

Law Office Management Guide Allegheny County Bar Association

*This has been adapted from a project of the Ohio State Bar known as “Office Keeper.”
The Ohio State Bar has graciously allowed the ACBA to adapt this to be in conformance
with Pennsylvania law.*

Table of Contents

Chapter 1 Opening and Maintaining a Law Practice

I. Business Entities

- A. Overview**
- B. Proprietorship or Sole Practice**
- C. Partnership or Multi-Lawyer Practice**
- D. Corporation**
- E. Limited Liability Company**
- F. Other Forms of Business**

II. Law Office Basics

- A. Business Plans**
- B. Why You Need a Business Plan**
- C. Components of a Business Plan**
- D. Options for Writing a Business Plan**
- E. Budgeting**
- F. Office Space Considerations**
- G. Insurance**
- H. Basic Equipment**
- I. Signage**
- J. Letterhead**
- K. Home Office Considerations**
- L. Practice Mobility**

III. Legal Resources – Law Library

- A. Introduction**
- B. The Basics**
- C. Your Law Library**
- D. Your Firm Library**
- E. Your Local Law Library**
- F. Primary Law Resources for your Firm Law Library**
- G. Rules of Court**
- H. Cases**
- I. Statutes and Legislative Materials**
- J. Administrative Rules and Decisions**
- K. Local Ordinances**
- L. Treatises, Hornbooks, Practice Materials, and Handbooks**
- M. Legal Encyclopedias and Digests**
- N. Form Books**
- O. Jury Instructions**
- P. Verdict Reporters**
- Q. Law Reviews and Journals**
- R. Citators**

- S. Legal Newspapers and Newsletters**
- T. Legal Dictionaries**
- U. Citation Manuals**
- V. Legal Directories**
- W. Pennsylvania Bookmarks**
- X. Help When and Where You Need It**
- Y. Law Library Staff Members**
- Z. Arrangement of Library Materials**

Chapter 2 Time Billing and Accounting

I. Accounts

- A. Trust Accounts**
- B. Other Accounts**
- C. Credit Card Payments**

II. Internal Fraud/Theft Protection

- A. Monitoring**
- B. Separation of Duties**
- C. Deposits**
- D. Vacation Policy**
- E. Review and Audits**

III. Information Management

- A. Time and Billing Procedures**
- B. Accounting**

IV. Financial Accounting

- A. Financial Statements**
- B. Invoicing**

V. Rules for Retainers/Billing

VI. Management Reporting

- A. Accounts Receivable and Collection Reports**
- B. Productivity Reports**

Chapter 3 Case Management & Office Operations

I. New Clients

- A. Initial Client Contact**
- B. Documenting the Representation**
- C. Client Communication**

- D. Evaluating Cases**
- II. Collections**
 - A. Seek Counsel**
 - B. Suits for Fees**
- III. File Closing Procedures**
- IV. Case Management Software**
 - A. What It Is**
 - B. Key Features of a Case Management System**
 - C. Main Players**
 - D. Hardware Recommendations**
- V. Internet Security and E-mail**
 - A. Importance**
 - B. Internet Protection**
 - C. E-mail Security**

Chapter 4 Hiring, Retaining, and Terminating Employees

- I. Hiring Employees**
 - A. Determining Your Employment Needs**
 - B. Finding the Right People**
 - C. The Hiring Process**
 - D. The Job Offer**
- II. Managing Employees**
 - A. Establishing Policies**
 - B. The Personnel File**
 - C. Evaluations**
 - D. Protecting Your Financial Information**
- III. Terminating Employees**
- IV. Payroll and Taxes**
 - A. Forms You Must Complete and File**
 - B. Forms Your Employee Must Complete**
 - C. What You Must Pay**
 - D. Outsourcing Payroll**
 - E. Pennsylvania Minimum Wage**
- V. Other Related Issues**
 - A. Independent Contractors**
 - B. Shared Employees**

Chapter 5 Marketing

I. Pennsylvania Rules of Professional Conduct

II. General Ideas and Concepts

III. Necessary Tools for the Marketing Process

IV. Niche Marketing

V. Networking

VI. Websites

VII. Newsletter and Correspondence

VIII. Visibility

IX. E-mail Headers and Footers

X. Specialization

XI. Resources

XII. Public Relations Activities to Consider

Marketing Your Sole Practice or Your Law Firm

Chapter 6 Practice Challenges

I. Making Money

A. Practical Tips

B. Following Your Business Plan

C. Cash Flow

II. Substance Abuse

III. Burnout

IV. Professionalism Consideration – Client Relations

V. Multi-jurisdictional Practice

VI. Retaining Your License

VII. Supervisory Responsibilities

VIII. Malpractice Insurance

IX. Disciplinary Procedures

Chapter 7 Quality of Life

I. Ways to Enhance Career Satisfaction

II. Knowledge Sharing / Use of Computers

A. Sharing

B. Automated Drafting Process

C. Knowledge Management

D. Teleconferencing

III. Taking Time for Yourself / Vacation

A. Find a Backup

B. Breaks

C. Achieve a Balanced Life With Job, Family, and Interests

D. Reassess Your Practice

Chapter 8 Closing, Selling, or Acquiring a Law Practice

I. Overview

II. Rules and Ethics Opinions III.

Preliminary Considerations IV.

Practice Disposition Triggers

V. Parties that May Be Involved in the Sale Process

VI. Professional Responsibility Issues and Rule 1.17 Compliance

VII. Business Transaction Issues

VIII. Law Practice Valuation

IX. Purchase Contract Elements

X. Buyer Issues

XI. Seller Issues

XII. Closing a Law Practice

XIII. Conclusions

Chapter 9 Sample Forms/Letters

I. Subsequent Appointment Confirmation

II. Court Appearance or Hearing Letter

III. Authorization for Transfer of Client File(s)

IV. Checklist for Departing Attorneys

V. Deposition Instructions

Chapter 1 Opening and Maintaining a Law Practice

I. BUSINESS ENTITIES:

A. Overview: The first step when establishing a law practice is to choose a business entity. This chapter describes the basic tax and legal characteristics of the various types of business entities. You will need to be aware of these characteristics in order to choose the appropriate entity.

Most of the focus in this chapter will be on selecting the appropriate type of entity for closely held companies. A closely held company is a business with one or very few owners. Closely held companies are not necessarily small businesses, and the term “closely held” has nothing to do with profitability or the level of business activity. However, there is a unique set of business considerations for a closely held company when choosing a form of business entity. The tax, legal, and management considerations are completely different for closely held companies than for publicly held companies.

The following types of businesses are most common for closely held companies:

- Proprietorship
- General partnership
- Limited partnership
- C corporation
- S corporation
- Limited liability company

There are many forms of business other than the six listed above, but closely held companies will typically not find it advantageous to use other entity types. However, in the right set of circumstances, one of the other entity choices may be desirable or necessary.

This chapter will provide the basic building blocks to make a choice of entity. After learning the basic characteristics of each entity type, the business owner will be able to evaluate the choice of entity factors discussed in later chapters to make the right decisions.

B. Proprietorship or Solo Practice: The solo practice or proprietorship is the simplest form of business for a lawyer. When a single lawyer decides to start a business and does not form a separate legal entity, then the business will be classified as a proprietorship. As the name suggests, a proprietorship has only one owner. A solo practice can include lawyers sharing offices, of-counsel situations, and contract lawyers. Any lawyer that does not have a co-owner or is not an employee falls under this category.

A proprietorship is easy to form, as there are generally very few federal and state requirements. A separate federal income tax return is not required for a proprietorship.

The proprietor simply includes his/her income on Schedule C of his/her Form 1040. The owner is taxed on all the net profit, even if he/she leaves some of the cash in the business. The owner receives no tax deduction for cash draws out of the business. This type of taxation is called flowthrough taxation because the net profit or loss flows through to the proprietor's individual income tax return.

Any net profit of the proprietorship will be subject to self-employment tax on the individual's federal income tax return. The self-employment tax is computed on Schedule SE and is attached to Form 1040. Losses from prior years cannot be carried forward or backward to offset self-employment taxes in other years.

There is no liability protection with a sole proprietorship, except a one member LLC taxed as a proprietorship. Even then, the lawyer is personally liable for his/her own torts including malpractice. A legal entity can only protect against liabilities like contracts, bank debt where the attorney is not signed on the debt (which is unusual), and general trade creditors.

C. Partnership or Multi-Lawyer Practice: This group includes any practice with two or more attorneys as co-owners. This does not include expense sharing arrangements. Multi-attorney practices are a partnership for state law and tax purposes, unless they form or elect to be a corporation. Multi-member LLCs are taxed as partnerships, unless an election is filed to be taxed as a C corporation or elections filed as an S corporation. A corporation can be either a C or an S corporation.

There is no liability protection with a general partnership. As a separate legal entity, the partnership is primarily liable for all of its debts and liabilities. This means a creditor of the partnership can look to the assets of the partnership to satisfy liabilities. Any general partner of a partnership is also liable on any partnership debt. The liability of any limited partners is limited to their capital contribution plus any debts they personally guarantee.

A general partnership and a LLC taxed as a partnership file a Form 1065 for federal tax purposes, with K-1 forms going to the partners reporting their share of tax items. Partners in a professional practice will generally pay self-employment tax on their income. Attorneys cannot be employees of their own partnership.

A partnership is a flow-through entity for federal income tax purposes. The partnership does not pay federal income tax. All items of income, losses, gains, deductions, and credits pass through from the partnership to the partners. The partners then put these items on the appropriate schedule on their tax return. In general, any item that has special tax treatment at the individual or corporate level should flow through separately from the partnership to the partners.

The partnership files an annual informational return on Form 1065. A schedule K-1 for each partner is included with the Form 1065 to report each partner's tax information. Each partner takes the information from his K-1 and reports this on his/her separate income tax return.

As under federal law, the income and deductions of the partnership are allocated to the partners in proportion to the right to share in income. Business and non-business income are treated differently. A partnership must file the PA-20S/Pa065 information return if either or both of the following apply: (1) during its taxable year, the partnership earned, received, or acquired any gross taxable income (or loss) allocable or apportionable to PA; (2) The partnership had at least one partner that was a PA resident individual, estate, trust, or other pass through entity at year end (PA S corporation or partnership). Each PA S corporation or partnership must also submit with its PA-20S/PA-65 Information Return a complete copy of its federal income tax return, including all schedules, statements, Federal Schedules K-1, and PA-20S/PA-65 Schedules RK-1 and NRK-1 that are received from other pass through entities. With its PA-20S/PA-65 Information Return, the entity must also submit copies of the PA-20S/PA-65 Schedules RK-1 that it provides to its resident partners/shareholders and copies of the PA-20S/PA-65 Schedules NRK-1 that it provides to its nonresident partners/shareholders. If the entity is a PA S corporation or an LLC and it has already forwarded a complete copy of its federal return to the Bureau of Corporation Taxes with the RCT-101, it does not send another copy. A partnership with operations wholly within PA, whose partners are all C corporations, must provide the Department a complete copy of its Federal Form 1065. Such a partnership must submit a PA-65 Corp, Directory of Corporate Partners, and does not complete a PA-20S/PA-65 Information Return. In most instances, PA PIT law and regulations do not provide specific treatment similar to federal tax laws. This is especially true with regard to federal elections concerning the timing of income and expense items. Taxpayers should not use federal elections to determine PA PIT income (loss). The PA-20S/PA-65 Information Return instructions explain the PA rules for classifying income and identifying PA allowable expenses and deductions, as well as those adjustments that PA PIT law does not allow. Following the instructions allows the PA S corporation or partnership to accurately report income, deductions, gains (losses), and other classified amounts for PA purposes, and to pass through those amounts to its resident and non-resident partners and shareholders. These instructions also explain the taxation of distributed and distributable income (losses) to partners and shareholders under PA PIT law. The partners/shareholders report the classified income (losses) and credits on their PA-40 Personal Income Tax return, PA-41 Fiduciary Income Tax return, or other PA returns.

Partnerships operating a trade or business activity will usually generate self-employment income or loss that will flow through to any general individual partners. Limited partners will generally not be subject to self-employment tax on their portion of the partnership profit. The partners will combine the pass-through self-employment income or loss from the partnership with other sources of self-employment income or loss and report the net self-employment income amount on their individual income tax returns. (If a partner has net self-employment income of over \$400, the self-employment tax will be computed on Form 1040, Schedule SE.)

There are many different types of partnerships. Each type of partnership has its own special legal and tax characteristics.

The following types of partnerships are discussed below

- General partnership
- Limited partnership
- Limited liability partnership

1. General Partnership: A partnership will be classified as a general partnership if it is not formed as a limited partnership or limited liability partnership under the applicable state law. The general partnership classification is the catch-all or default category for any partnership not falling within one of these three special categories. All partners in the general partnership are general partners.

All the partners of a general partnership are liable for all the debts of the partnership. This is the main legal characteristic that separates the general partnership from other types of partnerships. The creditor of a partnership can look to the partnership or any partner for payment. State law may provide that the creditor must first collect from the partnership before going after the partners. However, each partner is ultimately liable for the partnership debts if there are not enough assets at the partnership level. A creditor can select which partner(s) to pursue. Usually the target will be the partner(s) with the most money. There is no requirement to collect an equal amount from each partner or an amount that is proportionate to a partner's ownership interest. If the creditor collects all his/her debt from one partner, then it is up to that partner to pursue the other partners for repayment. From a practical standpoint, a creditor will probably name the partnership and all general partners in a suit, and then try to collect from the entity or person with the most money.

In Pennsylvania, a partnership is entitled to indemnity from an individual partner if: (1) it pays damages to an injured third party; (2) it is obligated to pay the damages to that party; and (3) its culpability is secondary to that of the individual partner. A partnership is obligated to pay for any loss suffered by a third party where an individual partner acting within the scope of his/her apparent authority is guilty of misfeasance causing that loss. Thus, when a partnership pays damages for a liability incurred by a partner, and none of the partnership's other partners or employees assist in the conduct giving rise to the liability, the partnership's liability is considered vicarious, or secondary, and the partnership is entitled to indemnity from the partner. An example of this is where a Pennsylvania law firm was entitled to indemnity from a former partner for damages the firm paid out to clients who were the victims of the former partner's misappropriation of escrow funds where no other firm members were involved in the misappropriation.

2. Limited Partnership: A limited partnership has one or more general partners and one or more limited partners. There must be at least one general partner. As discussed above, any general partner will be personally liable for the debts of the partnership. It is possible to have a separate legal entity as the general partner. For example, a limited liability company or a corporation might be the general partner. By using a legal entity as the general partner, no individual will be personally liable for the debts of the partnership. The creditors can look only to

the assets of the corporation or the limited liability company to satisfy the debts of the partnership. The partnership creditors will generally not be able to go around the corporation or limited liability company and hold the owners of the corporation or limited liability company personally liable.

Limited partners can generally not be held personally liable for partnership debts. Their liability exposure will be limited to their initial contribution, any obligation to make future contributions, and any debts they personally guarantee. A creditor may be able to hold a limited partner personally liable if he/she has been active in the management of the partnership. A limited partner will need to look at the applicable state law to determine how much management activity may cause him/her to be held personally liable for partnership debts.

The limited partnership will be formed under the limited partnership laws of a particular state. Most states such as Pennsylvania have enacted some form of the Revised Uniform Limited Partnership Act (RULPA) to allow the formation of limited partnerships in their state.

A limited partnership is managed by the general partner or partners. The limited partners may have a vote for some major business decisions. For example, the partnership agreement may have the limited partners vote on significant matters like admitting new partners, selling substantially all the assets of the partnership, and removing a general partner.

For tax purposes there are some differences between general and limited partnerships. The first difference relates to the deductibility of losses flowing through the partnership to the partners. General partners will have far fewer restrictions on the deductibility of these losses. Limited partners will have more problems with “tax basis” limitations and “passive activity” loss rules.

The treatment of self-employment tax is the second major difference between general and limited partnerships. Individual general partners will generally be subject to self-employment tax on the pass-through income from the partnership. See the self-employment tax discussion above (see Partnership or Multi-Lawyer Practice). On the other hand, limited partners will generally not be subject to self-employment tax on their share of the partnership profits. The exception to this rule is if the limited partners are actively involved in the management of the partnership.

3. Limited Liability Partnership: With a limited liability partnership, the partners are generally not personally liable for the acts of other partners and employees. In this respect, the partners are treated much like limited partners in a limited partnership. However, with a limited liability partnership the partners are generally liable for other debts. The partners can be active in the management of the partnership and not risk exposing themselves to personal liability.

From a tax perspective, a limited liability partnership can be somewhat unique. Like any other partnership, the limited liability partnership is a flow-through tax entity and does not pay tax at the partnership level. However, the deductibility of losses and the self-employment tax treatment will probably depend upon each individual partner's level of activity in the partnership. If a partner is active in the management of the partnership, the partner will probably not be subject to potential loss limitations under the tax basis and passive activity loss rules. Inactive partners may be subject to these limitations.

The more active partners will most likely be subject to self-employment tax. The inactive partners will most likely be treated like limited partners and will not be subject to self-employment tax.

The limited liability partnership has been particularly attractive for many professional practices. Many professionals choose to practice as a partnership for tax purposes because of favorable tax treatment and flexibility. A limited liability partnership may provide additional liability protection for these professionals in some states. The limited liability partnership should protect the partners against most personal liability for acts of other partners or employees. Further, in many states it may also protect the professional partner from any malpractice liability resulting from the wrongful acts of another partner.

In most states, professionals (for example, dentists, orthodontists, attorneys, physicians, accountants, engineers, and architects) are personally liable for their own malpractice and wrongful acts of staff members under their direct supervision. The unlimited personal malpractice liability generally cannot be avoided, regardless of what type of business entity the professional selects. However, with the proper entity selection, a professional may be able to protect him/herself against the malpractice of other partners and staff members not under his/her direct control. In some states, the limited liability partnership will help in this regard. A corporation or a limited liability company may also work.

In Pennsylvania, limited partnerships are creations of the state and require a certificate of limited partnership on file in the Department of State to exist. The Pennsylvania Revised Uniform Limited Partnership Act governs limited partnerships. The state also requires that an individual be admitted as a limited partner in the partnership agreement in order to achieve limited partner status. If a purported or actual limited partner participates in the control of the partnership's business, then the partner must be considered as a general partner and accordingly is subject to personal liability.

In Pennsylvania, because a partnership is based on a contract between the partners, the capacity of a person to become a partner in a partnership depends on the person's capacity to enter into a binding contract. The "persons" associated in a partnership may be natural persons, a corporation, another partnership, a limited liability company, a business trust, any other type of association, a government entity (other than the commonwealth), an estate, a trust, or a foundation. All of

the partners in a partnership that render one or more restricted professional services (chiropractic, dentistry, law, medicine and surgery, optometry, osteopathic medicine and surgery, podiatric medicine, public accounting, psychology, or veterinary medicine) must be licensed practitioners, unless a statute, rule, or regulation applicable to a particular profession provides otherwise. Because a partnership agreement is a contract, it requires consideration to be enforceable. The consideration for a partnership contract is often the mutual binding of the partners' time, effort, and capital to benefit each other through the conduit of the partnership. Any amendment to the original contract will require additional consideration.

D. Corporation: A corporation is a separate legal entity created under the laws of a particular state. Most states require corporations to file articles of incorporation with the secretary of state or other designated official. The articles of incorporation generally only cover the formation of the corporation. A separate legal document, normally called the bylaws, governs the operations and management of the corporation.

A corporation is managed by its directors and officers. The shareholders elect the directors; the directors in turn elect the officers. The officers handle day-to-day operations of the business. The officers and directors do not need to be shareholders of the corporation. However, it is typical in closely held companies for the shareholders to also be directors and officers.

According to Pennsylvania law, being the mere creature of law, a corporation possesses only those properties that the charter of its creation confers upon it, either expressly or as incidental to its very existence. Generally, the attributes of a corporation include the capacity of perpetual succession and the power to sue or be sued in the corporate name, to acquire or transfer property and do other acts in the corporate name, to purchase and hold real estate, to have a common seal, and to make bylaws for internal government. The characteristics that furnish the essential points distinguishing a corporation from every other variety of business organization are the greater aggregation of capital than is reasonably available to any single individual or small group of individuals, the limitation of the liability of the individuals involved in the enterprise to the sums voluntarily contributed, and the continuing dedication of such sums to the enterprise, irrespective of the deaths of the contributors. Closely held (or close) corporations, in their operation and in the relationship of the stockholders to each other, resemble partnerships more than traditional corporations. Typically, a close corporation has a small number of stockholders, there is no ready market for its stock, and all or a substantial majority of the stockholders participate in the management, direction, and operations of the corporation.

In Pennsylvania, a closely held corporation is defined as either a statutory close corporation or a business corporation that has not more than 30 shareholders, with shares that are held jointly, in common, or in trust by two or more persons, as fiduciaries or otherwise, or that are held by spouses, being deemed held by one shareholder for this purpose. Closely held corporation status is automatic, and no filing in the Department of State needs to be made with respect to the acquisition or termination of that status. A statutory close corporation is defined simply as a business corporation that has elected to

become subject to the statutes dealing with statutory close corporations and whose status as a non-stock corporation has not been terminated. The articles of incorporation of a statutory close corporation must provide that neither the corporation nor any shareholder may make an offering of any of its shares of any class that would constitute a public offering within the meaning of the Securities Act of 1933. A statutory close corporation may be a non-stock corporation, a registered corporation, a professional corporation, or an insurance corporation. It cannot be a management corporation, however.

The corporation provides limited liability protection to all shareholders. The shareholders are generally at risk only for their capital contributions and any debts they personally guarantee. In a closely held company, the owners may need to guarantee virtually all the debts of the corporation. Of course, this takes away some of the benefits of incorporating. There are some other limits to the liability protection provided by a corporation. Sometimes creditors can look through the corporation and hold the shareholders personally liable. This concept is known as “piercing the corporate veil.” This concept is generally limited to situations where shareholders have basically ignored the structure of the corporation in their business dealings. The shareholders, officers, and directors can also be held personally liable for certain payroll and other taxes they are required to withhold from employees or collect from customers and remit to the taxing authorities.

The federal tax treatment of the corporation will depend upon whether it is classified as an S or C corporation. The profits of both types of corporations are not subject to self-employment tax. Of course, the owners are subject to payroll taxes on any wages taken out of either type of corporation. The self-employment tax and payroll tax treatment is where the similarities end for the two types of corporations. They are treated drastically different for other federal tax purposes. The C corporation is a separate taxable entity. The S corporation is a flow-through entity.

A C or S corporation can be used under the corporate form, whether the entity is incorporated, or an LLC taxed as a corporation under the proper election. Tax is paid at the corporate level for any taxable earning of a C corporation. The taxable earnings flow through to the shareholders with an S corporation. However, most professional firms pay out most or all of their taxable earnings in wages to the owners. Note the 50% nondeductible part of meals and entertainment, officer life insurance premiums, and other nondeductible items can create taxable earnings.

1. C Corporation: The C corporation is a separate taxable entity apart from its shareholders. This makes the C corporation unique. All the other major forms of business entities are flow-through tax entities. The C corporation pays tax on its net taxable income. Any losses do not flow through to the shareholders. Losses either are carried back to preceding years to receive a refund, or are carried forward to offset future income. Any distributions of current or previously accumulated profits are taxable dividends to individual shareholders. Corporate shareholders may receive a full or partial dividends-received deduction. The dividend distributions are not deductible to the C corporation. This tax system can result in double taxation: once at the corporate level and then again at the shareholder’s level on dividend distributions. This double taxation certainly

occurs in publicly held corporations. However, there usually is not double taxation in closely held C corporations.

2. S Corporation: An S corporation is generally a flow-through entity for tax purposes. An S corporation can pay tax at the corporate level. However, entity-level taxation is the exception, not the rule. It applies only to certain S corporations that were once C corporations.

Otherwise, flow-through taxation applies to any item of income, loss, gain, deduction, and credit, much like a partnership. Any of these items that have separate tax treatment at the shareholder level will flow through separately to the shareholders.

The S corporation shareholders do not pay self-employment tax on profits of the S corporation. Unlike a C corporation, any distributions of previously taxed S corporation distributions are generally not subject to tax at the shareholder level.

There are limits on the number and type of shareholders that can own stock in an S corporation.

Even though an S corporation is treated as a flow-through tax entity, it is still treated as a corporation for state law purposes. An S corporation will have the same limited liability opportunities that are available to the C corporation. Likewise, an S corporation is managed by its officers and directors in the same manner as a C corporation. There may be different state reporting and tax requirements for an S corporation versus a C corporation.

E. Limited Liability Company: Limited liability companies (LLCs) have become very popular in the past few years. They provide the limited liability protection found with a corporation and the flexibility provided by a partnership.

The owners of an LLC are called members. Most states allow one-member LLCs, as well as multi-member LLCs. These members generally receive the same liability protection as shareholders in a corporation and limited partners in a limited partnership. The personal liability of an LLC member is limited to his/her capital contribution plus any debts personally guaranteed. Unlike the limited partner, an LLC member can be actively involved in the day-to-day operations of the LLC and not risk losing the liability protection

The LLC is managed by its members. Some LLCs choose to have centralized management by electing a management committee and/or one person to manage the day-to-day operations of the company. Other LLCs may choose not to have centralized management. These LLCs will be managed by all of the members based upon some type of vote or consensus. Management provisions will be set forth in some type of bylaws, declaration, or operating agreement. As a general rule, the members of the LLC must file some type of articles of organization in the state in which they are organized. The members will then have some type of bylaws, declaration, or operating agreement to govern the operations of the LLC.

A written operating agreement, declaration, or bylaws are generally not a requirement for forming a limited liability company. However, a written agreement is highly recommended. A written agreement will solve more problems than it will create. The agreement will address many important management and operating issues. This is especially true in a multi-owner LLC.

A one-member LLC owned by an individual will be taxed as a proprietorship for federal tax purposes. The one-member LLC does not have a separate tax existence, unless the individual elects to have the one-member LLC taxed as a corporation by filing Form 8832.

The uses for one-member LLCs have grown significantly over the past few years. Most states now have one-member LLC provisions. All proprietorships should seriously consider setting up an LLC to take advantage of the liability protection. Forming an LLC is a low-cost way to get added liability protection for proprietors.

The proprietorship can continue the same accounting and tax treatment after the LLC is formed. The one-person LLC will continue to file the same Schedule C for federal income tax purposes. Double-entry bookkeeping is not required. A federal identification number is not required if the business has no employees. Further, the same federal identification number can be used if a proprietorship switches to an LLC. The low cost and hassle of setting up an LLC makes it very attractive for proprietors trying to obtain liability protection.

The use of one-member LLCs is not restricted to individuals in most states. Corporations, non-profit entities, partnerships, and other limited liability companies can own a one-member LLC. For example, a one-member LLC owned by a corporation is treated for tax purposes as a division of the corporation. The LLC does not need to file a separate tax return. However, the corporation receives added liability protection from the activity placed in the one-member LLC.

The same is true for new business activities started in an existing S corporation or a limited liability company. It may be advantageous to have the new activity placed in a one-member LLC. A separate tax return is not filed. The activity in the one-member LLC is repeated as part of the S corporation or LLC tax return.

Non-profit organizations have been making use of limited liability companies. A non-profit organization can receive liability protection for activities placed in the wholly owned LLC. From a federal tax perspective, any for-profit activities operated by the non-profit entity can be included on Form 990T tax return, allowing income and loss activities to offset. This structure can be more advantageous than using a for-profit subsidiary corporation.

One-member LLCs have also been used for real estate ownership. An individual may wish to own real estate through a one-member LLC versus having outright ownership. The same is true for business entities that own real estate. Even a fractional interest in real estate can be owned in a one-member LLC.

The members of a multi-owner LLC will almost always want to have the business taxed as a partnership. In most states, the members have a choice between partnership and corporate taxation. The owners will generally not want the LLC to be taxed as a corporation.

An advantage of the multi-owner LLC is having the flexibility of partnership taxation. For income tax purposes, the LLC will be treated like a general partnership, and the members will be treated like general partners. For self-employment tax purposes, treatment of the LLC will be very similar to that of a limited partnership. The self-employment tax will generally apply to any member actively involved in the management of the LLC.

In Pennsylvania, a limited partnership is a type of partnership in which one or more persons with unlimited liability—general partners—manage the partnership, while one or more other persons—limited partners—only contribute capital. Limited partnerships permit a manner of doing business by which individuals can invest their money free of the fear of unlimited liability and the responsibilities of management. Limited partnerships are creations of the state and to exist require a certificate of limited partnership on file in the Department of State. The Pennsylvania Revised Uniform Limited Partnership Act governs limited partnerships. An individual must be admitted as a limited partner in the partnership agreement in order to achieve limited partner status. If a purported or actual limited partner participates in the control of the partnership's business, then the partner must be considered as a general partner and accordingly is subject to personal liability.

II. LAW OFFICE BASICS

A. Business Plans: What is a business plan? Generally, a business plan describes the business and details the past, present, and future of the company. The plan is outlined in a document prepared by the firm's owner/manager.

B. Why You Need a Business Plan:

1. Estimating Start-up Costs: For new firms, it provides a framework for organizing estimates of your start-up costs, and how much you'll need to invest yourself or obtain from other sources.

2. Operating Budget: Your business plan will contain a budget, which forces you write down and analyze your operating expenses. This also helps you formulate revenue targets.

3. Revenue: The plan provides a means of estimating revenue.

4. Financing for a New Firm: If you're seeking outside funding for a new practice, a business plan is often required by lending institutions for new

enterprises. Of course, lenders require a business plan because they want evidence that the business will generate enough income to pay back the loan. It is certainly possible for a lawyer to have a lot of clients and still fail to make a profit. Lenders want to see that you've planned for success.

5. Financing for an Existing Firm: If you're seeking outside financing for an existing firm, a business plan helps convince lending institutions to invest in your business (even if a business plan isn't specifically requested).

6. Protecting Your Investment: If you're funding your firm with your own assets, you need a business plan for the same reasons a lender requires one: you do not want to waste your own investment in the business.

7. Defining Objectives: A plan helps you to define your objectives (business, personal, and financial) and the means of achieving them.

8. Business Description: A plan should include a business description that clarifies your practice, specialties, services you offer presently, services you'd like to offer in the future, and profitability (or profit potential).

9. Marketing Plan: A marketing plan helps your firm make money from the onset by forcing you to devise an effective marketing strategy and means of "getting the word out."

10. Fixing Problems: For existing firms, developing a business plan provides a way to examine what is working and what isn't, and identify areas that can be improved upon, as well as the less satisfactory aspects of your practice. Once negatives are identified, you can plan the remedies, solutions, and corrective action.

C. Components of a Business Plan:

1. Executive Summary: This is particularly helpful if your business plan is going to be designed for public consumption (lenders, etc.). The executive summary summarizes the highlights and key points of your plan in one or two pages.

2. Business Description: There are three aspects of this: what happened in the past, what is going on now, and what you aspire to do in the future. Write a factual description of your firm, its ownership, and history. As for the future, write down your vision—your dream of what your business would be in the perfect world. What will you be doing, and who are your clients? What will make your business successful? What distinguishes you from all of the other lawyers?

3. Management Summary (if applicable): Consider developing a management summary to provide background on management team members, their experiences, and key accomplishments.

4. Products and Services: Describe your practice areas and the specific products and related services offered. Also describe how your products and services stand out or can be differentiated from those offered by other firms.

5. Market Analysis: Put together a summary of your typical clients within each practice area, and describe the competitive landscape, market size, and expected growth of that market.

6. Marketing Plan: How do you market yourself and your business? For example, how will you solicit referrals from other lawyers? Should you sign up for any lawyer referral services? How will you establish yourself in your community and make potential clients aware of you and the services you provide? Will you advertise? Will you have a website? Related to this is an analysis of what makes you unique, what you believe is your competitive advantage, and what the market is lacking (that you can provide).

7. Strategy and Implementation: Describe how you will execute your plan and what steps you'll take to put it into action. This is also where you'll establish milestones and set deadlines by which certain things will be done.

8. Financial Plan: This contains key financials including revenue, cash flow, profits, and expenses.

D. Options for Writing a Business Plan:

1. Write it Yourself: This can be a little intimidating, but it is certainly doable. Create an outline of the points you want to address and start filling it in.

2. Hire a Professional: There are business consultants and “lawyer coaches” who can help you write a business plan.

3. Use Business Plan Software: There are many options for this, including applications like Business Plan Pro (see www.paloalto.com), Biz-Plan (www.planware.org), Business Plan Success (<http://www.business-plan-success.com>), and others.

E. Budgeting: Budgeting is usually undertaken as part of or immediately after the development of a business plan.

1. When You Should Do It: Annually, usually at the start of your tax year.

2. Fixed or Adjustable Monitoring: You need to periodically monitor your budget (monthly and at least quarterly) to see how you're doing, and also because budgets sometimes need interim adjustments. Unexpected developments should be factored in, and resources may need to be reallocated.

3. Requisite Tasks: In order to develop a budget, you need to:

a. Estimate your fees or revenues. This involves estimating the amount of work from new clients and the amount of work generated by existing clients.

b. Estimate your personnel/payroll costs (probably your largest expense). This should include compensation for all employees aside from unscheduled bonuses or draws for equity partners; also include the cost of benefits.

c. Estimate your operating expenses. These include lease or mortgage payments for your office space, any costs associated with off-site (closed) storage, utilities, office operating expenses, professional activities such as CLE seminars, professional fees, and general business expenses.

4. Educated Guesstimates vs. Projection Based Upon Hard Numbers: If your firm has already existed for 12 months or more, then hopefully you have some historical information upon which to base your projections. If you don't, then no matter what else you do, you need to immediately place top priority on the installation of a legal time/billing and accounting system that will enable you to know and track your revenues and costs. This is absolutely critical to the success of your firm, and the only true way of determining where the money is coming from and where it is going. If you're launching a new firm without historical data, then you'll have to crunch some numbers based upon estimates.

F. Office Space Considerations:

REMEMBER EVERY SITUATION IS UNIQUE—WHAT WE LIST HERE AS A BENEFIT MAY BE A DRAWBACK IN YOUR SITUATION AND VICE VERSA.

1. Buying Versus Leasing:

a. Benefits of Buying:

Investment Retirement Fund: If you buy real estate for your business, then you're a lawyer and a real estate investor. If your property appreciates over time, you may be able to sell it later and realize a substantial profit. That profit may be an excellent retirement fund for you down the road. Furthermore, when you look back at how much money you've paid in rent over a period of

five or ten years, it can be depressing when you realize that you have nothing to show for it in terms of assets.

Additional Income: If you buy more space than your practice requires, then you may want to become a lawyer and a landlord. By leasing the additional space, you can generate additional revenue and offset your monthly mortgage obligation.

Locking-in Costs/Budgetary Benefits: Many commercial leases have accelerator clauses that increase the rent at specified time intervals. Also, many leases are for shorter terms (five, seven, ten years), so lease expenses can increase dramatically once the current lease expires and a new one must be negotiated. Assuming that you purchase office space with a fixed rate mortgage, you can avoid increases in office space cost.

Tax Deductions: The associated costs of owning and occupying commercial office space may provide expense deductions in the form of mortgage interest, property taxes, and other items.

b. Drawbacks of Buying:

Higher Initial Costs: Buying commercial space typically costs far more upfront than leasing. There are appraisal and maintenance costs, inspection fees, potential architect fees, the requirement of a large down payment, improvement costs, and transfer taxes. For example, there are often 20% to 30% down payment requirements. So if you buy a \$600,000 property, you may have to come up with an \$180,000 down payment.

Limited Flexibility: If your business grows to the point that your owned office space becomes too small, it may force you to sell it if there's no way to expand.

Time Consuming: Looking for, buying, financing, and building real estate can be incredibly time-consuming for the owner, even with the assistance of a real estate agent and architect. This can be quite a distraction to the running of your business. Unexpected maintenance costs can result in disruptions to your practice as well as unanticipated expenses.

Tax Drawbacks: Just as you may be able to deduct some expenses associated with owning property, other expenses may not be deductible. For example, rent expenses may be fully deductible when paid. However, improvements and depreciation on a

commercial building may only be deductible over a period of years. Check with your tax accountant.

c. Benefits of Leasing:

Prime Location: Leasing office space often provides the ability to obtain space in a prime location. If your practice would benefit significantly from being in a high-profile location, leasing may be the only way to accomplish that.

Unimpaired Borrowing Power: Your ability to borrow money for the operation or expansion of your business may be significantly curtailed if you've over-extended yourself with a real estate acquisition.

Less Impact on Cash Flow and Working Capital: It's easy to tie up a significant percentage of your working capital and cash in a real estate purchase. With no safety zone or cash buffer, the business may be vulnerable to unexpected cash flow disruptions (a bad month, etc.). If your resources aren't tied up in real estate, then they can be used to capitalize on opportunities or expand your business.

Less Time Consuming: Compared to buying, a lease arrangement typically requires far less of the owner's time to complete. This allows you to spend more time running your business and less time worrying about the new space and managing the property.

d. Drawbacks of Leasing:

Lack of Equity: Of course, you'll acquire no assets in a leased property. While leasing, you will be funding someone else's retirement with your lease payments.

Increasing Costs: Many leasing arrangements stipulate annual increases in rent. Furthermore, once the lease expires, the negotiation of a new lease may result in substantially higher costs depending upon the market.

2. Serviced Office Space/Executive Suites: These are typically leased individual offices within a larger suite shared by other companies or professionals. Offices often come furnished and offer shared common equipment (fax machines, copiers, etc.), shared resources (such as conference rooms), and services (such as phone answering, mail handling, and high-speed Internet).

3. Shared Office Space: A slightly different alternative to the executive suite service office space model is the shared office space. A group of lawyers may decide to jointly share the cost of renting an office; they do not however, form a firm. Rather, they maintain their separate practices. This allows lawyers to share expenses and resources (copiers, conference rooms, fax machines, phone answering services, etc.). Another benefit of this type of arrangement is the ability for the lawyers to easily distribute referrals among themselves. Lawyers who choose to share office space must be careful to keep their firms separate. This is an area where the lawyer must pay particular attention to the Pennsylvania Rules of Professional Conduct (Rule 7.5) so that the public is not confused about the relationship between lawyers in the same office space.

4. Additional Ethical Considerations Regarding Office Space:

a. Rule 5.3 - Responsibilities Regarding Non-Lawyer Assistants

b. Rule 1.6 – Confidentiality of Information

Consider whether shared space is suitable and can be configured so that their clients' files, confidences, and secrets are protected from others in a shared office.

Shared employees must be instructed about maintaining client confidences.

Receptionists in a shared office environment must not repeat client names while answering the phone since others in the waiting room may overhear.

5. Change of Address: If you're moving your office and/or setting up a new office, you must remember to notify the Pennsylvania Supreme Court of your address change. If you belong to one or more bar associations, don't forget to contact them too, as well as your malpractice insurance carrier.

6. The Americans With Disabilities Act (ADA): When contemplating new office space, you also need to consider the ADA and what changes may need to be made to your office space so you are in compliance with the ADA. As a business providing goods and services to the public, you fall under the purview of the ADA. Generally, you are obligated to remove physical "barriers" (physical features that limit or prevent people with disabilities from obtaining the goods or services you offer). The ADA requires that newly constructed facilities, first occupied on or after March 15, 2012, must meet or exceed the minimum requirements of the 2010 ADA Standards for Accessible Design (Standards). Alterations to facilities, spaces or elements (including renovations) made on or after March 15, 2012 also must comply with the 2010 Standards. For more information on the ADA, see www.ada.gov/2010ADASTandards_index.htm. You can also download the ADA Update: a Primer for Small Businesses at www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm

G. Insurance: Law offices need protection from risk of loss for physical location and contents, and premises liability, as well as coverage for the business interruption and persons working there. Insurance coverage is available through web sources, but working with a good insurance agent will allow a thorough assessment of coverage needs and policy options. Discounts also may be available for multiple policies.

H. Basic Equipment:

KEEP IN MIND THAT THE INFORMATION TECHNOLOGY WORLD IS CONSTANTLY CHANGING. YOUR MOST IMPORTANT INVESTMENT COULD BE HIRING OR RETAINING A QUALITY IT SPECIALIST. THIS PERSON SHOULD BE ABLE TO PROVIDE YOU WITH THE LATEST INFORMATION ON AVAILABLE EQUIPMENT.

1. Personal Computers:

a. General Rules and Tips on Buying PCs:

Quality Counts: Don't cut corners here because your practice will grind to a halt if your computers fail you.

Warranty: Make sure you get a three-year, next business day, on-site warranty on any laptop or desktop that you buy. Furthermore, avoid "economy" warranties. If you're buying a laptop and the manufacturer offers additional "accidental breakage" protection, it's usually worth buying if you travel a lot.

Operating System on a Windows PC: As of this writing, make sure you get Windows XP Professional or Vista Business or Vista Ultimate. Generally speaking, Windows XP Home or Vista Home are not designed for an office environment and should be avoided. If you are thinking of Vista, make sure you contact the manufacturers of every peripheral you intend to connect to the new computer to see if the devices are Vista compatible. In other words, if you have an existing printer you intend to use with a new computer running Vista, you should check the printer manufacturer's website or call its customer service to see if it has a driver that will enable your printer to work with Windows Vista. If you discover that some of your existing equipment won't work with Vista, then you'll probably need to replace those items as well. Of course, this can add considerable, unexpected expense to the total cost of your new computer.

What About Apple? They're excellent computers, but the selection of legal-specific software (such as case management, legal time/billing and accounting, etc.) that will run on the Mac OS is extremely limited.

However, newer models permit the dual operation of Mac OS and Windows. This provides the platform needed to run all available software. Modern PC issues like crashing and viruses make Mac an alternative many consider.

Bundled Software: Make sure you get Microsoft Office or another software suite included with your new computer as it is much more expensive to buy this software a la carte after the fact.

b. Research: If you're not sure of which brand to buy for a laptop or desktop, consider these excellent free reference sources:

PC World Magazine: (www.pcworld.com) Even if you don't subscribe, you'll have full access to everything, including reviews of hardware and software.

PC Magazine: (www.pcmag.com) Even if you don't subscribe to the magazine, you'll have full access to everything, including reviews of hardware and software. *PC Magazine* also conducts an extensive annual survey of reader satisfaction with hardware and software. Once you're on its website, look for the annual survey results for some very insightful reviews and recommendations.

CNET: (www.cnet.com) Another excellent free source of reviews, pricing information, and articles regarding personal computers and software applications.

c. Laptop or Desktop:

Laptop v. Desktop: Comparing a similarly equipped desktop and laptop, the laptop will cost around \$300 more. Even if you only use your laptop outside of the office once per month, you can easily justify this additional cost.

Tablet PCs: If you're considering a laptop computer, then make sure you go to a local computer store and test-drive a Tablet PC first. "Convertible" tablets have every feature of a standard laptop except that they also have "pen and ink" capabilities that allow you to write directly on the screen or use the included pen as you would a mouse and keyboard. In effect, it is a bottomless, digital legal pad. If you want to be able to take hand-written notes and

send hand-written e-mail, this is the tool for you. Popular brands for these include Lenovo, Toshiba, and Gateway.

d. Add-ons for Your Computer:

Computer Insurance: You can obtain insurance from many sources for things like accidental damage, theft, power surges, and the like. Some insurance companies even specialize in this area. See www.safeware.com as an example.

Uninterruptible Power Supply: An uninterruptible power supply (UPS) is an excellent surge suppressor, and it will keep your PC running during power blips.

2. Backup System For Your Data: To prevent data loss, it is essential that you have at least one backup device backing up all important data on a daily basis. Ideally, you'll have more than one device backing up contemporaneously. Catastrophic data loss can devastate your practice, and some would argue that failure to take steps to protect and backup your important data is malpractice per se.

a. Rules for Backing Up: Follow these closely in choosing how you handle your own backups.

No Excuses: You must be backing up all of your important data every day, no matter what. Every other day, once a week, or less frequently is completely unacceptable.

Unattended Is Best: The best backup methods do not require you to remember to do anything for the backup to occur. Unattended backups are the best for two important reasons. First, if someone has to remember to do it, he/she will forget. Second, backups sometimes take a long time and they'll usually bog down your system when they're running. Therefore, they are best run at night when no one is using your network or computers. This also means that you cannot use backup media that is not large enough to backup all of your data. Therefore, CDs, DVDs, zip drives, and the like are eliminated because it's extraordinarily unlikely that all of your data can fit on a single backup disk. That means that someone will have to swap disks as the backup device fills each disk.

Backup Everything: Backup the entire drive of the computer. When restoring after a crash, you want your operating system back the way it was, you want all of your printer drives installed, your video driver installed, your network adapter driver installed, etc. Trying to install all of your programs from CD and getting your

settings back to the way they were pre-crash can literally take months.

You Must Check the Backup Log Every Day: Most backup devices don't tell you if they worked properly or not. The only way to make certain is to look at the "backup log" that the backup software maintains (every backup device requires software that actually performs the backup). Someone needs to do this every single day to make sure there were no malfunctions.

Replace Tape Media At Least Annually: If you're using a tape drive as a backup device, you need to write a "born-on" date on the tape and replace them at their one-year birthday. Tapes lose their ability to hold data over time and you don't want to take the risk that your successful backup is not restorable due to bad media. Of course, buy your new tapes, get a good backup on them, then destroy the old ones.

Off-Site Storage: Portability of your backup media is important because you need to ensure that copies of all important data for your firm are taken off-site every night. If your office burns down and all of your backups were in the office, then it isn't going to do you much good. You can also use one of the Internet-based backup options mentioned below.

Avoid Using Incremental Backups: An incremental backup means you're only backing up files that have changed or are new since the last full or incremental backup. You can get quite a chain of these going, so hopefully there's a full backup at the beginning of the chain. The benefit of this method is that it is faster since far less data is being backed up every time (only the new or changed files). However, there are two main reasons why you should use full backups instead. The first drawback of incremental backups is that you may have five backup disks, but you only have one copy of each file. With full backups and five media, you have five copies of every file (more is obviously better). Second, if you encounter a problem in your chain of incremental backups (bad media, etc.), then you may be prevented from restoring files "upstream" from the problem.

Run Test Restores At Least Once A Month: You need to do this to verify that you can restore and also to make sure you know how to do it.

Have a Secondary Backup: If you're using a tape drive, get an external hard drive as a secondary backup, use one of the online

backup options, or get a recordable DVD drive. Just make sure you have an extra copy of everything important if at all possible.

b. Backup Software: Many backup devices (hardware) come with software that operates them. However, you are usually free to use third-party programs if you're dissatisfied with the backup software included with your backup device. These run the gamut from expensive and sophisticated (something like Symantec Veritas Backup Exec) to inexpensive and easy (an example would be Handy Backup – www.handybackup.com). Regardless, backup hardware is only half of the equation. You need backup software to complete a backup.

c. Backup Devices:

Tape Drives: High reliability, but slow and can be very expensive. Do not even consider tape drives with a Travan format (they are unreliable).

External Hard Drive Cartridges: This is excellent for smaller networks and the small cartridges are easy to take off-site as an additional measure of protection. A good example of this would be an Iomega Rev USB Backup Kit. As of this writing, each hard drive cartridge holds 70 GB (uncompressed).

Additional Hard Drives: These can be internal to the computer or external. They are inexpensive and are available in very large sizes. On the downside, they're not very convenient to unplug and take off-site every day.

Recordable CD or DVD Drives: It's risky to make this your primary backup method because you will probably be unable to fit all of your data on a single disk. Therefore, you can't run unattended backups and as we indicated above, it's extremely important that your primary backup method can be executed without requiring someone to do something. Having said that, many people use this method as a periodic (i.e., weekly) backup method that they keep off-site.

Internet Backup Options: This is becoming more and more common as a secondary backup method. It is not a good idea to use this as a primary backup method because: a) Internet connections frequently go down; b) backing up or restoring a large amount of data can take hours or days depending upon the speed of your internet connection; and c) it tends to be expensive over time (you pay a monthly fee for this service). Examples of this would be www.connected.com or www.mozypro.com.

USB Flash Drives: These are reliable for data storage, they are very small dimensionally, and they are becoming available in larger sizes (in terms of gigabytes). However, they are not available in sizes most other backup media are available in (100+GB). This means that it is unlikely that all of your data would fit on a single flash drive. In the future, this may be possible, but it isn't right now.

Floppy Disk Backup: Floppy disks are the most unreliable media ever developed for a PC and they hold tiny amounts of data relative to the options outlined previously. Don't use floppy disks for anything, if possible.

3. Printers:

a. No Inkjet Printers: Avoid making an inkjet printer your primary printer. The cost per page to print with inkjet printers (thanks to high-priced ink cartridges) can be as high as \$0.15/page (black and white) compared with a laser printer, which will give you roughly \$0.04/page. Furthermore, some inkjet ink will smear if it becomes wet. Laser printers generally are a better option for any law office.

b. Color Printing: If you have a color inkjet for purposes of printing photos, you likely will spend far more than you would if you had a third party print them for you. Online services are generally even cheaper than retail stores. Consider the services of www.snapfish.com or www.shutterfly.com. If you need to print color more frequently, then consider purchasing a color laser printer. If you tend to print either lots of color or straight black and white (with no color), then a "four pass" color laser will be your least expensive option. However, if you print mostly black and white with just a little color, four pass lasers use up a lot more toner, and this will drive up your cost per page. If you're printing a lot of color or you print mostly black and white with only a little color, then consider a single pass color laser which will keep your cost per page to a minimum.

c. Consider a Multifunction or All-In-One (AIO) Machine: If you need to keep your budget down for a printer and want to be able to use it for more than just printing, a laser multifunction is a good option. As a rule, a multifunction peripheral handles at least two of the following (and often all of them): printing, scanning, copying and faxing. There are usually cost and space savings associated with multifunction machines. Popular options include models from Brother, Canon, Dell, Xerox, and Hewlett Packard.

4. Fax Machine or Internet Faxing:

a. Options:

Multifunction of All-In-One machine: Almost all multifunction machines include fax capability. The primary benefit is that you only have to buy one machine that handles multiple tasks. Overall, you're likely to spend a lot less than buying a separate copier, scanner, printer, and fax machine.

Plain fax machine: No real benefit here other than they can be pretty inexpensive.

Internet faxing: There are many services that allow you to send and receive faxes via the Internet. Typically, faxes sent to your Internet fax number are delivered to you via attachments to e-mail. These services also enable you to fax directly from Word, WordPerfect, Excel, or Outlook. The biggest benefit of Internet faxing is that you can send and receive faxes anywhere you happen to be, as long as you've got a computer connected to the Internet. Of course, you also avoid the cost of a dedicated fax phone line. The drawback is that unless you have a scanner, you cannot fax a hard copy of something via this method. Examples of Internet faxing services would be www.efax.com or www.myfax.com.

b. Printing Methods for Fax Machines:

Ribbon Transfer: Available in black and white for light duty; likely not useful for office purposes.

Color Ink Jet: Black and white or color will be expensive because of high ink costs.

Black and White Laser: Black and white, higher volume, low cost per page; recommended for office purposes.

Thermal: Black and white, lower volume. Printing on this tends to fade over time and may even disappear entirely.

c. Phone System:

Research: Of course, you'll need a multi-line phone system with voicemail. Unfortunately, a phone system can be the most expensive thing you buy for your office. The best place to start your research is most likely the telephone directory under Telephone Equipment & Systems - Dealers. Get as many quotes as

you can and make sure you factor in the cost for ongoing maintenance and repair from the vendor you choose.

Look for Popular Options: It's a good idea to choose a brand of phone system that other dealers in your geographic area also support. Otherwise, if you become dissatisfied with the vendor you're using for support, you may have no alternative vendor.

Consider Voice Over Internet Protocol (VoIP):

www.webopedia.com provides a good definition of VoIP. VoIP is a category of hardware and software that enables people to use the Internet as the transmission medium for telephone calls by sending voice data in packets using Internet Protocol rather than by traditional circuit transmissions of the Public Switched Telephone Network. One advantage of VoIP is that the telephone calls over the Internet do not incur a surcharge beyond what the user is paying for Internet access, much in the same way that the user doesn't pay for sending individual e-mails over the Internet. To try VoIP, you need:

High Speed Internet Connection: See

<http://tinyurl.com/2uy8jm> to determine if your Internet connection is fast enough.

VoIP Service Provider: Almost every telecommunications company and Internet Service Provider (ISP) offers VoIP phone service including Comcast, Verizon, AT&T, Vonage, and many local firms. There are also many options which are not provided by ISPs but which work fine as long as you have a high speed Internet connection (see www.vonage.com for example).

Appropriate Phones: Some services will work with standard telephones, other require IP phones in order to work properly.

5. High Speed Internet Access: There is absolutely no excuse for not having high speed Internet access at your office. The amazing array of resources available via the Internet, including free legal research, makes it easy to cost-justify.

6. Leasing versus Buying Equipment: Many lawyers are leasing their technology as a means of spreading the costs over a period of years and obtaining tax advantages.

a. Deduct Payments as an Operating Expense: Your CPA will have to confirm this, but if you utilize an “operating lease” rather than a “capital lease,” you can deduct every lease payment as an operating expense. This would enable you to effectively deduct the cost of the computers over the length of the lease rather than a) writing it all off immediately or b) depreciating it over its estimated useful life.

b. End of Lease Option: Computer leasing companies will take back the computers at the end of the lease term. This may remove the sometimes significant headache of disposing of old computers. **However, it does not remove the headache of deleting all confidential materials (see below).**

c. Leasing Pros and Cons: The following are a few highlights from an article entitled “Tech Leasing for Lawyers,” by Dennis Kennedy, which appeared in the October/November 2004 issue of *Law Office Computing Magazine*.

“Computer technology leasing is an attractive option because computer systems get outdated quickly. There are good reasons to keep pace with technological change. Experts consistently recommend replacing computers on a three-year schedule. After three years, the typical computer has little or no market value and no longer will be covered by warranty. Hardware costs, especially for servers, add up quickly. Large cash outlays for new purchases might be required.”

“Leasing is especially attractive to law firms that want to stay closer to the cutting edge in technology. It smoothes out their cash flow and protects their working capital while avoiding large periodic expenses for new technology purchases.”

“Smart leases give you a way to roll services, hardware and software into your monthly lease payment. This type of bundling allows a firm to consider an appropriate monthly cost of technology and aim a little higher on hardware, without cutting corners on training and support. For example, a bundled lease might even provide a way for a smaller firm to afford a high-level consulting firm, better software or a robust network infrastructure.”

7. Disposing of Old Equipment: Whether you simply retire old computer equipment, sell it, give it away, or turn it in to a leasing company, you need to make sure that all confidential data has been deleted in such a manner that it is not recoverable. This is not as simple as just deleting the data. You’ll need to use a program designed to make the deleted data unrecoverable or hire someone to do that for you. Examples of programs that can permanently delete data for you

would include Search and Recover (www.iolo.com), WipeDrive (www.whitecanyon.com), or Secure-Delete (www.secure-delete.net).

8. Metadata: Lawyers have the obligation to avoid sending electronic materials containing metadata by utilizing software to “scrub” outgoing documents. For more information on this, please see PBA Formal Opinion 2009-100.

I. Signage: Signage placing the law firm or solo attorney’s name before the public is covered in the Pennsylvania Rules of Professional Conduct Rule 7.5 (Firm Names and Letterheads), which requires, in pertinent part, that

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Comment 2 states, “Lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, “Smith and Jones,” for that title suggests that they are practicing law together in a firm.”

With regard to signage, it is also essential that you check the zoning regulations of the municipality where your office is located to make sure your sign is in compliance.

J. Letterhead: Letterhead is governed by Rule 7.5 of the Pennsylvania Rules of Professional Conduct. Rule 7.5 provides:

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government, government agency, or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If otherwise lawful, a firm may use as, or continue to include in its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which that lawyer is not actively and regularly practicing with the firm.

(d) Lawyers shall not state or imply that they practice in a partnership or other organization unless that is the fact.

K. Home Office Considerations:

1. Protecting Client Confidences: It is important that you protect privileged information from family members and that they understand that any information they may come across at home must not be discussed with anyone. Reasonable steps would include:

- a. Using a separate computer at home that is only used for business and that no other family members can access.
- b. If using a computer that other family members also use, it should be configured such that a logon and password is required to access any information on said computer that may be confidential. This is fairly easily accomplished with Windows XP Professional or Windows Vista.
- c. Maintain a locked file cabinet at home for storing any paper client files.
- d. If client phone calls are received at home, a separate phone line should be secured for said communications with a separate voicemail that can be accessed only by you.

L. Practice Mobility:

1. Required Hardware:

a. Laptop, Notebook, or Tablet PC:

Key Hardware: This is the centerpiece for a mobile lawyer. If you already have or are getting a laptop, it's a good idea to make it your sole computer and not try and synchronize everything between a laptop and desktop.

Port Replicator: It is also a good idea to acquire a port replicator or docking station for your laptop.

Warranty: For laptops, you should always look for a three-year, next business day, on-site warranty that will follow you where ever you happen to be. We also recommend upgrading the warranty to include coverage for accidental breakage (if that is an option).

b. Portable Printer: There are excellent, small portable printers from manufacturers like Hewlett Packard and Canon. Most portable printers have the ability to run on a battery if there are no outlets available and some even offer infrared or Bluetooth connections to your computer in addition to a standard USB cable.

c. Cell Phone: Today, it makes sense to look for a convergent device or “smartphone” (combination of cell phone and PDA).

d. Portable Backup Device: You must have a means of backing up the work you complete when you’re out of the office. The easiest and least expensive option would be an external hard drive or external hard drive cartridges (such as an Iomega REV drive).

2. Optional Recommended Items:

a. USB Flash Drive: These are extremely inexpensive devices that allow you to transfer large amounts of data from one computer to another.

b. Digital Camera: Many lawyers who are frequently out of the office like to keep a compact digital camera in their bag. A picture is worth a thousand words.

c. Digital Voice Recorder: These are widely available at any office supply store, and many of them are very small. Digital voice recorders allow you to dictate and then store or e-mail the voice files for subsequent transcription.

d. Portable Scanner: There are many options for these including multiple offerings from Visioneer, Planon, and Pentax.

e. Extra Cables and Emergency Items: Kits such as the Zip-Linq Deluxe USB 2.0 road Warrior Kit include everything from USB cables, adapters, mice, lights, headphones, a microphone, and network cables.

f. Portable Routers: Products such as the Linksys Wireless-G Travel Router or D-Link AirPlus G Wireless Pocket Router allow you to setup a secure wireless network in any hotel room offering high-speed Internet access.

3. Security for Your Laptop: The following items should be considered if you’re traveling with a computer that contains confidential information:

a. Protecting Confidential Information: A laptop is stolen every 53 seconds. [Source: Safeware The Insurance Agency – see www.safeware.com] Therefore, if you have a laptop containing attorney-client privileged information, you need to take steps to protect it in the event of theft. For encryption, consider products such as SecuriKey (www.securikey.com) or PGP Whole Disk Encryption (www.pgp.com).

b. Theft Recovery: There are services for laptops that will significantly increase the likelihood that authorities will be able to recover your laptop if it is stolen. Consider a service such as LoJack for Laptops (see www.lojackforlaptops.com).

c. Avoid Prying Eyes: For example, if you're using a laptop to draft confidential documents for a client while on an airplane, what is to keep the persons sitting next to you from reading what you are writing? Consider something like a 3M Privacy Filter for your laptop screen, which narrows the viewing area so that the screen is only visible to persons directly in front of it. These can be purchased from many sources, including most laptop manufacturers.

4. Securing PDAs and Cell Phones:

a. The Problem: Lawyers frequently maintain confidential client information in their cell phones, PDAs, and convergent devices (smartphones). Furthermore, these devices are often lost or stolen. Therefore, it is incumbent upon you to take steps to secure the confidential data contained on your phone/PDA.

b. Using Built-In Security: Every device has some type of built-in security that you can enable. Enabling this security should be done at a minimum. Make sure you use a 'strong' password consisting of a nonsensical mix of numbers and letters at least eight characters long.

c. Other Options: This is just an example list; there are many other options. These applications allow you to destroy the data on your convergent device remotely by sending a special text message to your cell phone or other means.

mSafe (www.motionapps.com)

Warden (www.corsoft.com)

TealLock (www.tealpoint.com)

Windows Server Options: If you have a Windows Mobile OS PDA, and you have Microsoft Exchange Server with SP2, remote security can be configured. Microsoft Exchange 2007 has a very easy setup for this sort of functionality on most mobile devices.

III. LEGAL RESOURCES – LAW LIBRARY

A. Introduction: The scope of legal resources that are currently available to practitioners in Pennsylvania has expanded exponentially with the proliferation of the Internet.

Because we live in both a physical world and a virtual environment made possible by the Internet, we have access to a much wider collection of legal resources than ever before. This chapter will give you practical advice to help you define your law library needs, identify relevant books, websites, and databases, and tell you where you can find help at local law libraries.

B. The Basics: For research purposes, law comes in two basic types called primary and secondary law. Many cases can be resolved solely by reference to primary law. However, lawyers often need secondary law for background information or to explain, describe, or expand upon the law contained in primary law resources.

1. *Primary law* includes: constitutions, rules of court, cases, statutes, and legislative materials, administrative regulations and decisions, and local ordinances.

2. *Secondary law* includes: treatises, hornbooks, practice materials and handbooks, legal encyclopedias and digests, form books, jury instructions, verdict reporters, law reviews and journals, citators, legal newspapers and newsletters, and legal software programs.

3. In addition, some of the necessary tools of our trade include a legal dictionary, citation manuals and legal directories. Most lawyers also periodically use a regular print dictionary, a print thesaurus and local telephone books.

C. Your Law Library: Regardless of your practice areas or the ease with which you can navigate the Internet, you should keep a core set of books on or near your desk. Of course, most if not all of the following items are also available via the Internet (most for no cost) and via CD subscription in lieu of books. Some would argue that having a regular print dictionary, legal dictionary, thesaurus, or directory of local attorneys is completely unnecessary if you can access them via the Internet. In any event, these should include:

1. United States and the Pennsylvania Constitutions
2. Applicable rules of court
3. Legal dictionary
4. Citation manual
5. Directory of local attorneys
6. Regular dictionary
7. Print thesaurus

8. Local telephone books

D. Your Firm Library: Depending on your practice areas, you will also need access to most, if not all, of the remaining primary resources and a number of secondary sources.

E. Your Local Law Library: In addition to providing access to primary legal materials, local law libraries can furnish many secondary sources, materials from other states, specialty materials, and even some international and foreign materials. What these libraries do not possess as part of their collections they often can obtain from other nationwide libraries, usually for a reasonable fee.

Almost more importantly, a law library is a wonderful place where you can go to receive direct assistance from librarians who can help you streamline the time you spend researching and preparing your cases.

F. Primary Law Resources for your Firm Law Library:

1. The Pennsylvania Constitution:

a. Books: Rather than buying copies at a local or Internet book store, you may be able to pick up free pocket copies of the Pennsylvania Constitution at a local public library or your local law library.

b. Free Internet bookmarks:

Pennsylvania Legislature: <http://www.legis.state.pa.us/>

Pennsylvania Code: <http://www.pacode.com/>

2. The United States Constitutions:

a. Books: You may be able to pick up free pocket copies of the United States Constitution at a local public library or your local law library.

b. Free Internet bookmarks:

Library of Congress: <http://tinyurl.com/2v2myz>

Cornell: <http://tinyurl.com/2ob62v>

Cornell (annotated): <http://tinyurl.com/3458rt>

c. Online Databases:

Lexis: www.lexis.com

Westlaw: www.web2.westlaw.com

G. Rules of Court: Some of the most essential resources you should purchase in print are current compilations of court rules. These should be kept within arm's length of your desk or desktop computer. However, some of the rules you need are also available for free on the Internet and in online databases.

1. Pennsylvania Rules of Court:

a. Books: If you practice in state court, the following will contain the civil, criminal, evidence, appellate, and Supreme Court rules you will need most often:

Pennsylvania Rules of Court: State (Thomson West, 2009)

Pennsylvania Code Annotated (Lexis)

Pennsylvania Rules of Court: Local (Thomson West, 2009)

If these books do not contain your court's local rules, try the court's website, or call the clerk of the particular court to order a copy. Your local law library also may have a copy you can use and/or borrow.

b. Free Internet Bookmarks:

The easiest and best place to find Supreme Court of Pennsylvania, civil, criminal, appellate, evidence, ethics, and other rules is at the Supreme Court's website:

<http://www.courts.state.pa.us/T/SupremeCourt/>

Many of the appellate districts and lower courts have also put their local rules on their individual court websites. An Internet gateway to many online Pennsylvania court rules can be found at:

<http://www.llrx.com/courtrules>

2. Federal Rules of Court:

a. Books: If you practice in federal court, you will want to purchase the *Pennsylvania Rules of Court: Federal* (Thomson West, 2009) for access to applicable federal civil, appellate, bankruptcy, and local rules:

In addition, annotated versions of the federal civil, criminal, evidence, appellate, Supreme Court, and bankruptcy rules can be found in both commercial annotations of the *United States Code*:

USCS: United States Code Service (Lexis)

USCA: United States Code Annotated (Thomson West)

b. Free Internet Bookmarks: The following rules are available for *free* at these and other websites:

Federal Rules of Appellate Procedure
<http://tinyurl.com/5vecn8>

Sixth Circuit Rules and IOPs
www.ca3.uscourts.gov/Rules%20and%20Procedures.htm

Federal Rules of Evidence
<http://www.law.cornell.edu/rules/fre/index.html>

Federal Rules of Civil Procedure
<http://www.law.cornell.edu/rules/frcp/index.html>

Federal Rules of Criminal Procedure
<http://www.law.cornell.edu/rules/frcrmp/>

Bankruptcy Rules:

U.S. Bankruptcy Courts
<http://www.uscourts.gov/bankruptcycourts.html>

Bankruptcy Court, Western District of Pennsylvania
<http://www.pawb.uscourts.gov/rules.htm>

Federal Rules of Bankruptcy Procedure
<http://straight.law.cornell.edu/rules/frbp/>

Western District of Pennsylvania civil and criminal rules
<http://www.pawd.uscourts.gov>

Middle District of Pennsylvania civil and criminal rules
<http://www.pamd.uscourts.gov>

Eastern District of Pennsylvania civil and criminal rules
<http://www.paed.uscourts.gov>

An Internet gateway to many online court rules can be found at the following site: <http://www.llrx.com/courtrules>

H. Cases: Although legal research vendors still publish cases in books, the easiest and most cost-effective way for lawyers to obtain access to reported, unreported, and archival cases today is to access them online. More and more courts are putting their cases online for free. There are several obvious advantages to having access to online summaries. First, the resources often come annotated with cross-references to secondary sources that can be helpful. Second, the cases often come with hyperlinks to other resources that may be included in the same database, thus speeding up your research. Third, citation checking can be conducted with just a few clicks.

However, print reporters still have some utility for several major reasons. In the first place, some attorneys prefer to read their cases in a book, where they can page back and forth and flip pages easily. Secondly, online databases sometimes omit appendices and attachments to opinions when they post decisions online, while you can still find these ancillary materials in the books. A disadvantage to relying on print resources is that in a book, you may only be able to find opinions that courts have issued but later “withdrawn.”

1. Pennsylvania Law:

a. Books: Although most practitioners should now retrieve their cases online from a legal research vendor or the issuing courts themselves, some may still want to collect current court reports in print. In Pennsylvania, official reports are still published in several sources, including:

Pennsylvania Official Reporter (Thomson West)

Pennsylvania State Reports (Pennsylvania Supreme Court decisions)

Thomson West also publishes reported cases in the *Atlantic Reporter 2d series*.

b. Free Internet Bookmarks:

The Supreme Court of Pennsylvania is your gateway to free online decisions from the Supreme Court of Pennsylvania back to 1996: <http://www.courts.state.pa.us/opinions/supremeopinions/supremepostings.htm>.

In addition, many lower courts are beginning to post their decisions on the Internet, although some have become more

sensitive to revealing private information such as Social Security numbers, bank account numbers, etc.

Lexis also provides a *free* online product that contains a rolling five years' worth of case law. Register online for access at this website: <http://www.lexisone.com/>.

2. Federal Law:

a. Books:

Lexis and Thomson West are still publishing new reported federal cases in the following books:

Supreme Court opinions:

Supreme Court Reporter (Thomson West)

United States Reports (U.S. Government Printing Office)

United States Supreme Court Reports, Lawyers' Edition, 2d (Lexis)

Federal appellate opinions: *Federal Reporter 3rd* (Thomson West)

Federal District Court opinions: *Federal Supplement 2nd* (Thomson West)

Opinions relating to federal civil and criminal rules: *Federal Rules Decisions* (Thomson West)

b. Free Internet Bookmarks:

According to its website, "The Pacer Service Center is the Federal Judiciary's free centralized registration, billing, and technical support center for electronic access to U.S. District, Bankruptcy, and Appellate court records":

<http://pacer.psc.uscourts.gov>

U.S. Supreme Court opinions:

Supreme Court opinions back to 2003:

<http://www.supremecourts.gov/opinions/opinions.html>

Supreme Court opinions back to 1893 from Findlaw:

<http://www.findlaw.com/casecode/supreme.html>

Supreme Court opinions from 1937-1975:
<http://www.gpoaccess.gov/supcrt/index.html> and
<http://supcourt.ntis.gov/>

Supreme Court opinions by topic:
<http://stralight.law.cornell.edu/supct/cases/topic.htm>

Gateway to other sources of Supreme Court decisions:
<http://tinyurl.com/23coub>

U.S. Court of Appeals for the Third Circuit opinions:

Third Circuit's website:
<http://www.ca3.uscourts.gov/indexsearch/archives.asp>

c. Online Databases:

Lexis and Westlaw sell various packages containing access to all reported and most of the unreported federal court decisions.

I. Statutes and Legislative Materials: Statutes and legislative materials are often the starting point for issues under both state and federal law.

1. Pennsylvania Law:

a. Books:

The codified laws of Pennsylvania are contained in the *Pennsylvania Code*.

b. Free Internet Bookmarks:

The *Pennsylvania Code* can be found online for *free* at the following site: <http://pacode.com>

The *Pennsylvania Building Code* can be found online for *free* at the following site:
<http://www.dli.state.pa.us/land/cwp/view.asp?a=310&q=2108qz>

Pennsylvania General Assembly: www.legis.state.pa.us

2. Federal Law:

a. Books:

Federal public and private laws are published by the Office of the Federal Register. Federal public laws are also published in a set of books called the *United States Statutes at Large*, which contains

the text of every law passed by Congress since 1789. Public laws are then arranged by subject in the *United States Code* (National Archives and Records Administration).

You may find it easier to use the following commercial resources that provide annotated versions of the USC in print: *USCS: United States Code Service* (Lexis) and *USCA: United States Code Annotated* (Thomson West).

A lesson on federal legislative history is beyond the scope of this chapter. As a result, please visit your local law library for help. You can also get a good start using the guides provided at the following websites:

<http://www.llsdc.org/fed-leg-hist>
<http://lib.law.washington.edu/ref/fedlegishist.html>
<http://tinyurl.com/5mrlpp>

b. Free Internet Bookmarks: The best place to find the USC online for *free* is at the following website:

GPO: <http://www.gpoaccess.gov/uscode/index.html> (public and private laws since the 104th Congress)

U.S. House: <http://uscode.house.gov/search/criteria.shtml> (current version)

Cornell: <http://www.law.cornell.edu/statutes.html> (current version)

The Statutes at Large for the 109th Congress can be found at the GPO site: <http://www.gpoaccess.gov/uscode/index.html>

c. Online Databases:

Lexis and Westlaw also provide sophisticated databases containing federal statutes and legislative history.

J. Administrative Rules and Decisions: Oftentimes, the applicable code is so general or vague that it does not completely explain the law. In those situations, you can turn to applicable agency regulations, or what are sometimes called rules, for greater detail and explanations. Like common law, agency decisions also can elucidate statutes and/or regulations that are unclear.

1. Pennsylvania Law:

a. Books:

An Overview of Rule-Making Procedure in Pennsylvania: 42
Pa.Cons.Stat. § 1702.

Some agencies issue their decisions in print:

Pennsylvania Attorney General opinions

Pennsylvania State Ethics Commission Advisory opinions

Decisions of the Pennsylvania Supreme Court Disciplinary
Board

b. Free Internet Bookmarks:

Pennsylvania's Government Portal: <http://pa.gov>

Pennsylvania Attorney General:
<http://www.attorneygeneral.com>

Pennsylvania Board of Tax Appeals:
www.boardofappeals.state.pa.us

Pennsylvania Human Relations Commission: <http://phrc.state.pa.us>

Pennsylvania Ethics Commission:
<http://www.ethics.state.pa.us>

2. Federal Law:

a. Books: Once they are finalized by federal agencies, federal regulations are initially published in the *Federal Register*. Federal regulations are subsequently arranged by subject and agency in the *Code of Federal Regulations* (CFR). Both of these sets of books are published by the United States Government Printing Office.

A *free* searchable version of the Federal Register back to 1994 can be found at the GPO website:
<http://www.gpoaccess.gov/fr/index.html>

The GPO is also the place to find an online, searchable version of the CFR and the List of CFR Sections Affected (LSA):

CFR: <http://www.gpoaccess.gov/cfr/index.html>

LSA: <http://www.gpoaccess.gov/lsa/index.html>

Regulations.Gov is another place to find regulations and other actions of federal agencies:

<http://www.regulations.gov/fdmspublic/component/main>.

K. Local Ordinances: You may need to check local ordinances for issues relating to property rights, building restrictions and permits, zoning regulations, traffic laws, and other topics. The only places you used to be able to find copies of local ordinances were the particular jurisdiction's law department and possibly your local public library. Although those are still places to go locally, more and more ordinances are being posted on the Internet.

All of the ordinances for the major Pennsylvania cities are already on the Internet:

Pittsburgh: www.city.pittsburgh.pa.us/city_clerk/html/ordinances.html

Philadelphia: www.phila.gov

Allentown: www.allentownpa.gov

Harrisburg: www.harrisburgpa.gov

York: www.yorkcity.gov

Erie: www.erie.pa.us

You can also check your jurisdiction's website for a link to its local ordinances, or check the following sites to help you ascertain whether the local ordinances you need are on the Internet:

American Legal Publishing: <http://www.amlegal.com/>

Conway Greene: <http://www.conwaygreene.com/Municipal-Codes.htm>

Lexis' Municipal Codes Web Library: <http://www.bpcnet.com/codes.htm>

Municode.com: <http://www.municode.com>

E-Codes: <http://www.generalcode.com/webcode2.html>

L. Treatises, Hornbooks, Practice Materials, and Handbooks: A treatise typically provides an extensive discussion of a legal topic. Similarly, hornbooks explain the basics of a subject. Both treatises and hornbooks come in handy when researching black letter law principles. Practice materials discuss more practical applications of the law and often include sample forms to use. Handbooks can vary from practical guides on a legal subject to compilations of relevant statutes, rules, and sometimes cases and/or case summaries. These value-added resources can be very helpful when primary law sources do not speak

for themselves. Although these resources have traditionally only been available in print, many are now available online, although not for free.

1. Pennsylvania Law:

a. Free Internet Bookmarks: The books listed above are not available for free on the Internet. As a result, you will either have to purchase online versions from Lexis or Westlaw, as appropriate, or check at your local law library.

b. Online Databases: Most, if not all, of the books specifically listed above, are available from Lexis or Westlaw, as appropriate. They often come in dedicated online libraries or packages labeled as analytical or practice materials.

2. Federal Law:

a. Books: A few select resources that provide an introduction to federal law would include:

Federal Courts (West)

Federal Practice and Procedure [Wright] (Thomson West)

Federal Procedure, Lawyers Edition (Thomson West)

Manual of Federal Practice (Lexis)

Moore's Federal Practice (Lexis)

Supreme Court Practice (BNA)

Weinstein's Federal Evidence (Lexis)

West's Federal Administrative Practice (Thomson West)

In addition, legal vendors publish books on every legal topic imaginable. As a result, there are likely to be treatises, hornbooks, practice guides, and/or handbooks on virtually every federal law or principle. However, a list of these resources is beyond the scope of this chapter. For recommendations, please ask the librarian at your local law library.

In addition to these materials, CLE booklets, especially those from the ABA, ALI-ABA, and your local bar associations, can be excellent sources for current information on particular areas of the law, sample checklists, and references to applicable cases and statutes.

M. Legal Encyclopedias and Digests: Both legal novices and seasoned practitioners often overlook these extremely helpful resources. Encyclopedias can provide a thorough and organized overview of a legal topic, and digests can provide quick access to relevant case authorities.

1. Pennsylvania Law:

a. Books: You may not have thought about it as an encyclopedia, but that is the purpose of:

Pennsylvania Jurisprudence 2d (Thomson West)

West's *Pennsylvania Digest* which also provides access to West's universal topic and key number system. Although West also still publishes *General and Decennial Digests* with squibs of nationwide cases, these products are too cumbersome to use, in contrast to online access on Westlaw.

b. Free Internet Bookmarks: Neither *Pennsylvania Jurisprudence 2d* nor any of West's Digests are available for free on the Internet.

c. Online Databases: Only Westlaw provides online access to *Pennsylvania Jurisprudence 2d*. Westlaw is also the sole place to find the Digest system with its universal topic and key number system. Lexis has computerized and expanded its traditional headnote system online. These products are both integrated within databases of cases, etc. and are not sold separately.

2. Federal Law:

a. Books: There is no one encyclopedia of federal law, but the following two commonly-known titles provide a national perspective on the practice of law in the United States:

Corpus Juris Secundum [CJS] (Thomson West)

American Jurisprudence 2d [AmJur] (Thomson West)

Other related titles which may also be helpful would include:

Words and Phrases (Thomson West)

American Law Reports (1st-6th and federal series) (Thomson West)

Restatements of the Law (Thomson West)

Uniform Laws Annotated (Thomson West)

Thomson West still publishes the following federal digests, although using the digest system online is extremely easy and much more expeditious through Westlaw:

United States Supreme Court Digest (Thomson West)

West's Federal Practice Digest (Thomson West)

In addition, Thomson West still publishes topic specific digests. Examples of these topics would include digests for bankruptcy and education law.

b. Free Internet Bookmarks: None of the books listed above are available for free on the Internet, but there are a few places on the Internet to get an overview of a legal topic:

Cornell Legal Research Encyclopedia:

<http://library.lawschool.cornell.edu/encyclopedia>

Electric Law Library: <http://www.lectlaw.com/ref.html>

Cornell Wex Encyclopedia: <http://topics.law.cornell.edu/wex>

c. Online databases: Westlaw is the sole place to find the Digest system with its universal topic and key number system, and Westlaw also provides access to all of the related Thomson West products listed above. Lexis has computerized and expanded its traditional headnote system online. These products are both integrated within databases of cases, etc. and are not sold separately.

N. Form Books: If you have not been in practice long enough to have amassed a computer file or credenza of standard forms you use in your everyday practice, form books can save you a lot of time. Form books are taking hold online as a way to streamline preparation of court documents.

1. Pennsylvania Law:

a. Books: Many of the Pennsylvania subject matter treatises identified above contain companion forms to supplement the text. Additional books that have proven to be good sources for basic Pennsylvania forms include:

Pennsylvania Civil Practice (Lexis)

Dunlap-Hanna Pennsylvania Forms (Lexis)

Goodrich-Amran 2d Procedural Rules Service with Forms
(Thomson West)

West's Pennsylvania Legal Forms (Thomson West)

Pennsylvania Transaction Guide Legal Forms

b. Free Internet Bookmarks: More and more courts are posting their standard forms on their websites:

Internet gateways to many online court forms can be found at the following sites:

<http://www.llrx.com/courtrules/>

<http://www.uscourtforms.com>

Pennsylvania forms are available at these locations on the Internet:

Findlaw Forms for Pennsylvania:

<http://www.findlaw.com/11stategov/pa/index.html>

Lexisone free forms:

<http://www.lexisone.com/legalresearch/legalguide/states/pennsylvania.htm>

2. Federal Law:

a. Books: Although there are many to choose from, several standard federal form books include:

American Jurisprudence Pleading and Practice Forms (Thomson West)

American Jurisprudence Proof of Facts, 1st, 2nd and 3rd series
(Thomson West)

American Jurisprudence Trials (Thomson West)

Bender's Federal Practice Forms (Lexis)

Bender's Forms of Discovery (Lexis)

Causes of Action, 1st and 2nd series (Thomson West)

Federal Procedural Forms, Lawyers Ed. (Thomson West)

Manual of Federal Practice Forms (Lexis)

Trials (Thomson West)

West's Federal Forms (Thomson West)

American Jurisprudence Legal Forms, 2nd (Thomson West)

Nichols Cyclopedia of Legal Forms Annotated (Thomson West)

Rabkin & Johnson Current Legal Forms with Tax Analysis (Lexis)

West's Legal Forms (Thomson West)

Your local law librarian can also recommend topic specific form books that may help you save time and money drafting pleadings, motions, and briefs that address federal law.

b. Free Internet Bookmarks:

The quickest way to find federal forms on the Internet is at: <http://www.forms.gov/bgfportal/main.do>. Federal courts also post many of their standard forms on their court websites.

Internet gateways to many online court forms can be found at the following sites:

Lexisone:

<http://www.lexisone.com/store/catalog?action=main>

Catalaw:

<http://www.catalaw.com/cattopics/forms.shtml>

Findlaw forms: <http://findlaw.com/16forms/>

c. Online Databases: Both Lexis and Westlaw contain huge databases of federal practice forms that can be downloaded in various formats and word-processed on your desktop or laptop computer.

O. Jury Instructions: Every lawyer who tries a case in Pennsylvania will need access to sample jury instructions. Both Pennsylvania and federal jury instructions are available in books and from legal database vendors. In addition, courts sometimes incorporate the text of jury instructions into their legal decisions.

1. Pennsylvania Law:

a. Books: The essential guide for drafting jury instructions in Pennsylvania continues to be:

Pennsylvania Suggested Civil Jury Instructions (PBI)

Pennsylvania Suggested Criminal Jury Instruction (PBI)

2. Federal Law:

a. Books: Although there are many topic specific form books that your local law librarian can recommend for particular legal subject areas, the following sources serve as good general federal form books:

Federal Jury Practice and Instructions, 5th ed. (Thomson West)

Modern Federal Jury Instructions (Lexis)

b. Free Internet Bookmarks: There are really no good sites for *free* federal jury instructions on the Internet.

c. Online Databases: Third Circuit Pattern Jury Instructions are available for *free* on the Internet:

<http://www.ca3.uscourts.gov/modeljuryinstructions.htm>

Lexis and Westlaw provide online access to the jury instructions they publish in print.

P. Verdict reporters: In order to evaluate your likelihood of success in a case or damages which your clients may be able to recover, you will want to turn to jury verdict and settlement reporters. Many of these resources are available in print and through fee- based online databases, but there is really only one general source on the Internet that you can use for free.

1. Pennsylvania Law:

a. Free Internet Bookmarks: There are really no places to find a compilation of Pennsylvania jury verdicts for free on the Internet, but you can try the following resource:

National Law Journal's Annual Survey of the Year's Largest Jury Verdicts <http://www.verdictsearch.com/index.jsp>

b. Statewide Online Databases: Lexis and Westlaw also provide access to all of the major Pennsylvania trial reporters.

c. Allegheny Verdicts Online: Allegheny County Bar Association members have summarized verdicts from the Allegheny County Court of Common Pleas from 1999 to the present. These verdicts are available on a searchable, online database located at http://www.pittsburghlegaljournal.org/subscribe/allegheny_verdicts/index.php

d. Pittsburgh Legal Journal Opinions: Allegheny County Court of Common Pleas opinions from 1999 to present can be searched at <http://www.acba.org/ACBA/Publications/Pittsburgh-Legal-Journal-Opinions.asp>.

2. Federal Law:

a. Books: As opposed to federal jury verdict reporters, publishers print jury verdict reporters with a national perspective. These would include the following resources:

Dollar Verdicts: Personal Injury (Thomson West)

National Jury Verdict Review and Analysis (Jury Verdict Review Publications, Inc.)

Personal Injury Valuation Handbooks (Jury Verdict Research, Inc.)

What's It Worth? (Michie Company)

b. Online Databases:

Subscribers to *Lawyers Weekly* can access a verdict database online at: <http://www.lawyersusaonline.com/>

Lexis and Westlaw also provide access to all of the major national trial reporters separately and/or in combined databases.

Q. Law Reviews and Journals: Law review articles can help you flesh out the salient points of a thorny legal issue or keep abreast of developments in your practice areas. However, unless they come from your law school alma mater or are devoted to your practice area, you probably do not need to personally subscribe to law reviews in print anymore. Instead, you can obtain them when you need them online from a legal research vendor or through your local law library.

There are several good ways to find law reviews and journals that may contain articles discussing Pennsylvania and/or federal law. One way is to use key terms to search a full text database of law reviews and journals online. Another good way is to search in a periodical index, such as one of the following two sources, both of which can be searched many ways, including by title, author, subject, and keyword: *Index to Legal Periodicals* (best used online) and *LegalTrac* (only available online).

The *Index to Legal Periodicals* is available from both Lexis and Westlaw, and *LegalTrac* is available online from Thomson Gale. A third way is to check the annotations to your cases, statutes, and authorities for cross-references to journal and law review articles.

1. Pennsylvania Law: Many journals cover Pennsylvania law topics, but several journals are devoted to a discussion of Pennsylvania law. While all Pennsylvania-specific journals are available in print, many are becoming available online.

a. Books: A list of several Pennsylvania print journals includes:

The Capitol Glance

County Line

Duquesne University School of Law Journals

Pennsylvania State University Dickinson School of Law Journals

Dickinson Law Review

Dickinson Journal of Environmental Law and Policy

Dickinson Journal of International Law

University of Pennsylvania Journals

Penn Law Journal Online

*University of Pennsylvania Journal of Labor and
Employment Law*

University of Pennsylvania Journal of Constitutional Law

*University of Pennsylvania Journal of International
Economic Law*

University of Pittsburgh School of Law Journals

University of Pittsburgh Law Review

Journal of Law and Commerce

Temple University Journals

Temple Law Review

Temple International and Comparative Law Journal
Temple Environmental and Technology Law Journal
Temple Political and Civil Rights Law Review

Villanova University Journals

Villanova Environmental Law Journal
Villanova Journal of Law and Investment Management
Villanova Law Review
Villanova Sports & Entertainment Law Journal
Women's Law Forum

Widener University School of Law Journals

The Delaware Journal of Corporate Law
The Widener Law Symposium Journal
Widener Journal of Public Law

b. Free Internet Bookmarks: None of the print Pennsylvania journals published by legal research vendors are available for free on the Internet. More and more law schools are beginning to provide *free* access online to recent and archival law review and journal articles. Here are two links that may help you find the journals you need:

<http://stu.findlaw.com/journals>

<http://www.lawreview.org>

c. Online Databases:

Lexis and Westlaw provide online access to overlapping collections of law reviews and journals. Some of Pennsylvania's law reviews and journals are becoming available through these venues.

Some public libraries and law libraries subscribe to databases which contain abstracts and/or the full text of law review and journal articles.

2. Federal Law:

a. Books: There are too many journals that cover federal law topics to list them here. However, the best way to find them is to use the periodical indexes listed above. In addition, your local bar association may also publish its own journals covering topics of interest to local practitioners.

b. Online Databases: Lexis and Westlaw provide online access to overlapping collections of law reviews and journals. However, the breadth of these articles is simply beyond the scope of this chapter. In addition, both vendors constantly change their providers and add more archival content, making a master list from anyone but them impossible.

Some public libraries and law libraries subscribe to databases which contain abstracts and/or the full text of law review and journal articles.

R. Citators: Legal Research and Writing 101 teaches prospective lawyers to always check the authority and subsequent history of cases, statutes, and other authorities they cite. Traditional citators include Shepard's Citations from Lexis, and KeyCite, a purely electronic product from Thomson West. Only a few practitioners and less and less traditional law libraries still maintain print sets of Shepard's because the most efficient way to check the authority and/or subsequent history of a case is to use an online citator from either of these vendors. Both vendors also offer graduated levels of these services which can cover only Pennsylvania or only federal law.

S. Legal Newspapers and Newsletters: Legal newspapers can be a good source for local and nationwide news, legal trends, public policy analysis, and docket information. Newsletters can provide more topic-specific information.

1. Pennsylvania Law:

a. Legal News: In addition to your local daily and weekly newspapers, if you are a member of the Allegheny County Bar Association, you have access to publications like *The Lawyers Journal*. Several Pennsylvania law firms also publish periodic newsletters on various legal topics. Some law firms also post their newsletters on the Internet.

b. Online Databases: Mealey's publishes *Litigation NewsBriefs* that are available on Lexis, and both Lexis and Westlaw provide various news services.

2. Federal Law:

a. Books: There are only a few legal newspapers that cover the nation: *American Lawyer*, *Lawyers Weekly USA*, and *The National Law Journal*.

b. Free Internet Bookmarks: Several websites where you can find current national legal news include:

American Lawyer: <http://www.law.com/jsp/tal/index.jsp>

Courthouse News: <http://www.courthousenews.com>

CNN: <http://www.cnn.com/crime>

Dolan Media: <http://www.dolanmedia.com/websites/htm/>

Findlaw: <http://www.news.findlaw.com/>
Jurist: <http://www.jurist.law.pitt.edu/>
Law.com: <http://www.law.com/jsp/law/index.jsp>
Lawyers Weekly USA: <http://www.lawyersweeklyusa.com>
National Law Journal: <http://www.law.com/jsp/nlj/index.jsp>

c. Online Databases: Both Lexis and Westlaw provide access to selected national news sources. However, before you contract to purchase these products, make sure the papers and newsletters you need are included. Also, check the scope of the online products because some only cover substantive articles, without providing access to graphics, shorter articles, advertisements, and the like. If you make only infrequent use of these resources, you might want to rely on your local law library for access.

T. Legal Dictionaries: Nothing can replace having a legal dictionary handy on or near your desk, but for a quick answer, there are a number of legal dictionaries on the Internet.

1. Books: You can always rely on *Black's Law Dictionary* (Thomson West, 2004), which is now in its eighth edition.

2. Free Internet Bookmarks: Free legal dictionaries on the Internet can be found at the following websites:

Legal Glossary at Nolo.com: <http://www.nolo.com/glossary.cfm>

Law.com Dictionary: <http://dictionary.law.com/>

Findlaw Legal Dictionary: <http://dictionary.lp.findlaw.com/>

'Lectric Law Library: Legal Lexicon's Lyceum:
<http://www.lectlaw.com/def/htm>

Cornell Wex Legal Dictionary:
<http://topics.law.cornell.edu/wex/category/definition>

3. Online Databases: Westlaw provides access to *Black's Law Dictionary* (8th ed.) online.

U. Citation Manuals: All lawyers need to cite legal authorities once in a while.

1. Books: For technical questions relating to citations, you can turn to one of two alternative sources:

The Bluebook: A Uniform System of Citation (18th Ed., Harvard)

ALWD Citation Manual: A Professional System of Citation (Association of Legal Writing Directors)

2. Free Internet Bookmarks:

A handy cheat sheet to citation formats can be found at the following website: <http://www.law.cornell.edu/citation>

3. Online Databases: The Blue Book is available online for purchase at: <http://www.legalbluebook.com>.

V. Legal Directories: In combination, print and online directories can help you find the lawyers you need to locate, contact, and serve.

1. Books:

Many bar associations publish online membership directories that can be accessed on their corresponding websites.

Martindale-Hubbell (Lexis) is also still available in print, with a free online component.

For more information on federal judges, you can use: Almanac of the Federal Judiciary (Walters Klower/Aspen) or American Bench (Forster-Long, Inc.).

2. Free Internet Resources:

The *Pennsylvania Legal Directory* provides an attorney search engine on the Internet at the following site:

http://www.padisciplinaryboard.org/pa_attorney_search.php

The Allegheny County Bar Association membership directory is available on the ACBA website: <http://www.acba.org/ACBA/Members/membership-directory.asp>

Martindale-Hubbell provides an online companion to its print directories at: <http://www.martindale.com>

West Group provides a free online directory of lawyers, law firms, government offices, and corporate law offices in the United States and Canada at: <http://lawyers.findlaw.com>

Many courts and agencies also provide online information about their judges and court personnel.

3. Online Databases:

Westlaw provides a large number of databases that profile attorneys, judges, and expert witnesses. Westlaw also contains West's Legal Directory and specialty directories to help you find experts, judges and courts, governmental offices and lawyers, and businesses.

Lexis provides access to the Martindale-Hubbell law directory, as well as a State Legislative Directory.

W. The Best Pennsylvania Bookmarks:

1. Summary: More and more of what librarians call "primary law" resources are becoming available on the Internet. In addition to your local court websites, here are some of the best sites to bookmark for free copies of Pennsylvania court rules, recent cases and opinions, codes, legislative information, administrative agency information, and more.

2. Your Local Courts: Your local court websites can be a wonderful source of up-to-date contact information and potential access to local rules, forms, frequently asked questions (FAQs) about local court procedures, docket information, fee schedules, case opinions, and more.

3. The Supreme Court of Pennsylvania: Bookmark the Supreme Court of Pennsylvania's website (<http://www.aopc.org/T/SupremeCourt/>) for a number of reasons. Here, you can find:

- Supreme Court Justices
- Supreme Court Prothonotaries' Addresses
- Judicial and Administrative Responsibilities of the Supreme Court of Pennsylvania
- The Supreme Court's Power of Extraordinary Jurisdiction
- Conducting Business with the Court
- Supreme Court Opinions
- Disciplinary Board of Supreme Court Postings
- Docket Sheets
- Sessions Calendar
- Filing Fees
- Requirements for Filing a Brief
- Supreme Court Districts (where to file)
- Protocols for Oral Argument
- Internal Operating Procedures

4. The Pennsylvania General Assembly: (<http://www.legis.state.pa.us/>), this site provides a wealth of legislative information, including current and archival bills, bill status information, session law and acts; information on the Pennsylvania House and Senate, their rules, calendars, and journals; and links to online versions of the *Pennsylvania Code*, *Pennsylvania Statutes*, and the *PA Bulletin*.

5. Pennsylvania's Government Portal: See www.pa.gov. This site contains a wealth of information, including a list of all state agencies and departments and a gateway to Pennsylvania business information.

6. Agency Sites: Agency sites that are particularly useful for lawyers include:

- Claims Board
- Continuing Legal Education Board
- Environmental Hearing Board
- Law Examiners Board
- Liquor Control Board
- Milk Marketing Board
- Pardons Board
- Probation and Parole Board
- Sexual Offenders Assessment Board
- Tax Equalization Board
- African American Affairs, Governor's Advisory Commission on
- Civil Service Commission
- Crime and Delinquency Commission
- Ethics Commission
- Fish and Boat Commission
- Futures Commission on Justice in the 21st Century
- Game Commission
- Historical and Museum Commission
- Independent Regulatory Review Commission
- Juvenile Court Judges' Commission
- Local Government Commission
- Human Relations Commission
- Port of Pittsburgh Commission
- Public Utility Commission
- Securities Commission
- Turnpike Commission
- Women, Pennsylvania Commission for
- Arts Council
- Health Care Cost Containment Council, (PHCCCC)
- Rural Development Council

7. Local Ordinances: Gone are the days when lawyers could only obtain copies of all local ordinances from municipal law departments and public libraries. More and more cities are providing their ordinances online via city websites or through online publishers. Bookmark your jurisdiction's local ordinances.

8. Pennsylvania Demographic Data:

Demographic data on Pennsylvania: <http://pasdc.hbg.psu.edu/>

X. Help When and Where You Need It:

1. Summary: Local law libraries can provide the help you need to research and prepare your cases. There are actually many types of law libraries in Pennsylvania. These libraries can be classified as county law libraries, law firm libraries, law school libraries, court libraries, agency libraries, and public libraries. As described below, these libraries vary in terms of organization, collections, operations, access, services, and staffing. Some are open to the public, while others serve particular constituencies.

2. County Law Libraries: Some of Pennsylvania's county law libraries include:

Adams County Law Library
Allegheny County Law Library
Beaver County Law Library
Bucks County Law Library
Chester County Law Library
Lancaster County Law Library
Lehigh County Law Library
Mercer County Law Library
Montgomery County Law Library
Westmoreland County Law Library

Recent survey results show that the collections, staffing, policies, and operations at these libraries vary greatly, depending on several factors, including unpredictable public funding. These libraries run the gamut, from the largest libraries that maintain robust print and online collections in metropolitan areas, to a large variety of medium-sized libraries spread throughout the state, to the smallest un-staffed libraries in tiny courthouse rooms.

Services that are available at many of these libraries include: reference assistance, research services, computer access, access to books and online databases, book circulation, document delivery services, remote access to selected databases, word processing, CLE programs, chat reference, use of conference rooms and various equipment, and notary services.

3. Law Firm Libraries: While most practitioners collect handbooks and desktop resources relevant to their particular practice areas, some medium-sized firms, and all large law firms, maintain an in-house law library, often with one or more professional librarians on staff. Historically limited to collecting print resources, these libraries have migrated to providing electronic resources, cataloging their collections, loading information on firm intranets and extranets, and often sharing their resources with other local law libraries. More recently, some firm libraries

are going totally digital, relying on their local county law libraries and law schools for supplementary resources. Firm libraries often maintain an intricate system of current awareness and news services to keep their attorneys up-to-date on the latest developments in their fields. In addition to conducting detailed legal research and providing reference assistance to firm attorneys, paralegals, and law clerks, some law firm librarians are expanding their roles to work closely with internal IT and IS departments, perform competitive intelligence, and even conduct conflict checks. The natural corollary of these activities reflects a growing trend for firm librarians to bill clients for some or all of their time.

4. Law School Libraries: Each of Pennsylvania's seven law schools maintains a law library with an Internet portal and an online catalog:

Duquesne University School of Law Library
Temple University School of Law Library
Pennsylvania State University Dickinson School of Law Library
University of Pennsylvania Law School Library
University of Pittsburgh School of Law Library
Villanova University School of Law Library
Widener University Legal Information Center

Although these libraries primarily serve their faculty members, students, and staff, most, if not all, are also open to the public. As a result, Pennsylvania practitioners can use their resources, make copies, and seek limited reference assistance, where available. Naturally, the libraries' collections vary from institution to institution.

5. Court Libraries: Pennsylvania lawyers have access to the books, materials and selected online databases available at various law libraries across the state.

County law libraries serve as chief law resource providers for many of Pennsylvania's subordinate state courts. However, some larger counties maintain separate law libraries for use by their judges, law clerks, and staff attorneys and supplement the print resources they buy with online access from legal research vendors such as Lexis or Westlaw. Except where permitted by the local court, these libraries are not for use by local practitioners.

The federal court libraries in Pennsylvania are part of a national federal trial and appellate court library system called the U.S. Courts Library. Although these libraries cater to the needs of their courts, attorneys admitted to practice before the courts may also use their local federal court law libraries. The URL for the U.S. Court's library is <http://www.uscourts.gov/library.html>.

6. Agency Libraries: Both state and federal agencies have historically maintained in-house libraries to save and archive their own documents, opinions, and orders. Upon request, most are willing to send copies of these items at no cost or for a reasonable fee. Where applicable, they require public records and/or

FOIA requests. Recently, nationwide trends show that such agencies have begun to downsize and/or eliminate these libraries, often to the detriment of the general public.

7. Public Libraries: With a few exceptions, most of the public libraries in Pennsylvania have limited legal collections.

Y. Law Library Staff Members: Law libraries are staffed by a variety of personnel. At the helm is the head librarian, who may, among other titles, also be called a director or executive director. More recently, due to an expansion of their duties, these individuals are being referred to by many titles under the umbrella of information management. In law schools, these individuals are often faculty members. Regardless of the titles on their business cards, many of these individuals usually hold a master's degree in library and/or information science, and some may also possess a law degree. Recent trends also suggest that some current librarians and many new hires have or soon thereafter acquire at least some expertise in information technology.

Head librarians are often supported by additional reference librarians who may hold master's degrees in library and/or information science. These employees also may be considered faculty at some law schools. Depending on the size and type of library, libraries may also employ para-professionals, library assistants, and pages to perform various types of services for patrons. In addition, law school, court, and agency libraries sometimes receive support from their local IT or IS departments.

Z. Arrangement of Library Materials: For the most part, law libraries have historically been arranged by call numbers using either the Dewey Decimal system, a system developed by the Library of Congress, or a couple of other classification schemes. The two major systems arrange materials by subject. Some libraries may, in addition and/or alternatively, arrange their materials by type (such as books or audio visual materials) or by jurisdiction (i.e., Pennsylvania, federal, or foreign and international).

Chapter 2 Time Billing & Accounting

I. ACCOUNTS:

A. Trust Accounts:

1. General:

a. Open at least one insured, interest-bearing bank account designated as a client trust account or IOLTA account. The funds that must be placed in IOLTA accounts are those that are nominal in amount or are expected to be held in trust for a short period of time so that establishment of a separate escrow account would not be practical. Conversely, funds that are substantial in amount or will be held for a long enough period of time to generate significant interest must be placed in an escrow account bearing the clients' names. Separate client trust accounts should be opened when administering decedent estate (or other fiduciary account) funds, proceeds of the sale of real estate, tax funds, and other amounts that are being held pending a settlement.

b. Preserve all records regarding trust accounts for five years.

c. An attorney may deposit non-client funds into the trust account solely for the purpose of paying or waiving bank service charges on the account, but only in an amount necessary for that purpose. Maintain accurate records of attorney funds deposited into and withdrawn from a trust account.

d. Reconcile the trust account bank statement monthly to ensure that checks written to a client or third parties are cashed. If a check written from the account does not clear the bank within a reasonable period of time, contact the client or third party to determine why the check has not yet been cashed.

2. Proper Management Pursuant to Rule 1.15: Proper management of trust account records have been defined under Rule 1.15 of the Pennsylvania Rules of Professional Conduct as follows:

a. Maintain a copy of the fee agreement with each client.

b. Maintain a record of the following information regarding trust funds or property held on behalf of a client:

The name of the client

The date and amount of the funds received, and from whom the funds were received

The date and amount of any expenditure of trust funds, why the funds were spent, and who received the funds, as well as the current balance in the trust account for each client.

c. Maintain a record for each trust bank account that includes the following:

The name of the bank account

A record of each deposit and withdrawal of funds by date, amount, and name of client

The overall balance in the bank account

d. Maintain the bank statements, deposit slips, and if provided by the bank, all cancelled checks for each trust account for five years:

Reconcile trust accounts monthly and keep the records of the reconciliation for five years.

Deposit funds received from a third party in which the client has an interest, such as a settlement payment, jury award, etc., into a trust account. Notify the client promptly when these funds are received. These funds must be given to the client promptly. If the client is to receive anything other than the full amount of the funds received, the arrangement as to the distribution of funds must be *in writing*. If requested by the client or the third party, promptly prepare a full accounting of the distribution of funds received.

B. Other Accounts:

1. Open a bank account in the name of the lawyer or firm for the purpose of paying firm and client expenses and receiving client fees or other income earned.

2. Keep a detailed record of each check written from the account. This record should include the check number, date, amount, and the purpose of the check.

3. Checks written for expenses advanced on behalf of a client should be recorded in the billing system and subsequently billed to the client for reimbursement.

4. Keep a detailed record of each deposit into the account. This record should include the date and amount of the deposit, from whom the funds were received, and the reason for the deposit.

5. Payments received from clients should be recorded in the billing system and detailed on subsequent bills or statements sent to the client until the client account is paid in full.

6. Written receipts for payments should be provided upon request or at any time at the discretion of the attorney. It is advisable that written receipts always be provided if a payment is made in cash, and that a copy of the receipt be retained by the attorney.

7. Bank accounts should be reconciled monthly, as soon as is practically possible, after receipt of a monthly bank statement. When reconciling the account, maintain a record of checks and deposits that have not yet cleared the bank to facilitate the following month's reconciliation.

8. Client payments that have been returned for insufficient funds should be recorded in the billing system and deducted from total payments received on the client's account. Bank fees for insufficient funds may, at the lawyer's discretion, be charged to the client as an expense.

C. Credit Card Payments:

1. Lawyers may, at their discretion, establish a merchant account with their bank for the purpose of receiving payments by credit card. This merchant account is generally processed through the attorney's primary operating account. As with all other client payments, the credit card payment must be transferred to the lawyer's trust account until such time as fees are earned. Transfers to the trust account are not necessary if the client is making a payment on a balance due.

2. Merchant accounts may be processed through the attorney's trust account.

3. A merchant account with the bank will require payment of a number of bank fees, including a discount rate. The discount rate represents the percentage of the credit card payment that the bank will keep. Discount rates vary, but are generally in the range of 2-5 % of the credit card payment. Other fees may include a monthly merchant account fee and a fee for leasing equipment necessary to authorize the credit card payment and process the payment into the bank account.

4. A merchant account agreement with the bank usually prohibits charging the holder of the credit card for any associated merchant account fees or discount rates. Under this agreement, a client payment by credit card should be recorded to the client billing system at the full amount of the credit card payment, and the discount rate bank charge should be recorded as a firm expense.

5. If the merchant account is processed through the lawyer's trust account, the lawyer must maintain at all times sufficient funds in the trust account to cover the

discount rate and other associated merchant account fees. These funds are in addition to those otherwise maintained in the account for ordinary bank service charges.

II. INTERNAL FRAUD/THEFT PREVENTION:

A. Monitoring: Attorneys should be aware of and monitor the financial transactions occurring in their firm. Depending on the size of the firm, different strategies should be in place to minimize the risk of internal fraud and theft.

B. Separation of Duties: To the extent possible, adequate separation of duties for key tasks should be in place. Separation of duties requires that more than one attorney and/or employee be involved in these key tasks. Tasks which should be considered for a separation of duties approach should include:

1. Bank Statement Receipt and Reconciliation: While it is not always possible or practical, in an effort to prevent fraud in a law office, the individual who receives the bank statement should be an attorney or other individual (or, in the case of a solo practitioner, an outside party) who is not authorized to sign checks on the account. This individual should review the statement and cancelled checks looking for any unusual activity, unfamiliar vendor names, forged signatures, etc.

2. Payment Authorization: The individual requesting a payment must provide adequate documentation (invoices, receipts) substantiating the need for the payment. The individual requesting the payment should not be the same person who mails the payment to the third party. Individuals with check-signing authority should not sign checks for payments they have requested or for payments to themselves.

3. Payroll: Someone other than the person responsible for preparing payroll checks should receive and review the checks, and then distribute them. If payroll is outsourced, someone other than the person responsible for communicating with the payroll provider should review the reports received from the payroll providers.

If payroll is not outsourced, someone other than the person responsible for processing payroll should ensure that payroll tax payments are being made, and payroll tax checks recorded have cleared the bank.

4. Receipt of Cash: Persons who make payments in cash should be given a numbered receipt, and a copy or electronic record of the receipt should be maintained at the firm.

C. Deposits: Checks and cash received should be deposited to the bank daily. If the deposit cannot be taken to the bank, all funds received should be placed in a secure location such as a locked box or fireproof safe to prevent loss or theft.

D. Vacation Policy: A vacation policy for any employee involved in key tasks should be in place, and another employee should fulfill the key employee's duties while he/she is gone.

E. Review: A review of your financial statements should occur at least annually. This is typically done by a CPA firm. Such a review should include the following:

1. Bank Statements and Reconciliations: The accountant should reconcile a sampling of deposits received to the firm's billing system to ensure that all client payments were recorded to the client's account, and that payments recorded on the client's account also appear as a deposit on the bank statement. The accountant should also be looking for unusual adjusting entries made during the firm's bank reconciliation process.

2. Checks and Other Payments Made: The accountant should reconcile a sampling of client expense checks or other payments made to the firm's billing system to ensure that all client expenses were properly recorded. The accountant also should review a sampling of payments made to ensure that payment authorization procedures have been followed and there is associated documentation such as internal approval forms, copies of invoices and receipts for each payment made.

3. Firm Credit Card Accounts: The accountant should review a sampling of firm credit card purchases. This review should include a review of receipts associated with each credit card purchase and the nature of the purpose. If a firm credit card purchase is designated as a client expense, the purchase should be reconciled to the firm's billing system to ensure that the expense was properly recorded and is reflected on a client's account. As with other payments, the accountant should ensure that all payment authorization procedures have been followed and there is proper documentation to justify the expense.

III. INFORMATION MANAGEMENT:

A. Time and Billing Procedures:

1. Computerized Systems: A computerized system for time and billing is advisable, if not essential, for accurate accounting of time and billing information. Dozens of programs are available for maintaining records relevant to recording services provided, expenses advanced, retainers, payments received, and balances due. Resources for identifying software programs available for time and billing include the American Bar Association Law Practice Management Section, recommendations from other attorneys, and technology professionals or consultants.

2. Selection Criteria: The minimum requirements for selecting a time and billing program should include:

- a.** Recording the name, address, and other contact information for each client/matter, and the primary attorney assigned to the engagement;
- b.** recording the name, position, and hourly rate of each timekeeper at the firm;
- c.** recording the date, description, timekeeper name, client/matter name and time spent on services rendered;
- d.** recording the date, amount, description, and payee for all expenses advanced on behalf of a specific client/matter;
- e.** recording the date, amount, and payer of all payments made on a client/matter balance;
- f.** recording the date, amount, and payer of all payments received into the firm's trust account;
- g.** entering the date, amount, description, and payee of all payments made from the firm's trust account for a specific client/matter;
- h.** the generation of a report detailing each transaction and the balance remaining in the firm's trust account for each client/matter;
- i.** an automated system for producing draft bills and invoices for each client/matter;
- j.** the generation of a report detailing the date and amount of each invoice generated for each client/matter, payments or retainers applied, the balance due for each invoice, and the total due for each client/matter;
- k.** the generation of a report detailing the fees and expenses advanced that have yet to be billed to a client/matter (Work in Progress, or WIP).

3. Additional Desirable Features: Additional features to be considered in selecting an appropriate time and billing program include:

- a.** the ability to reprint previously produced bills, eliminating the need to retain paper copies;
- b.** multiple invoice design layouts or the ability to modify a layout to meet firm or client-specific requirements;
- c.** productivity reports for each firm timekeeper, in summary or detail, for a specified date range;

- d.** accounts receivable reports detailing the age of outstanding invoices for each client/matter;
- e.** recording additional information about the matter, including area of law, referral source, originating attorney and fee/billing arrangements;
- f.** maintaining multiple timekeeper rates as appropriate for various engagements;
- g.** a conflict checking feature that will search the billing program to determine if conflicts of interest exist;
- h.** a link to the firm's accounting program to eliminate duplicate entry of client expense and payment transactions; OR an "all-in-one" program that includes time, billing, and firm accounting capabilities.

B. Accounting:

1. Computerized Systems: Accurate financial records are critical to a firm's survival; financial records provide for an analysis of a firm's assets, debts, profitability, and for tax reporting purposes. A wide array of software programs are available to maintain law firm accounting records. Some programs are generic and are used by a variety of enterprises. Some programs are legal-specific, having been designed to record the typical transactions of a law firm, including client costs and trust accounting.

2. Selection Criteria: The minimum requirements for selecting an accounting program include:

- a.** a chart of accounts for identifying the specific nature of each financial transaction. A chart of accounts will include account identifiers (account numbers) for firm equity, assets, liabilities, income, and expenses;
- b.** a general ledger that allows for the designation of each financial transaction to be recorded to the appropriate equity, asset, liability, income or expense account;
- c.** a check register for each operating and trust account;
- d.** automated reporting capabilities for producing a balancing sheet, an income statement, and detailed reports of all firm financial transactions.

3. Additional Desirable Features: Additional features to be considered in selecting an appropriate accounting program include:

- a. printing checks and modifying check layouts to accommodate the firm's existing bank checks; (Some accounting programs require that you purchase checks from them in order to print checks from their software.)
- b. bank reconciliation tools;
- c. payroll processing capabilities and access to up-to-date tax tables;
- d. tax reporting preparation, such as quarterly state and federal tax reports, and W-2 and 1099 forms;
- e. accounts payable capabilities;
- f. a link to the firm's time and billing program; OR an "all-in-one" program that includes time, billing, and firm accounting capabilities.

IV. FINANCIAL ACCOUNTING:

A. Financial Statements:

1. What They Are: Financial statements represent detailed and summary reports of all firm financial transactions.

2. Frequency of Production: Financial statements should be produced on a monthly and annual basis for review by firm management and/or an outside accountant.

3. Standard Statements: Basic financial statements that should be prepared on a monthly and annual basis include:

a. The Income Statement: This is also referred to as a profit & loss statement. The income statement is divided into two sections, which display total income and total expenses.

The **income section** of the income statement summarizes transactions for each category of income and provides a total of firm income for the month or year. Income that should appear on an income statement would include fee income, interest earned on the firm operating account, if any, and other sources of income such as speaking fees or rental income. Under a typical cash-basis accounting system, this section of the income statement would also include a total of client expenses reimbursed.

The **expense section** of the income statement summarizes each transaction of each category of expense and provides a total of firm expenses for the month or year. Typical firm expenses that appear on an income statement include payroll, rent, utilities, supplies, etc. Under a typical cash basis

accounting system, this section of the income statement would also list a total of client expenses advanced.

Total income less total expenses produces a figure representing the firm's net profit (or loss) for the month.

Income statement totals are often compared to the totals for the same period for a prior year. If firm budgets have been established, an income statement also may display actual and budgeted income and expenses, and the variance between actual and budgeted totals.

Analysis of the income statement should be a part of the overall firm financial management strategy and an essential component in managing firm cash flow.

b. The Balance Sheet: The balance sheet is divided into three sections which display total assets, liabilities, and firm equity.

Asset totals represent the month-end or year-end balance in firm operating and trust accounts. Other assets that might appear on a balance sheet would be the balance outstanding on loans made to third parties and fixed assets, such as real estate or office furniture as well as equipment owned by the firm. Under an accrual basis accounting system, the asset total may also include accounts receivable and work in progress. Under a modified cash basis system, the asset total may also include client expenses advanced not yet billed or repaid by the client.

Liability totals represent the month-end or year-end balance of firm debts. Typical firm liabilities would include the month-end or year-end balance in the trust account, firm loans or lines of credit due, payroll taxes withheld but not yet forwarded to the government, and health insurance premiums withheld from employee paychecks not yet paid to the health insurance company. Under an accrual basis accounting system, the liability total may include accounts payable.

Equity totals represent the "value" of the firm. The equity total represents total assets less total liabilities.

c. The General Ledger:

The general ledger report lists each firm financial transaction during the specified date range. The report lists the opening balance, each transaction by date, and the closing balance for each account in the firm's chart of accounts.

A careful review of the general ledger will provide details for each deposit received and how it was applied (trust retainer, fee income, loan

repayment, interest earned, etc.), as well as each withdrawal from a bank account and how it was designated (trust disbursement, client expense, payment on a loan, firm operating expense, etc.).

B. Invoicing:

- 1.** Establish a procedure for the regular preparation of bills to clients detailing services performed and expenses advanced. A monthly cycle for the preparation of client bills is standard.
- 2.** During the initial intake with the client, the party responsible for payment of the bill should be identified. If more than one party is responsible for payment, the extent to which each party is responsible should be documented in writing. The full name and address of the party responsible for payment should be recorded.
- 3.** Individuals performing legal services should record the details of services provided. This record should include the name of the client/matter, the date and description of the service, and the name of the individual who provided the service.
- 4.** In hourly billing engagements, the amount of time spent to perform the service should also be recorded.
- 5.** In contingent or flat fee engagements, the amount of time spent providing the service should be recorded in the event that the contingent engagement is terminated or the reasonableness of the fees are disputed.
- 6.** Detailed records of expenses advanced on behalf of clients should be maintained and identified by client. The record of expenses advanced should also include the date and amount of the expense, the nature of the expense, and to whom the payment was made.
- 7.** A draft bill detailing services provided and expenses advanced should be prepared for each client who received services during the billing cycle. The draft bill should contain all the information recorded by the service providers as detailed above. The draft bill should be reviewed carefully by the attorney primarily responsible for the engagement, and check for errors, accuracy, and reasonableness of fees.
- 8.** Once the draft bill has been reviewed and corrections or adjustments made, an approved bill should be mailed to the client.
- 9.** There is no “standard” layout for client bills. However, the bill should contain, at a minimum, the following:
 - a.** the firm name, address, and telephone number

- b.** the date the bill was issued;
- c.** the client name, and if applicable, the name and address of the party responsible for payment of the bill;
- d.** a description of the legal services provided and the fee for those services;
- e.** a detailed listing of expenses advanced;
- f.** the total due for fees and expenses for the bill.

In addition, if a client retainer was used to pay all or part of the bill, an accounting of the amount of the retainer used and the remaining retainer balance should be included.

10. Other items that may be included on a client bill are:

- a.** the date each service was provided, who provided the service, the hourly rate charged, how much time was spent on each task, and a calculation of the hourly rate multiplied by time spent;
- b.** the previous balance due from prior bills, if any;
- c.** a listing of payments received since the previous bill;
- d.** the total balance due, including a previous balance;
- e.** the payment due date or payment terms (“Net 30 days,” for example).

11. A “statement of account” is different from a bill. A statement lists bills previously issued to a client that remain unpaid, and the total balance on the client’s account. A typical statement of account will include the invoice date, the original amount of the invoice, total payments received on the invoice, and the balance remaining. A statement of account may also be referred to as a “reminder statement” or “past due notice.”

V. RULES FOR RETAINERS, BILLING:

A. Retainers:

1. Attorneys may, at their discretion, require a prepayment or retainer in advance of performing services for a client. The amount of the retainer or prepayment is at the discretion of the attorney, but generally should not exceed the total amount of

fees and expenses anticipated for the representation. The attorney may require that a retainer balance be replenished as fees are earned and expenses incurred.

2. Retainer agreements, as with all transactions involving deposits into the trust account, must be in writing, and generally are included as a part of the fee agreement.

3. Deposit retainers or advance payments from clients for fees *or expenses* into a trust account. Retainers or advance payments may not be withdrawn from the trust account and paid to the attorney until fees have been earned or expenses incurred.

4. Attorneys may designate retainers as “non-refundable” if the agreement is *in writing* and the fee is reasonable. (Pennsylvania Bar Association, Formal Op. 85-120.)

B. Billing:

1. Charges for services should be reasonable. The factors to be included in determining the reasonableness of the fee include:

- a.** the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly;
- b.** the likelihood, if apparent to the client, that the acceptance of the engagement will preclude other employment by the attorney;
- c.** the fee customarily charged in the area for similar legal services;
- d.** the amount involved and the results achieved;
- e.** the time limitations imposed by the client or by the circumstances;
- f.** the nature and length of the professional relationship with the client;
- g.** the experience, reputation, and ability of the attorney(s) providing the services;
- h.** whether the fee is fixed or contingent.

2. Communicate with all clients the essential elements of the representation. Rule 1.5(b) requires that the basis of the fee must be communicated to the client in writing. This communication must occur before (or within a reasonable time after) commencing the representation, and must include:

- a.** the nature and scope of the representation;

b. any reasonable limits on the scope of the representation;

c. the basis or rate of the fee to be charged and any expenses for which the client will be responsible.

3. Fees designated as “non-refundable” are prohibited unless the agreement is in writing and the fees are reasonable.

4. Contingent fees based on the outcome of the matter are permissible EXCEPT for the following engagements:

a. domestic relations matters where the fee is contingent upon securing a divorce, or the amount of spousal or child support or property settlement;

b. representation in a criminal matter.

5. All contingent fee agreements must be *in writing*. The contingent fee agreement must state the method by which the fee is to be determined, including the percentage(s) that shall accrue to the attorney in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether these expenses are to be deducted before or after the contingent fee is calculated.

6. A contingent fee agreement will clearly advise the client of any expenses for which the client will be liable, whether or not the client is the prevailing party.

7. If the attorney becomes entitled to compensation under the contingent fee agreement and the attorney will be disbursing funds, the attorney should prepare a closing statement and provide the client with the statement at the time of or prior to the receipt of the compensation under the agreement. The closing statement should include the following:

a. the manner in which the compensation was determined under the agreement;

b. any costs and expenses deducted by the attorney from the judgment or settlement involved;

c. if applicable, the division of the attorney fees with other attorneys not in the same firm;

d. the closing statement signed by the client and the attorney.

8. The ABA Model Rule on Financial Recordkeeping recommends that copies of bills for legal fees and expenses rendered to clients be retained for a period of five

years after termination of the representation. The recommendation provides that paper copies of the bill are not necessary if electronic records can be produced.

VI. MANAGEMENT REPORTING:

A. Accounts Receivable and Collection Reports:

1. Accounts Receivable Reports:

The accounts receivable (A/R) report provides information on client balances owed to the firm. A typical A/R report will list the name of the client, the invoice date, and the amount owing on the invoice, as well as the total client balance for all invoices outstanding. An aged A/R report separates the outstanding invoices into aging categories, typically 30, 60, 90, and 120+ days since the date the invoice was issued. A routine review of invoices which are 60 days or older should be done on a regular basis. Clients with past-due invoices can then be identified and should be contacted to determine why the balance remains unpaid.

In firms with more than one timekeeper, it may be useful to produce an A/R report sorted by a timekeeper or responsible attorney. This can be helpful in analyzing balances by a timekeeper or attorney that remain unpaid and determining if the age or amount of the unpaid balances is in variance from other timekeepers at the firm.

2. Collection Reports:

a. A client collections summary report will list total fees and expenses billed to each client/matter and total collections for a specified date range. This information is useful in analyzing which clients are producing the most income for the firm.

b. A timekeeper collections summary report will list total fees billed by the timekeeper and total collections for a specified date range. This information is useful in analyzing how much fee income each timekeeper is generating for the firm.

B. Productivity Reports:

1. Work-In-Progress Reports:

a. A work-in-progress (WIP) report provides a listing of services rendered and expenses advanced that have not yet been billed to the client. The WIP report can be in summary form, simply providing the total unbilled fees and expenses by client/matter. Or, the report can be in detailed form, listing each time entry and expense advanced for each client matter. Some

firms use a detailed WIP report by client/matter as a draft bill for review and editing purposes just prior to billing.

b. An aged WIP report details unbilled fees and expenses in aging categories as in an aged A/R report. Certain matters, such as estate administration, contingent cases, or flat-fee engagements may not be billed until the conclusion of the matter. Hourly engagements where unbilled fees and expenses are over 60 days old should be regularly reviewed to determine why the fees and expenses have not yet been billed.

2. Timekeeper Productivity Reports:

a. A basic timekeeper productivity report, or time listing, details the hours and value of work done during a specified date range. This report is useful in analyzing what and how much work is being done by each timekeeper. A summary report will simply provide total hours and value of work done. These totals can be compared to other timekeepers at the firm to assist in determining if target productivity objectives or budgets are being met.

b. Write-off/write-down reports detail the original amount of a fee entry and how much of it was written down by not being billed in full to a client, and how much of it was written off by not being paid in full by the client. A regular review of write-offs and write-downs per timekeeper should be conducted to analyze trends and compare totals with other timekeepers at the firm.

c. A billing and collection realization report by a timekeeper will provide a listing of hours/dollar value worked, fees billed, and fees collected. Realization rates are expressed as percentages. A billing realization rate is calculated by dividing the value of fees billed by the value of work done. A collections realization rate is calculated by dividing the value of fees collected by fees billed. An overall realization rate is calculated by dividing total fees collected by the value of total services provided. Target overall realization rates for a typical firm should be in the 85–90 % range. Failure to meet target realization rates should be analyzed by reviewing A/R, WIP, and write-off/write-down reports.

3. Firm Productivity and Management Reports:

a. An invoice journal or fees billed report details the date and amount of each invoice generated by the firm for a specified date range.

b. A firm collections report will list total collections by client/matter or by timekeeper, for a specified date range.

c. Analysis of total firm billing and collections should be reviewed monthly as a part of the firm's overall cash flow management strategy.

d. An accounts payable (A/P) report details the amount and date due for invoices issued to or anticipated by the firm that have not yet been paid. Typical entries that are included in an accounts payable system that will appear on an A/P report would be monthly payments such as rent, utilities, and payroll. Analysis of the firm's total accounts payable should be reviewed monthly as a part of the firm's overall cash flow management strategy.

e. Cash flow reports assist the firm in determining whether funds are available to meet current obligations and to predict the availability of funds in the future. A typical cash flow report starts with the balance in the firm's operating account. Additions to cash will include actual and anticipated income per a review of current and prior income, billing, and collections reports. Reductions to cash will include actual and anticipated expenses per a review of current and prior expense and accounts payable reports.

Chapter 3 Case Management & Office Operations

I. NEW CLIENTS:

A. Initial Client Contact: Prior to undertaking representation of a new client, you must:

1. Decide if you have the expertise necessary to competently represent the client, as required by Rule 1.1 of the Pennsylvania Rules of Professional Conduct. In this context, competence means the requisite legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. However, you don't necessarily have to have special training or prior experience for the matter to be competent. You can accept representation if you can achieve the requisite level of competence through study and investigation, as long as that wouldn't result in unreasonable delay or expense for the client.

2. Determine if there is a conflict of interest. To avoid creating a conflict of interest that could result in disqualification, the attorney should determine whether actual or potential conflicts of interest exist before receiving detailed information from the prospective client, other than that which is necessary (names of adverse or opposing parties or other parties to transaction, names of counsel for any of those parties, and a general description of the nature of legal representation the prospective client seeks). Failure to screen for conflicts of interest can result in a legal malpractice claim. Use a system that will cross reference a database for additional and adverse parties as well as the potential client(s). The Conflicts of Interest Check Form can assist with this check and can be part of your electronic case management system. Rules 1.7, 1.8, 1.9, 1.10, 1.11, and 1.12 address how specific conflict situations must be addressed. If there is a waiver of a conflict of interest, each affected client must give informed consent, confirmed in writing.

3. Conduct a thorough intake interview. If possible, this interview should occur at a time other than the initial contact. If it occurs at the time of the initial contact, the lawyer should conduct that part of the interview only after (1) gathering the information needed to check for conflicts and (2) actually conducting a conflict check. Use a form or checklist to be sure you have the basic information about the client. This data should be entered in the database for the case.

4. Gather information from your prospective client. Using a form like a general information questionnaire or another checklist for a specific type of client will assist you in having the information you need from your client.

B. Documenting the Representation: After the potential client has cleared your conflict check and you have decided to undertake representation, you should discuss the scope of your representation and fees.

- 1.** An engagement letter should be sent to the client confirming what you have agreed to do.
- 2.** You may limit the scope of a new or existing representation, per Rule 1.2, if the limitation is reasonable under the circumstances and communicated to the client, preferably in writing.
- 3.** The engagement letter may also outline the mechanics of communication (e.g. e-mail), the handing of money (e.g. IOLTA unless otherwise directed), and the disposal of documents at the end (e.g. destruction of documents after a specified period of time).
- 4.** A non-engagement letter should be sent if you do not undertake the representation. This gives the client direction should they wish to continue to seek legal representation to pursue his/her case. A non-engagement letter should generally be used in four situations:
 - a.** When the attorney declines a specific request for legal representation.
 - b.** When the attorney performs legal services for, or advises one or more, but fewer than all, of the parties.
 - c.** When the representation involves, or could involve, parties who might reasonably claim the attorney's client intended them to benefit from the attorney's services.
 - d.** When the attorney reasonably thinks someone involved in the matter might claim the attorney negligently misrepresented something of consequence.
- 5.** A non-engagement letter should convey, at a minimum:
 - a.** That the attorney declines the representation;
 - b.** That no attorney-client relationship exists with the party seeking the representation (or who might claim status as a "client");
 - c.** Other relevant, critical information. For example, if the non-engagement letter relates to a proposed litigation matter for a plaintiff, the letter should advise, in rather general terms, the existence of statutes-of-limitation, accompanied by an urging to consult immediately or promptly with another lawyer. If the limitations issue presents more urgently, the attorney should use a much stronger admonition than if the limitations issue is more remote.

6. A disengagement letter should be sent if the attorney decides not to continue the representation (for any reason), if the client terminates the attorney's representation, or if the attorney's representation is involuntarily terminated (such as by the court when revoking a attorney's admission *pro hac vice*).

7. The disengagement letter should state the reason the attorney-client relationship has ended. If the client owes the attorney fees, the attorney should address this issue or matter in the letter. The attorney should consider addressing whether the attorney will consult with successor counsel and the terms of such potential consultation. The attorney should consider addressing whether the client or successor counsel will be allowed access to work product for which the client has yet to pay, and if the attorney will allow such access, the terms on which the attorney will do so.

8. A fee agreement, preferably in writing, is the best way to satisfy the requirements of Rule 1.5 that the nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client before or within a reasonable time after commencing the representation, unless the attorney will charge a client whom the attorney has regularly represented on the same basis as previously charged.

9. A fee agreement must be in writing and shall state the method by which the fee is to be determined, including the percentage(s) that shall accrue to the attorney if there is settlement, trial, or appeal; litigation and other expenses to be deducted from recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated.

10. Other critical aspects of fee agreements which the attorney should convey to the client include: the scope of the representation, services outside the scope of representation, and the recovery of court-allowed attorney's fees and costs.

11. Retainers should be clearly spelled out in the fee agreement. If the lawyer will require an "evergreen" or replenished retainer, that should be spelled out.

C. Client Communication: This keeps the client informed about the representation. Rule 1.2 clearly gives the client the ultimate authority to determine the purposes to be served by the legal representation, within the limits of the law and the attorney's professional obligations:

1. Mail Procedures: These should be established:

a. Designate a specific place to receive incoming mail.

b. Mail should be received so that client confidences will be protected. It should not be opened and laid out at the receptionist's station where clients coming in for appointments can see it.

c. Give a specific person responsibility for opening incoming mail and train a backup.

d. All incoming mail should be date stamped. You may want some original documents to be date stamped on a removable cover for later removal or on the back of the document. Be sure there is an established office policy that is well known to staff in contact with incoming mail.

e. It is usually not necessary to save envelopes. If you want the envelopes attached to correspondence, specify to the mail opener.

f. Mail should be sorted for each attorney or support staff member. The attorney's administrative assistant should further sort mail into correspondence from attorneys, clients, courts, periodicals, and "junk" mail.

g. A designated person should enter any court dates into the docketing system as orders are received. The designated person should also provide the attorney a log of the dates the person has added to the docketing system so the attorney can determine whether any dates present scheduling problems.

h. If an attorney will be out of the office for more than a day, support staff should make a daily mail and fax log form. As much as possible, mail should be filed as received, unless it requires further attention. When the attorney returns, mail logs should be reviewed, after which time they may be disposed.

i. Another attorney in the office should look at the priority mail on the mail and fax log form and take care of any situations requiring immediate attention. Sole practitioners should have support staff look at mail, and if the attorney will not be communicating with the office daily, designate another available attorney to whom emergency matters can be referred.

j. "Green cards" or other receipt of mail forms should be recorded and attached to the appropriate document in the file.

k. Any returned mail or change of address should be noted and entered into the system.

l. Checks should be recorded as received and immediately given to bookkeeping to process as appropriate. Deposits to trust accounts should be made daily.

m. Designate a specific place for outgoing mail.

n. Designate a specific person to prepare outgoing mail. Designate and train a backup person.

o. If mail is processed through a mail room, all staff members should know when mail is picked up or taken to the post office so that emergency trips can be avoided.

p. Maintain client confidentiality for outgoing mail. Do not place it on the receptionist's desk for postal pick-up with client names exposed.

q. If a postage meter is used, a specific person should be responsible for maintaining postage on the meter.

r. Record "return receipt" letters in a log for easy reference.

2. Telephone Calls: Unreturned calls are major obstacles to good client relations. You should establish clear telephone protocols.

a. Establish a set phone answering order (e.g., if receptionist is busy, the phone will ring at administrative assistant A's station who will pick up after a set number of rings).

b. Inform your support staff *exactly* how you want the telephone to be answered. Example: "Good morning, [firm name]. How may I direct your call?" or "How may I assist you? And who may I say is calling?" Avoid asking the person's name and *then* telling him/her whether or not the attorney is available. This procedure may make a client feel his/her call is less important than another person's. *Always thank clients for calling.*

c. If an attorney is unavailable, a message should be sent to voicemail or recorded on a duplicate message pad. Messages should *always* be put in the same place to be picked up by the attorney upon his/her return.

d. Who talks to clients and what is said when an attorney is gone should be spelled out to support staff. Staff should be cautioned not to give legal advice when talking to clients.

e. Perhaps all calls are referred to the absent attorney's administrative assistant, or perhaps the receptionist fields all calls. Whoever talks to your clients, remember to instruct him/her to say: "Attorney X is in court at this time. I anticipate his/her return later today. When is an acceptable time to return your call and at what telephone number can you be reached?" Such a response sounds much better than: "Attorney X is out this afternoon. Can I have him call you?" (Staff should never reveal to a caller anything

about the identity of a client or the nature of a case on which the attorney is working.)

f. *All calls should be returned by the end of the business day, if possible, and at the latest, within 24 hours.* If an attorney is not able to return the calls, support staff may do so, simply explaining the nature of the delay and determining if an emergency exists. Allowable access to voicemail by support staff or the duplicate pad comes in handy for this. Without revealing the name of the client or the nature of the case, a staff member may say: “Attorney X is still in trial, but anticipates returning your call tomorrow. Is this something that will require a call before that time?”

g. Be careful where the phone answerer sits. Be sure clients waiting in the reception area cannot hear phone calls being announced.

h. Have a procedure for taking true emergency calls. You may wish to suggest that your administrative assistant discretely knock on your door and place a note in front of you where no one else can see it. If you decide to take the call, you must, of course, do so in another room away from any clients.

i. Unless you are following emergency procedures, *never* take a call from another client while you are in conference with a client. Even excusing yourself to do so will make him/her wonder why another client is more important than he/she is when he/she is sitting right there.

j. While cell phones are ubiquitous, you should caution the client to reveal no confidential information (especially information the client may want to qualify for “privileged” status). You should not discuss a substantive issue relating to a legal matter on a cell telephone. Rather, the attorney should arrange a time when attorney and client can meet in person or can talk by telephone using a “land line.”

3. Client Letters: These are a vital part of client communication. Sample letters are included in Chapter 9 for:

- a.** Subsequent appointment confirmation letter
- b.** Deposition scheduling letter and instructions
- c.** Court appearance letter

D. Evaluating Cases: Effectively allows you to keep your client informed and be prepared.

- 1.** A plus/minus table can be a good evaluation tool. The plus is anything in favor of your client, the minus anything negative.

2. Start with an analysis of the applicable statutory and case law. How does that apply to your client?
3. Next look at the result your client seeks. Is it reasonable?
4. Look at the economics of the representation. What will you need to do to reach the goal? Will there be extensive discovery? Expert(s)? Costs?
5. How long will it take? What are the expectations of client? Do you have the time to dedicate to this?
6. What are other possible means of resolving the situation? Can you consider alternative dispute resolution, mediation, or arbitration?
7. Balance the pluses and minuses and determine what you need to discuss with your client. Remember: it's your client's case, but he/she came to you for legal representation.

II. COLLECTIONS

A. Seek Counsel: Collecting debts from others can be tricky for attorneys unfamiliar with that area of the law. Seeking the advice of attorneys who regularly handle cases in this area of law is advisable.

1. The Financial Services Regulatory Relief Act of 2006 amended the Fair Debt Collection Practices Act in three respects:

- a. A formal pleading in a civil action shall not be construed as an initial communication under the FDCPA, and does not trigger the notice provision otherwise required in an initial communication.
- b. Notices required by the IRS, the GLB Act, or other federal or state laws regarding breach of data security are not to be treated as initial communications under the FDCPA.
- c. Collection activities can continue within the 30 days following the initial communication to a debtor, provided that the debtor has not notified the debt collector in writing that he/she disputes the debt or the debtor requests the name and address of the original creditor. However, any collection activities should not overshadow the debtor's right to dispute the debt or request the name and address of the original creditor.

B. Suits for Fees: These should be carefully considered as they occasionally draw a counterclaim raising legal malpractice. Using retainers, billing regularly, inquiring of the client why he/she has not paid a bill if it goes unpaid for a month and communicating frequently with your client can help prevent large unpaid accounts.

If you do decide to sue for fees, it is advisable to consider the statute of limitations for legal malpractice and wait at least one year from the termination of the attorney/client relationship, as documented by a disengagement or closing letter. The flip side is that collection of debts becomes harder the longer the wait before pursuit.

Attorneys should also consider the economics of suing for a fee. If the attorney draws a counterclaim for attorney malpractice when the attorney sues to collect an unpaid bill, the attorney faces a substantial risk that he/she will have to pay the deductible on his/her professional liability policy.

III. FILE CLOSING PROCEDURES: At the conclusion of your representation, you should inform the client and address record retention issues.

A. Complete original documents concluding matter (release executed, dismissal entry filed, etc.)

B. Return original documents and papers to the client. Note: You may not charge the client for copying any documents you wish to retain for your files.

C. Copy useful forms for your office form file. Do not charge client for copies of file.

D. Remove duplicates and “clean out” file for storage. Decide if you will scan the file or store a paper file. If storing paper, be sure storage area will not be subject to dampness or other conditions that may render the files unusable. Be sure records are protected in event of disaster. If scanning files into electronic format, make certain to scan to a durable medium, confirm that the electronic files are readable and accessible on the storage medium, and keep a back up of the scanned data off-site or in a location other than the principal data. Also, set a regular schedule to test the integrity of the electronic files.

E. Send a file closing letter to client.

F. Prepare and send final bill to client. Be sure to check on all court costs and other expenses.

G. Calendar future docket dates such as Uniform Commercial Code and judgment renewals.

H. Send a post representation survey client survey to client.

I. Enter case into closed file database for future conflicts checks.

J. Comply with record keeping requirements of Rule 1.15.

K. Assign date for review/destruction of file. Ask client if he/she prefers to have the file returned or destroyed after the assigned date. If you destroy the file, be sure to dispose of it in a manner that leaves no recoverable information.

IV. CASE MANAGEMENT SOFTWARE:

A. What It Is: Case management software (CMS) does so much that it is difficult to describe. To appreciate what CMS can do for you, imagine that all information about your client matters was centrally located, available electronically in an instant, and shareable with everyone in your office. The case information compiled in CMS includes all of your contact names, addresses, and phone numbers (the term “contacts” includes every person or entity that you deal with, some of whom are also clients); all the calendar items related to that matter on anyone’s calendar in your office, all the to-do list items; all the notes of phone calls, theories, meetings; the documents and e-mails related to the case; and even time, billing, and accounts receivable information.

B. Key Features of a Case Management System:

1. Calendar: In a perfect world, your calendar system would be office-wide, easy to use, and portable. You would have the ability to relate every appointment or task to the case to which it is relevant. The system would have redundancy and security built in, you’d have the ability to see other people’s calendars, and you would be able to determine who made any particular entry. Finally, you would have the ability to run reports which would allow you to see, for example, all of your approaching deadlines or to make sure that at least one follow up date exists for every open file. CMS offers all of the aforementioned capabilities. With CMS you can do things like:

- a.** view all incomplete tasks for one matter regardless of whose task it is;
- b.** see all appointments for a particular matter, no matter who is assigned to the appointment;
- c.** produce a history of every task and appointment, past or present, complete or incomplete, in one place.

2. Case Information Tracking: Since case management programs are matter-centric, all matter-related information is compiled in the electronic files. “Files” in CMS are simply electronic containers of matter-specific information. They run parallel to your paper files and contain the key information you might otherwise have to locate in the paper file in order to obtain. This same information is also available to everyone in your firm who works on that file. No more time will be wasted searching for a paper file that’s gone MIA; everything you need quick

access to is stored in your CMS. Information contained in CMS includes the following:

- a.** administrative information (client name, matter name, responsible attorney; source, client's type of business, file type, attorney/individual who referred the matter to you, etc.);
- b.** file summary (notes);
- c.** status report;
- d.** notes related to the file (Forget sticky notes. Make an electronic note that never gets lost.);
- e.** events (collectively, tasks and appointments; you can see only yours or everyone's in your firm);
- f.** time spent (your time spent or all time spent by everyone working on the file; these are copies of the time entries);
- g.** communications (yours or everyone's) which include incoming and outgoing phone calls, phone messages, and e-mails;
- h.** documents (links to the documents you've created for that matter);
- i.** chronological list (recorded list of everything that has happened in the file since it was opened);
- j.** research (links to the research compiled for that particular file);
- k.** custom fields for that type of file. (For example, if it was a probate file, you would find the date of death, county of domicile, probate court case number, whether the decedent died testate or intestate, the decedent's SSN, etc. You can create an unlimited number of custom fields per type of file.)

3. Contact Management: Many times, firms buy CMS simply to create a firm-wide electronic rolodex. A very common problem in law firms is the inaccessibility to client telephone numbers, and perhaps more importantly, *correct* client phone numbers. The way contact lists are maintained in most law firms is usually inefficient. Each person has his/her own electronic or paper contact list, and if anything changes with a particular contact, each person who has that name on a list will, at some point, have the task of updating the record. All CMS has a shared contact list. Because your CMS is also a relational database, contacts are only entered one time, no matter how many matters or people within your firm they are associated with. Simply put, this means that when someone's address

changes, and that person is associated with several matters in your law firm, you will only need to update the address one time and the change is instantaneous for everyone. Furthermore, as soon as anyone in your firm adds a new contact, everyone else can instantly access that contact's information through the CMS.

4. Reminder Systems: There are two distinct benefits to the reminders in CMS. The first is that the reminders don't show up until the day you want them to. The second is that they not only remind you of things, they can initiate tasks. For example, many CMS applications have advanced features which allow you to launch a phone call and/or journal, create a document from a template, run another program (like Excel, QuickBooks, etc.), check the status of a file, send an e-mail, or even visit a website based simply upon an entry you have made in your to-do list. Finally, reports can be run to pull out a list of file follow ups or any other items you've created in the CMS like reports on the expiration of statutes of limitation and the like.

5. Conflict Checking: A proper conflict check involves searching all searchable databases in your office (or manually checking lists of clients and parties), plus circulating a new matter memo to all employees. If you have multiple applications and everyone maintains a private contact list, this can be extremely difficult. To make this easier, all CMS applications have conflict checking built in. With a properly implemented CMS, you would be able to quickly search every person related to any matter in your firm, including parties, witnesses, experts, and even notes.

6. Automated Document Generation: Most CMS enables you to execute straight WordPerfect merges and MS Word mail merges. In this manner, you can pull information (names, addresses, etc.) out of the CMS and into your documents using standard word processor templates. Furthermore, CMS typically integrates with document assembly programs like HotDocs (from LexisNexis). This gives you tremendously more power when generating documents that utilize information stored in your CMS. Time is saved on even the simplest fax cover sheet and significant time is saved on more complex documents. Additionally, the documents created are consistent, no matter who sends the fax, generates the follow up letter, contract, trust, etc.

7. Time Tracking: Cumbersome time-keeping programs which require every time record to be manually entered often cause attorneys with poor typing skills to abandon the idea of entering their own time. As a result, it is often dictated or written down and then given to someone else who enters the time into a billing program. This is an inefficient way of entering time. Two people have wasted time. The person writing the time could have entered it directly into the CMS, and the person who normally types the entries can work on something else—maybe even something billable! Even more so, writing down time and passing it off to someone else increases the possibility that transcription errors will be made. Handwriting is difficult to read, the transcriptionist may not know what your

abbreviations mean. The list goes on. CMS streamlines the process of entering time.

As this genre of software has evolved, more CMS applications are beginning to introduce built-in billing software. At the very least, a good CMS will integrate with many popular third-party accounting programs like PCLaw, Juris, Tabs3, QuickBooks, or Timeslips. For example, let's say you have an appointment on behalf of a client that is billable. Since the appointment is already linked to a matter in your calendar, creating a time entry is a simple matter of clicking the timesheet button in the appointment on your calendar. Doing so creates a perfect time entry with no additional data entry (the appointment description is automatically dropped in and the length of the appointment is also recorded). This ability to automate time entries means that even non-typists can enter their own time which typically results in more time being captured.

8. Communication Management: One of the most powerful features of CMS is the ability to manage and store communication records (usually e-mail and phone calls). All CMS applications allow one to easily journalize phone calls and most integrate with Microsoft Outlook or Novell GroupWise for purposes of e-mail. Not only can you save copies of your e-mails into the appropriate contacts and files, you can one-click bill them as well.

9. Information Mobility: Lawyers who have laptops will be able to take all of the foregoing information about all active matters with them everywhere they go. Therefore, phone calls can be returned while out of the office since almost all file information will be on the attorneys' laptops and searchable in the CMS.

C. Main Players: There are literally hundreds of CMS options, some pre-specialized for use in particular practice areas, others that can be customized to work in almost any practice area. The following is a sample list:

1. AbacusLaw by Abacus Data Systems, Inc. – 1-800-726-3339;
www.abacuslaw.com

2. Amicus Attorney by Gavel & Gown Software, Inc. – 1-800-472-2289;
www.amicusattorney.com

3. Case & Point by Corporate Legal Solutions – 1-800-597-4361;
www.caseandpoint.com

4. Case Management Groupware by Legal Files Software, Inc. – 1-800-500-0537;
www.legalfiles.com

5. CaseTrack by Economy Analysis Group, Ltd. – 207-367-2950;
www.case-track.com

6. Client Profiles by Client Profiles, Inc. – 1-866-720-5005; www.clientprofiles.com
7. CLS/Summit by Computer Law Systems, Inc. (now merged into RainMaker Software, Inc.) – 1-800-328-1913; www.clssummit.com
8. EsqWare Case Management by EsqWare, Inc. – 1-800-568-7996; www.esqware.com
9. Law Base by Synaptec Software, Inc. – 1-800-569-3377; www.lawbase.com
10. Legal Edge Law Firm Suite by Legal Edge Software – 610-975-5888; www.legaledge.com
12. Needles by Chesapeake Interlink Ltd. – 410-363-1976; www.needleslaw.com
12. Perfect Law by Perfect Law – 1-800-749-6200; www.perfectlaw.com
13. Perfect Practice Case Management by ADC Legal Systems – 407-843-8992; www.adclegal.com
14. Practice Master by Software Technology, Inc. – 402-423-1440; www.stilegal.com
15. Prevail by Practice Technology, Inc. – 407-228-4400; www.prevail.net
16. ProLaw by Thompson/West – 1-800-977-6529; www.prolaw.com
17. RealLegal Practice Manager by law.com – 1-888-584-9988; www.reallegal.com
18. TimeMatters by LexisNexis – 1-800-328-2898; www.timematters.com
19. Trial De Novo by De Novo Systems – 1-800-755-9744; www.denovosys.com
20. TrialWorks by Lawex – 1-800-377-5844; www.trialworks.com

D. Hardware Recommendations: The hardware requirements for CMS are program-specific. Some require a dedicated file server; others do not. Some will work on Windows networks only, and some work on other network operating systems. Realistically, the “minimum system requirements” proffered by the manufacturers of CMS are usually far less than what you would want. Your best bet is to ignore the “minimum” system requirements and find out what the “recommended” system requirements are. Better yet, find a consultant who has direct experience with what does and doesn’t work.

V. INTERNET SECURITY AND E-MAIL:

A. Importance: It is incumbent upon you to protect confidential client information and defend your computer systems and data from people who may try to destroy or steal it. Unfortunately, many of these people use the Internet as a means of accomplishing their goals. Here are some things to consider:

B. Internet Protection: If you're going to connect your computer to the Internet, you need to make sure you're protected.

1. Four Essential Types of Protection:

a. Antivirus Software: Antivirus software protects you against viruses which are typically transmitted via e-mail. Examples would be Norton or McAfee Antivirus.

b. Antispam Software: SPAM is unwanted or unsolicited e-mail. An overload of this can make it very difficult to manage your electronic communications. Examples of antispam software include Cloudmark Desktop (www.cloudmark.com), iHateSpam (www.sunbelt-software.com), or Postini (www.postini.com).

c. Antispyware Software: Spyware is typically software that is loaded on your computer without your knowledge. Typically, it gathers information about you as you browse the Internet and uses that information to track surfing habits and/or build marketing profiles (for targeting you with pop-up ads, for example). Spyware typically invades your privacy while bogging down your computer and sometimes rendering computers unusable. In order to detect and remove spyware and prevent future infections, you need antispyware software. Two excellent examples are SpySweeper (www.webroot.com) and Spyware Doctor (www.pctools.com).

d. Firewall: LearnTheNet.com provides an excellent definition of this: "A firewall is a combination hardware and software buffer that many companies or organizations have in place between their internal networks and the Internet. A firewall allows only specific kinds of messages from the Internet to flow in and out of the internal network. This protects the internal network from intruders or hackers who might try to use the Internet to break into those systems." Examples of this might be a hardware firewall like the Linksys WRT54G router or a software firewall like ZoneAlarm Pro (www.zonealarm.com).

2. Security Suites: There are programs that combine all of the aforementioned protections into a single program. It is generally accepted that none of the security suites contain the best of each type of protection. However, they're very cost

effective. Examples are the ZoneAlarm Internet Security Suite or the Norton Internet Security Suite.

C. E-mail Security:

1. General Information: Although the Pennsylvania Rules of Professional Conduct do not require the use of encryption software for e-mail communications with clients, they *do* reference attorneys to ensure that client confidentiality is maintained. This obligation clearly extends to electronic communications. Moreover, it is fairly easy to make a case that one should have little expectation of privacy when sending e-mail and/or e-mail attachments that have not been encrypted.

2. Recommendations: It is a good idea to discuss confidentiality issues with any client you intend to e-mail. Ideally you should get permission to use e-mail for communicating with a client. This may be included in the engagement letter. When information is extraordinarily sensitive, common sense and good judgment should carry the day. Consider avoiding e-mail for this kind of information, or use (and advise a client to use) encryption software to help maintain confidentiality. There are many good options for encrypting e-mail. A few of samples include:

a. Mail It Safe: (www.mailitsafe.com) With Mail it Safe, you have the ability to secure the content, to pull back messages inadvertently sent, and to track the receipt and consultation of your e-mail and its attachments. You also know in real-time if and when your recipient reviews your message and attachments. The Mail It Safe alert system allows you to receive a confirmation report at an e-mail address on your mobile phone, Palm or Blackberry.

b. PGP Desktop E-mail: (www.pgp.com) PGP Desktop E-mail provides you with an automated, transparent set of encryption solutions to consistently secure confidential information in e-mail. PGP Desktop E-mail supports major e-mail security standards and will operate seamlessly with most popular e-mail security software solutions. For recipients without e-mail security, senders can encrypt files using PGP Zip and send the protected information as a standard e-mail attachment.

Adapted from *Barron Henley & Gretchen Koehler Mote*

Chapter 4 Hiring, Retaining, and Terminating Employees

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I. HIRING EMPLOYEES:

A. Determining Your Employment Needs: Your needs will vary depending on the size of your office, your work load, and how much of the administrative work in the office you intend to do yourself.

1. You may only need an office assistant who can act as a receptionist, typist, bookkeeper, and all-around office worker.
2. You may want to hire a paralegal. “A paralegal is a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by an attorney. This person may be retained or employed by an attorney, law office, governmental agency, or other entity or may be authorized by administrative, statutory, or court authority to perform this work.” (National Federation of Paralegal Associations.) A paralegal may draft legal documents for the attorney’s review, assist in trial preparation and do legal research.
3. You can chose to do your own typing and have an automated or “live” service take messages for you, but delegation will allow you to bill more hours at your rate.
4. You should prepare a written job description for each position that you intend to fill. The job description should include expected duties and responsibilities, as well as skill sets and qualifications necessary to do the job. Written job descriptions force you to understand what you need and will set the expectations for your employees. The job descriptions should be reviewed over the life of your business to reflect actual duties performed.

B. Finding the Right People:

1. There are local schools which offer paralegal certificates and train legal secretaries. You can contact the placement offices of these technical schools for names of people seeking secretarial or paralegal jobs.
2. The ACBA endorses a secretarial and paralegal placement service that can be contacted for assistance with obtaining personnel. This option also allows you to choose a temp-to-hire individual which will give you more time to evaluate the potential employee’s work product and fit. See the following link to access the

ACBA's endorsed placement service:

<http://www.acba.org/ACBAsite/Members/AttorneyPlacement.asp>

3. Other professional associations may also be places to contact. You might be able to advertise in association publications for the candidates you are seeking.

One such local association is the Pittsburgh Paralegal Association

(<http://www.pghparalegals.org/>).

4. The Internet is a great resource to look for potential employees. CareerBuilder (www.careerbuilder.com) and Monster (www.monster.com) are two of the largest Internet employment search engines that can help you locate interested people.

5. You can place an advertisement in the local paper seeking candidates. You can also place a classified advertisement in the ACBA's publications at reasonable rates. (*Pittsburgh Legal Journal* or *The Lawyers Journal*.)

6. Word of mouth is also a good way to hear of people interested in employment. Contact your professional friends to see if they can refer people that they would recommend.

C. The Hiring Process:

1. Illegal discrimination is governed by federal, state, and local law and all regulate the hiring process. The various statutes prohibit discrimination in recruiting and hiring on the basis of race, color, religious creed, ancestry, age, sex, sexual orientation, national origin, place of birth, handicap or disability, use of guide or support animals because of the blindness, deafness, or physical handicap of the user or because the user is a handler or trainer of support or guide animals. Immigration law also makes it unlawful to hire or recruit a foreign national who is not legally authorized to work in the U.S. Employers must verify the identity and employment eligibility of all hires. Forms can be obtained from the United States Department of Labor.

2. Interview and application questions are important. You cannot ask questions that will indicate race, color, religious creed, ancestry, age, sex, sexual orientation, national origin, place of birth, handicap or disability, use of guide or support animals because of the blindness, deafness, or physical handicap of the user or because the user is a handler or trainer of support or guide animals. The Pennsylvania Human Relations Commission has a publication that discusses lawful and unlawful pre-employment inquiries. This publication may be found at http://sites.state.pa.us/PA_Exec/PHRC/publications/literature/Pre-EmploymentInquiries.pdf.

3. You might want to have a written application that requests the following information and contains the following notices:

- a. Name, contact information, and date;
 - b. Education and training, including schools attended and degrees and certificates obtained;
 - c. Employment history, including dates of employment and contact information;
 - d. References, with a separate authorization from the applicant for release of information from prior employers;
 - e. A statement that you are an Equal Opportunity Employer;
 - f. A statement for the applicant to sign verifying the truth and accuracy of all statements made in the application. Notice should also be provided here that false statements or relevant omissions will result in discharge.
4. Prior to interviewing candidates, prepare a question outline so that you do not forget to ask essential questions. This will make sure you get the same information from all applicants, and make comparison easier.
 5. Use the interview to tell the applicant what you expect from him/her. You should go over the written job description and discuss what the employee can bring to your office. You may also wish to discuss the candidate's salary and benefit expectations.

D. The Job Offer:

1. The Pennsylvania Department of Labor and Industry tracks occupational employment statistics and can provide you with a range of wages that employees earn in given job classifications and in given areas. You can use this resource to gauge the wages that you may want to offer. See <http://www.paworkstats.state.pa.us/analyzer/wagechoice.asp?cat=INC&session=oeswage&time=&geo=>. Information about Pennsylvania's minimum wage requirements can be found at <http://www.dli.state.pa.us/landi/lib/landi/laborlaw/pdf/lc-1.pdf>.
2. As an employer, you have the option to afford your employees fringe benefits. You may need to provide these to attract and keep quality employees. Fringe benefits may include:
 - a. **An Employer-Sponsored Retirement Plan:** The details of such plans are beyond the scope of this publication, but your accountant or investment advisor can explain the various employer-sponsored retirement plans that are available, and can set them up for you and your employees.

b. Health Insurance: You may be entitled to procure health insurance through a group plan sponsored by the ACBA. See <http://www.acba.org/ACBAsite/Members/USIColburnInsur.asp>.

c. Life Insurance: You may be entitled to establish a group life insurance policy through a plan sponsored by the ACBA. See <http://www.acba.org/ACBAsite/Members/USIColburnInsur.asp>.

d. Paid Time Off: such as vacation days, holidays and sick days.

3. Pennsylvania is an employment-at-will state, which means the employment relationship can be terminated at the will of either party. However, there are restrictions on your ability to fire someone for certain reasons, including express or implied contract, public policy, the employee provides additional consideration, or for reasons prohibited by specific statutes. You should include a statement in your handbook making it clear that the employee is an employee at will, and that no policies or handbooks can be construed as a contract for employment.

II. MANAGING EMPLOYEES:

A. Establishing Policies: Regardless of the size of your office, you should establish certain policies for employee management. These policies should be in writing, and you should ask your employees to sign and acknowledge that they have read and received copies. Be sure to include an employment-at-will disclaimer on that receipt.

1. Privacy Policy: Employees only have the right to privacy that they are put on notice to expect. Therefore your privacy policy should specify that there will be no expectation of privacy with respect to the company's computers, e-mail, PDA's, cell phones, and the Internet. In addition, it should be made clear that desks, break rooms, and other common areas are places in which employees should not expect privacy. Advise your employees that their use of a computer may be monitored by the company.

2. Internet Usage and E-mail Policies: There can be plenty of liability associated with unauthorized or inappropriate use of your firm's Internet access and company e-mail accounts. Your policy should specifically enumerate the purpose, scope, prohibited activities, and consequences for violation. It is a good idea to go over the policy with each employee, have them sign it, and keep a copy in each employee's personnel file.

3. Harassment: You should have an explicit policy prohibiting harassment based on race, color, religion, national origin, sex, age, disability, veteran status, sexual orientation, or any other protected characteristics. It should state that employees who make complaints about harassment will be protected from retaliation and clearly explain the complaint process. Information can be obtained from the Equal

Employment Opportunity Commission website at
<http://www.eeoc.gov/policy/guidance.html>.

4. Confidentiality/Conduct: The Pennsylvania Disciplinary Rules of Professional Conduct Rule 5.3, relates to an attorney's responsibilities with respect to supervising non-attorney employees. Non-attorney employees must receive appropriate instruction and supervision concerning the ethical aspects of their employment, including confidentiality. It is a good idea to have office policies about confidentiality, conflicts of interest, and ethical expectations in writing.

5. Unauthorized Practice of Law: Rule 5.5 of the Pennsylvania Disciplinary Rules of Professional Conduct prohibits an attorney from aiding another person, who is providing legal assistance, when that person is not licensed to practice law. This includes, but is not limited to, having a non-attorney sign pleadings and correspondence, and drafting legal documents which you have not supervised. You should review and approve all documents and sign everything yourself to indicate your review and approval.

6. Discipline: You should have a written policy addressing the different levels of discipline that employees can expect to be in force, from a verbal warning (which is recorded), a written warning, suspension, and termination. If you have a discipline policy, it must be followed for all employees equally, and you should do due diligence in investigating any employee issues before resorting to discipline. The policy should have an immediate termination provision for egregious behavior, and should include an employment-at-will disclaimer. All actions involving discipline must be recorded in writing and kept in the employee's personnel file. All reports should be written at the time the action is taken; they must be complete and factually accurate, and should be signed and dated by the person taking the action.

B. The Personnel File: You should create a file for each employee where you can store employment-related records, such as employment applications, employment offers, policy sign-off sheets, benefit sign-up sheets, education attendance forms, personnel reviews, and disciplinary documents. Medical records should be kept separately. You should store I-9 forms in a separate file as well.

C. Evaluations: Periodically (at least once a year), you should evaluate the performance of each of your employees. The evaluation should include an honest assessment of the employee's attendance, effectiveness, quality of work, and attitude. The evaluation should be in writing and should be reviewed with the employee. Many employers ask their employees to do a self-evaluation, and then discuss strengths, weaknesses, areas for improvement, and expectations. The employee should sign the evaluation, acknowledging that it was reviewed.

D. Protect Your Financial Information: Be careful not to give any employee too much unsupervised control over your office's finances. Embezzlement is a common occurrence when any one employee has too much control in this area. There are different levels of safeguards, but at the least, the person you authorize to write the checks should not be the same person who reconciles the account. You may choose to be the only person authorized to sign checks, and you should balance the accounts yourself frequently.

III. TERMINATING EMPLOYEES:

A. Remember that there are many reasons that may not be used when firing someone. A practical list of prohibited discrimination and relevant discussions can be found at <http://www.eeoc.gov/types/index.html>.

B. Employment law is an entire practice area in and of itself and is beyond the scope of this resource, but to avoid lawsuits and to be prepared for them when they come, there are a couple of common sense things to do. Keep complete and accurate records in the employee's personnel file, make full use of the performance appraisal to document issues, give notice for disciplinary actions and be consistent in those actions, make sure to document any disciplinary action in the employee's personnel file, and be as fair and reasonable as you can.

IV. PAYROLL AND TAXES

A. Forms You Must Complete and File: The hiring of any employee triggers the reporting of wages to certain entities, and the withholding and paying of certain taxes and fees. Bonuses and any extra pay, including some benefits, must be included as income and taxes must be withheld. The first thing you must do is file the following forms:

1. IRS Form SS-4, which will give you an employer identification number. This form can be located on the IRS website (<http://www.irs.gov/>), or by typing "SS-4" into your favorite search engine.
2. PA Enterprise Registration Form (PA-100) which allows businesses to register for an Employer Withholding account with the Pennsylvania Department of Labor and Unemployment and/or Workers' Compensation with the Pennsylvania Department of Labor & Industry. You may download the form from <http://www.revenue.state.pa.us/revenue/lib/revenue/pa-100.pdf>. The form can also be completed online at <http://www.paopenforbusiness.state.pa.us>.
3. In order to comply with federal, state, and local tax responsibilities, it is recommended that you review the following websites <http://www.irs.gov>, <http://www.revenue.state.pa.us>, and http://www.city.pittsburgh.pa.us/finance/html/tax_types_and_regulations.html.

B. Forms Your Employee Must Complete: Your employees must complete an IRS form W-4 from the IRS website (<http://www.irs.gov/>), and a Department of Homeland

Security I-9 form, which can be found on the Formi9 website (<http://www.formi9.com>) or by typing “I-9” into you favorite search engine.

C. What You Must Pay: When you pay your employees, you are required to withhold (deduct) certain amounts from their wages. Additionally, you are required to pay from your funds into certain federal and Commonwealth funds.

1. From each employee’s gross paycheck, you must withhold federal income tax. The amount to be withheld changes and the current withholding percentages can be found on the IRS website or by typing “current IRS withholding” into your favorite search engine. Those withheld amounts must be deposited based on the amount owed.

2. You must also withhold Pennsylvania income tax from each employee’s gross income, which is a flat tax but is also subject to change. The current tax rates can be found on the Pennsylvania Department of Revenue’s website (<http://www.revenue.state.pa.us/>). Depending upon the amount of the withholding, you are required to remit the taxes on a semi-monthly, monthly, or quarterly basis.

3. You are required to withhold Social Security and Medicare taxes from each employee’s gross wages, to be deposited with the federal government. The employee’s portion of the Social Security Tax is currently 6.2% (and has been since 1990), but you should check with the Social Security website (<http://www.ssa.gov/>) for current rates. These taxes, plus your portion of that liability, must be paid quarterly.

4. If an employee works within the city limits of a city that has income tax, you must withhold the appropriate percentage of local income tax for that municipality. If the employee works in the city but does not live in the city, the employee still will be required to pay city income taxes, but you are not required to withhold them. You may however withhold local income tax as a courtesy. Check with your local municipality to see if there is a local income tax. This will need to be paid to the municipality at least quarterly.

5. In addition to the amounts that your employee has withheld from his/her gross pay, you as employer are required to pay additionally into Social Security, currently at 6.2%, and one-half of the Medicare premium.

6. You must provide workers’ compensation insurance coverage. Workers’ Compensation in Pennsylvania is provided through private insurance companies. There are three criteria which the insurance companies generally use to determine the payment of premiums. These are (1) the payroll, (2) the employer classification, and (3) the experience record and number of accidents and severity of injuries incurred.

7. You must also withhold federal unemployment taxes at a rate that can be located at the IRS website on Form 940. FUTA must be paid to the IRS at the time Form 940 is filed.

8. Finally, you must pay state unemployment taxes at a rate determined by the Pennsylvania Department of Labor and Industry. The tax is payable on the first \$8,000 of Pennsylvania wages times the rate and is payable quarterly along with the unemployment tax form.

D. Outsourcing Payroll: If you do not wish to be burdened with the requirements of managing payroll, there are different ways for you to hire that work to be done. Your local accountant usually will do any level of service for you, from completing only W-2 forms at the end of each year to providing complete payroll services. There are also professional payroll services such as ADP and Paychex. Additionally, there are computer software programs that allow you to take care of your own bookkeeping and payroll needs. Some examples of such software programs are PCLaw, Juris, Tabs 3, Quick Books, and Peachtree.

E. Pennsylvania Minimum Wage: Effective July 2009, the Pennsylvania minimum wage was raised to \$7.25 per hour. The federal minimum wage was raised to \$7.25 on July 24, 2009 as well. As these change from time to time, you need to determine the Pennsylvania and federal minimum wages and pay whichever is higher.

V. OTHER RELATED ISSUES:

A. Independent Contractors: You can contract with independent contractors to do work that is not performed by your employees. You need to be careful not to improperly classify an employee as an independent contractor, as you could be held liable for overtime and taxes. A good resource for making sure you properly classify an independent contractor is IRS publication 1779 which can be downloaded for free at <http://www.irs.gov/pub/irs-pdf/p1779.pdf>. See also <http://www.dol.gov/esa/whd/regs/compliance/whdfs13.pdf> from the Department of Labor.

You must issue an IRS Form 1099 to any non-employee that was paid more than \$600 in any calendar year.

B. Shared Employees: If you have an office sharing arrangement, you may agree to share employees. Be sure to establish what portion of the work day is assigned to you, who is responsible for paying taxes, and recognize that all employers may be liable for the actions of a joint employee. Keep in mind an attorney's duties with respect to the supervision of subordinate attorneys and other employees. Please see Pennsylvania Disciplinary Rules of Professional Conduct Rule 5.1 and Rule 5.3.

Chapter 5 Marketing

INTRODUCTION:

Marketing must be an integral part of your practice. It gives you the ability to develop and control your practice and should be viewed as a positive element of any successful business operation.

Your law business will come from three primary sources: current clients, satisfied past clients, and strangers. Of course, current clients and past satisfied clients know you and are pleased with your work. Hopefully they will use your services again or recommend you to others in the future, and for that reason it is important that you continue to market your services to them.

Strangers obviously don't know you, and most likely won't even think about an attorney until they are faced with a legal problem. Once the need arises, however, you want to be the person they turn to, and the way to help them think of you first is through marketing. Effective law office marketing requires both compliance with the Pennsylvania Rules of Professional Conduct and application of sound marketing principles.

I. PENNSYLVANIA RULES OF PROFESSIONAL CONDUCT:

A. Rule 7.1 Communications Concerning a Lawyer's Services: Governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, the statements must be truthful and not false or misleading. Truthful statements that are misleading are prohibited by the rule.

There is no prohibition on client testimonials or self-laudatory claims, as long as they are not unverifiable. However, an advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if it could lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case.

B. Rule 7.2 Advertising and Recommendation of Professional Employment: Provides, subject to requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communication, including public media.

A lawyer is allowed to pay for advertising and communications permitted by this rule, including the costs of:

1. Print directory listings
2. Online directory listings

3. Newspaper ads
4. Television and radio ads
5. Domain-name registrations
6. Sponsorship fees
7. Banner ads
8. Group advertising

Lawyers may also advertise in the bar association's publications, which include the *Lawyers Journal*, the *Pittsburgh Legal Journal*, the ACBA Legal Directory, and the ACBA website. Ads in these publications could lead to case referrals. For more information, see <http://www.acba.org/ACBA/Publications/Advertising-information.asp>.

A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff, and website designers. A lawyer employing such help shall take reasonable efforts to ensure that the conduct of non-lawyer employees is compatible with the professional obligations of the lawyer.

C. Rule 7.3 Direct Contact With Prospective Clients: Prohibits the solicitation of a prospective client through in-person, telephonic, or real-time electronic exchange that is not initiated by the prospective client.

A lawyer may contact or send written communication to a prospective client for the purposes of obtaining professional employment unless a person has made known to the lawyer a desire not to receive communications or the communication involves coercion, duress, or harassment.

None of the requirements of Rule 7.3 apply to communications sent in response to requests from clients or prospective clients. Also, general announcements by lawyers including changes in personnel or office location do not constitute communications within the parameters of this rule.

D. Rule 7.4 Communication of Fields of Practice and Specialization: Provides that a lawyer may communicate the fact that he/she does or does not practice in a particular field of law. A lawyer may not state that he/she is a specialist except: those who are admitted to engage in patent practice may use the designation "patent attorney" and a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty," or a similar designation.

A lawyer may communicate that the lawyer is certified in a field of practice only when that communication is not false or misleading and that certification is granted by the Supreme Court of Pennsylvania.

E. Rule 7.5 Firm Names and Letterheads: Allows truthful statements about a lawyer's professional status, other business pursuits or degrees. If otherwise lawful, a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm in a continuing line of succession.

II. GENERAL IDEAS AND CONCEPTS: Within the confines of the Pennsylvania Rules of Professional Conduct and law practice ethical guidelines, standard marketing concepts and issues are applicable. You should:

- A.** Conduct an honest and candid self-assessment of your current practice and where you want to be in the future.
- B.** Determine your target market and prospective client profile.
- C.** Determine what tools, staff, and skill set you need to employ (language skills, technology, specialized legal practice) and how you may get them.
- D.** Use your imagination for developing prospects.
- E.** Be aware that you are marketing for prospective clients 24 hours a day, seven days a week, for law work that may not even have happened yet.

III. NECESSARY TOOLS FOR THE MARKETING PROCESS: Based on your analysis of the target market, necessary tools for any marketing effort are critical and subject to budget issues. They should include:

- A.** Your-30-second message of what you do.
- B.** Business cards for distribution.
- C.** Note taking ability for follow-up. This can be pen and paper, a Blackberry, tablet PC, or even a digital voice recorder. Be prepared and credible when meeting your client.
- D.** All communication media including stationery, fax cover sheets, and telephone-computer response technology.
- E.** Websites. Do not ignore the continued expansion of the use of Internet search engines by clients and potential clients.

IV. NICHE MARKETING: Be aware that certain marketing methods are better for specific types of practice. Real estate law, business law, criminal law, and probate and elder law all can be marketed using unique methods (i.e. specific industry specialists as referral sources, timing of advertising placement, and demographics of target audience.)

V. NETWORKING: The core concept of networking is that people use lawyers they know or hear about and think can help them. Prospective clients find out about lawyers from friends, family members, other lawyers (referrals), business associates, referral services, Internet searches and the Yellow Pages, and the search continues until one is found with whom they are comfortable. Any network that allows your name to become visible for legal work is a business referral source. Structural versions include formal organization memberships—church, service groups, bar associations, sports groups, school activities, and anything else that gives you visibility and a chance to meet people. Participation in any of these is enhanced when you undertake a leadership role that showcases your talents for being responsible and for getting the job done.

A less structured but effective network is your personal network of contacts or vendors—your barber, dry cleaner, or copy machine salesman. Make sure these contacts know you are a lawyer and know your areas of expertise so that they will hopefully think of you first when they need answers to their legal questions.

VI. WEBSITES: The trend to electronic Internet searches for lawyers and legal advice is a continuing and permanent factor in marketing legal services.

Search engines such as Yahoo, Google, or legal-specific search engines are used by everyone. Websites can stand alone or be included as part of a service like Martindale-Hubbell or West. They can be personally or professionally maintained. If you decide to maintain the site yourself, consider that providing this support costs you and/or your staff time away from your other work.

Websites can be static like an e-Yellow Pages or interactive. The latter requires a level of oversight and periodic updating to avoid dated material that can deter prospective clients.

Don't ignore the membership lists of organizations to which you belong. Being listed on an organization's online membership roster as an attorney with specific areas of practice is a great way to let the other members of the organization know you are available to help them.

As a caution, be aware of the potential clients reliance on your website for legal advice and its adverse consequence. It is important that all of the information on your website be accurate. It is an excellent idea to add an outright disclaimer or "Terms of Use" section which specifically explains that information contained on your website is not legal advice or legal opinion and should not be relied upon. Furthermore, nothing contained in your website is intended to create or establish, and does not constitute, an attorney-client relationship between you and anyone else.

Social networking sites such as Facebook, LinkedIn, and Plaxo present a number of advantages for law firms. They are typically free to join and easy to use, whereas creating and maintaining a detailed and useful website might be cost prohibitive for some smaller law firms. Creating a

profile for your law firm on one of several social networking sites requires very little effort and no monetary expense in most cases. Moreover, social networking sites have proven themselves practical and effective forms of advertising.

Social networking sites allow law firms to connect with both clients, potential clients, and other law firms. By linking to other law firms, lawyers have the opportunity to form mutually beneficial alliances and cross promote. The Internet never closes, so advertising through social networking sites has the potential to reach many more customers than using traditional forms of advertising. If you run an ad on the radio, it will only run as many times as you pay for it, but your profile can be viewed an infinite amount of times online. Smaller law firms can also advertise on some social networking sites using traditional forms of Internet marketing such as pay per click, though not all social networking sites offer this form of advertising.

There are some disadvantages to using social networking sites. There is always a potential for failure of security in both personal and business context. While many sites apply certain measures to keep any of these cases of harassment, cyber-stalking, online scams, and identity theft to an absolute minimum, you can never be fully protected. Furthermore, results generally aren't achieved nearly as quickly with social media as they are with direct marketing techniques.

VII. NEWSLETTER AND CORRESPONDENCE: The newsletter should be viewed as a chance to make contact with current, past, and prospective clients. The size of your law firm and the time you have available to devote to creating a newsletter will help you decide if you can create the newsletter in-house or will need to use outside contractor sources.

The goal is to make frequent contact so the recipient remembers you when he/she has a legal problem. The contact cycle can be quarterly, monthly, or just periodically.

Take advantage of direct mail opportunities that are triggered by changes in the law, year-end planning, or client business issues like annual meetings or successor planning. In all cases, seek to create opportunities to communicate with clients and potential clients so you can showcase your legal services and expertise.

A growing number of lawyers are also using electronic newsletters as a means of reaching their clients. The cost is typically much less than direct mail and there are services that make it easy to develop professional looking newsletters and manage the distribution of them, such as www.constantcontact.com.

VIII. VISIBILITY: You should be looking for opportunities to speak and write on legal issues so your audience can see your competence and expertise in a topic area or specialty. Opportunities are extensive both within the legal community, such as speaking at a CLE event or submitting an article for publication, as well as within non-lawyer groups who have regular meetings and are seeking speakers.

IX. E-MAIL HEADERS AND FOOTERS: The general shift to e-mail use requires the same care as other firm communications. The Internet's inherent informality should not be an excuse for a failure to "sell" and demonstrate your competence.

A. Signature: At the minimum, your name and contact information should be part of your e-mail signature that is automatically attached to your e-communication. Some lawyers have expanded their signature to include application of a motto, phrase, or practice area. Compliance with all standard business e-mail guidelines of courtesy and professionalism are mandatory since you don't know to whom your communication will be forwarded.

B. Additional Disclaimers and Notices: You may also want to consider adaptations of the following at the end of your e-mail addresses:

1. This e-mail may contain confidential or privileged material and is intended for use solely by the above referenced person(s)/recipient(s). Any review, copying, printing, disclosure, distribution, or other use by any other person or entity is strictly prohibited. If you have received this transmission in error, please notify the sender by telephone at _____ or send an electronic mail message to the sender and delete the copy you received. Thank you.

2. Neither the information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is indicated in this message.

3. IRS Circular 230 Notice/Disclosure. To ensure compliance with requirements imposed by the Internal Revenue Service, I inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

X. SPECIALIZATION: If you have an authorized "specialty" or certification by an organization approved by the Pennsylvania Supreme Court, use it!

A. If you don't maintain a certification or a "specialty," but you concentrate your practice in certain areas, make that known pursuant to Rule 7.4 while being careful not to mislead anyone in violation of Rule 7.1. Make sure this becomes a part of your letterhead, e-mail signature, and other disclosure opportunities.

XI. RESOURCES: The Allegheny County Bar Association has developed a Lawyer Referral Service. For more information, see www.acba.org.

XII. PUBLIC RELATIONS ACTIVITIES TO CONSIDER:

A. Prepare and distribute news releases

1. Announcing the firm's formation, new members, or offices

2. New certifications

3. Seminars you are offering

B. Prepare letters to the editor of the local newspaper explaining current events related to your practice areas.

C. Develop regular newspaper columns for your local papers on topics within your area(s) of practice.

D. Offer your services to local organizations (Chamber of Commerce, Rotary, Kiwanis, PTA, etc.) to speak on areas in your fields of practice.

E. Consider hosting seminars or clinics for your community in areas of your practice.

F. Contact local radio and television stations to offer yourself as a contact in your areas of practice. You can become a local resource for the media, and you could be invited to appear on local talk shows.

Marketing Your Sole Practice or Your Law Firm

From the Marketing Department of the Allegheny County Bar Association

Whether you have a large firm or small firm or you are a sole practitioner, your business could benefit from some level of marketing. While some firms may be able to put aside a larger budget, there is still a lot one can do marketing-wise with limited funds available.

No matter what size of firm you operate, you should ensure that these important objectives are followed.

- Always adhere to the Pennsylvania Rules of Professional Conduct when it comes to marketing/advertising. Rules 7.1 through 7-7 discuss what you can and cannot do when it comes to legal marketing. If you aren't sure about a marketing piece or advertisement, consult with one of the Allegheny County Bar Association's duty officers for an interpretation of the rules. The duty officers can be found on the Allegheny County Bar Association website under Committees/Professional Ethics Committee.
- Your marketing and advertising efforts should convey professionalism, which includes integrity and honesty. Your marketing will not only reflect positively on you and your firm but will help improve the public's perception of attorneys and the legal profession.

While marketing options for your firm can range from simple networking and word of mouth endorsements to full blown advertising campaigns, keep these tips in mind:

- Running a small firm or being a sole practitioner can be an important point of differentiation. Many consumers appreciate having an attorney located in their neighborhoods.
- Legal service is different from other services and products because consumers may not need your assistance for years.
- Marketing services can be negotiated.
- Slowly build up your marketing budget and build in measurement tools to see what is working.
- Even if you are a small firm or sole practitioner, you might want to consider hiring a marketing firm. There are a lot of excellent firms in Allegheny County who work with small businesses and organizations. Ask around for references and interview several before choosing the one to represent your firm.

Develop a Marketing Plan

If you want to market your firm, you should start out with a written marketing plan. A marketing plan can be as simple as a one page list of bulleted items or it can be more comprehensive, with detailed listings of marketing strategies and competitive and market analysis. A written plan helps you to focus your strategy and guide your efforts.

A more detailed marketing plan should include:

- Purpose/Mission
- Target Audience (Who are your customers?)
- Strategic Analysis (SWOT Analysis)
- Market Analysis
- Marketing Strategies
- Budget
- How are you going to measure effectiveness?

Purpose/Mission

It is important to have a clear understanding about what goals you want to accomplish through your marketing efforts. Obviously, one major goal is to solicit new business.

The marketing plan of the Allegheny County Bar Association includes these items under Purpose/Mission:

- Raise awareness of the good things our attorneys are doing in the community.
- Position the bar association as a primary source of legal information for the general public.

Target Audience

It is important to know the types of customers you are interested in soliciting. Do you want high-income, middle-income, or low-income clients? Are you interested in senior citizens, small businesses, religious organizations, or other non-profits? Are you interested in strictly family law cases or do you want clients looking for assistance in a variety of legal areas?

It is important to know your audience, so that you can develop marketing strategies that target these individuals rather than just hoping you hit your target with a general approach.

Strategic Analysis (SWOT)

Many marketing plans include the results of an exercise called a SWOT Analysis, which is an acronym for Strengths, Weaknesses, Opportunities, and Threats. A SWOT Analysis will help you find your niche or what differentiates you from the competition as well as help you uncover opportunities and avoid possible threats from competition or the current business environment.

A STRENGTH of a elder law attorney may be years of experience in handling estates and living will issues or being able to offer more affordable rates than a lawyer in a larger firm. A WEAKNESS may be that there are five other elder law lawyers in a two-block vicinity. An OPPORTUNITY may be to offer a clinic on the new power attorney pamphlet that was created by the Allegheny County Bar Association and the Allegheny County Medical Society. A THREAT may be that non-legal organizations are offering estate planning services.

It would be helpful to conduct a SWOT Analysis annually as part of developing your upcoming marketing plan and budget.

Market Analysis

When considering marketing strategies for yourself or firm, get a better understanding of the current market conditions that can affect the number and types of consumers looking for legal service. In recent years, the decline of the housing industry and changes in bankruptcy laws have led to increased business for bankruptcy and real estate lawyers. If your market has a larger number of senior citizens, there may be a greater need for estate planning and assistance with wills and power of attorney documents.

An analysis of the market in your area should also include knowing the competition. What types of lawyers are in your community? What services do they provide that you don't? What differentiates you from the competition?

Budget

It is important to know how much you are able to spend on marketing, but don't put off marketing because you don't have a lot of money to spend. With a limited budget, you may not be able to do television commercials but you still may be able to advertise on the radio or some less expensive option.

Measuring Marketing Efforts

Obviously, if you start seeing a steady stream of new clients after you started marketing your business, you would be correct to assume that those marketing efforts are succeeding.

Other measurement indicators could be:

- Referrals from both friends and other attorneys
- Hits to your website
- More requests for information pamphlets

The most important part of measuring your efforts is determining what works and what doesn't, so that you can dedicate greater resources to the more effective marketing efforts.

Create a Website

To be competitive in any type of business today, a company website is a must. A high percentage of consumers are searching for products and services solely through the Internet, so to have an online presence for your business puts you within reach of most consumers today.

A website can be as simple as one page or it could contain multiple layers of pages. The price to create a website can be as low as a couple hundred dollars or as high as several thousands of dollars. The Allegheny County Bar Association has a business relationship with EsqSites, which will produce websites for ACBA members for as little as \$100 for a one page site. For more information, visit the bar association site at www.acba.org and click on Member Information.

Regardless of the size of your website, you should ensure that your site contains this information:

- About Us – Provide information about yourself or firm, especially your legal experience.
- Types of services you provide
- Contact Us – Include name, address, phone, and fax numbers at the very least. Include a means of contacting you through the website.
- Directions
- What differentiates you or your firm from other firms?
- Frequently asked questions

Ensure that your website is user friendly and updated frequently.

Variety of Marketing Strategies

As mentioned earlier, marketing can range from word-of-mouth personal references to full-blown advertising campaigns. Here is just a partial list of marketing ideas.

- Yellow Pages or other print listings. The Yellow Pages has been one of the top vehicles for advertising for attorneys and other businesses for many years. However, more consumers are looking for products and services online, so at least be listed on the online Yellow Pages, even if you don't have a website. If you choose to go with the print Yellow Pages, consider using a graphic item, such as your logo or a box outline, to grab the reader's attention and give you more room to add copy and your website address.
- Create a one or two page website. It could be a good project for a high school or college class or it could be done using EsqSites.

- Identify yourself to potential clients as a resource for a certain area of the law. (E-mail is an effective approach. Direct mail is another option.)
- Join the Allegheny County Bar Association Lawyer Referral Service and benefit from the LRS advertising.
- Join the ACBA speakers' bureau.
- Volunteer for community programs and pro bono projects.
- Offer story ideas to your neighborhood regional papers.*
- Contact local community groups and suggest a topic to speak about.*
- *(Piggyback off stories in the news – i.e., reports of elder fraud, bankruptcy changes, living will and power of attorney stories.)
- Offer to write a column/op-ed for your local newspaper, but pitch this with a couple of ideas in mind.
- Networking (Let people know you are looking for business). This is still one of the most effective marketing options.
- Host a small clinic/workshop. (Work with accountant friends or other professionals.)

Ideas for a Small Marketing Budget (If you have several thousand dollars to spend.)

- Create a one or two page website.
- Sponsor a community sports team.
- Purchase an ad in your community newspaper. Ensure that the ad is professionally designed, and that it includes contact information and your website address. The newspaper normally can do this for you.
- Take out an ad in a community event program (could be as little as \$25). Programs aren't the old typed programs anymore. They have shelf life.
- Place an ad in your church bulletins.
- Produce a professional marketing or direct mail piece to send to clients and potential clients.

Some Tips on Producing a Print Ad

- Remember to follow the Pennsylvania Rules of Professional Conduct for ads.
- You've spent the money, so make it an effective ad. Get someone with an eye for design to create it. Most publications will produce your ad.
- Make your ad interesting (i.e., pose a legal question and its answer).
- Piggyback off a current news items, such as changes in the bankruptcy laws or the revised living will and power of attorney pamphlet produced by the Allegheny County Bar Association and the Allegheny County Medical Society.
- With clip art packages, easy-to-use software packages, and photo libraries, it is easy to produce camera-ready artwork.

Billboard Advertising

- Impressive approach, but it is pricey.
- Don't eliminate this option until you investigate.
- They will produce your ad for you.
- Price depends on size and location.
- Keep it simple and professional.

Radio Advertising

- It is cheaper than television.
- Many consumers still listen to radio, especially during drives time and popular talk shows.
- Radio stations offer specials. A radio commercial could cost as little as \$25 a spot.
- Sponsor weather or traffic conditions.

Television Advertising

- Television advertising is an expensive option, but if you have some marketing dollars, you should at least get some prices from the stations. More attorneys are advertising on television because it is an effective way to reach a mass audience.

- There is room for price negotiation.
- Cable television commercials are cheaper.
- Stations will produce your commercial as part of the contract.
- Price depends on airing time, the amount of spots you purchase, and the length of the commercial.

If you have any questions about marketing, consult the Marketing Department of the Allegheny County Bar Association.

Chapter 6 Practice Challenges

Portions from materials prepared by Gretchen Koehler Mote

This chapter highlights some of the challenges practicing attorneys will face during their careers. The topics are not exhaustive, but are meant to give some guidance in situations where you may encounter potential pitfalls.

Above all else, this section is meant to raise awareness that when you experience “bumps in the road,” you are not alone. Others have been there before! You are encouraged to seek help immediately in order to not imperil your clients or yourself.

I. MAKING MONEY: The evolution of the practice of law from “an honored profession” to a “business” is often lamented. However, a framed document from the 1800s listing a fee schedule clearly reflects that lawyers have never wanted to work for free and have always had to consider how to keep the lights on, whether those lights were lanterns or halogen.

A. Practical Tips:

1. Get your name out by community and professional involvement.
2. Do what you say you will do, when you say you will do it.
3. Clearly explain the scope of what you will do.
4. Use engagement letters, written fee agreements, and retainers.
5. Send regular status updates to clients.
6. Bill for your services reasonably and regularly.
7. Save for that rainy day. Not every month hits a home run.
8. Spend less than you make.

B. Following Your Business Plan: You spent your valuable time and effort to develop your business plan. Use it! Re-visit it regularly and tweak it to fit reality vs. your expectations. Eliminate what isn’t working and add new items. It will take some time to see results, so set realistic time tables and follow through. For more on how to write a business plan, see Chapter 1.

C. Cash Flow: Gauging the ebb and flow of money into your law practice can be tricky. When starting out, it’s a good idea (but often difficult) to have cash reserves. A line of credit to cover cash-flow issues and emergencies is essential.

Keep a close eye on this. Operating on a deficit obviously won't work in the long haul. Use of retainers should help get over some of this uncertainty by avoiding some billing and payment delays and risks. Remember to budget for fixed costs that must be covered at regular intervals regardless of current cash flow, such as weekly employee salaries, monthly overhead, and quarterly tax payments. No matter how tempting it may be when money becomes tight, your trust account is NOT the place to get a quick loan.

II. SUBSTANCE ABUSE: Statistically, lawyers have a higher incidence of substance abuse and depression than the general population. Whether stresses of dealing with clients or the financial uncertainty of the practice of law causes this, it probably contributes to it. If you or a colleague face issues of substance abuse, depression, or addictions including gambling, Internet site abuse, or shopping addiction, you have help nearby.

A. Rule 8.3(c) of the Pennsylvania Rules of Professional Conduct provides that information regarding lawyers participating in lawyers' assistance programs is not only confidential but "shall be privileged for all purposes."

III. BURNOUT: Lawyers experiencing a general fatigue with the practice of law will tell you burnout is an understatement! When this happens, you can employ several strategies:

A. Determine areas of dissatisfaction:

1. If monetary, re-visit business plan for evaluation.
2. If practice area, explore new fields.
3. Contact Pennsylvania Lawyers' Assistance Program for assistance.
4. Review Chapter 7, Quality of Life.
5. Consider finding an attorney to serve as your mentor.

IV. PROFESSIONALISM CONSIDERATIONS - CLIENT RELATIONS:

A. It is important to offer fairness, integrity, and civility to opposing parties and their counsel. Rules 3.4 and 4.4 reflect these goals.

B. Courts and other tribunals are offered respect, candor, and courtesy in the next paragraph. Rules 3.3 and 3.5 require the same conduct.

C. Concern for reputation and well-being of colleagues in the practice is found in paragraph four, as well as in Rule 4.1 and 4.4.

D. Keeping the law a calling in the spirit of public service and promoting its understanding encompasses paragraph five. Rules 5.1, 5.2, 5.4, 8.1, 8.3 and 8.4 echo these sentiments.

E. Finally, the offer of service to the public is contemplated in reserved Rule 6.1 and in 6.2.

F. The interweaving of professionalism in the Rules indicates how inseparable such conduct is with the continued practice of law as a learned profession.

V. MULTI-JURISDICTIONAL PRACTICE (MJP): Rule 5.5 provides that a lawyer may practice only in a jurisdiction in which the lawyer is authorized to practice. The rule further provides that a lawyer who is admitted in another United States jurisdiction is in good standing and regularly practices law may provide legal services on a temporary basis under one or more of the conditions listed.

The comments to the rule also address pro hac vice admission, noting that such admission of an out-of-state lawyer to represent a client is a matter within the discretion of the tribunal before which the out-of-state lawyer seeks to appear.

No change in Pennsylvania law or ethics is intended by the adoption of Rule 5.5.

VI. RETAINING YOUR LICENSE: Pennsylvania Regulations for Continuing Legal Education require:

A. “The public properly expects that lawyers, in the practice of the law, will maintain throughout their careers certain standards of professional competence and ethical behavior. These regulations prescribe the standards for the implementation of the Orders of the Supreme Court of Pennsylvania of January 7, 1992; July 1, 1992; August 21, 1992; November 29, 1993; February 1, 1994; June 22, 1994; March 7, 1995; and September 17, 1996; promulgating the Pennsylvania Rules for Continuing Legal Education and mandating continuing legal education requirements for Pennsylvania lawyers. These regulations have been amended several times. As of here and now, the following regulations are in effect.”

B. “Section 3: Minimum Education Requirements

Every active lawyer shall complete the following annual CLE minimum requirements:

Commencing September 1, 1995, the CLE requirement shall be a minimum of one (1) hour of ethics, professionalism, or substance abuse and a minimum of eleven (11) hours of substantive law, practice, and procedure and shall be first applicable to the compliance groups as follows:

Group II August 31, 1996

Group III December 31, 1996

Group I April 30, 1997

CLE credits for ethics, professionalism, or substance abuse may be applied to any substantive law, practice, and procedure requirement.”

VII. SUPERVISORY RESPONSIBILITIES: Rules 5.1, 5.2, 5.3 enact the responsibilities for lawyers.

A. Under Rule 5.1 a lawyer shall be responsible for another lawyer’s violation of the Rules if the lawyer either orders, or with knowledge of specific conduct, ratifies the conduct or if the lawyer is a partner or has comparable managerial authority in the law firm or governmental agency or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when consequences of such conduct can be avoided or mitigated but fails to take reasonable remedial action.

B. Rule 5.2 provide that a lawyer is bound by the Rules notwithstanding that the lawyer acted at the direction of another person. However, a subordinate lawyer does not violate the Rules if that lawyer acts in accordance with the supervisory lawyer’s reasonable resolution of a question of professional duty.

C. Rule 5.3 imposes responsibility on the lawyer for non-lawyer assistants. A lawyer individually or together with other lawyers with managerial authority must make reasonable efforts to ensure the firm or governmental agency has measures in effect giving reasonable assurance the person’s conduct is compatible with the professional obligation of the lawyer.

VIII. MALPRACTICE INSURANCE: Rule 1.4 requires that the lawyer advise the client in writing if the lawyer does not maintain professional liability (malpractice) insurance of at least \$100,000.00 per occurrence and \$300,000.00 in the aggregate or the client must receive the notice prescribed by the Rule.

Beyond the specified amounts, determining the amount of professional liability insurance is a business decision of the lawyer involving an assessment of potential exposures and their tolerance for risk.

Whatever malpractice carrier a lawyer chooses, careful consideration should be given to the company’s rating by insurance rating services, the track record of service, and how the policy compares with others in the marketplace. You should always carefully read your policy. In the event of a claim, you must read and follow the directives in the policy to fully comply with the required claim reporting procedures.

IX. DISCIPLINARY PROCEDURES: Rules 8.1 to 8.5 of the Pennsylvania Rules of Professional Conduct impose duties for lawyers’ own, as well as others’, admission or discipline. The rules make it a separate professional offense to knowingly make a misrepresentation or omit a material fact in connection with a disciplinary matter.

Rule 8.3 requires a lawyer to self-report a disciplinary violation.

You should also check whether disciplinary coverage is afforded under your legal malpractice insurance policy.

Portions from materials prepared by: Kathleen Allmon Stoneman & E. Jane Taylor

The legal profession is extremely rewarding most of the time. However, because the profession is so demanding in terms of time, resources, and mental/emotional stress, attorneys need to construct their practices so that their profession does not consume them. An attorney is better able to serve his/her clients when he/she enjoys the work and is not under prolonged stress. This chapter attempts to provide ideas to ensure that an attorney's practice remains rewarding whether through outlets related to the profession, through office practice assistance, or through pro bono engagements. Achieving a sense of balance between work and the rest of your life and enhancing your professional satisfaction through pro bono work will help make you a better attorney and help you maintain a sense of purpose in your career.

I. WAYS TO ENHANCE CAREER SATISFACTION

A. Mentoring:

1. Through the Allegheny County Bar Association, other local bar associations, the Pennsylvania State Bar Association, and the American Bar Association.
2. Through area law schools.
3. Mentoring new attorneys in the area.

B. Community Organization Boards, Advisory Committees

C. Presentation At Seminars:

1. Through national, state, or local bar associations.
2. Through local organizations or other businesses.
3. Estate or tax planning seminars with CPAs, investment advisors, or insurance agents.
4. Caution:
 - a. Pennsylvania Rules of Professional Conduct, Rule 5.3 Responsibilities Regarding Non-lawyer Assistance
 - b. Pennsylvania Rules of Professional Conduct, Rule 5.4 Professional Independence of a Lawyer

c. Pennsylvania Rules of Professional Conduct, Rule 5.6 Restrictions on the Right to Practice.

D. Be Selective: Sort through cases at or before intake to determine what cases you should accept or decline.

1. Determine how many previous attorneys the potential client has utilized in the case and the reasons for terminating the relationship.
2. Estimate length of time case will take.
3. Determine whether the potential client seems willing to listen to you and your advice.
4. Consider whether taking the case will place an undue burden on you and/or your staff and cause you to neglect other matters at work and home.
5. Ask: Is the potential client realistic in his/her expectations?
6. See Pennsylvania Rules of Professional Conduct, Rule 1.18 Duties to Prospective Client and Rule 1.16 Declining or Terminating Representation.

E. Mediation/Alternative Dispute Resolution: See Pennsylvania Rules of Professional Conduct Rule 2.4 Lawyers Serving as Third-Party Neutral.

F. Managing Your Schedule:

1. Schedule “work days” on your calendar when no client appointments are scheduled. This permits you to do the work necessary outside of the appointments to accomplish the client’s goals in an expeditious manner. See Pennsylvania Rules of Professional Conduct, Rule 1.3 Diligence.
2. Schedule specific times of day to return telephone calls/respond to e-mails. Pennsylvania Rules of Professional Conduct, Rule 1.4 Communication.
3. Delegate non-lawyer tasks when appropriate. See Pennsylvania Rules of Professional Conduct, Rule 5.3, *supra*.
4. Consider arranging flex-time with another attorney in the firm. If you’re a trial attorney, schedule appointments around the court schedule.

II. KNOWLEDGE SHARING/USE OF COMPUTERS

A. Sharing: Documents can be shared between attorneys, banks, other professionals, and clients easily and efficiently.

B. Automated Drafting Process: Computer programs allow attorneys and staff to create documents with extreme accuracy and consistency. Options include using the automation features found in the popular word processors like Microsoft Word and Corel WordPerfect; or utilizing programs which integrate with Word and WordPerfect such as HotDocs, DealBuilder, Rapidocs, Pathagoras, Activedocs, QShift, or D3.

C. Knowledge Management: According to dictionary.com, one definition of “knowledge management” is “the technologies involved in creating, disseminating, and utilizing knowledge data.” This concept is extremely important to lawyers from efficiency and profitability perspectives. Here are some resources:

1. Knowledge Management for Lawyers
www.lawyerlounge.com/knowledge/index.php
2. American Bar Association Legal Technology Resource Center - *KM 101*: Assistive Technology for Knowledge Management Initiatives -
www.abanet.org/html/ltrc/publications/km101.html
3. LexisNexis - Perspectives on Knowledge Management in Law Firms (White Paper) by Ronald W. Staudt, Professor of Law
www.lexisnexis.com/presscenter/hottopics/kminfirms.pdf
4. Legal Knowledge Management: A Holistic Model (White Paper) by George T. Tziahanas, J.D., Vice President of Knowledge Services for Legal Research Center
<http://tinyurl.com/39pxfz>
5. www.systems-thinking.org/kmgmt/kmgmt.htm
6. www.llrx.com/features/kmpower.htm

D. Teleconferencing: Teleconferencing between attorneys saves time and travel, and speeds negotiation.

III. TAKING TIME FOR YOURSELF/VACATION

A. Find a Backup: Find an attorney to provide emergency coverage for your clients in your absence. See Pennsylvania Rules of Professional Conduct Rule 1.6 Confidentiality of Information and Rule 1.5 Fees and Expenses.

1. Obtain clients’ agreement.
2. Provide other attorney with necessary file information.
3. Create written fee arrangement with clients’ knowledge and consent.

B. Breaks: Schedule breaks in weekly schedule. Work with staff to schedule appointments at sufficient intervals to allow for breaks.

C. Achieve a Balanced Life With Job, Family, and Interests:

1. Work Schedule:

- a. Consider a part-time/flex-time schedule.
- b. Work at home.
- c. Set a work schedule and hold to it.
- d. Limit or eliminate evening or Saturday appointments.
- e. Schedule work/office appointments around children's schedules/ school schedules.
- f. Carve out weekend time for family, friends, and personal interests while leaving work out of your plans (i.e. do not take cell phone calls).
- g. Take a lunch break.
- h. Make lunch appointments with friends so that you force yourself to take a break and have time with friends as well.
- i. Schedule working lunches with other attorneys to discuss cases.

2. Rely on Support Staff:

- a. Train staff to handle calls, drop-ins and matters not requiring legal advice. (See Rule 5.3 Responsibilities Regarding Non-lawyer Assistants)
- b. Delegate, delegate, delegate. Use the paralegals you hired and take advantage of the excellent on-the-job training you have given your staff.

3. Efficient Communication: Communicate through e-mail to increase convenience for providing responses.

4. Pro Bono Work: Do pro bono work for groups of interest, such as bar associations, church-related groups, humane society, arts council, or historical society. Many resources are available:

a. Pennsylvania Rules of Professional Conduct

Preamble and Score[6]: “As a public citizen, a lawyer should seek improvement of the law, access to the legal system, advance the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public’s understanding of and confidence in the rule of law and the justice system and because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.”

Rule 6.5: waives conflict of interest rules for attorneys providing short term limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or a court.

b. Referral Sources:

Area Lawyer Referral Services

Allegheny - 412-261-5555

Uniontown - 1-800-692-7375

Washington - 724-225-6710

Westmoreland - 724-834-8490

Neighborhood Legal Services Association

Allegheny County Administrative Office

928 Penn Avenue

Pittsburgh, PA 15222

412-255-6700

Aliquippa - 412-466-0773

Butler County - 724-282-3888

New Castle - 724-658-2677

Beaver County - 724-766-0773

Lawrence County - 724-658-2677

Crisis Center North (Abused Women) - 412-364-5556

Allegheny County Public Defender

412-350-2401

American Civil Liberties Union (ACLU)

313 Atwood Street

Pittsburgh, PA 15213-4025

412-681-7864

Center for Victims of Violent Crimes - Allegheny County

900 Fifth Avenue

Pittsburgh, PA 15219

Hotline: 412-392-8582

Main Number: 412-350-1975

Children, Youth and Families - Allegheny County

412-473-2000

City of Pittsburgh - Mayor's Service Office

412-255-2621

Allegheny County Department of Human Services

412-350-4456 (General Information)

Allegheny County Department of Human Services - Mental Health

Wood Street Commons

304 Wood Street

Pittsburgh, PA 15222

412-350-4457

Emergency: 412-350-4457

Pennsylvania Department of Public Welfare

300 Liberty Avenue

Pittsburgh, PA 15222

412-565-2146

Disabilities Law Project and Education Law Center

Law and Finance Building, Suite 1901

429 Fourth Avenue

Pittsburgh, PA 15219

412-391-5225

Equal Employment Opportunity Commission

Allegheny County

412-644-3444

Family Services of Western Pennsylvania
1-888-222-4200

Gateway Rehabilitation Center (alcohol & drug abuse)
412-766-8700

Housing Authority - City of Pittsburgh
200 Ross Street
Pittsburgh, PA 15219
412-456-5000

Indigent Divorce Program
412-391-4467

Judicial Inquiry and Review Board of Western Pennsylvania
225 Market Street
Harrisburg, PA 17101
1-717-234-7911

Allegheny County Bar Foundation Juvenile Court Project
412-391-4467

Pennsylvania Commission for Women
1-717-787-8128
1-888-615-7477

Pennsylvania Department of Aging
Allegheny County - 412-350-4234
1-717-787-7313

Pennsylvania Department of Insurance
Allegheny County - 412-565-5020
1-717-787-2317

Pennsylvania Protection and Advocacy
1414 N. Cameron Street, C
Harrisburg, PA 17101
1-800-692-7443

Pennsylvania Human Relations Commission
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
412-565-5395

Pennsylvania Department of Vocational Rehabilitation
1-800-442-6351
1-866-830-7327 TTY

Southwestern Pennsylvania Legal Aid
16 W. Cherry Avenue
Washington, PA 15301
724-225-6170
(Washington, Greene, and Fayette Counties)

U.S. Department of Labor
Office of Federal Contract Compliance Programs
1000 Liberty Avenue
Pittsburgh, PA 15222
412-395-6300

United Way of Allegheny County
Helpline for Social Service Referral Services
412-255-1155

Women's Center and Shelter of Greater Pittsburgh
412-687-8005

c. Bar associations:

Allegheny County Bar Association
400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Phone: 412-261-6161
Fax: 412-261-3622
www.acba.org

d. Court appointments

**e. Community organizations, including churches, temples, mosques,
and any affiliated groups**

f. Schools

5. Prioritize and Engage in Strict Self-Discipline: Stick to a plan whenever possible. Do not be controlled by the “tyranny of the urgent.” Remember that what may be perceived as urgent by the client or another attorney is not always the most important aspect of your work day. You cannot help everybody; you are not indispensable. Be careful not to take a case based solely on feelings or guilt (this seldom turns out well and takes more time than other cases).

6. Exercise: Schedule regular exercise during the day or evening after work (even if it is just a walk around the parking lot).

7. Make Best Use of Drive Time: Use your drive time to and from work to relax by either listening to music, your favorite radio program, or books on tape.

D. Reassess Your Practice:

1. If certain types of cases continue to wake you up in the middle of the night, focus on taking your practice into other areas and eliminating the stressful cases.

2. When all else fails to provide you with professional and personal satisfaction, assess what you enjoy doing and by to match your practice areas and style with your interests and skills.

3. “An in-depth assessment of your skills is absolutely necessary before you can undertake an effective job change.[...] Without an honest analysis of your abilities, you will probably fall into another unhappy work situation that meets neither your needs nor your wants. [...]

You will need to be aware of your well-developed skills because those are the ones that come naturally to you and are the most comfortable and pleasing to use. When you are using those skills, what you are doing at that moment doesn't seem like work, and you don't have to think about your actions. Everything just flows smoothly. These are the skills that you want to transfer to new work. Conversely, when you are required to use a skill that does not come naturally or that you haven't developed, the task will produce stress and feel forced. You will have to concentrate much harder to get a successful result.” (Greenberg, Hindi, *The Lawyer & Career Change Handbook*, 104-105.)

4. For a complete discussion of skills analysis and application to the practice of law, refer to www.lawyersintransition.com, or refer to *The Lawyer's Career Change Handbook* by Hindi Greenberg.

Chapter 8 Closing, Selling, or Acquiring a Law Practice

By Thomas Joseph and Theodore Mann Jr.

I. OVERVIEW:

The acquisition, sale, or closing of a law practice is a multi-faceted process. Guidelines must be considered that relate to any business transaction. The additional compliance requirements are the legal-professional components creating responsibility and liability issues which should not be ignored by the parties to the transaction. This is a three way process with seller, buyer, and client interests. The sale of a law practice should be viewed like the sale of any professional practice, with the important caveat of the need for protection of client confidences and respect for the attorney-client relationship.

II. RULES AND ETHICS OPINIONS:

A. Applicable Pennsylvania Rules of Professional Conduct:

1. Rule 1.17, Sale of Law Practice
2. Rule 1.0(e), Definition of "informed consent"
3. Rule 1.1, Competence of lawyer in representation
4. Rule 1.6, Confidentiality of Information
5. Rule 1.7, Conflict of Interest and Current Clients
6. Rule 1.8(h), Conflict of Interest and No Limitation of Liability to Client
7. Rule 1.9, Duties to former clients
8. Rule 1.16, Declining or Terminating Representation

B. Ethics Opinions:

1. Pennsylvania Bar Association Informal Opinion Nos. 1994-110, 2000-06, and 2003-112
2. Philadelphia Bar Association Opinion Nos. 96-1, 98-7, and 2003-9

III. PRELIMINARY CONSIDERATIONS:

- A. Know the scope of the transaction - buy, sell, transfer, or close.

B. Determine post-transaction compatibility issues of the surviving entity and reverse engineer to ensure Professional Conduct compliance before deal closing and asset transfer.

C. Valuation and self-analysis is needed by both sides.

D. Final judgment on the transaction will be rendered not on the business metric but with a view of client safeguards and professional responsibility.

E. Rules of Professional Conduct mandate the purchase transaction must include the entire practice except for carve-outs due to conflicts of interest.

IV. PRACTICE DISPOSITION TRIGGERS (INVOLUNTARY AND VOLUNTARY):

A. Involuntary reasons include attorney's death and estate administration, attorney being unable to continue practice for variety of reasons of disbarment or discipline, disability, and extended absence like military service.

B. Voluntary reasons include retirement, lateral job opportunity, merger of practice, and election to political office.

V. PARTIES THAT MAY BE INVOLVED IN THE SALE PROCESS:

A. Buyer entity, its owners, and its legal advisors

B. Seller entity, its owners, and its legal advisors

C. Accountants for buying and selling operations

D. Outside valuation sources and experts

E. Office staff to maintain operations and retain key employees

F. Bankers and financing entities

G. Landlord

H. Equipment leaseholders

I. Insurance providers

J. Clients, clients, clients

K. Outside oversight when transaction is involuntary (Probate Court, Disciplinary Counsel)

L. Government agencies (workers' compensation, unemployment, wage withholding, etc.)

M. Work-in process notices

VI. PROFESSIONAL RESPONSIBILITY ISSUES AND RULE 1.17 COMPLIANCE:

A. The seller must cease to engage in the private practice of law in Pennsylvania. (Rule 1.17(a)).

B. The seller must sell the practice as an entirety to an individual lawyer or a single law firm. (Rule 1.17(b)).

C. Actual written notice is given to each of the seller's clients, which notice must include at a minimum:

- 1.** Notice of the proposed transfer of the client's representation, including the identity and address of the purchasing lawyer;
- 2.** A statement that the client has the right to representation by the purchasing lawyer under the preexisting fee arrangements;
- 3.** A statement that the client has the right to retain other counsel or to take possession of the file; and
- 4.** A statement that the client's consent to the transfer of the representation will be presumed if the client does not take any action or does not otherwise object within 60 days of receipt of the notice. (Rule 1.17(c)).

See also Rule 1.17, Official Comment Nos. 5-6.

D. The fees charged clients shall not be increased by reason of the sale (Rule 1.17(d)).

E. Existing agreements between the seller and the client concerning fees and the scope of work must be honored by the purchaser, unless the client gives informed consent confirmed in writing. (Rule 1.17(d)).

F. The agreement of sale shall include a clear statement of the respective responsibilities of the parties to maintain and preserve the records and files of the seller's practice, including client files. (Rule 1.17(e)).

G. In the case of a sale by reason of disability, the selling lawyer must file the notice and request for transfer to voluntary inactive status, as of the date of the sale (unless a Rule 301 disciplinary proceeding has been commenced against the selling lawyer). (Rule 1.17(f)).

H. The sale shall not be effective as to any client for whom the proposed sale would create a conflict of interest for the purchaser or who cannot be represented by the purchaser. (See Rule 1.17(g)).

I. Admission to or withdrawal from a law partnership or professional association, retirement plan or similar arrangement or a sale limited to the tangible assets of a law practice is not a sale or purchase for purposes of Rule 1.17. (See Rule 1.17(i)).

J. Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms with respect to which client consent is not required. Providing the purchaser access to the client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale and file transfer including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or make other arrangements must be made within 60 days. If actual notice is given, and the client makes no response within the 60 day period, client consent to the sale will be presumed (Rule 1.17, Official Comment No. 4) (This comment seems to recognize that while express written consent of a client is desirable, it may not always be practical or possible.)

K. The sale may not be financed by increases in fees charged to the clients of the practice (Rule 1.17, Official Comment No. 9).

L. Legal malpractice insurance transitions and coverage “tail” requirements.

M. Identification of clients and work in progress with “look back” on open responsibilities. This is necessary if Rule 1.17 applies to the sale because the buyer will assume responsibility for all of the seller’s active files except for matters for clients to whom the buyer has a conflict pursuant to Rule 1.17(g).

N. Stored files and archive retention, document destruction, or release to client

VII. BUSINESS TRANSACTION ISSUES:

A. Written letter of intent (optional) and purchase agreement (mandatory)

B. Define what is being acquired or transferred and what is being retained by seller.

C. Due diligence by both sides

1. Buyer due diligence should include:

- a.** Several years of filed tax returns
- b.** Asset titles
- c.** Debt agreements
- d.** Equipment and office leases
- e.** Business and payroll tax returns
- f.** Malpractice policy, applications, and claim history
- g.** Bar association grievance and fee dispute history
- h.** All insurance coverage and loss or claim history
- i.** Staff interviews

2. Seller due diligence with focus on clients receiving successor legal service and buyer ability to complete sale process:

- a.** Verification of buyer's credentials
- b.** Verification of buyer's financial ability
- c.** Buyer competence and ability to serve clients
- d.** Acquisition of "tail" insurance coverage

D. Identify all assets, liabilities, and ownership

E. Contracts and leases as exist, service requirements, assignability, and termination

F. Labor and employment issues as to agreements and statutes (FMLA, ERISA, etc.)

G. Electronic issues—computers, passwords, website, e-mail, data back-ups, procedures to transfer or erase data, system compatibility

H. Offsite assets and records

VIII. LAW PRACTICE VALUATION:

A. General rule of willing buyer and willing seller is applicable.

B. No mandatory price or valuation so long as “arms length” transaction exists.

C. Similar or comparable sales as reference points on pricing and terms can be difficult to identify with each law practice having unique issues; comparable sales may have confidentiality restrictions.

D. The hard assets of equipment, contracts, etc. are easy valuations.

E. The core asset is seller attorney’s “goodwill” that generates clients and revenue.

F. Business of client mix and reliable future earnings stream expectations are primary valuation components.

G. Purchase price as multiplier of business revenue is universal rule for any business but lower number for law business due to uncertainty of future client revenue base.

H. Review average earnings of prior time period of 3–5 years for earning history.

I. The multiplier range is generally 0.5 – 1.5 times annual earnings as adjusted. Positive factors are (a) stable core clients, (b) seller assist in succession, and (c) selling firm profitable. Negative factors are (a) over-reliance on seller leadership/rainmaking, and (b) selling business tied to negative economy/declining market

J. Valuation elements are a combination of (a) net tangible assets (balance sheet items at FMV, collectible fees less costs) plus (b) goodwill.

K. Price adjustment factors should include post-close participation by selling attorney to keep client base loyal to new business, condition of equipment, and hard assets to compliment acquiring operation, net income.

L. Staff skills and key employee retention with no-compete issues may be value factors due to client contact with staff.

IX. PURCHASE CONTRACT ELEMENTS:

- A.** General contract requirements
- B.** Price and consideration definitions
- C.** List of all client accounts and status of any written fee agreement or fee and billing terms
- D.** Assets to be transferred or retained
- E.** Obligations and liabilities to be assumed or retained
- F.** Lease identification and assignability with lessor- third party information
- G.** Identification of accounts, deposits, and pre-paid expenses
- H.** Income defined and factors for potential price adjustment in post-close period
- I.** Purchase price payment terms and conditions
- J.** Performance guarantees as basis for price adjustment after closing
- K.** Representations and warranties as to assets, liabilities, and business conditions
- L.** Identification of accounts receivable and accounts payable with charge backs for collectability problems and “surprises”
- M.** Agreed client communications, notices, and public announcements
- N.** Insurance coverage, continuity, transfer and unearned premium ownership for all risks
- O.** Tax reporting and payments
- P.** Potential claims and reserves or procedures for resolution
- Q.** Dispute resolution process for any transaction and post-close issues
- R.** Consents required, if any, from interested parties
- S.** Items referenced in Rule 1.17(d)

X. BUYER ISSUES:

- A.** Verify business absorption and coverage issues with surviving current professional insurance coverage.

B. Buyer may need to revise or create new business structure for post-close operation.

XI. SELLER ISSUES:

A. Review post-sale personal and professional plans and plan for it (license surrender or inactive status).

B. Relocation to another jurisdiction where prior status of Pennsylvania license and its disposition may be an issue.

XII. CLOSING A LAW PRACTICE:

A. Business structures will dictate certain procedures under Pennsylvania law for winding down

B. Government agency filings (last wage report, etc.)

C. Secretary of State business filing form with notice disclosures

D. Internal operations and contract terminations

E. Professional insurance “tail” coverage

F. Law license status change and Supreme Court filing

G. Communication to clients

H. Release of client records and archives

I. Records retention for general business requirements

XIII. CONCLUSIONS:

A. Law practice acquisition is a method to increase practice size or enter an area of practice on an accelerated time frame beyond normal business development and marketing techniques.

B. The sale of a law practice under the Professional Rules allows a more professional structure to secure value from an existing practice, without complex gyrations used in the past to transfer a practice between unstructured entities.

SUBSEQUENT APPOINTMENT CONFIRMATION

(on letterhead)

Date

Dear Mr./Ms. _____,

This will confirm your appointment to meet with me in our office on
_____ at _____ o'clock. The purpose of our meeting will be
_____. Please bring _____ with you when
you come.

I look forward to meeting you again. If you have any questions before we meet,
please feel free to call.

Very truly yours,

COURT APPEARANCE OR HEARING LETTER

Date _____

Re: Case Name & Number

Dear Mr./Ms. _____,

Your case has been set for a jury trial on _____ at _____ o'clock in the county courthouse, located at _____ in _____ . Your case is before Judge _____ in Courtroom _____ .

You will find it most convenient to park _____. Judge _____'s Courtroom is located on the _____ floor. I will meet you _____ at _____ o'clock the day of the trial.

You must be present for this. If you have any questions, please feel free to call.

Very truly yours,

AUTHORIZATION FOR TRANSFER OF CLIENT FILE(S)

I have elected to have [DEPARTING ATTORNEY] continue as my attorney of record for the matters:

I hereby authorize the law office of [FORMER FIRM] to deliver a copy of my file(s) to [DEPARTING ATTORNEY] at the following address:

Client

Date

CHECKLIST FOR DEPARTING ATTORNEYS

1. Identify clients to notify about your departure.
2. Determine the status of your caseload.
3. Decide what approach to take with your firm regarding files and clients.
4. Draft a letter to your clients informing them of your departure and their option to stay with you as their attorney.
5. Draft authorization for transfer of client file to be enclosed with notification letter to clients. [See Authorization to Transfer File to Departing Attorney]
6. Meet with your firm; finalize your client notification letter.
7. Mail notification letters to clients.
8. File substitutions or withdraw as attorney of record* on cases you will *not* be taking with you to your new position. (This includes state and federal agencies as well as state and federal court systems.)
9. Prepare a memo to the appropriate partner(s) regarding status of files you are leaving behind. Include information about upcoming deadlines.
10. Make arrangements with your former firm to forward mail and redirect incoming calls.
11. Make arrangements with your former firm to set up an automated e-mail reply and filter to process your incoming messages.
12. Discuss who will retain or store your closed files.
13. Arrange to take conflict information with you to your new position.
14. Determine whether you will need to reimburse your firm in whole or in part for any professional liability coverage paid by the firm. If your firm has excess coverage, check with your excess carrier.
15. Determine whether you will need to reimburse your firm in whole or in part for any bar association dues paid by the firm.
16. Submit a change of address card to the post office.
17. Prepare a change of address notice for opposing counsel, courts, vendors, etc.
18. If required by your bar association, submit a change of address form.

19. Prepare and mail out announcement cards about your new position (to your state bar association, local bar association, law school alumni newsletter, former clients, friends, colleagues, etc.)

20. Review the client list at your new office to screen for potential conflicts.

21. Sign new fee agreements with the clients you brought over from your old firm.

22. Arrange for transfer of trust funds from your old firm. The trust account check from your former firm should be accompanied by an itemization of funds being transferred, as well as copies of the most recent billing statements sent to the clients.

* Review applicable disciplinary rules and rules of procedure.

DEPOSITION INSTRUCTIONS

(Note: Some of the advice provided below is applicable primarily in personal injury cases. Practitioners will wish to tailor these instructions to suit particular cases.)

Under the law, the other lawyer has a right to take your “discovery deposition.” This means that you will be put under oath and the lawyer will ask you questions relating to this case. The lawyer’s questions and your answers will be taken down by a court reporter. One of your lawyers will be present at all times.

There will be no judge or jury present. However, after the deposition is over, the court reporter may type out all the questions and answers, and both your lawyer and the other lawyer will receive copies. The original may be filed in court.

If your case goes to trial, your deposition may be used in court, particularly in cross-examination of you by the other lawyer should your testimony at trial be different than your testimony at the time of the deposition. The lawyer will want to indicate that you told two different stories. For this reason it is extremely important that you have everything in mind concerning the cause and nature of your injuries, and the facts of the case at the time of the deposition. It would be helpful if you try to refresh your recollection before you have your deposition taken.

The other lawyer at the deposition can ask you questions that may seem as if they are none of his/her business and that actually would not be admissible in court. However, the courts allow “discovery” in these depositions, and the lawyer may ask you for “hearsay” and other things that will enable him/her to make further investigation of the case.

For this reason, do not be surprised if we do not object to questions that seem to you to be out of line. If the other lawyer questions you on any subject that is not proper, we will object to the question. If we object to the question and instruct you not to answer it, then you should **REFUSE TO ANSWER THE QUESTION**. Please answer all other questions. Sometimes we will object for the record, but may still permit you to answer. The only time you should not answer the question is when we instruct you not to answer.

REASONS FOR TAKING THIS DEPOSITION

The deposition will assist the opposition in evaluating your case for settlement purposes. This is often the first and only opportunity for the other lawyer to see you before the case comes to trial. Therefore, you should be clean and neatly dressed, and courteous and respectful to the other lawyer and all others in the room. Be prepared to exhibit any injuries that might be visible, so wear the right clothes. Discuss what to wear with us if you have any questions.

You should answer all questions in an honest and straightforward manner.

HOW TO CONDUCT YOURSELF IN THE DEPOSITION

We know that you would not deliberately lie, but it is important that you do not testify to something that is inaccurate or exaggerated. For this reason, listen to each question carefully and be sure that you understand it before answering. If you do not understand it, ask the other lawyer to rephrase it so you do understand the question, then answer it honestly and in a straightforward manner. If you do not know the answer, do not be afraid to say that you don't know or don't recall. No one can remember every small detail. However, you will remember the important things and should give an honest and full answer to questions on these points.

The other lawyer will probably be friendly and will not bully you in any manner. His/her theory will probably be that the more he/she can get you to say, the more likely you are to put your "foot in your mouth." Therefore:

- o Understand the question. You don't have to hurry to answer.
- o Answer that question truthfully.
- o STOP!

Do not volunteer anything. Give a full and complete answer to the question asked, but do not anticipate any other question or attempt to answer it. If the other attorney overlooks any relevant or important questions, that is his/her worry, not yours.

If the other lawyer should be rough in any manner, do not lose your temper. We will be there with you and be certain he/she acts properly.

Speak loudly and clearly enough that everyone can hear and understand you. You must answer out loud, saying "yes" or "no," as a nod of your head cannot be recorded by the court reporter transcribing your testimony.

PAST INJURIES (if applicable)

The other lawyer will undoubtedly ask you about injuries you may have sustained in the past. Insurance companies and railroads have central index bureaus where they can get information on all injuries that persons have sustained, where persons have been paid workers' compensation, and where they have filed suit or recovered from any employer or insurance company. Also, it is common for the other side to check on treatments you have had from medical doctors, osteopaths, chiropractors, and hospitals, wherever you have lived and in adjoining areas. Therefore, it is extremely important that you answer every question truthfully.

Also, answer only the question you are asked. In other words, if you are asked what injuries you have had to the same part of your body that was injured this time, then limit your answer to that part of your body. Or, if you are asked what injuries you have sustained on a certain job or in automobile accidents, then limit your answer to the questions asked. If, however, you are asked generally about any injuries you have had, give the other attorney the information requested concerning any and all injuries of any type and to any part of your body that you have had at any time.

ACTIVITIES SINCE INJURY (if applicable)

Before the trial, perhaps before the deposition, the other side may have investigated what you do at work, at home, in your neighborhood, and any other place you go. It is quite common for them to hire photographers to hide a block or so away, out of sight, and take videos or pictures with a telephoto lens of a person working around the house, on the job, or out fishing, or engaged in other recreational activities.

Fishing, mowing the lawn, working, or doing anything else you feel able to do (and that your doctor allows you to do), will not hurt your case in and of itself. However, if you forget that you have engaged in a certain activity and testify at your deposition that you are unable to do so because of your injuries, the other lawyer can seriously damage your case with pictures, videos, or witnesses directly contradicting your testimony.

SUMMARY

1. You should be clean, and wear neat clothing.
2. Treat all persons in the deposition room with respect. Consider this an important and solemn occasion.
3. Come prepared to exhibit any and all injuries which you have suffered.
4. Have with you the facts and figures with respect to your time lost from work, amount of wages lost, doctor bills, hospital bills, and all other facts with respect to the damages caused as a result of your injury. Review these items before coming to the deposition.
5. Tell the truth.
6. Never lose your temper.
7. Don't be afraid of the lawyers.
8. Speak slowly and clearly.
9. Answer all questions directly, giving concise answers to the questions, and then stop talking.
10. NEVER volunteer any information. Wait until the question is asked; answer it and stop. If you can answer "yes" or "no," do so and stop.
11. Do not magnify your injuries or losses.
12. If you don't know, admit it. Some witnesses think they should have an answer for every question asked. You cannot know all the facts and you do yourself a disservice if you attempt to testify to facts with which you are not acquainted. It is imperative that you be honest and straightforward in your testimony.

13. Do not try to memorize your story. Justice requires only that a witness tell his/her story to the best of his/her ability.

14. Do not answer a question unless you have heard it and clearly understand it. If you have to, ask that it be explained or repeated.

15. Do not guess or estimate time, speed, or distance unless you are sure that the estimate is correct, and then make certain that when you answer, you state that this is your estimate. Go over these estimates with us before your deposition is taken.

16. Many of the questions you will be asked will not be admissible at the trial, but the opposition is entitled to an answer in order to help them prepare their case. Many cases are lost because the witness tries to hide something. Many of the questions can be used at the trial to discredit you.

17. If we object to a question, stop talking, and we will instruct you after we object to either answer the question or not to answer it.

18. After the deposition is over, do not discuss anything in the presence of the opposing lawyers or the reporter. If you want to discuss something after the deposition, wait until we are alone.

Remember, perhaps the most important aspect of your lawsuit is you and the appearance you make. If you give the appearance of earnestness, fairness, and honesty, and if in giving your discovery deposition you keep in mind the suggestions we have made, you will be taking a great stride toward successful completion of the litigation in which you are involved.

Because the testimony you give will be your own, there is no need for you to take these instructions with you to the deposition. Your testimony will be more natural if you are not relying too heavily upon instructions.