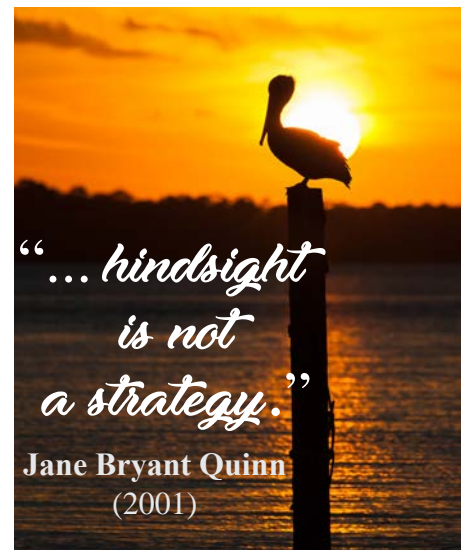


Hanging Out *your Shingle* **LOUISIANA** *Style*

CHAPTER 1

The Law Office Business Plan - The Basics



All successful businesses should have a business plan – even law offices. By composing a business plan, you will crystalize your goals. Further, the process of drafting one will require you to take a realistic look at how and when you are going to achieve your goals. A well written business plan will also assist in your dealings with financial institutions should you need to obtain financing to help get your started.

Such a plan causes you to take stock of the nonbillable activities that you will have to do – including the administrative load that you are taking on in having your own office (paying staff, time needed to review and choose legal technology, billing and time keeping, etc.) along with an eye towards do-it-yourself and paid marketing efforts.

Though you may be tempted to conclude that you will not benefit from having a business plan because you are planning only a one-person (you) office or a very small office with others, you nonetheless are encouraged to follow through with a business plan so that you become aware of what is ahead of you for the business end of your practice.



Further, a good business plan can be an excellent sales tool and useful for many purposes to a lawyer just starting out. It can aid in obtaining financing or opening a line of credit from an institution, or when considering a partnership with someone else.

Simply, a business plan is a roadmap or outline for your office – a formal, written statement of your business goals, and your financial plan for attaining them with deadlines to achieve certain steps. It is a systematic assessment of the factors critical to your law office purpose and goals.

Business plans vary in headings and the type of information. Common to all good business plans is a realistic appraisal of the money needed to achieve your goals. Business plans need not be hundreds of pages long to accomplish the task. However, it should be well-written, realistic and succinct.

Creating the business plan forces you to engage in the necessary inquiries to test the economic feasibility of your goals. Certainly, your goals may change along the way, but your ability to adapt successfully to the changing winds will depend upon a well-written initial business plan. You will find that during the drafting process of your business plan, you will uncover issues and weaknesses that you would not have thought of. Consider your business plan as a living document, one which will change as your practice grows and changes.

Set time aside to prepare your business plan. Be prepared to gather the data that you need to support your plan. Style your plan into a compelling form. Consider enhancing your plan with graphics. Once completed, consider providing the business plan to others whom you trust for their sage advice and input.

As you construct your business plan, keep in mind these tips:

- Temper your optimism. In fact, some experts advise avoiding optimism. What you want is a realistic appraisal of where you are and where you want to be.
- Be liberal when predicting operating costs.
- Be conservative when prognosticating future income.
- Keep long range planning to just a few years, and emphasize the short term, particularly in the beginning.
- In the beginning, review your business plan every six months, and at least once a year thereafter.

You might find that as you review each section, you are unable to complete certain sections. Your plan may be more aspirational than based on reality. That is to be expected, especially if you are just starting. There is no need to complete each section chronologically. Begin with the sections that you can complete. The other sections may require some research on your part. Take advantage of talking to more experienced colleagues to get some ideas that can work for you. You might find that your business plan becomes a living document that you will adapt as your practice and goals change.

A sample business plan for a law office might include the following:

▶ **Executive Summary**

- a. **Mission Statement:** The firm's purpose and what it will do.
- b. **Description of Law Firm:** Include your relevant experience, even if non legal, and that of personnel, if any. Inform when you formed your office and why.
- c. **Firm Goals and Strategy:** Include date milestones needed to achieve the goals.
- d. **Practice Areas:** Will you have a niche practice or a general practice?
- e. **Pro Bono Activity**
- f. **Financing Requirements:** Identify the biggest costs of operating your office. Include fixed and variable costs and where you can lower costs. Discuss whether the profit margin is sufficient for you and your outside life.

▶ **Firm's Description:** Strengths and weaknesses

- a. Name and Ownership
- b. Decision Making and Operation: Describe your firm's capabilities and what you think is unique about your firm; the legal organization of your firm (solo proprietorship, LLC, etc.); and use of technology.

▶ **Marketing Strategy**

- a. **Target Market:** Describe overall demand for your practice and what would cause potential or real clients to choose your services over others. Discuss sources of clients and potential clients. Describe your typical clients – are they business savvy or are they not experienced with the legal profession.
- b. **Budget**
- c. **Local Economy:** Describe the direction of the marketplace. Analyze opportunities and threats.
- d. **Marketing Plan:** Include helpful relationships (colleagues, competitors, family, professional organizations, community or civic organizations, former employers or pro bono colleagues who may help you get your word out. Discuss your marketing activities such as writing articles, giving CLE presentations and follow up meetings with potentials clients. Outline your social media and online activities that are directed to marketing.
- e. **Current and Potential Clients**
- f. **Competition:** Identify your competitors. Discuss factors that make it difficult to practice your area and factors that might affect your ability to transition to other areas if need be.

▶ **Firm Economics**

- a. **Start-up Costs**
- b. **Billing Projections:** Back up your projections with assumptions so that projections can be adjusted as necessary.
- c. **Expenses**
- d. **Overhead Review**

▶ **Financial Plan**

- a. **Budget:** Include a discussion of how you will earn your fee – hourly or contingent or shared fee?
- b. **Financing Sources**
- c. **Break-even Analysis**
- d. **Financial Projections**

See Appendix 1: Business Planning Template



CHOICE OF BUSINESS ENTITY AND FIRM NAME

► Choosing Business Entity

Step 1: Investigate which type of entity might be best for your office.

Law firms can operate as general partnerships, professional limited liability companies (PLLCs), professional corporations (PCs), or limited liability partnerships (LPs). A solo practitioner can operate as a single-member PLLC, as a single-shareholder PC, or as a sole proprietorship. A sole practitioner cannot operate as a general partnership or as a limited liability partnership since partnerships require the participation of more than one individual or entity.

Step 2: Review and analyze the tax considerations for the entity choices.

Carefully consider the tax advantages or disadvantages for each entity.

Step 3: Assess liability implications for the choice of entity.

Lawyers cannot escape responsibility and liability for their professional misconduct regardless of the entity they choose to operate their practice. There is a difference, however, in vicarious liability that may be imposed on a lawyer for the acts of others in the firm depending on the choice of entity.

Step 4: Keep administrative considerations in mind.

In general, PLLCs are easier to set up and involve fewer documents than PCs. PCs that do not elect S-corporation status provide some tax advantages regarding the treatment of fringe benefits that are not available to partnerships, PLLCs, or S corporations. In addition, self-employment taxes may be avoided or reduced if S-corporation status is elected. An analysis of these tax issues in the context of the client's specific needs is appropriate before making the choice-of-entity selection.

Consider how the choice of entity might affect the future development of your law office.

PLLC operating agreements can provide considerable flexibility in dealing with expansion or contraction of the firm. They can accommodate a number of different titles or positions, including details on membership and management. While these are possible to accomplish in a PC, the nature of the corporate structure makes it more complex.

Tax Considerations

Solo practitioners. A law office organized as a solo practitioner is a sole proprietorship, which is not a separate legal or taxable entity. The individual owner includes all of the income and expenses from the business on his or her personal income tax return for each calendar year.

General Partnerships. General partnerships are pass-through and not tax-paying entities. At the federal level, general partnerships file a partnership return that is an information return showing the income of the partnership. As part of that return, each partner receives a K-1 form indicating that partner's share of the partnership's profit or loss during the tax year. The partner is individually liable for the tax liability (or benefit) as a result of the allocation of profit or loss. The partner is responsible for the taxes owing on the K-1 allocation of profit regardless of whether the profit was actually paid out to the partner. Thus, the general partnership form completely eliminates the risk of double taxation that exists in the case of entities that are taxpayers as distinguished from entities filing information returns.

Professional Limited Liability Companies (PLLCs). PLLCs are pass-through tax entities and thus are taxed in the same way as general partnerships.

Limited Liability Partnerships. These are taxed exactly as general partnerships and have the same pass-through characteristics.

Professional Corporations. Professional corporations, like other kinds of corporations, are entitled to choose between being a tax-paying entity or a pass-through entity. A PC that does not elect S-corporation status must file a corporate tax return and is liable for whatever taxes are levied on the net income of the corporation. A PC that elects S-corporation status does not have a tax-paying obligation but instead files IRS form 1120-S, which, like a partnership return, is an informational return. The S-corporation tax return indicates the allocation of the net income of the PC to the shareholders, and each shareholder receives a K-1 setting forth that information.

The double-taxation risk in a corporation that does not elect S-corporation status should not be overstated. Law firms that operate as C corporations can manage the double-tax risk. The two primary ways to do this are to pay out whatever net income remains to the members of the firm in the form of additional salary or bonus before the end of the year. In addition, a law firm that has a qualified retirement plan obtains a deduction for contributions made to the plan provided that those contributions are made by the date the PC's tax return is due. This is usually March 15th of the following year but can be put on an extension. Using this device, the law firm can retain some net income as of year-end to pay bills early in the following year and later fund the retirement plan contribution that was deductible for the prior year.



Liability Considerations

General Partnerships. If a claim is brought against a lawyer in a firm that operates as a general partnership, not only are the assets of that lawyer at risk with respect to the claim but so are the assets of the partnership itself as well as the assets of the other partners. All have unlimited liability. In a general partnership the liability of a partner exists regardless of whether the partner had anything to do with the claim and even in a situation where the partner objected to the conduct that gave rise to the claim against the firm. One way that lawyers in law firms operating as general partnerships have avoided this liability is to form individual PCs and have the individual PCs be the partners in the general partnership.

Professional Corporations. Shareholders in PCs are at risk to the extent that they have invested in stock in the PC. If a claim against the PC exceeds the value of the assets of the PC, the investment by the lawyer in the PC stock would become worthless but, provided that corporate formalities are met, the PC shareholder has no obligation to contribute additional funds to satisfy the claim.

PLLCs. Members of a PLLC, like stockholders of a PC, are at risk of losing their investment in their membership interest but have no obligation to contribute additional capital to the PLLC to satisfy a claim against it. Except for the sake of tradition, it is hard to imagine why the general partnership form should ever be chosen over the PLLC because of the substantial personal liability the individual partners of a partnership have for the debts, liabilities, and obligations of the partnership.

Limited Liability Partnerships. In an LLP, a partner is responsible for his or her own misconduct, but there is no liability for the misconduct of another partner unless the innocent partner was actually supervising the work of the partner committing malpractice.

Sole practitioners. The choice for a sole practitioner is between practicing under his or her own name or as either a PC (taxed as an S corporation) or a PLLC. The liability protection provided by the PC and PLLC is significant. However, the simplicity and flexibility of the proprietorship is attractive as well. If a choice has to be made between liability protection and simplicity, liability protection should be the choice. A single-member PLLC will provide both liability protection and simplicity and flexibility.

Before you open your office, consider consulting with a certified public accountant (CPA) for initial tax and accounting advice. You may be tempted to just hire a bookkeeper, but be advised that no national certifications for bookkeepers exist. A bookkeeper's skills range from only paying bills or processing receipts to summarizing bookkeeping activity for your CPA to prepare your tax returns.

Avail yourself of a CPA's advice on your choice of business entity for your law office as well as on how to prepare income and payroll tax returns. If you want to do your own bookkeeping, your CPA can provide helpful advice for this as well. Handling the more routine bookkeeping duties yourself may allow you to afford a higher level of expertise with a CPA when it comes time to filing tax returns. If you want to hire a bookkeeper, ask for recommendations from a CPA.

A CPA can help you:

- prepare cash flow statements that will estimate the cash needs of your law office in the months to come;
- prepare a personal financial statement, including a balance sheet of your personal needs and liabilities along with a statement of income and expenses reflecting the amount of cash flow you generate each month;
- locate a banker (an experienced CPA will likely lead you to a banker with whom she or he has a relationship);
- give you good feedback on your business plan for your banker; and,
- organize your financial information.

See Appendix 2: *Deciding Which Form of Practice is Right for You.*