for years or saved the family farm a decade ago could become irrelevant when the new law school graduate down the street markets "Last Will and Testament..now reduced to move quick at 50% off." We must therefore cultivate our client relationships while improving our efficiency. We must utilize new technologies without allowing them to distance us from our clients.

One thing remains certain. To the extent that a lawyer can operate more efficiently, quickly and cheaply in the future, it will benefit both the lawyer and the lawyer's clients. Improving in this area is not an option.

Today, we must focus on creating satisfied clients in an increasingly competitive marketplace. Legal ethics and obligations to protect the client's best interests may prevent us from adopting the old adage - "The Customer is Always Right". But we can strive toward the goal of "The Client is Always Satisfied". This does not mean necessarily satisfied with the outcome of a particular case. It does mean that the

client's perception of the lawyer's advice, efforts and reliability should be satisfactory. For it is the client's perception that will result in either future referrals or bar complaints. Many lawyers never recognize that the skill of a lawyer or even an outstanding result may not weigh as heavily in a client's positive or negative perception as other matters. The tone of the receptionist's voice, the amount of time left on hold, the promptness of returned phone calls, the appearance of an attorney's office, copies of pleadings and correspondence being mailed to the client, all may contribute more to your client's attitude than the matters we are trained to consider important.

The Lawyer As Manager A Thumbnail Sketch of Law Office Management

Generally speaking there are several types of lawyer-specific operations in a law office.

1. Client and Case Management
2. Delivery of the Legal Services
3. Document Management
4. Time and Billing
5. Accounting
6. Marketing and Client Development

Traditional means to do these operations involved files in folders, typewriters, manually recorded time sheets and ledgers. Manual systems still work fine. But no one uses a typewriter to prepare documents anymore. There is a difference in ease and accuracy in word processing on a computer versus a typewriter. You will find a similar improvement in automating all of the above functions. The sooner you handle all operations on a computer, the better.

As a lawyer, you need access to the law. The better your access the more you will spend (in money and training). It is very important to shop around among the various legal information providers. Internet access is an absolute must.

Someone must pay you for your services, usually either clients or other lawyers, with a rare situation where a government entity or the other side will pay you.

The best source of business is a referral from a satisfied client. Client satisfaction depends more on the client's perception of his treatment than on the lawyer's skills or the results obtained.

Every dollar you do not pay out in overhead is an extra dollar you take home.

Your greatest successes are often cases that you turn down.

Your client has to receive your bill to pay it. The sooner you get the bill to the client, the better your chances are it will be paid and paid promptly.

Excellent employees are the greatest of prizes. Praise them, listen to them and compensate them well. Schedule some regular time each month (perhaps a luncheon) to listen to your assistant's concerns and ideas. Continuing training for employees is an investment you will never regret.

Your receptionist is often the lowest paid, least experienced and least trained employee. Your receptionist gives all of your clients their first impression of you and sets the tone for every dealing between you and the world. Make sure you are giving the impression you desire

The successful lawyer MUST BE a law Firm Manager.

Most lawyers just want to practice law. A few, perhaps, came from a business background or attended business school and really are excited about the prospect of running their own business. But for most, the business concerns are not what drove them to law school.

What is management?

Well, obviously, law firm management means different things depending on the size of the firm and the type of practice. The managing partner of a two hundred attorney firm has a vastly different view of management than a solo practitioner with one employee.

But, the general tasks of law office management are similar no matter what the size of the firm.

The primary management style difference between smaller and larger firms is the delegation of management duties. The larger the firm the greater share of those duties are handled by staff, who specialize in administration and management. The smaller the firm, the less likely it is that resources are available to hire full time managers and, therefore, the duties fall on the lawyers (or secretaries.)

For convenience, let us refer to two broad sets of management issues, the Administrative Services, which are generally applicable to most businesses and Delivery of Legal Services, those which apply only to a law firm.

Administrative issues are crucial for the existence of the law firm. They may be done poorly, which will decrease success and profitability of the firm, but they will generally be done. For example, if the electricity keeps getting shut off, eventually there

will be a system in place to pay the electric bill. Penalties for late payment or non-payment of employees withholding will eventually be remedied if the practice is to survive. Administrative issues which do not directly relate to the delivery of legal services are often referred to as the "business side" of the practice of law.

Some of these types of administrative issues include:

1. The Physical Location
2. Purchasing
3. Accounting
4. Personnel
5. Establishing procedures and systems
6. General business plan
7. Technology

In addition to the prior list of actual delivery of legal services issues we might add such areas as:

1. Quality Control and Risk Management
2. Work Allocation (who does what tasks)
3. Future Planning
4. Technology proficiency
5. Training and Continuing Legal Education
6. Trust Account Management
7. Development of Legal Assistants and Associate Attorneys
8. Relationships with Affiliated Attorneys

As you can see, these lists could go on and on and it is almost impossible to draw a "bright line" separating one set of areas from another.

The key is to determine whether lawyers are doing tasks that are mostly on the "business side" of the firm and are more properly done by non-lawyer employees or consultants. Even the solo practitioner who has no staff will probably make arrangements for outside help for computer applications, heavy typing and other non-legal matters. More than one solo practitioner's spouse has found themselves pressed into service for tasks as shopping for office supplies, typing or otherwise serving as a temporary receptionist or secretary.

(In fact this is one of the key differences between a solo practitioner and a lawyer practicing in a large firm. A lawyer in a larger firm has the luxury of allowing the lawyer's spouse to be totally oblivious to what goes on in the law practice. A solo's spouse will have to know much more and will have much more direct interest since the disposable income in the household may vary from month to month depending on the success of the practice. Suppose someone calls for the lawyer at home in when the lawyer is out. With a personal injury practice, for example, the spouse will need to know that a minor

accident with no hospitalization may just need some reassurance and instructions to contact the lawyer in the morning and not discuss the matter with anyone further until then. A case involving death or catastrophic injury may mean tracking down the lawyer immediately for client consultation and evidence preservation issues.)

The inherent problem of the lawyer as administrator or manager is that all of the time that lawyers spend managing, they are not producing legal services at all. As a solo and small firm lawyer, one may be surprised that over one-third of office time may be devoted to non-billable tasks. The lawyer has to handle these matters (or delegate them to someone) but should do so as efficiently as possible. Efficiency in management always results in more time for compensated client services.

Office Space — Just Where Are You Going to Work?

As the real estate agent saying goes, there are three important things about real estate; location, location and location. If you wish to establish a new practice with consumer clients, renting an office on the thirtieth floor of a downtown Tulsa office building may not be a wise decision. On the other hand, if you are going to have a litigation based practice with clients not limited to the local area, getting as close to the courthouse as possible maybe the most important consideration.

For the solo practitioner lawyer who is just starting out in business, there are essentially three alternatives:

- (A) you can decline to rent office space and work out of your home,
- (B) you can sublet or office share space with other attorneys, or
- (C) you can lease space independently to establish your own law firm separate from any others.

A. The Home Office - The obvious benefit to working from your home is that you save a tremendous amount of office overhead expenses. It is doubtful your utility bills will be any higher at home due to having your office there and you are already paying your house payment or rent. Plus the Internal Revenue Service has loosened some restrictions on deducting home office expenses.

Nevertheless there are significant disadvantages to operating from a home office. Perhaps the major disadvantage is possibility of an aura of lack of success or professionalism on the part of the attorney who does so. Clients want to be represented by competent, successful professionals. If you office from your home, you may find yourself not getting certain business because clients will have the perception that you cannot be that skilled an attorney if you cannot even afford to have a “real office.” You may also find that clients will entrust you with minor matters, but would go to another attorney with a more impressive office environment when a significant or complicated matter presents itself.

Another detriment to the home office is that it can be much more difficult to get work done in this setting. There are more external distractions (your spouse asks you to help with some household chore "for just a few minutes" or the dog wants to be petted) and internal distractions (turning on the television or raiding the refrigerator).

Finally, you will have to deal with the issue of where will you have conferences and meetings with your clients. Though you might be comfortable inviting some clients into your home, there are certain types of practices (notably family law or criminal law) where this presents an unacceptable risk.

Scheduling client appointments at locations like restaurants or the court house snack bar often simply does not provide a sufficiently confidential atmosphere for attorney/client conferences. There may also be events like closings, will executions or depositions that do not work well in this environment.

While the home office setting is not for everyone and does entail some significant disadvantages, many lawyers are functioning quite well in this environment. It is particularly beneficial for the lawyer who only wishes to practice law part time or where it addresses child care concerns.

If you do decide to practice law from your home here are some suggestions:

(1) Dedicate a room in your house as your law office with one or more separate business phone lines. Having a place to go "to work" will help you discipline yourself and avoid family distractions. Consult carefully with your telephone company as to what features are available for voice mail when you are out of the office or on the phone, call forwarding, or a second business line or a "personalized ring" for your computer/fax machine. Also investigate a personalized answering service. You will be unable to answer the phone quite a bit and it may be worth the monthly cost to have a human being taking messages.

(2) Look at the "all-in-one" devices that have printing, photocopying, faxing and scanning capability. While these are normally not recommended for high volume office use, the small "footprint" requiring less space is a major consideration in most home office environments. Do not buy an inexpensive multifunction device or the ink jet versions of these devices. These will usually turn out to be inadequate. Some good units to review include Brother MFC 9600 or 9700, HP LaserJet 3200 and 1220 series and the LexMark X520.

(3) Try to make an arrangement with another lawyer or a court reporter or some other professional to sublet their conference room or spare office for a certain number of hours per week for client conferences, and

(4) Consider obtaining a post office box or a mail drop for your "official" office address. Post office boxes are obviously much cheaper, but a private mail drop will

have the advantage of allowing you to have your mail delivered to a "suite number" which sounds more impressive than a post office box. In addition mail box stores will accept overnight deliveries and packages that arrive by private messenger such as Federal Express and UPS where the post office will not.

B. Sub-letting an office or office sharing - Office sharing with other attorneys can be greatly beneficial to the beginning attorney. Typically your rental payment will allow you access to any resources in addition to your actual office such as a law library, a fax machine, a copier (you will pay on a per copy basis), a receptionist, client waiting areas, a kitchen, restrooms and so forth. These arrangements can prove beneficial to all concerned as it is unlikely that all of the lawyers will want to use a law book, the conference room or the kitchen at any one time. A solo practitioner, who is not office sharing, will have to pay for these types of items whether they are being utilized or not.

In addition, associating with other attorneys may provide valuable client referrals and some mentors with whom to discuss legal strategies and interpretations. Perhaps the greatest difficulty in being a "true" solo practitioner is finding other attorneys with whom to "brainstorm" or seek advice without compromising client confidences.

A beginning lawyer may also be able to negotiate a rent reduction in return for a few hours of services to the landlord attorney each month for things like filing or routine court appearances.

However, there are several possible problem areas with office sharing arrangements. An attorney's reputation is his or her most important asset. You should be aware that many attorneys will tend to make assumptions about you personally based on the reputations of the attorneys with whom you choose to office share. It is important that you investigate the attorneys with whom you may be intending to office share as to their reputation in the legal community.

You may also find that the attorneys from whom you seek to sublet or office share are reluctant to enter into a written agreement. This is typically because they are as unsure as you as to whether the arrangement will work out on a long term basis. In addition, all attorneys are typically busy and no one wants to take the time to draft an agreement. You are going to make a significant investment in moving into a location, perhaps installing a phone line, and having business cards and stationary and envelopes printed. You should be entitled to some reasonable amount of notice even if the arrangement proves unsatisfactory to the other attorney. Typically, you will find that if you agree to draft the agreement, subject to the other attorney's approval, these concerns can all be adequately and fairly addressed. The leasing attorney should be sure to specify in the agreement what is included in the monthly rental charge and what requires additional payment (such as copies). For a true office sharing agreement between co-equal attorneys, it is also important to spell out what is to be paid for collectively and what is the individual obligation of the attorney.

Perhaps the most troubling concern about office sharing arrangements is the potential for ethical dilemmas or for exposure for liability for the malpractice of another attorney.

Even if you are not truly a partner with another attorney, you may still find yourself in legal jeopardy based on a claim that the client believed he was represented by a partnership. Evidence supporting this allegation could include answering the telephone with a firm name, having a stationary with all of the lawyers names on it, or referring to one another as "partner" in front of the client. You may find that your malpractice insurance carrier will refuse to insure you if there is letterhead, a sign or receptionist answering the telephone combining several attorney's names. The best initial solution to the malpractice exposure is to require that all of the attorneys who are sharing offices obtain malpractice insurance with the same carrier and in similar limits and to provide proof of coverage to each other.

The following language in an office sharing agreement might serve to prevent some future troubles.

"The undersigned lawyers agree that they are all solo practitioners who are pooling to share office expenses but are not a partnership. Each attorney agrees to use his best efforts to ensure that all clients that he or she represents understand that there is no existing law partnership. All attorneys agree that they will not represent clients without a written fee agreement and that all such written fee agreements shall all contain the following language: "Client understands that he/she is contracting only with the attorney whose name appears herein and that the attorney is not in a partnership with the other attorneys located in the same office suites. Only the attorney whose name appears herein is responsible for the client's case."

Potential conflicts of interest are another area of significant concern in an office sharing relationship. There are significant economic benefits that occur from office sharing. An attorney should accept that there will be some detriments and some cases that the office sharing situation will render you unable to handle.

It is not the purpose of this paper to discuss conflicts of interest in depth. These matters are generally discussed in the Rules of Professional Conduct Rules 1.7, 1.8, 1.9 1.10 and 2.2.

Since lawyers who are merely sharing expenses are not considered to be a law firm, many attorneys are not as concerned about conflicts of interest as they would be in a partnership context. They should be. As a practical matter, many of the most significant potential conflicts of interest will be recognized by the clients or perceived even when they do not in fact appear. If the lawyer down the hall represents the wife in the divorce case, you are probably not going to convince the husband that you can adequately and fairly protect his interest. Frankly, you should not even try to convince him and then represent him.

It is possible to construct a "Chinese wall" between yourself and another lawyer in the office sharing relationship. This is a risky course of action however and is not recommended as a general rule. Before even considering that course of action, you should consider the anticipated fee that might be earned in relation to the potential problems with a later claim of malpractice or ethical violation, the extent to which such representation could effect your relationship or future referrals with the other attorney, and the difficulty in securing clients confidentiality under such situations. Some written communication detailing potential problems to the client is required and yet this also serves to raise a red flag should a client later become unhappy. Both lawyers would have to ensure that the files were stored and locked in such a location that the other lawyer or his staff could not have access to the client's confidential information. If a receptionist is shared, clients must be cautioned to not leave messages with the receptionist and such things as sharing the same copy machine could prove to be a problem. Having several lawyers computers networked where they can share files in another problem area . Hopefully after an examination of the facts the attorneys will conclude that this is a situation that is would be better to be safe than sorry.

The "safe" way is to agree in advance that the lawyers will observe the same conflict of interest rules as if they were in a partnership, even though they are not. They are then more free to consult, to share and to network their computers. But that does not mean that they can disclose client confidences to each other without client approval.

Most important office sharing tip: Your phone number is your lifeline for business. You will certainly be passing out business cards with your phone number on them and sending letters. You may be doing some advertising where your phone number is presented. Former satisfied clients who wish to refer you new business will typically do so by the phone number on the business card from your prior representation. It is well worth the investment and expense in an office sharing or subletting arrangement to pay for an additional telephone line for you with your own phone number that you may take with you should the relationship dissolve. This can be done either with a telephone that actually rings on your secretary's desk or it can just be one of the multiple lines that the receptionist answers for all of the lawyers. Your office mates will probably appreciate the additional telephone line and will appreciate your business foresight. A separate telephone line will also allow you to have all of your long distance calls billed to one number so that splitting up the long distance phone calls between lawyers will not take any of your time. Although business telephone lines are a significant expense, this is an important investment into the stability of your future practice.

C. Your own separate location - The major benefit of renting your own law office location is that you will have complete control over all aspects of your office space. You can furnish the office as you see fit and you will be in charge.

The drawback, of course, is that it will be significantly more expensive for you to rent and fully equip your own office than to office share. Before entering into a lease it

is critical that you spend time shopping for a convenient location and that you establish a reasonable budget for equipping your office. You should also spend some time in the office of another lawyer cataloging all of the different equipment that is present.

Being on your own and dependent on no one can bring a great sense of freedom. It also brings much responsibility. If your waiting room needs chairs, you are going to have to buy the chairs. Consider shopping for used furniture. Do not, however, purchase used computer equipment except from an individual that you know and trust well at a very low price. Nothing becomes obsolete sooner than computer equipment.

At a minimum you will probably be forced to purchase or lease a telephone system, a postage meter, a copy machine (or have access to a very convenient copying service), a computer for yourself and each employee, word processing software, time and billing software and law office management software, faxing ability-whether through the computer or a fax machine, high speed Internet access, office furniture, office supplies, desk clocks, wall hangings, bookshelves, file cabinets, as well as various other things. A set of the Oklahoma Statutes is a bedrock part of most offices even though you can use commercial online research services or OSCN for your research. Even with purchasing used furniture at auctions and intense price shopping it is difficult to imagine that a solo practitioner's office could be equipped and opened for less than a five to ten thousand dollar initial investment, especially if you include the first few months operating expenses.

Billing and Collections

***Author's Note:** This portion of this CLE paper is in large the work of Pat Yevics, who is my counterpart with the Maryland State Bar Association. After we did a joint presentation on this topic for the American Bar Association's "Solo Day" event at the ABA Annual Meeting for 2000, she graciously offered to let me make use of these materials in Oklahoma.*

There was a time in the legal profession when you performed services for a client, you billed the client for those services and the client paid you for those services. Like most aspects of modern life, it is no longer that simple.

Now more than ever, billing and collection is a process that practitioners must understand and master if they are to manage their practices effectively and profitably. It requires planning and organizational skills

There are five important aspects to the process:

1. Deciding which clients/cases to take. Know the warning signs of "bad" clients and do not take them.

2. Determining the type of fee and the fee agreement. Inform the client of the billing and collection rules/procedures when you first meet the client. Give a copy of them to the client with the fee agreement.
3. The process of recording time. Knowing the real value of your time and sending invoices that reflect all of your time and effort.
4. The billing process.
5. Getting paid

We will discuss steps three through five. Although these written materials will not cover the first two parts one and two at this time, they are integral parts of the process. covered in the oral presentation. If they are handled properly then it will be much easier to bill and collect for your services.

Timekeeping

According to Ted Orenstein, writing in the ABA Publication, *Flying Solo*, the results of an economic survey of lawyers consistently reflect that those who keep contemporaneous time records have 25% to 40% higher income than those who do not. You must write down your time as you do the work. All firms should collect and enter "timeslips" daily. For those lawyers who are so inclined and are computer literate, they should enter time directly into the timekeeping system as they do the work.

The reasons, according to Orenstein, that lawyers who keep time daily, make more money is because they:

- 1) send better and more detailed bills
- 2) know the true value of their services and are more likely to send bills that reflect all of the time put into the matter.
- 3) are better able to determine which types of cases are less profitable, this goes back to deciding which clients/cases to take.

Each lawyer should be recording all time expended every day and not just on those matters that are billed on an hourly basis. Keep in mind that these are time records and not billing records. You will ultimately determine what time you bill and what time you do not bill. You need to know how you spend the hours in the day so that you can be certain that you are utilizing your precious and valuable time effectively. You should even be accounting for your non-billable time, such as those spent on business development, bar association activities and education.

Billing

According to J.Harris Morgan in his outstanding book, *How to Draft Bills Clients Rush to Pay (available through OBA-MAP.)* communicating effort is critical in preparing invoices. Without proper timekeeping, there is no way to communicate the work and

effort that went into the services that were performed. In his book there are excellent examples of various invoices.

On most matters you should consider doing regular progress billings. It is much easier for a client to pay a series of invoices as the work progresses than a large invoice when the matter is completed. Too often, the client will forget about all the effort that went into the case when it is completed.

Alternative Billing Strategies

Lawyers have and will continue to labor long and hard to produce documents. However, one of the benefits of the increased computerization of the law offices is the accessibility of automated document assembly processes, including such applications as macros, templates and document assembly software.

A question therefore arises as to how these applications can be fairly integrated into a law office environment with the primary billing method being based on the hourly fee. The simple answer is that in a lot of situations they cannot.

The major dilemma facing law office in the immediate future is hourly billing vs. flat fee or task based billing. Many writers have called this the Productivity Paradox. Since lawyers continue to become more efficient in their law firm operations they will greatly reduce the time required to produce certain types of legal services, particularly routine documents. Thus they will have to re-think their billing strategies

Practical Billing Tips

1. **Avoid the Surprise Total!**
A client should never be surprised by the amount of a bill. Poor communication was listed by Altman Weil Pensa as a main reason clients give for not paying an invoice. If you know that a client's bill is going to be high for a particular reason, contact the client personally and tell him/her in advance.
2. **Avoid Complicated or Incomprehensible Format**
The key here is to make the bill as clear as possible. Include enough detail to be certain that the client knows what was done.
3. **Do Billing in a Timely Manner**
For ongoing work, it is critical to bill timely. It is best to bill as soon as the work has been completed. With today's new time and billing software, it is not necessary to wait until the end of the month to send a bill. It is very easy and convenient for a client to forget the work that was done if a bill is sent out long after the work was completed.

4. **Avoid Errors of Any Kind on the Bills**
There is no excuse for any type of error on an invoice, especially an error in arithmetic. Although the time and billing software almost eliminates errors, attorneys in all size practices will often retype an invoice. An error on an invoice will cause a client to question the entire bill and may cause them to question all past and future bills.
5. **For Business Clients, Avoid Directing the Invoices to the Wrong Person**
Make certain that the person who is responsible for reviewing and paying the bills receives them. Nothing slows the payment process more than sending the invoices to the wrong person.
6. **Watch Overuse of Certain Billing Descriptions**
Clients do not like the overuse or, in some cases, misuse of billing descriptions such as 'Conference' or 'Telephone.' When using these descriptions, be as specific as possible.

Keep in mind that none of these tips will guarantee that your clients will pay their bills quickly. You must still make certain that you provide quality work, communicate with your client, mail invoices timely and monitor your receivables constantly.

Collection

Unfortunately even when we do everything right in steps one through four, we still have a problem collecting a fee. You must be diligent when dealing with your accounts receivable. You must make certain that you review your aged A/R on a weekly basis. In small firms, everyone should understand the importance of collecting the accounts receivable.

As with billing, time is of the essence. Statistics show that an invoice over 60 days has only a 70% chance of being collected in full. After 90 days the chance of collecting the invoice in full drops to 45 % and after 120 days, it falls to 20%.

You should be able to generate the following information from your time and billing system on all of your clients and you should review this information regularly:

1. How much each client owes you in total and on each separate matter
2. How much has been billed to date
3. What is total work in progress and how old is the work in progress
4. How much work remains to be done on this matter/client
5. What is the payment history of this client
6. Your fee agreement with the client
7. Other factors such as whether or not the client is a fantastic referral source or

is the brother-in-law of the president of your best corporate client.

Collection Tips

1. Concentrate your efforts on your current clients.

We all have clients and former clients that we have allowed to get too far behind. We should not allow our past errors to prevent us from making certain that our we allow our current clients to get too far behind in payment.

2. Develop a collection policy.

The policy should be simple to administer and enforce. It should address what should be done when a client goes past 30 days, 60 days and 90 days. For 90 - 95% of the cases, the process should be automatic. It can be as simple as sending a letter after 30 days to determine if there is a problem or having an office manager contact a client.

3. Monitor daily cash receipts.

If necessary, distribute copies of daily cash receipts to appropriate staff.

4. Communicate with clients.

Do not avoid discussing collection of fees with clients. If you are providing quality legal services and are charging a fair and reasonable fee, you should be paid for those services. If you choose for whatever reason, to do the work pro bono, then the decision should be yours and not the client's.

5. Contact Clients When They are Late Paying

Have someone in your firm or if necessary a part-time person hired just for collection to contact clients when payment is past 30 days or when they do not live up to a payment arrangement. Follow up is the key. If the client knows they are going to be called they are more likely to live up to their obligations.

6. Stop Work if Clients Do Not Live Up to The Fee Agreement

If you monitor your A/R regularly, you will catch payment problems early enough to withdraw from representation.

7. Consider Getting Paid in Advance for the Work You Do...

- a. **Up-Front Retainers** - This is the most common type of retainer. The money is paid up-front by the client, then used by the lawyer as legal services are performed and billed. Often, the retainer doesn't cover the full cost of the services, and at the end of the matter a substantial account is owing.

- b. **Replenishing Retainers** - The client pays an initial lump sum fee advance, when it has been exhausted the client is given 30 day notice to deposit, either the same amount or a predetermined amount, failing which, subject to ethics, the lawyer stops working and withdraws.
- c. **Security Retainers** - The retainer stays in the lawyer's trust account until the end of the matter. The client is billed as the work progresses and must pay each bill; if a bill is not paid by the client within 30 days, it is paid from the retainer, and subject to ethics, the lawyer withdraws. The amount outstanding when the matter is completed is paid from the retainer. These are sometimes referred to as evergreen retainers.
- d. **Split Retainers** - The retainer is split in two; one-half is used as a replenishing retainer and the other half as a security retainer. After the first half of the fee advance has been spent, the client is billed and must pay each bill. When the matter is completed any outstanding amount is paid from the remaining half of the retainer.
- e. **Credit Cards** - By accepting credit card payments you shift the burden of being the client's banker over to the client's banker. It costs one to three percent of each transaction but isn't that worth the price of not having to collect a fee?

8. Consider giving a discount for paying with 15-20 days

9. If You Agree to a Discount, get a Quid Pro Quo.

If you agree to discount an invoice to get quick payment, consider saying something like you will agree to reduce it by \$75.00 if payment is made immediately.

10. Consider Hiring a Part Time Person to Monitor Your A/R.

This person's sole responsibility will be to contact clients. He/She will meet with you to discuss problems and then given the task of contact all clients with collection problems. This will be money well spent.

11. Consider Handwritten Notes on Invoices to Speed Collection

This may work to "embarrass" clients into paying the invoices on time.

12. Monitor Your A/R Weekly. Age Your A/R Monthly.

Today's time and billing systems make it very easy to run an accounts receivable weekly and to age it monthly. This will allow you catch problems early.

13. Monitor Collections and Deposits Daily

Know which clients have promised to pay and when. You can use *MS Outlook* to keep an automatic list of when payments are due. Enter the information and the date the payment is due and it will remind you on that date.

14. If You Have Employees Make Certain They Know Your Collection Policy

Employees are fully aware of those clients who do not pay. It is very important that all your employees know your policy and your firm's commitment to it.

Good management of your firm will result in quality service and satisfied clients who will value your effort and be willing to pay you for it. Here are some forms to help in collection.

Thirty Day Letter

Dear

In reviewing our accounts receivables I noticed that we have not received payment in the amount of \$_____ for invoice #_____, dated _____.

I am sure this is just an oversight on your part. If, however, you have a problem with the service we have provided, please contact me immediately so we can discuss the matter.

If I do not hear from you I will assume that you have no difficulty with the service or with paying the invoice and will look for payment by (Date).

Sincerely yours,

Solo Law Firm

Sixty Day Letter

Dear

It has been thirty days since my last letter and we have not heard from you regarding payment. According to our fee agreement, all invoices must be paid within 30 days of receipt of the invoice. If we are to continue to provide you with a high level of service, it is critical that we have invoices paid timely.

Please contact me immediately if you have any problems with the payment of this invoice. If I do not hear from you, we will expect full payment by (Date.)

Sincerely yours,

Solo Law Firm

Ninety Day Letter

Dear

I have not had any response to either of my letters requesting payment of the past due invoice # _____ in the amount of \$ _____. I regret that I am at the point where I cannot extend any further time to you for the payment of this invoice.

Effective immediately, we will be unable to perform any further work on this matter until the invoice is paid in full.

Please contact me so that we may resolve this matter.

Sincerely yours,

Solo Law Firm

Letter After Client Promises (Some) Payment

Dear

Per our discussion on (Date) you have agreed to pay \$_____ on invoice # by (Date). We know that you will live up to this agreement.

If there are ever any problems or difficulties with payments or invoices, please contact us immediately so that we can resolve the matter quickly. We want to assist you in every way possible and we are here to answer any questions you may have about our policy and procedures.

We look forward to a continued good working relationship.

Sincerely yours,

Solo Law Firm

**Letter After Client Promises (Some) Payment
And Does Not Send Payment**

Dear

Although you had promised to send payment in the amount of
\$_____ by (Date) we have not received any payment.

I regret that I am at the point where I cannot extend any further time to you for
the payment of this invoice.

Effective immediately, we will be unable to perform any further work on this
matter until the invoice is paid in full.

Please contact me so that we may resolve this matter.

Sincerely yours,

Solo Law Firm

Questions for Staff to Ask When First Contacting Client for Payment

The key when contacting a client for payment is to get the client to tell you what the problem is and why it is not being paid. This should not be confrontational but conversational.

1. Have you received the invoice?

This forces the client to admit that he/she has received it. If he/she says it was not received, ask to check the address and send another copy immediately. After one week, if no payment is received, contact the client again.

2. Ask if they understand the invoice or if they have any questions?

If they have questions or say they do not understand, tell them you will have the lawyer call immediately to answer any questions.

3. Ask if they have any problems with the service being provided?

If the answer is yes, tell them you will have the lawyer call immediately to answer any questions.

4. If they have received the invoice, have no questions or problems, ask when you may expect payment?

Make note of the date and follow up if payment is not received.

Billing and Collection Policy of Solo Law Firm

In order to provide our clients with the best possible service and manage our practice efficiently, it is necessary that we have a fair and reasonable billing and collection policy.

1. We will expect all clients to pay a retainer fee agreed upon at the initial interview. This will be placed into a trust account and will be used to pay for the last invoice at the conclusion of the matter. Any money that is not used for that invoice will be refunded to the client immediately.

or

1. We will expect all clients to pay a retainer fee agreed upon at the initial interview. This will be placed into a trust account and will be used to pay for time and expenses as work progresses. You will receive a monthly invoice that will list the balance of your retainer. If necessary, you may be required to replenish the retainer.

2. Invoices will be sent out monthly and will include the details of the time spent.

3. Payment of invoices will be expected within 30 days of receipt.

4. Work will stop on all work if invoice goes unpaid after 90 days or no payment plan is established and maintained.

DAILY CASH RECEIPTS

Date: _____

Payments expected:

Client	Amount	Rcv'd

Other Payments Received:

Client	Amount

Total Received: _____

DAILY CASH FLOW REPORT

DATE: _____

Operating Account Balance _____

 Amount Expected _____

 Invoices to be paid _____

Anticipated Balance _____

Operating Account Balance _____

 Actual Deposit _____

 Actual Payments _____

Final Balance _____

Payment Expected:

Client	Amount	Rcv'd

Total: _____

Invoices Needed to Be Paid:

Vendor	Amount	Due

Purchasing

You have to buy a lot of "stuff" to run a law office. From office supplies to computer hardware to utilities, even the smallest law firm writes a lot of checks each month. Some of the decisions are simple and routine, but they all either have to be done by an attorney or delegated by the attorney to someone else, usually a paid employee.

Purchasing and overhead decisions are critical. To oversimplify, just compare the attorney who grosses \$100,000 annually with a \$60,000 annual overhead with the one with \$75,000 gross and \$25,000 overhead. The goal is net income or "take-home" pay and so the attorney with lower income and lower overhead "wins" in the comparison.

It is easy for a new lawyer just opening a practice to make statements like "I'm charging my client \$100.00 per hour. My time is too valuable to spend time shopping around for legal pads to save a few cents." While it may be apparently mathematically true, it reveals a dangerous attitude. Even saving a small amount such as ten or fifteen dollars actually puts that amount in your pocket as "take-home" pay if you are a solo practitioner. Even saving ten or fifteen dollars each month adds up over a long term.

This does not mean that the lawyer must personally shop for the best bargain (although for the solo practitioner it may), but it does mean that cost comparison shopping should be stressed. When your employee finds a vendor to supply legal pads at \$1.19 each instead of \$1.39, the correct response is praise, not "Don't bother me with small details." It bears repeating that every dollar you do not spend in overhead is a dollar that you take home in income.

Accounting

Running a business is about making profit. Good record keeping is a must. A lawyer would be absolutely appalled with a client who ran a business without monthly financial reports, profit and loss statement, business projections, cash flow data and other accounting procedures that any business employs. Yet frequently lawyers run their practices with insufficient attention to their bookkeeping.

One should direct immediate attention toward purchasing a good time and billing and accounting software package.

Some case management software packages have accounting functions and a simple program like Quickbooks may work for the solo and small firm lawyer. There are

a number of billing programs available including some released as shareware on the Internet. Other software that combines several functions. PC Law Jr. will handle certain accounting and check book balancing functions as well as time and billing. For the non-accounting types, just remember that accounting software and good record keeping will allow you to greatly save on the fees that you pay to others for preparing your tax returns. Quickbooks also comes with a module called Quickpay which allows you to calculate the withholding from employee's paychecks and print the Forms 940 and 941 for filing with the Internal Revenue Service.

OBA members may consult the OBA Management Assistance Program for advice about their software purchases.

This part of law office management is pretty simple to plan. If you have an accounting background, then you know what to do in this regard. If you don't have an accounting background, then you should utilize accounting software to help you in your day to day operations and obtain professional help to complete and file tax returns. Here's one valuable tip: although programs like Quickbooks will set up standard law office expense categories, consult with your accountant about these before you start entering data. You might as well start off with categories that match the ones your tax preparer uses.

Personnel

There can be no more important business decision in a law office than who you hire to work with you.

For better or worse, your secretary, receptionist or legal assistant will be your representative and create your image when dealing with clients, other lawyers, court personnel and many others in your community. The efficiency and profitability of your office will often be substantially determined by the efficiency and dedication of your staff. Investing in proper staff training is an absolute necessity particularly with new and improved computer hardware and software.

Some beginning lawyers are confused in the terminology between legal secretary, legal assistant and paralegal. The terms paralegal and legal assistant appear to be used interchangeably. The American Bar Association has defined the legal assistant as follows: "Persons who, although not members of the legal profession, are qualified through education, training or work experience, are employed or retained by a lawyer, law office, government agency, or other entity in capacity or function that involves the performance, under the direction and supervision of an attorney a specifically designated substantive legal work, which work, for the most part, requires sufficient knowledge of legal concepts such that, absent that legal assistant, the attorney would perform the task."

Essentially a legal secretary does largely clerical tasks and a legal assistant is

authorized to do more substantive law related tasks, such as document drafting. However, these terms seem to be somewhat interchangeable and most veteran attorneys would tell you that they would much rather have a "legal secretary" with 15 years experience than a "legal assistant" who just graduated from a community college and is seeking his or her first employment. Legal assistants do often keep time records and are billed out by the attorney at an hourly rate when they are doing tasks that would otherwise be done by a lawyer. If you do plan to have a legal assistant bill clients at an hourly rate it is suggested that your attorney fee contracts and or engagement letters specifically note the hourly billing rate for the legal assistant and mention that the legal assistant is not a lawyer and cannot therefore give legal advise. Legal assistants can be a valuable resource for the lawyer and a profit center for the firm if they are properly supervised and managed by the attorney.

It is important to teach a legal assistant or other staff person what they can tell the clients and what they cannot. They may explain the legal processes to the client and how they will operate but they should not advise the clients regarding their rights and duties or represent to the client that they are making decisions regarding the client's case. It is important that an attorney checks the assistant's final work product to ensure that a quality product is always reaching the client.

It is also important for the lawyer to provide regular feedback, both positive and (where warranted) negative, to all employees regarding the quality of their work. You should teach your employees the importance of thorough and complete written documentation of conversations with clients, instructions from clients, and information given to clients. You should also make sure that all employees are aware of the importance of returning telephone calls promptly, being on time for appointments and keeping the clients regularly informed of the progress on their case and other interactions that often fray the attorney/client relationship. As the attorney you should set a good example in all of the above matters.

You should also be aware that when you hire staff, you will invest time as well as money. Problems of the staff will inevitably become your problems. You will have to deal with these issues. I recall once talking to a solo attorney on the phone when we were interrupted by the cry of a baby. The veteran lawyer chuckled and said "I've got a baby here. My secretary's babysitter is sick. When she called in, I told her to bring the baby up. We've got a brief due today and I don't know how to run the computer, but I know how to watch a baby."

Most importantly, you should stress to your employees the importance of maintaining client confidentiality and how discussion of anything that goes on in the office outside of the office could be grounds for immediate termination. Many employees are too lax in this regard, believing that as long as they do not mention names, they can discuss interesting fact situations with their family and friends. Stress to your employees that fact situations can easily identify clients and compromise client confidences without ever mentioning a client's name.

Each person employed by a law firm should be required to sign a Statement of Confidentiality. It is imperative that all employees know and understand that confidentiality of all matters related to the client's and cases is to be held in the strictest confidence and should not be discussed in the presence of other clients, delivery persons or with their friends. In order to assure that each employee knows and understand the importance of confidentiality it is a good idea to have all employees sign a "Confidentiality Agreement" upon employment.

On the next page we have included a sample "Confidentiality Agreement".

CONFIDENTIALITY AGREEMENT

It is the policy of (name of firm) that matters related to the firm, its clients, and its practice are not to be discussed in the presence of any unauthorized persons. The information received in this office is the private property of the client and any unauthorized disclosure could result in legal liability of the firm and prejudice to the client's case.

All information must be treated with the utmost sensitivity and confidentiality. A breach of confidentiality with respect to any client matter or internal matter will be considered reason for immediate dismissal.

This will confirm that I, the undersigned have read, thoroughly understand and agree to abide by the provisions of the foregoing stated policy.

Date: _____

Signature of Employee

Time Management for Attorneys

One of the most common complaints among all attorneys is that they do not have enough time. In fact that seems to be a common complaint from many people in our society today. But for the solo practitioner, this is a critical issue. When you waste a half a day, you have effectively shut down the business for that period. If you waste time in the office regularly, you can have significant problems.

One lawyer enjoyed telling the story of representing a very busy individual who could only meet with the lawyer between 8:00 p.m. and 10:00 p.m. on Wednesday nights or on the weekend. This busy individual was employed as a sanitation engineer riding on the back of a garbage truck. However, between several children all involved in summer athletic teams and a spouse who was taking some college classes in the evenings, these two hours were all he had left during the week.

Time management is more properly the subject of an entire book (or several books) rather than a CLE paper. As solo practitioner, you really need to read at least one book in this subject area. Your attention is directed to the following suggested reading:

The Time Trap by Alec MacKenzie - There have been over one-half million copies sold of this best seller from the American Management Association. This book is available from the Law Practice Management Section of the ABA. It is also available in most book stores. Mr. MacKenzie focuses on "The Twenty Biggest Time Wasters," including inadequate planning, attempting to do too much, the inability to say "No", inadequate controls, too much travel, inadequate staff, drop in visitors, management by crisis, and much more.

The Seven Habits of Highly Effective People by Stephen Covey. Mr. Covey suggests that you recognize that there are tasks which are urgent and tasks which are important. A law practice has dozens of tasks which must be accomplished daily. Even something as simple as filing an Entry of Appearance becomes urgent when the deadline for filing is today. You may find yourself trapped into doing urgent tasks all day without ever having a chance to get to the tasks that are very important but not urgent, such as marketing, contacting referring attorneys and former clients to thank them, law office automation, upgrading hardware or software, writing for publication in legal periodicals or designing more efficient office systems.

Book stores brim with books on time management and self improvement (which generally include significant attention to time management). Obviously there aren't enough lawyers and harried executives to justify this many publications. So time management must be a concern for many people these days.

Several common suggestions run through the many time management

publications that are available. These observations include such things as:

1. Goal Setting - Several times a year one should take the time to set both short term and long term personal and professional goals. It is impossible to succeed until you have decided on what you are trying to accomplish. You should plan for where you want to be in one year, five years, and ten years and then review your prior goals to see what progress you are making towards them and where there is room for improvement.

2. Daily planning- Allow fifteen or twenty minutes per day at the beginning of each day to plan what specific tasks will be accomplished that day.

3. Organization -Every attorney already should keep a Things To Do List on the desk. Try to shorten that and give yourself a daily goal by distilling the list to a five or six "Must Do Today" list. Be sure and prioritize these items.

4. Procrastination is a difficult enemy to overcome. Try to focus on doing your most difficult task as soon as you get to the office each morning. One form of procrastination is to put off unpleasant or difficult tasks by clearing up a bunch of minor tasks that can be done within a few minutes. The result is that at the end of the day soon comes with no progress on large task.

5. Self-study- Consider spending one week recording every minute of your office time, including trips to the restroom and personal phone calls and drop in visitors. You may be surprised at how much time that you are wasting each day and the mere fact that you are recording wasted time makes you likely to waste less time.

6. Plan your errands smartly. One housewife with several children became particularly adept in this regard. She kept a 3 X 5 spiral notebook in her purse and kept lists of shopping items that were needed broken down by store. It was not only a great time saver, but avoided impulse purchases. She could be able to run in Target quickly and pick up just the six items that were needed there. One law office management consultant suggested that one important time management technique was to pick a dry cleaner, gas station, and grocery store that were all on the way to work.

7. Schedule time to work- Try to schedule blocks of time without interruption in your office for such items as taking and returning phone calls and completing long neglected projects. Consider marking off two mornings a week from your calendar for interruption free work time. You might also consider advising your clients as to when you return phone calls for example, between 1:30 p.m. and 2:30 p.m. each day. Once you so advise them, however, you then have to be faithful in returning phone calls during that time period.

8. Delegate effectively. Lawyers are among the world's worst in failing to appropriately delegate projects. Hire good employees and trust them with important

assignments.

9. It is important to learn how to say NO in a warm and graceful way to the many requests that you will have from schools, community groups, bar associations, civic groups, religious groups and the others depend on voluntary help. There is no doubt that many of these are beneficial and worthy projects. Remember Abraham Lincoln's adage that all a lawyer has to sell is his time and advise. Agreeing to serve on yet another committee is pulling more inventory out of your store that cannot then be sold to customers.

10. Try to avoid telephone tag as much as possible. See if your opposing counsel has an e-mail address and regularly checks his or her e-mail. You will be rewarded by the efficiency in communication that is promoted by e-mail as opposed to leaving telephone messages with third parties and futilely attempting to talk in person. Some matters do require discussion and are not handled well via e-mail.

11. Always try to have reading material or other projects with you so that you can effectively utilize unexpected delays (such as waiting for your turn in court or at a doctor's office.) Law office management books are great material to carry in your briefcase for such situations.

12. Try to keep a positive mental attitude no matter how stressful your day to day practice becomes. A good sense of humor is essential for relieving stress or breaking the tension during difficult situations.

Perhaps the most important aspect of time management and stress management is the following adage: Don't Sweat the Small Stuff. Constant worry about every single aspect of your life will soon make you a miserable person and a less effective lawyer. This does not mean that you can ignore crisis and deadlines but means that your efforts are better directed towards working on the project than worrying about it.

Suggested Reading

(All available from ABA Law Practice Management Section through OBA Management Assistance Program.)

Flying Solo: A Survival Guide for Solo Lawyers (3rd. Ed.) (2005)
Edited by Jeffrey R. Simmons

How to Start and Build a Law Practice (5th Ed.) (2004)
By Jay F. Foonberg

OBA Law Office Management articles online at
<http://www.okbar.org/members/map/articleindex.htm>