

*Hanging Out
your Shingle*

LOUISIANA

Style



written by

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Preface

The practice of law is a great privilege. Your clients will trust you with their most confidential information and problems. Your representation of them and advice to them have the potential of changing the course of their lives. You learned much about the substantive part about your role. What about the nuts and bolts of creating your office and managing it efficiently?

If your first legal employment is with a larger firm, your employer will likely have established tried and true office systems that are simple for you to learn and adopt insofar as billing and time keeping, office processes, managing court filings, and the like. Additionally, the larger office may have staff who will attend to many of these and other time-consuming administrative tasks that are associated with the managing of a law office. Under these circumstances, it will be easier for you to devote your time to client representation than if you are starting practice for the first time on your own.

If you are new to the practice of law and opening your own law office, you will have to create those office systems yourself. The challenge is to create systems which work for your particular practice so as to optimize your representation of your clients.

Whether employed with a larger law office or starting out on your own, you will benefit from some practical assistance on how to best organize your office for efficient operation so that it best fits your working style, the type of practice that you have and your clients.

Hanging Out Your Shingle: Louisiana Style was developed by the LSBA's Law Practice Management Program and augments the LSBA's online *Practice Aid Guide: The Essentials of Law Office Management*.

This manual is divided into the following sections as follows:

Chapter 1: The Law Office Business Plan – The Basics

The Business Plan
Choice of Business Entity

Chapter 2: The Actual Law Office

Choosing Your Firm Name
Choosing Office Location
Essential Office Equipment and Staffing
Disaster Planning and Business Continuity
Insurance
File Flow and Organization
Calendaring
Insurance

Chapter 3: Attracting the Right Clients for Your Practice

Developing the Right Client Base
Avoiding the Wrong Clients
Building a Positive Online Presence

Chapter 4: Client Communication and Client Relations: Beginner's Tips

From the Start
Communication Organization and Maintenance
Ending Representation
Procrastination

Chapter 5: Time and Billing and Preventing Fee Disputes

Having the Money Talk with Your Clients
The Little Things Go a Long Way and the Importance of Engagement Letter/Retention Agreement
Time Keeping and Strategies
Effective Time Keeping Narrative
Billing and Costs Strategies
Low or *Pro Bono* Billing
LSBA's Fee Dispute Arbitration Program

Chapter 6: Practice Resources

LSBA Resources

The LSBA's Law Practice Management Program also offers the following:

Specific CLE programming geared to law office management and legal technology:Chapter

Annual Solo, Small Firm and Tech Conference

Four Corners Seminars – Free and Offered Throughout the State

Management Mondays and Tech Tuesdays CLE series

Personalized Law Management Advice via Email (techcenter@lsba.org) and by phone (Shawn L. Holahan, shawn.holahan@lsba.org, ((504) 619-0153))

You are also encouraged to make use of other LSBA member services, in particular the Ethics Advisory Service which can help guide you through ethical thickets that you might find yourself in. Feel free to field your ethics inquiries about marketing activities, business associations, compensation methods or other ethics questions that you may have through the Ethics Advisory Service. The committee overseeing this service is comprised of attorneys across the state along with LSBA's Ethics Counsel Eric Barefield. The committee provides confidential non-binding ethics opinions to Louisiana licensed attorneys. Ethics counsel are available to discuss ethics queries by phone. The turn-around time on formal inquiries is approximately five to ten working days on written advisory opinions (possibly a little longer or shorter depending upon the complexity and/or novelty of the issue(s) involved and number of requests from other members being handled at the time). The Ethics Advisory Service does not answer hypothetical questions. Its goal is to assist Louisiana lawyers by providing non-binding confidential opinions regarding a member's own prospective conduct. Please note that the committee and Ethics Counsel are not authorized to respond to third party queries. You can begin the process by submitting your questions in writing to Ethics Counsel Eric Barefield (ebarefield@lsba.org (504) 619-0122) or by fax at (504) 598-6753).¹

You should also familiarize yourself with the Lawyer Advertising Rules before you embark on your marketing plans. Under Rule 7.7, lawyers are obligated to file ALL non-exempt advertisements and unsolicited written communications with the LSBA Rules of Professional Conduct Committee, through LSBA Ethics Counsel Richard Lemmler, prior to or concurrent with first use/dissemination of the advertisement/communication. The purpose of the filing is for a determination of whether the particular advertisement/communication is compliant with lawyer advertising rules. Rule 7.8 lists advertisements/communications that are exempt from the filing requirement. Please note that while a particular advertisement/communication may be exempt from the filing requirement under Rule 7.8, all lawyer advertisement/communications nevertheless must be compliant with the Rules. You should acquaint yourself with the lawyer advertising rules. Consult the Lawyer Advertising webpage for more information or contact Richard P. Lemmler (rlemmler@lsba.org; (504) 619-0144) with your questions.

Introduction

One of the best things about having your own law office is that you are your own boss and in charge of the finances. One of the worst things about having your own law office is that you are your own boss and in charge of the finances. At first blush, law office management might not seem as important as the substantive part of what you do. The reality, however, is that the majority of client complaints and discipline matters arise from offices which are not managed appropriately and do not follow best practices. Why is this?

Calls are not being returned timely.

Emails and other communications are being lost.

Files are in disarray.

Deadlines are missed and calendars are not kept.

Client contact information is not easily found.

Client expectations about expenses and fees are not being managed.

Procrastination and inertia rule the day.

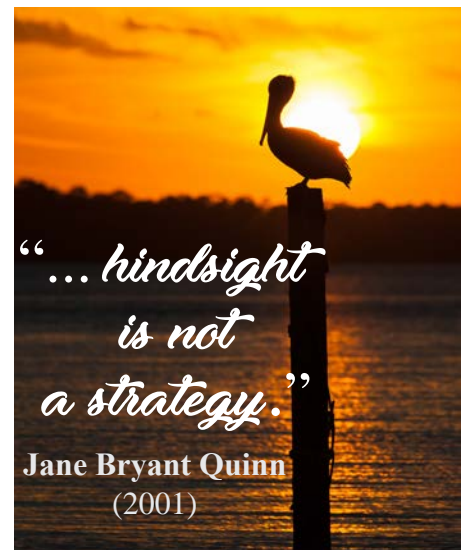
Paying attention to proper law office management will ease the pain of getting the administrative part of what you do as an attorney humming along so your best time is spent attending to your client's issues and problems.

¹ The LSBA's Ethics Advisory Service does not accept, investigate or prosecute complaints regarding attorney misconduct nor does it provide evaluations of whether or not a Louisiana attorney may have committed misconduct. Complaints of attorney misconduct or questions regarding the complaint process should be directed to the Office of Disciplinary Counsel at 1-800-326-8022 or ladb.org.

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 obtaining 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.*

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CHAPTER 2

The Actual Law Office



CHOOSING YOUR FIRM NAME

You are entering a profession which will draw on your creative and analytical powers. You may be tempted to be creative when choosing your firm name. Your firm name must comport with the Rules of Professional Conduct and your firm name should be one which conveys professionalism and trust. Choose wisely.

The LSBA Rules of Professional Conduct Committee guidance is as follows:

An identifying name used by a lawyer in connection with the practice of law, whether it is a conventional firm name or a fictitious or trade name, may be used if it otherwise complies with the Louisiana Rules of Professional Conduct and the same name is used consistently and exclusively by that lawyer on all communications concerning the practice of law. A lawyer may not use multiple business identities simultaneously in connection with the practice of law, regardless of whether those identities utilize a conventional firm name or include a fictitious or trade name.²

2. See LSBA, Rules of Professional Conduct Committee PUBLIC Opinion 07-RPCC-012 (the Identification of a Law Practice – Fictitious or Trade Names; Multiple Business Identities).

Whatever your firm name, Rule 7.10 of the Rules of Professional Conduct, which concerns firm names and letterhead, should be your first reference in these regards. It states as follows:

(a) False, Misleading, or Deceptive. A lawyer or law firm shall not use a firm name, logo, letterhead, professional designation, trade name or service mark that violates the provisions of these Rules.

(b) Trade Names. A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association, that implies that the firm is something other than a private law firm, or that is otherwise in violation of subdivision (c)(1) of Rule 7.2.³

(c) Advertising Under Trade Name. A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this Rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) Law Firm with Offices in More Than One Jurisdiction. A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located.

(e) Name of Public Officer or Former Member in Firm Name. The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) Partnerships and Organizational Business Entities. Lawyers may state or imply that they practice in a partnership or other organizational business entity only when that is the fact.

(g) Deceased or Retired Members of Law Firm. If otherwise lawful and permitted under these Rules, a law 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 law firm, or of a predecessor firm in a continuing line of succession.

With amendments through June 2, 2016.

3. Rule 7.2 (c) (1) states:

Statements About Legal Services. A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the law firm's services. A communication violates this Rule if it:

- (A) contains a material misrepresentation of fact or law;
- (B) is false, misleading or deceptive;
- (C) fails to disclose material information necessary to prevent the information supplied from being false, misleading or deceptive;
- (D) contains a reference or testimonial to past successes or results obtained, except as allowed in the Rule regulating information about a lawyer's services provided upon request; (Suspended)
- (E) promises results;
- (F) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
- (G) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;
- (H) contains a paid testimonial or endorsement, unless the fact of payment is disclosed;
- (I) includes (i) a portrayal of a client by a non-client without disclaimer of such, as required by Rule 7.2(c)(10); (ii) the depiction of any events or scenes, other than still pictures, photographs or other static images, that are not actual or authentic without disclaimer of such, as required by Rule 7.2(c)(10); or (iii) a still picture, photograph or other static image that, due to alteration or the context of its use, is false, misleading or deceptive;
- (J) the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionalized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case;
- (K) resembles a legal pleading, notice, contract or other legal document;
- (L) utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter; or
- (M) fails to comply with Rule 1.8(e)(4)(iii).

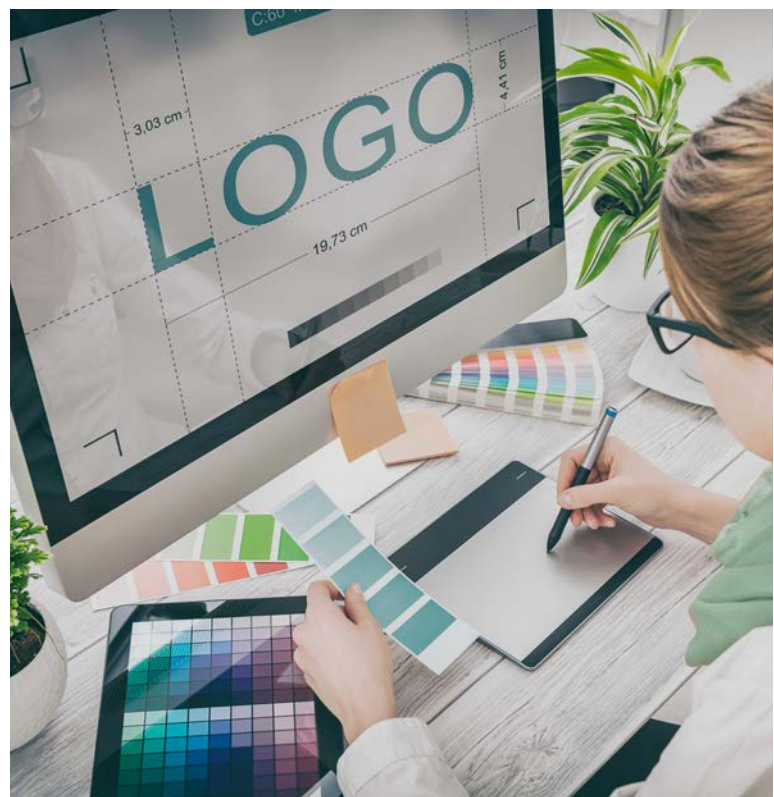
With amendments through June 2, 2016.



Your firm name must comport with the rules and your firm name should be one which conveys professionalism and trust. Your conforming law firm name must be used on your letterhead, business cards, office signage, fee contracts and on pleadings and other legal documents.

If you choose to share fees with another lawyer with whom you are not in partnership or with whom you are not employed, avoid partnership by implication. Use separate letterheads and business cards. Do not carry a joint legal malpractice policy. If sharing a receptionist, have staff use a generic greeting like “law office” or another greeting which does not connect you with unaffiliated lawyers.

Your firm name cannot imply a connection with a government agency, or a public or charitable services organization or other professional association (e.g., U.S. FEMA Law Firm, LLC, won’t work). Your law firm name cannot imply that your firm is anything other than a private law firm (e.g. John Smith, Esq, and Chiropractic Clinic won’t work). Your law firm name cannot guarantee a result (e.g., I Always Win, LLC, won’t work.).



Familiarize yourself with Professional Rule of Conduct 7.2(c)(5) as amended which states as follows:

Communication of Fields of Practice. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may state that the lawyer is a “specialist,” practices a “specialty,” or “specializes in” particular fields, but such communications are subject to the “false and misleading” standard applied in Rule 7.2(c)(1) to communications concerning a lawyer’s services. A lawyer shall not state or imply that the lawyer is “certified,” or “board certified” except as follows:

Lawyers Certified by the Louisiana Board of Legal Specialization. A lawyer who complies with the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization, may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice. Such communications should identify the Louisiana Board of Legal Specialization as the certifying organization and may state that the lawyer is “certified,” or “board certified in (area of certification).”

Lawyers Certified by Organizations Other Than the Louisiana Board of Legal Specialization or Another State Bar. A lawyer certified by an organization other than the Louisiana Board of Legal Specialization or another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice by stating that the lawyer is “certified,” or “board certified in (area of certification)” if:

(i) the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the full name of the organization in all communications pertaining to such certification. A lawyer who has been certified by an organization that is accredited by the American With amendments through June 2, 2016. Bar Association is not subject to Section 6.2 of the Plan of Legal Specialization.

Certification by Other State Bars. A lawyer certified by another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice and may state in communications to the public that the lawyer is “certified,” or “board certified in (area of certification)” if:

(i) the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the name of the state bar in all communications pertaining to such certification.

If you have doubts, you should direct any questions that you may have to Ethics Counsel.

Basically, your firm name cannot be false, deceptive or misleading. Choose your law firm name wisely.

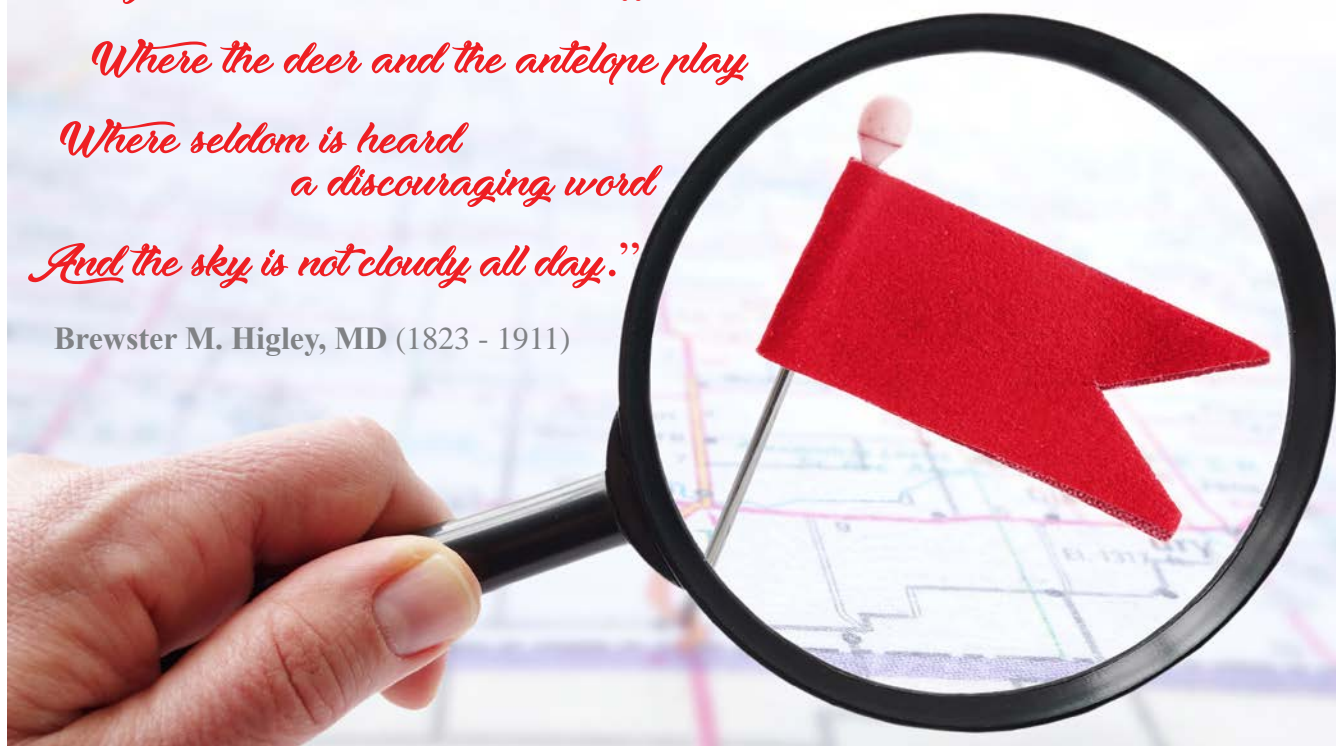
“Oh, give me a home where the buffalo roam

Where the deer and the antelope play

*Where seldom is heard
a discouraging word*

And the sky is not cloudy all day.”

Brewster M. Higley, MD (1823 - 1911)



CHOOSING OFFICE LOCATION

Traditional Office, Shared Office, Home Office, Virtual Practice or Combination

Where will you practice law? And while we are at it, just what is a law office? Many options exist for the new solo or small office lawyer. Among them are:

- Traditional bricks and mortar office
- Shared office space with another lawyer (no partnership)
- Rent-a-desk or co-working spaces
- Virtual (no physical office)
- Home
- Combination

Technology and finances will affect whether you have a traditional law office, a shared office, a home office, a virtual office, or maybe even a blend of these options. The physical location of your office will also affect your marketing efforts and what type of clients who you will attract. Physical location still matters, even for the most virtual of practitioners.

Office location and office appearance is often as important as the quality of the legal work as first impressions are important to the potential client. When choosing an office location, consider whether you need to be close to the courthouse or whether your office must be easily accessible to clients.

Each of these options has its advantages and drawbacks to the solo practitioner. A traditional bricks and mortar law office is likely the most expensive option because of its lengthier leases, furniture, phone and internet costs. Also for a small office practitioner, this arrangement may be too isolating. Rent-a-desk options will have shorter term lease arrangements, and will offer furnishings including fully equipped meeting spaces, kitchen and reception areas. The rent-a-desk option also offers camaraderie, contact with other entrepreneurs and other small office, more experienced lawyers. The downside is the lack of privacy. The cheapest option is the home office; the drawback is that it might prove too difficult to impose the self-discipline necessary to carry it off. Studies indicate that over time lawyers with offices or office-sharing arrangements earn more than home-office colleagues.

Whatever the office situation you choose, you should create a dedicated workspace for your practice.

Consider the primary focus of your practice when deciding on the location of your office. For example, if your practice requires many court appearances, you may want an office near the courthouse. However, the location for a business practice might be better near where your clients are, even if that location is not near a courthouse. A plaintiff based practice might require your offering your clients' easy access and parking, particularly with the injured or elderly. Even though communication with your clients may be mostly telephonic or electronic, some clients feel more secure when their attorneys are physically near.

An important note is that despite the connectedness that technology provides, potential clients inevitably search the web for a lawyer who is geographically near them or near a particular location. The same is true when a potential client asks another for a recommendation.

Special Note About Temporary or Office Sharing Arrangements:

Temporary offices and office sharing are popular cost-conscious options for a new law office. In an attempt to reduce operating costs, newly minted lawyers are increasingly turning to ready-to-go office spaces which provide low cost office areas or desks with month to month lease terms. Some of these arrangements offer the use of communal spaces, like conference rooms for client conferences and depositions. Such arrangements might also include use of internet services, printers, and perhaps even a receptionist.

With temporary offices and/or office sharing, you might share office spaces with other lawyers with whom there is no partnership or an employee-employer relationship.

Short term or shared office arrangements often puts the lawyer in close quarters with others who are not affiliated with your law office. This potentially exposes your client's files and details to others. In such cases, you must use extra care in protecting client confidences and avoiding possible conflicts of interest.



Here are some tips:

- ▶ Do not use names together on websites, social media, letterheads, building directory, etc.
- ▶ Do not share trust fund account.
- ▶ No joint malpractice insurance.
- ▶ Never say partner unless you are partners.
- ▶ Protect client confidences. This may be particularly challenging when working in close quarters.

Special Note About Virtual Offices:

The internet has allowed lawyers to work anywhere. According to the 2011 ABA Legal Technology Survey Report, 77% of the lawyers responding indicated that when they telecommute, 88% report doing so from home, and with about 12% using cafes and coffeehouses as occasional workspaces. The survey also indicated that the most popular client services offered online are:

- Document sharing
- Messaging and communication
- Invoicing and bill payment
- Case status
- Scheduling and calendaring
- Real time consultation
- Fillable forms for online legal document creation and preparation
- A virtual practice might also include a practice without a traditional office at all.

Lastly, if you anticipate meeting clients, make sure that you have access to an appropriate private space for that purpose. Avoid coffee shops and any public areas for confidential conversations with your clients. If in the New Orleans area, you can avail yourself of the LSBA Bar Center's conference rooms which can be used for client meetings and depositions at no charge. Call the LSBA to reserve a room ((504) 566-1600), or reserve it online at lsba.org.

Whatever option you choose, ensure that you have 24/7 access to your office and the ability to access your information remotely.

Do I need an actual street address?

The Supreme Court of Louisiana requires a street address on your annual registration statement. Louisiana Supreme Court Rule XIX, Section 8C (emphasis added) states in pertinent part:

The lawyer shall include an office and residence address on the registration statement, and shall designate either his/her office or residence address as a primary registration statement address. The other address shall be designated as the lawyer's secondary address. The lawyer's primary registration statement address, and the secondary registration statement address, shall each be a physical address and not a post office box. A lawyer may choose either the primary or secondary registration statement address as his/her preferred mailing address, or may designate a third address for this purpose. Service of disciplinary process pursuant to these rules may be made at the lawyer's primary registration statement address. Service or proof of attempted service at the lawyer's primary registration statement address shall constitute adequate notice for purposes of these disciplinary rules.

Each lawyer shall also include an office email address on the registration statement, unless he or she does not have one.

Each lawyer shall thereafter file with the Louisiana State Bar Association any change of physical or office email address within thirty days of the change. Attorneys admitted to practice in the spring shall receive notice for filing the registration statement before July 1st of the year of admission. Attorneys admitted to practice in the fall shall receive notice for filing the registration statement before July 1st of their first full calendar year of admission.

If you intend to advertise or engage in unsolicited communications, under Rule of Professional Conduct 7.2(a) (1) (2), you shall disclose a *bona fide* office location. A *bona fide* office location is defined as a physical location maintained by the lawyer of law firm "where lawyer of law firm reasonably expects to furnish legal services in a substantial way on a regular and continuous basis and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location."

However, Rule of Professional Conduct 7.2(a)(2) also provides for the absence of a *bona fide* office and states that in such a case, "the lawyer shall disclose the city or town of the primary registration address as it appears on the lawyer's annual registration account."

So is paying for and using a street address only for mail sufficient (e.g., using a private mailing address for office mail)? Maybe, not clear. Do you intend to advertise? Are you only engaged in contract work with no client contact? If you have questions about this, you should obtain guidance from the LSBA's Ethics Counsel.



ESSENTIAL OFFICE EQUIPMENT AND STAFFING

Resist buying or hiring more than you need. When you are first starting out, you should stay lean and purchase only what you need. Cover the basics, and do not purchase more than you need in the hope that you might need it later. Same is true for hiring.

So what are the very basic equipment that you need in your law office? At the very least, you will need:

- Computer
- Monitor
- Back Up
- Printer
- Scanner
- Internet
- E-Mail
- Telephone
- Desk, Table, Chairs
- Lamp
- Bookshelves

Used office furniture sales are frequent. Bargains can be found at hotel liquidators companies and through Craigslist ads. Join the LSBA Solo and Small Firm Section and post an inquiry in one of its listservs regarding your need for office furniture.

Technology and Cloud Computing Considerations

Technology sales can be quite tempting and the sales pitches will be alluring. Buy only what you need in the beginning. As your business grows and changes, you will be better poised financially to purchase technology based on an actual need rather than upon a speculative one.

Another reason to go lean with your initial technology purchases is that legal technology is constantly changing. Just when you think you have the latest greatest, in a couple of years, you find that the new shiny fab tech that you invested in a few years ago is obsolete. And, to make matters more complicated, this vicious tech cycle of cutting-edge to obsolescence seems to be getting shorter and shorter.



Further, coincident with new tech are new threats. While tech may make our lives easier in that we are able to practice law from any location and more efficiently, this technologically enhanced mobility requires increased diligence on your part to protect client confidences and to maintain data security. Today's data protective measures may not be sufficient measures for tomorrow. When new technology is adopted, be mindful of additional threats to security. Stay abreast of technology news. Google periodically your products and read lawyer reviews about the technology that you are using.

Keep in mind that whatever technology you purchase, particularly technology that you will use for client data and information, you will need to ensure that client confidences are protected. Rule of Professional Conduct 1.6 (c) regarding the confidentiality of Information governs our obligations in these regards:

(b) A lawyer shall make **reasonable** efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

(emphasis added).

While Rule 1.6 (c) does not define “reasonable efforts,” it is not a stretch to assume that “reasonable efforts” would include an obligation that the lawyer using certain technology knows how to use that technology, particularly with regard to safeguarding client information.

The ABA's Model Rules of Professional Conducts requires attorneys “to act competently to safeguard [client confidential] information against inadvertent or unauthorized disclosure.” The amended Model Rules note that the fact of a disclosure does not mean an ethical violation has occurred “if the lawyer has made reasonable efforts to prevent the access or disclosure.”

The prudent lawyer will be vigilant, will review data safeguards regularly and make changes where necessary especially when new emerging technologies.

Be vigilant in choosing your technology. Ask questions about the product. Satisfy yourself that the technology provider safeguards your client information. Carefully examine all technology before buying, whether it's SaaS (software as a service or cloud-based) or traditional. In particular, consider these questions of any cloud-based provider before committing your data to their hands. Vendors that aren't willing or able to answer these questions should be treated with caution.

- Do you offer a trial period or demo of your product?
- What training options are available for customers?
- What kind of documentation (*e.g.*, knowledge base, product manual,, online tutorials) is available for your product?
- How often are new features added to your product?
- How does your software integrate with other products on the market, especially products in the legal market?
- How many attorneys are currently using your product?
- What hours is your human tech support available?
- Do you offer a Service Level Agreement (SLA) and/or would you be willing to negotiate one? (A service level agreement (SLA) is a contract between a service provider (either internal or external) and the end user that defines the level of service expected from the service provider. SLAs are output-based in that their purpose is specifically to define what the customer will receive.)
- What types of guarantees and disclaimers of liability do you include in your Terms of Service?
- How do you safeguard the privacy/confidentiality of stored data?
- Who has access to my firm's data when it's stored on your servers?
- Have you (or your data center) ever had a data breach?
- How often, and in what manner, will my data be backed up?
- What is your company's history — *e.g.*, how long have you been in business and where do you derive your funding?
- Can I remove or copy my data from your servers in a *non-proprietary* format at any time, even upon nonpayment?
- Where does my data reside — inside or outside of the United States?
- What happens to my data if your company is sold or goes out of business?
- Do you require a contractual agreement for a certain length of service (*e.g.*, 12 months, 24 months)?
- What is the pricing history of your product?
- How often do you increase rates?
- Are there any incidental costs I should be aware of?
- What happens if you are served with a subpoena regarding my data? (Gold star answer is that the vendor contacts the account holder (you) to give you a chance to file whatever protective pleadings you see fit.)

Your Computer: Your Firm's Workhorse

Your computer is THE most important item in your office. You will be tempted to keep your law school computer for your law office. If there is wise money to spend for your law office, it should be for a good, solid, bug free computer. Purchase a robust hard drive, adequate RAM, and a fast processor speed. Do not skimp on virus and malware protection.

If you are still considering using your law school computer, ask yourself these questions: Is your computer stable? Does it lock up? Does it connect to the internet quickly? Is the memory just about used up?



If you need to upgrade, do it now rather than making a poor purchase when you are in crisis mode. Keep your old computer for movies and non legal activities. Use your new computer only for work.

Whether a desktop or a laptop will be a personal preference. If choosing a laptop, adding a docking station will allow you to connect a monitor or two which, while not necessary, is helpful when writing briefs, cutting and pasting, or comparing documents.

Data Back Up and Security

You should have a plan in place. Analyze your system. Devise your plan. Implement your plan. Test your plan. Review you plan periodically (e.g., at the end of the year).

What should you back up? You should back up your data wherever it is located. The more redundant your back up plans are, the better. Plan for back ups to fail. Have several locations for your data back up because you may need to access your data from a different location.



- **Back up your email.** Web based email can be lost. Save local copies of emails by installing email software (e.g., Outlook, Thunderbird, AppleMail). Save email to PDF for archival storage.
- **Back up your hard drive.** Consider third party tools such as Acronis True Image, Norton Ghost, or Carbon Copy Cloner. Use Windows' hard drive back up function. Mac OS has one too.
- **Back up your local or network drive.** Arrange for daily backups. Review the back up logs to ensure that files are being backed up. Perform test restores.
- **Back up to the cloud.** There are many services for this purpose. There are sync tools (e.g., Dropbox and SugarSync) and online backup tools (e.g., Carbonite, Mozy, Crashplan). Make sure backups are working properly.
- **Back up your servers.** Replicate it to an external drive.
- **Back up mobile devices, smartphones and tablets.** iCloud, Google, Windows OneDrive and Lookout (iPhone/Android phone) back up call history. Local files such as pictures, documents, notes and videos, can be backed up using Micro cards or wireless portable drives.
- **Back up social media.** Preserve your online presence. Backup your blogs though your site host or through WordPress' plugins for backup (e.g., Backup Buddy and BackWPU). Back up social media with Backupify for Facebook pages and Twitter or with Social Safe for Facebook, Twitter, LinkedIn, Google+ and more. Back up your websites with NextPoint Cloud Preservation.
- **Back up your paper files.** Scan them to put them into the electronic backup process. If you need to keep originals, place them in a fireproof, waterproof safe. Keep an electronic index of your files. Keep duplicate paper copies offsite (e.g., Iron Mountain).

Scanners

A scanner is the foundation for the paperless office, which in reality, is not an office without paper, but rather an office which digitizes paper wherever possible. A scanner that you will actually use is the best scanner to have. Having access to a scanner that is down the hall and a function of a huge multi-tasking copier/printer machine is not likely to be used to the extent necessary to make scanning documents work for your practice. Desktop scanners are the way to go – the simpler, the better. By having a scanner on your desk, scanning as paper comes in can become a habit. A good rule of thumb is to think of scanners like printers. For high volume, the large multitasking copier/printers are the way to go. For smaller jobs, a desktop scanner will be fine. Scanners will ask what you want to do with the scanned document – whether attaching to an email, or saving to a computer file.



You should familiarize yourself with programs that manipulate PDF, or portable document format, documents. Adobe and its free Adobe Acrobat Reader are probably the most recognized format. Other programs exist that might be more cost-effective, such as Power PDF and its reader by Nuance. Often, scanners will come with one of these programs included. The Fujitsu ScanSnap is very popular but other brands are in the marketplace with options that are just as attractive (e.g., Canon, HP, Brother, Epson, and others). PDG readers only allow you open and read documents, but do not allow you to combine or manipulate PDF documents, which is key to organizing your digitized documents.

Printers

Get only what you need when first starting. Forego color printers – toners are expensive. Enough said.

Phones

Landlines, who needs them? Ok, it's not necessary to have a landline, but the big advantage in having one is that it helps to keep your personal life separate from your business life. Investigate low cost landline-like alternatives such as VoIP, Google Voice or a call park or call forwarding service.

You might be tempted to try a cell phone only approach. Know that doing so without protections may create an unrealistic 24/7 expectations for your clients. Among the protections to incorporate with this approach is to employ different notification sounds, so that you can know who is trying to reach you.

Alternatives to Staff

Skip full time help until you can pay for it. The potentially biggest overhead you might encounter outside of your law degree will be the hiring of staff. So, the decision whether to hire full time staff should not be made lightly.

In the beginning, you will be tempted to do everything yourself. And, you will have the time to do just that. However, as you build your practice, you will not have the time that you had in the beginning to attend to the myriad of administrative tasks.

Until you are able financially to hire staff, consider outsourcing until hiring someone is financially sensible and feasible.



Bookkeeping and Payroll

Perhaps the most common task to outsource is bookkeeping (and payroll if you have staff). Certainly, software options like Quickbooks can be learned and might make sense in the beginning. However, if you have complicated accounts and even if you can do your own books, be cognizant of the time that you are taking away from the practice of law. Consider hiring a bookkeeper for an hour or so to set up your QuickBooks accounts properly and who can answer your inquiries should you have difficulty with Quickbooks later.

Accounting

When it is time to file tax returns, consider hiring an accountant. Unless you have the expertise, avoid doing your own business taxes. It is complicated and time consuming if you are not sure of what you are doing, and time-consuming, even if you do. Again, this is time away from practicing law. Upon hiring a CPA to do your returns, your CPA might send you worksheets to complete, where your income, expenses, mileage, and charitable giving are listed, and the accountant then creates the quarterly tax forms and returns for your signature.



Virtual Receptionist

The first point of contact that a potential client has with your office can send a powerful message to the kind of attorney you are – whether valid or not. Having an overloaded answering machine, or answering your cellphone yourself will not engender good feelings for long, if at all. You could hire a full time receptionist at great cost or you can contract the services of an outsourced receptionist for much less than the cost of a full time employee.

The better receptionist services will answer your business number seamlessly without the caller knowing that the person actually answering your phone is answering from another state. An outsourced receptionist can answer an incoming call asking for you, put that caller on hold and send a text, email or call you with a message with the identity of the caller on the line. At that point, you can ask the receptionist to take a message or take the call. The service will keep a record of all calls and messages. At no time does the caller have to know whether you are truly in the office. This arrangement protects you from becoming distracted with incoming calls when you are working on other matters. There is variable quality of professional receptionists. Shop for one that you like.

Professional answering services can often fill the receptionist gap on an as needed basis while giving your clients assurances that you will be back on touch with them as soon as you are able. A personal touch goes a long way. Many now exist including Ruby Receptionist, Back Office Betty, Acxiom, Televerde, America's Call Center, Gabbyville and MoneyPenny to name a few. Each has different price structures to service the small office practitioner.

Similarly, temporary secretarial help is available on an as needed basis. Companies such as The24HourSecretary and Home Secretarial Services are among many companies which offer this kind of service. Consider sharing a secretary with another lawyer on an as needed basis.

Research or Paralegal Work

Other assistive work that can be outsourced includes other attorneys, outside paralegals, and law students.

Hiring a *per diem* attorney to appear for routine or trivial matters may be useful. Outsourcing marketing and public relations tasks is also useful.

Paralegals

While nationally recognized paralegal associations exists, there are no certification requirements in the state of Louisiana for paralegals. When hiring a paralegal or contracting one as an independent contractor, look for one with experience. Formal paralegal training is a plus, but not necessary in the state of the Louisiana.

A paralegal cannot practice law for you, but can assist you. Rule of Professional Conduct 5.5 (a) is clear: “A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.”

So what can a paralegal do for you?

- Organize and assemble files and documents.
- Locate witnesses.
- Facilitate client and case communication.
- Draft routine correspondence.
- Draft routine pleadings (e.g., Motion for Extension would be fine, but a Petition for Damages would not, particularly if the responsible lawyer does not review and edit before filing or transmission to the client, opposing counsel or the court.
- Schedule depositions, hearings and meetings.
- Review and summarize depositions, medical records.

Paralegals should not:

- Render legal advice or be exclusive client contact.
- Conduct client or witness interviews.
- Prepare clients for depositions, hearings, or trials.
- Have signatory power over bank accounts, especially trust account.
- Do or say anything, making non-lawyer a witness in client’s case.
- Prepare substantive letters or pleadings.
- Be allowed to make decisions that affect client’s rights and/or decide strategy.
- Appear in court for the client.

You should also review Rules of Professional Conduct 5.3 (Responsibilities Regarding Nonlawyer Assistance) and 5.4 (Professional Independence of a Lawyer).⁴

4. Rule 5.3. Responsibilities Regarding Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a non lawyer, except that:

- (1) an agreement by a lawyer with the lawyer’s firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer’s death, to the lawyer’s estate or to one or more specified persons;
- (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;
- (3) a lawyer or law firm may include non lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit sharing arrangement; and
- (4) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and
- (5) a lawyer may share legal fees as otherwise provided in Rule 7.2(c)(13).

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:

- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
- (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

With amendments through June 2, 2016.

See Appendix #3 Checklist for Opening Law Office.



DISASTER PLANNING AND BUSINESS CONTINUITY

Will your firm survive a disaster? Having your data backed up is only a part of disaster planning. Another important part of disaster planning is understanding that such planning accounts for unforeseen disasters of various natures. Start your disaster planning by taking a few moments to think about your office's ability to survive these common "disaster" scenarios:

FIRE/HURRICANES/TORNADOES/NATURAL DISASTERS: If your office was completely destroyed by fire or natural disaster like a hurricane or tornado, how long would it take you to contact all of your clients, recreate all your computer data, contact your insurance company, process invoices, contact opposing counsel and generally get your practice operational again? Who would be responsible for performing each of these functions?

ILLNESS: If you had a heart attack tonight, or otherwise had to be out of the office unexpectedly or indefinitely, are your files organized so that someone could pick up your caseload without your clients suffering any disadvantage? Could anyone actually find anything on your desk or in your files? Do your answers change if your assistant was out sick or away on vacation at the same time?

Conversely, if you have a partner/associate who was suddenly disabled, do you or someone in your office know his/her schedule for the next three months? Do you or someone in your office know the status of all matters in your office?

DISABILITY: If you or a partner in your firm is disabled for an extended period of time, will you be able to draw a salary? If so, how much and for how long? If you are a sole practitioner and the only rainmaker, how will expenses of the firm be paid while you are out and unable to make rain?

SUDDEN PERSONNEL CHANGES: If your secretary/legal assistant/bookkeeper suddenly quit, do you know their filing systems so that you can find information in their desks, in their (or your) files or on their computers? Do you have copies or know where they keep the keys for filing cabinets, etc.? Do you know all their respective passwords (including voice mail, computer login, e-mail, the accounting package and any other software applications they use)?

THEFT OR BURGLARY: If all of the computers in your office were stolen over the weekend, do you have all the serial numbers of the equipment, the original cost of the equipment, the value of the equipment and the ability to recreate all of the data on the computers?

MAJOR COMPUTER MALFUNCTION: If your computer(s) were attacked by a virus and/or your data was rendered unusable or unavailable, would you be able to retrieve your data to start anew?

TRUST FUND THEFT: If one of your staff members disappeared with client trust funds, would you have sufficient records to determine what was taken and when?

Disaster Binder:

Prepare a hard copy disaster binder for the possibility of a power outage and/or when electronic access to your data is not possible. Use a small three-ring binder or something similar which should contain hard copies (preferably laminated) of the following items which should be reviewed yearly:

- *Staff Contact List:* Create a printed list of staff contact information including alternative email addresses, emergency contact information, and a possible location that each person may go if evacuating.
- *Client and Opposing Counsel Contact List:* Create a printed list of your clients and opposing counsel, along with contact information, including email addresses.
- *Directory File List:* Print a list of your directory files on your computer system or “in the cloud.”
- *Trust Accounts/Other Accounts:* Banks; Bank Contact Information; and account numbers.
- *Copy of Insurance Policies.*
- *Inventory of Office Equipment and Furnishings with Photos.*
- *Copies of Software Licenses/Installation Disks.*
- *Important Passwords:* Firm social media and website passwords, account passwords, etc.
- *Vendor and Supplier Contact Information.*
- *Cell Phone Charger* (include a solar cell phone charger).

Make electronic copies of the binder’s contents and place copies of it in several places as follows:

- Email as an attachment to an email to yourself and to someone else you trust who lives in another area from you;
- Flash/Thumb drive (you can keep in your wallet or on your key chain);
- Electronic tablets (e.g., iPad);
- On the Hard Drive of your desktop or laptop;
- Directory on your local server; and/or
- A secure “cloud provider” (Dropbox, Box.net and others).

Also provide an electronic and hard-copy of the binder’s contents to another responsible person (key staff member or partner or other).

Laminated wallet card:

Create a simple, credit-card-size card with key contact information. Laminate the card and keep in your wallet with your driver’s license. One side of the card might contain key staff member contact information and the other side could be court contact information and community emergency numbers. Give a copy of this card to all staff.

Identify Alternative Location(s) for Office:

Create a list of possible temporary office locations should a disaster occur and require a temporary move. You might talk to a colleague about having a reciprocal agreement that either could use the other's office temporarily in the event of a disaster. Your alternative places to work might include your home or someone else's home. Inform staff ahead of time of these potential places. In the event of an area-wide power outage, these potential relocation spots, if known ahead of time, will also optimize your chances of finding or being found by your staff.



Communication Plan for Clients and Staff:

Communication is often the first to go in a disaster. Create a default plan on what to do if you cannot communicate with each other.

- Be able, or have someone on staff able, to post remotely critical firm information on your firm website, email, Facebook, Twitter, LinkedIn, and/or other social media;
- Create a simple post-disaster default message for these sites that informs clients and staff of alternative methods of reaching and finding you; and
- Ensure that all important cell phone numbers and email addresses are stored on each other's cell phones.

Investigate other forms of communication (for example: Skype, Google voice, social media, and other electronic chat formats). Many are free.

Other tips: If you have a traditional telephone company landline, have a plain, non-cordless phone which connects directly into the phone line. When the power goes down, traditional phone lines often remain functional. In extreme situations, the Red Cross will have satellite phones and may allow you to place a call or two.

Check your bar association for communication. During Katrina, the LSBA set up an open forum where people posted temporary location information and contact information. Local bar associations are likely to set up to respond similarly in a disaster.

After a disaster strikes, use all communication tools early and often. Do not assume what communication issues your target audience is having. Be prepared to send the same message several different ways to optimize the chances that your intended recipient will receive it.

For a more particularized information to disaster planning business continuity, please review the LSBA's online *Practice Aid Guide: The Essentials of Law Office Management, Chapter 10 Disaster Planning for Louisiana Lawyers*.



INSURANCE

Malpractice Insurance

Attorneys are not required to obtain malpractice insurance to practice in Louisiana. That said, malpractice insurance is a good idea; and hence, it would be prudent for you to familiarize yourself with the basics of such a policy.

Overview and Background:

The LSBA offers an endorsed insurance program which is administered by Gilsbar, an acronym for Group Insurance Louisiana State BAR. This program is overseen by the LSBA's Legal Malpractice Insurance Committee whose mission is to ensure the most favorable rates, coverage and service for Louisiana lawyers insured under the bar-endorsed legal malpractice plan.

In 1991 at the request of the Legal Malpractice Insurance Committee, Gilsbar created a Loss Prevention Program. The purpose of the program is to assist Louisiana practitioners, whether insured under a malpractice policy or not, in preventing legal malpractice, improving office practices and procedures, and better serving the public. Gilsbar's Loss Prevention Counsel is available for telephone consults with Louisiana attorneys. Gilsbar's Loss Prevention Counsel also conducts law office audits and telephone consults pursuant to a consent agreement with the Louisiana Attorney Disciplinary Board or orders by the Louisiana Supreme Court. Calls to them are confidential and privileged under La. Rev. State 37:220.

Gilsbar's Loss Prevention Counsel:

- Can explain malpractice policy provisions
- Can offer practice suggestions
- Can assist with most ethics questions
- Cannot offer legal advice or legal opinions
- Cannot make professional liability coverage determinations

Do You Need Professional Liability Insurance?

Again, Louisiana attorneys are not required to carry malpractice coverage. Before you make your decision on whether to obtain such coverage, become better informed about malpractice coverage and the statistics regarding malpractice litigation by clients.

According to various studies, an attorney can now expect to be sued at least once during his or her career. A reason for the rise in legal malpractice claims is due, in part, to lawyers retaining work outside of their area of expertise rather than referring those cases to another attorney with more specific knowledge.



According to Gilsbar, seventy percent of business transaction claims involved attorneys who devoted 5% or less of their practice to that area of practice. Gilsbar also notes that not just new attorneys make mistakes. Attorneys with more than 10 years of experience accounted for 92% of reported claims in one survey. And, of particular interest to those considering a small office practice, firms with 5 or fewer attorneys account for most claims, and 65% of all attorneys practice in firms of this size.

Claims resulting in indemnity payments exceeding \$2 million have increased significantly. Fewer claims are being abandoned or are resulting in no payment.

How much is the malpractice premium? How much does it cost to defend a malpractice claim?

The average annual premium for professional liability insurance for a solo practitioner with \$1M/\$1M limits of liability is \$4,300. However, premiums will vary over a legal career depending on the type of law practiced and years of experience. Lawyers change jobs frequently over a career. Your premium will be affected by how far back you want your coverage to go. This is called prior acts coverage. You can obtain career coverage for all acts, a coverage that can be expensive considering the length and type of practice. Or, you and the carrier may agree to certain date when retroactive coverage may begin. You might also opt for only prospective coverage. Claims occurring before the prior acts date will not be



covered even if they are made and reported during a current in-force policy period. Coverage for prior accounts can get quite complicated; you should consult with the malpractice insurer when making this decision.

While premium costs might seem a large expense, defending a malpractice claim can be expensive. The minimal cost of defending a “no liability” legal malpractice claim is about \$10,000. Defending a legal malpractice claim with “possible liability” can run anywhere from \$50,000 to \$150,000. Additionally, defending malpractice claims require considerable time – time away from your regular practice. The average life span of a legal malpractice claim is two years.

What are the common triggers for malpractice claims by clients?

Substantive errors, administrative errors, problems with client relations, and intentional wrongs can contribute to the triggering of a malpractice claim.

Examples of substantive errors are:

- Conflicts of interest
- Inadequate discovery of facts or inadequate investigation
- Error in mathematical calculation
- Failure to know or ascertain deadline correctly
- Error in public record search
- Improper drafting
- Planning error in choice of procedures
- Failure to understand or anticipate tax consequences
- Failure to know or properly apply the law

Administrative errors that may trigger a malpractice claim include:

- Failure to calendar properly
- Failure to react to calendar
- Failure to file documents where no deadline is involved
- Procrastination in performance of services or lack of follow-up
- Lost file, document, or evidence
- Clerical error

Issues with client relations may also prompt a malpractice claim. Such as:

- Failure to follow client’s instructions
- Failure to obtain client’s consent or to inform client
- Improper withdrawal from representation

Intentional wrongs, such as libel or slander, malicious prosecution or abuse of process, violation of civil rights and fraud, can trigger a client to allege legal malpractice.

In Louisiana, what attorney errors trigger the most claims?

From 2013 through 2015, disciplinary matters were by far the most frequent claims under a legal malpractice policy in Louisiana.

Other errors causing claims are in the order of most frequent to least frequent are:

- Failure to settle or unsatisfactory settlement reached
- Improperly drawn and/or record documents
- Failure to follow client's instructions
- Failure to know and/or properly apply the law
- Failure to calendar properly
- Failure to know or ascertain deadlines
- Existence of conflict of interest
- Inadequate representation
- Inadequate discovery or investigation
- Failure to react to calendar
- Failure to file/record document
- Failure to obtain consent and/or inform client
- Malicious prosecution – abuse of process
- Improper handling and/or disbursement of funds
- Improper withdrawal of representation
- Error in public record search
- Fraud
- Planning error – procedure choice
- Fee dispute
- Procrastination in performing and/or follow up
- Personal misconduct
- Clerical error
- Libel and/or slander
- Negligent misrepresentation
- Error in mathematical calculation
- Civil rights and/or discrimination

What areas of law bring the most malpractice claims in Louisiana?

For the period of 2013 through 2015, the top seven areas of law which bring the most malpractice claims in Louisiana, in decreasing frequency, are civil litigation; plaintiff personal injury and/or property damage; family law; wills, estate, trust and probate planning; real estate and residential; collection and bankruptcy; criminal business transaction and commercial law. Other areas of law where there are claims are personal injury and property damage; plaintiff workers' compensation; taxation and labor law.

What size firms bring the most claims in Louisiana?

For the period of 2013 through 2015, 47% of the malpractice claims brought in Louisiana were against solo practitioners followed by 17% against two lawyer firms and followed by 18% against lawyers in a firm with three to five lawyers. In other words, 82% of malpractice claims are against small office practitioners in firms of one to five lawyers.

What does a malpractice policy pay for if the policy is triggered?

Malpractice policies pay for the costs of defense of malpractice claims under the policy's terms and conditions. Additionally most professional liability policies provide reimbursement for the costs of responding to disciplinary complaints.

The policy will also pay for settlements and judgments up to the coverage that you have obtained under policy terms and conditions.

What kind of risks does the malpractice policy cover?

The types of claims that are covered under the policy include the following:

- “Wrongful acts or omissions” committed in the rendering of legal or professional services
- Indemnification and claims expense
- Ancillary services
- Services as a notary public
- Services as a title agent and or Title Agency
- May need a separate Title policy
- Acting as a trustee or executor of an estate in connection with representation of a client
- Acting as an officer, director, or member of a legal professional association

The types of risks that are not covered typically covered by a legal malpractice policy include:

- Intentional acts (dishonest, fraudulent, criminal, malicious)
- Bodily injury or property damage
- Contractual Liability
- Insured v Insured
- Insured’s ownership interest of business enterprise > 10%
- Claims based on insured’s capacity as a fiduciary under ERISA
- Capacity as a public official
- Non-reported claims

Who is covered under a malpractice policy?

These individuals and/or entities are covered under a malpractice policy:

- Named Insured
- Predecessor firm
- Government affairs advisor or lobbyist
- Lawyer, partnership, professional association who is or becomes a partner, officer, director, stockholder-employee, associate, employee of Named Insured
- Of Counsel or non-employee independent contractor attorney
- Lawyer previously affiliated with the Named Insured as partner, officer, director, stockholder-employee, associate, employee
- Any person who is a former or current non-lawyer (staff)
- The estate, heirs, executors, administrators of an Insured in the event of such Insured’s death, incapacity, insolvency or bankruptcy
- The spouse or domestic partner of an Insured, but only to the extent that such Insured is provided coverage under this Policy.

How can I assist in the defense of a malpractice claim?

It is always wise generally to keep detailed notes of everything that goes on in your clients’ matters. This is particularly important if you suspect that a malpractice claim may be or has been filed. This would include confirming all important information in writing, keeping drafts of documents that you produce and send out externally, saving copies of the entire client file, and keeping and retaining files for the required period of time after the attorney client relationship has terminated.



Cyber Insurance

We, as lawyers, have heightened obligations to keep our client confidences and information safe. Our obligations in these regards are no less if the client information is electronic. Cyber insurance is designed to assist before, during and after an electronic security breach. While a professional liability policy may help protect against third party lawsuits, gaps exist when it comes to consequences of a data breach including expenses associated with privacy notification, crisis management, business interruption, cyber extortion threat and recovery of data. Traditional coverage will not extend to injury caused by network security and privacy breaches and cyber insurance coverage will. An average premium for cyber insurance is between \$200 and \$600 per year for a small firm of up to ten employees.

Two coverages are typically offered: for network security liability and for basic privacy injury liability. Network security liability coverage is for network damage caused by a wrongful act that results in a security breach or the insured's network. Network damage includes the inability to gain access to the network, and destruction or alteration of a third party's information residing on the network. Basic privacy liability provides coverage for a claim of privacy injury alleging a wrongful act that results in a security breach of the insured's network. Privacy injury includes the unauthorized disclosure or the insured's failure to prevent unauthorized access to nonpublic personal information or to nonpublic corporate information residing out of the insured's network.

Additional coverages are available including for:

- Laptop computer breach privacy liability (resulting from the loss or theft of an insured's laptop or removable storage device)
- Broad form privacy injury liability (covers information in printed form and in the insured's care, custody or control and covers the rogue employee for whose wrongful act the insured is legally responsible)
- Privacy regulatory proceedings (covers loss due to privacy regulatory proceedings alleging a violation of any security breach notice law; covers civil fines, sanctions or penalties imposed under a privacy regulation proceeding for a violation of a security breach notice law and coverage include the rogue employee for whose wrongful act the insured is legally responsible)
- Privacy event expense (reimbursement for reasonable expenses incurred by the insured to comply with a security breach notice law to respond to a privacy event (including setting up a call center and providing credit monitoring services))
- Network extortion expense (reimbursement for reasonable expenses incurred by the insured to respond to a network extortion or demand).



Health Insurance

Health insurance is heavily regulated at the state level. If you are looking to obtain new coverage, or replace your current policy, you should familiarize yourself with Louisiana's health insurance laws. Go to HealthCare.gov or contact Gilsbar for guidance.

See Appendix #4 Legal Malpractice Policy Highlights.

See Appendix #5 Network Security and Privacy Coverage Highlights (Cyber Insurance)

See Appendix #6 Workers' Compensation

See Appendix #7 Sample of Legal Malpractice Policy with Mandatory Louisiana

Endorsements



FILE FLOW AND ORGANIZATION

Document Management

File management is the creation of a system which results in the filing of every document of every client matter. Good file management helps to discharge your obligation of competent representation, to safeguard client confidences and with the easy retrieval of needed documents. It is important to note that proper file management continues through the life of the representation and for a time thereafter. After a matter concludes, the file should be stored, and eventually destroyed and/or electronically copied to make room for new files.

Effective file management depends on: a system of centralized storage for all files; whether that method is electronic, through a “cloud” service or through local storage on your server or computer; by paper; or both. If storing files electronically, provide for regular redundant backup of your files. If using a “cloud” provider for file management, inquire how documents are backed up on the company’s end. If storing files through a combination of electronic and paper, be clear which documents are to be stored electronically or by paper, and communicate this to staff. Whichever methods are chosen, basic file organization achieves the same purpose – the easy and efficient retrieval of client documents. Regardless of method, good categorization of the documents contained within a file is key to a good file management system.

Assuming you have conducted a conflict check (*see the LSBA’s online Practice Aid Guide: The Essentials of Law Office Management, Chapter 2 Conflict of Interest*), your filing system should start with a useful file naming convention. That filing naming convention will be the label for your files, whether paper or digital. You should create a filing naming convention that provides you information at a glance.

An example of a useful file naming convention might look as follows:

- 2017-4-3: Glitch Enterprises v. Jeanie Thompson

This convention would mean that this file was opened in 2017 for client #4 who is Jeanie Thompson, and it is the third matter that has been opened for this client.

Let's assume that file # 2017-4-3 is a personal injury matter. If digitizing file documents, you would open a folder entitled "2017-4-3." If organizing paper files, you would label an expandable folder sleeve "2017-4-3" for the entire matter. Then, whether electronic or paper, you would open subfiles and collect documents by function. The subfiles you might open for a personal injury matter might include:



- File Opening Form: Client contact information; file opening date; fee arrangement; opponent and opposing counsel contact information; court information; prescription dates
- Engagement Letter or Retention Agreement
- Correspondence/Email: You might consider a file naming convention that incorporates a date. For instance, instead of "Client Letter 1" and "Client Letter 2" to identify documents in your Correspondence subfolder, use "Client Letter 8-15-2016."
- Pleadings
- Discovery
- Depositions
- Medical Records
- Expert Opinions
- Research
- Your Notes
- Documents from Clients

You may have other headings depending on the file. Your subfile names may differ if your matter involved business litigation or a trusts and estate matter. The point is to create a filing system whereby you can retrieve documents quickly and efficiently.

Organize documents that you have on computers using the same categories that you would use if the file was a paper file. Create and adhere to a standard document naming and storage convention for your electronic file. Each file should have its own electronic file name with subfolders for the particular document categories. If you have many client matters that need organizing electronically, do one file at a time and chip away at the files, starting with the ones which are the most active.

If scanning documents, make sure that the scanned document finds its way to the correct subfolder for the client matter.

Good, secure electronic file management services in the cloud will offer ways to organize a file for easy document retrieval. Adapt them to meet your file needs.

Practice management systems manage all aspects of a matter in the cloud. Features will vary among the services. Typical services provided are:

- Case/matter database
- Calendaring
- Email management
- Time tracking and billing
- Accounting
- Form assembly

Examples of practice management systems are Clio, Cosmolex, MyCase, Rocket Matter and Time Matters.

Document management systems help firms organize just documents in the cloud and no other features. This might be the best option for the new lawyer on a budget. These systems offer:

- Structure for organizing documents
- Indexing and searching function
- Comparison tool for document reviews
- Microsoft integration
- Tags
- Email management
- OCR conversion of documents

Examples of document management systems include Worldox, iManage, NetDocuments and LegalWorks.

Appropriate technology will force you to become organized. Take the time to devise a good filing system and make sure that anyone who works with you complies with it.

File Retention:

Document retention is insusceptible of a simple answer without knowing about the particular records. But, there are guidelines for you to consider.

In 2006, the LSBA's rules of Professional Conduct Committee issued Public Opinion 06-RPCC-008, entitled [Client File Retention](#). It begins with the admonition: "Unfortunately, there are no hard and fast rules regarding a lawyer's obligation to retain and store client files in which the work has been concluded and the file close." You should review this in full for guidance.

Code of Professional Rule 1.15(a) provides:

... Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Louisiana Civil Code article 3496 states:

An action by a client against an attorney for the return of papers delivered to him for purposes of a law suit is subject to a liberative prescription of three years with prescription commencing from the final judgment in the law suit or the termination of the attorney-client relationship.

A good rule of thumb is that document should be kept for five years, *unless* good reason exists for maintaining file; e.g., promissory notes, wills, trusts or similar documents. You should also note that should there be a disagreement about your fees, the best evidence will be your file contents. So keep that in mind too.

Review book #72, *The Lawyer's Guide to Records Management and Retention* (2d Ed) by George C. Cunningham (2014) from the LSBA Lending Library (www.lsba.org/PracticeManagement/LendingLibrary.aspx) at no charge. This publication speaks to the mechanics of storing documents and the establishment of a retention schedule.

For additional information, please review the LSBA's online *Practice Aid Guide: The Essentials of Law Office Management, Chapter 5 File Management*



CALENDARING

Time is relative to the position of the observer. When the new client calls, next month looks wide open and promises flow freely. When the promised deadline approaches, things look different. Calendar control methods help us make promises we can keep.

A calendar system needs six elements for safe and effective calendar control:

- **Calendar control person:** This person is responsible for daily maintenance and backups and for making sure that everyone properly uses the calendar. If you are the only person, calendar back up and redundant sources of your calendar are critical.
- **Events (or Appointments):** Your calendar system must account for date driven dates. Any dates, particularly court imposed deadlines, should be double checked for accuracy before you put away the source documents, such as a deposition notice or an order that sets a case for trial.
- **“To-Do” items (or Tasks):** This list may be date-driven but are usually not time-driven. Examples are the steps in writing a brief or preparing for trial. Also, add a to-do item as a reminder to follow up an important outstanding task, such as obtaining the clerk’s confirmation of filing a suit well before prescription runs.
- **Alerts (or Reminders):** Find a tool which provides warnings of an event or a “To-Do item” in the future. Set the alerts so that the reminder leaves with time enough to complete the upcoming task. For example, set alerts one-month ahead for brief due dates or three-month alerts for discovery deadline dates. Repetitive alerts for the same task are advisable, particularly for crucial court deadlines and tasks.
- **Maintenance:** Search for a tool that makes maintaining your calendar easy. You should devise or have a calendaring system that allows changing, removal, and modification of dates and events easy makes to easy.
- **Backups:** Internet calendar systems with reliable vendors will provide the back up you need. It is prudent notwithstanding to make hard copies of your calendar in the event that you are unable to access your electronic calendar. Have redundant ways to access your calendar.

Numerous electronic tools exist for calendar, task management and docketing. Search online for independent reviews by lawyers to assist in your choice. Visit product websites for these calendaring tools, and take advantage of free trial periods to find one which works best for you. The tools offer varying services. For some, a stand alone calendaring tool is sufficient, while for another, a tool which allows shared schedules is necessary. Here are some suggestions (the following list is not an exclusive list; there are numerous tools):

- Microsoft Outlook users and upgrade to Outlook Express
- One person offices might benefit from Kiko or Yahoo! Calendar
- Small offices which need to share schedules might consider WebEx Web Office, Visual Day Planner or Google Calendar
- Stand alone calendaring software can be found at CompuLaw and Deadlines on Demand
- Practice Management systems, such as Perfect Practice ProLaw and Time matters and others also offer calendaring functions.
- Apps such as Wunderlist and Todoist are useful tools also and can send lawyer email and text messages when tasks are due and before.
- Evernote and other syncing tools can add dates to your calendar through your smartphone.



TIP:

Email, voicemail or text yourself dates for entering onto calendar at a more convenient time if you are unable to access your calendar. You will have a written record of the date.

Electronic calendars work well, and are very efficient and reliable. Creating paper copies of your calendar should be a part of your system in the event that you are unable to access your calendar electronically.

What do I calendar?

You should calendar these items:

- Prescription dates
- Abandonment dates
- Court dates and deadlines
- Client imposed deadlines
- Periodic review of client files
- Schedule time to contact client
- Personal dates

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



CHAPTER 3

Attracting the Right Clients for your Practice



DEVELOPING THE RIGHT CLIENT BASE

Developing the right client base depends on your choosing the right area of law for yourself. You might be drawn to the general practice of law and want to take in every case that walks through the door. After all, you have got student loans to pay off. However, that might not be the way to go. Selecting three or four complimentary focus areas may be more effective. By limiting yourself to a few areas, you will be able to hone your skills faster for those areas which will result in a more efficient practice. Further, marketing a general practice is harder than marketing a niche of focused practice. With a fixed focus, your clients and referral sources will be able to more easily recommend you.

How to Determine What Areas of Law Will Suit You

Choosing the right areas of law for your practice involves some careful soul-searching. Assess your abilities. Consider your background, legal and non legal. Follow your passions. Network with others; ask them what your strengths are. Use your law school as a resource.

Ask yourself these questions to get started:

- **Do you like to argue?** This is the “litigation or non litigation” question. If court room excitement is what you want, be cognizant of the level of ongoing animosity that often continues with opposing counsel outside the courtroom. Litigation is always about arguing and you need to build a thick skin. If you are more the conciliator, perhaps a transactional practice might be a better fit.
- **What tasks do you like to do?** What legal tasks have you enjoyed the most? Is it writing briefs? Negotiating? Client interaction? Oral argument? Take note of what you do like doing and what others say about what you are good at doing.
- **Do you like people?** Much of what we do as lawyers are solitary tasks, whether we are litigators or not. Notwithstanding, some types of law lend themselves to more interaction with others than other areas. Type A personalities, outgoing individuals might gravitate towards litigation practice or a mergers and acquisitions practice. A more introspective, academic person might prefer a tax, antitrust, or intellectual property. If you prefer working with individuals (non corporate clients), trusts and estates, real estate, or family law might be matches for you. Think of other practitioners with personalities like yours, and discuss their area of law with them to get some ideas.
- **Do you want control over your work life?** Do you want to set your work hours? This question directly concerns your life outside the office and the amount of time that you want to have attending to it. If autonomy and control of your time is a high priority, weigh the effects of a litigation practice versus a transactional practice where control may be easier.
- **Do you like routines or unpredictability?** Certain practice areas are conducive to a routine than others. As service providers, attorneys need to be available when the needs arise.
- **Where do you want to live?** Some practice areas will require you to live in a certain area to attract the clients that you want. Think about where you need to be for your clients.



Advantages of a Carving a Niche:

- **Proficiency:** Through dedicating yourself to a certain client base, practice area, or service, you will hone proficiencies that you would not otherwise have time to do had were you to choose a general practice.
- **Marketability:** You might think that narrowing the scope of your practice rules out clients at a time when you need them. However, having a practice limited to a certain scope, you actually increase your marketability to others. You become known for doing “x,” which lends itself to a better description of the services that you are offering. What sounds better? “Call Ann; she’ll take any case. She can help you.” Or “Call Ann with your employment discrimination issue. She focuses on employment law, and works primarily on complicated discrimination matters.”
- **Less Error Risk:** Higher proficiency reduces error risk. General practice lawyers tend to make more mistakes than lawyers who have limited their practice to a few areas.
- **Interest Generating:** Creating proficiency in a few areas cultivates your confidence and continuing interest in those areas, which, in turn, makes lawyering more fulfilling.

Disadvantages of a Niche Practice:

- **Trend Today, Gone Tomorrow:** Niche practices, if drawn too narrowly, are vulnerable to market fluctuation. You can see quite readily after a natural disaster when lawsuits against homeowner’s insurers skyrocket after a strong wind event such as in a tropical storm or hurricane. Such lawsuits decrease dramatically with the passage of a few years without tropical activity. To guard against fluctuations, choose complementary niches that are not triggered by similar events. Be nimble and be able to adjust your business model and offered services so that you can respond to a dwindling need or a new opportunity.
- **Too Narrow of a Niche:** You can limit yourself out of practice before you even get started. If you sense a legal need for a certain type of law, do some research to determine how many lawyers in your area practice in that area of law. Think about whether that niche can accommodate another lawyer. If you are passionate about that niche, choose it, but optimize the chances of success by choosing other areas for your bread and butter.
- **The Great Idea:** You have a great idea for your practice area, and you just know it is going to work. Do some research first. If other lawyers are practicing in the area, that is an indication that the market is viable, but it may also indicate that the market may be too small for another lawyer. If no one is doing it, it may mean that no market exists, or that no competition exists. Before you jump in, become informed. Is this a niche that is too narrow and new to be successful immediately, if ever? Maybe there is a problem, but does it require your services as a lawyer? Or, is the issue more of a political issue which is resolved not through the courts, but rather resolved through local government.
- **Boredom:** The same old, same old gets old quickly. So choose areas of law which are interesting to you enough such that as you encounter similar cases, you can still find something interesting about each of them. Avoid too narrow of a focus. For instance, instead of limiting your practice to only wage penalty cases, expand your practice to include workers’ compensation.
- **Location Issues:** Market saturation can certainly occur for many common areas of law. You can combat that by adding a niche that not many practice such that your reputation will go beyond your local environment. Choose an area of law that has not attracted many practitioners so that you can build your reputation as one who is knowledgeable about that area of law beyond your locale. For instance, civil rights lawyers are not often found in rural areas and litigants will often have to secure legal services from attorneys from an area outside of where they live.

See Appendix #8, Quick Tips on Acquiring Clients.

AVOID THE WRONG CLIENTS

Establishing a positive online presence and building your good reputation takes time away from revenue producing activity. As a result, when you first start, you will be tempted to take any case. Know that good clients will cause you to become a better lawyer and will enhance your reputation as a good lawyer. Bad clients will cause you to doubt your skills and possibly wreck your hard earned reputation. Heed the adage that the bad clients whom you do not take will be the best money that you have never made.

As you spend time trying to attract the good clients, obtain a better understanding of the kind of clients that you want to avoid. Learn to say no.

Reduce client complaints with effective client screening:

Before agreeing to take a particular client, consider these questions:

- ***Can you manage the client's expectations regarding results, and how long will it take to get results, whatever they may be?***
Most clients begin with unreasonable expectations about the value of their matter. If upon meeting your potential client you are not able to adjust your client's expectations, the client will be dissatisfied at the outcome regardless of how well you do your job. You should avoid taking clients with unreasonable expectations and should avoid saying anything to encourage unreasonable expectations.
- ***How concerned is the client about attorney's fees?***
Attorney fee disputes cause a significant number of attorney complaints. If client is trying to make you cut too many corners to keep the bill as low as possible and those cuts interfere with your representation of the client, think twice. Carefully document any rejection by a client of an expense that you feel is necessary for the proper resolution of the matter. If a client cannot afford your services, do not take the case.
- ***Is your client more concerned about the "principle" of the case?***
If your client wants to pursue litigation only to punish the other side because of the principle of the matter, this is a type of client who will resist paying the bill when bill becomes due.
- ***Has the client fired other lawyers?***
If your client has had more than one lawyer, ask your client and listen carefully to your client's response. Consider talking to the prior lawyer(s) before agreeing to take the matter. Clients often change lawyers because of a dispute about legal fees or because of the client's unrealistic expectations. Make sure that you understand why there has been a change of counsel, no matter how good the case seems to be.
- ***Is the client late in getting the case to you?***
Did the client wait to the last minute to seek counsel? Are you days away from a prescription date or from a trial date? Can you rely on the client to give your needed information upon a deadline?
- ***Is the client financially unstable or off questionable moral character?***
Would representing this client hurt your reputation in the community?
- ***Is the client a close friend or relative?***
See below.
- ***Is the matter appropriate for your practice?***
Is the matter out of your comfort zone? If the case is more complicated than your usual case, are you able to associate others to help you? Do you the skill, expertise and time to handle the matter?
- ***Do you have a favorable feeling about your client?***
Do you think that your client is being honest with you? Does the client show confidence in your abilities to represent him or her?

Representing family members or close friends:

Representing family members and close friends can be an excellent to build up a client base through referrals. Assess these factors when thinking about taking a relative's matter:

- ***Setting the fee:***
Family members and close friends will likely expect that your representation on a pro bono or discounted basis. Have the fee discussion before you accept representation. Even if you do agree to take the matter pro bono or at a discount, send a bill with your standard rate and indicate the family discount. This will go a long way in proving the value of your time with your client, even though he or she is a family member or close friend.
- ***Establishing attorney client boundaries:***
Establish a professional demeanor with your client even though he or she is related to you or is a close friend. Keep in mind an older relative may remember you as a child but you want him to take your advice seriously. Try to have formal appointments with your client relative at your office to discuss the legal problem and avoid doing so at family functions. Inform your client that you will not be discussing the matter with anyone except him or herself.
- ***Carefully consider whether you want to take the case:***
Does the matter involve a dispute between family members or between close friends? Are there emotions involved that would rather not stir up with your family or friends?
- ***Guard against being drawn into a matter that involves an area of law that you do not do or would take too much of your time at a discount:***
If you suspect that would concern an area of law that you do not do or the matter would take a lot of your time at a discount, do not be reluctant to decline.
- ***Be honest with your client:***
Are you able to keep objective even though your client is a relative or close friend? Are you able to have a frank discussion if your client is a relative or close friend and disagrees with your assessment?

If you have been through this analysis, and you have determined that it is best that you decline to represent a client in a matter, how and when do you say no?

If you know that you will be declining the matter, do so as soon as you can and follow it up with a written letter. Distinguish whether you are saying “no” to the client or to the case. If you are saying “no” to the case, explain to the client why the matter is not a good fit for your firm. If you like the client but just cannot or do not want to accept that particular matter, keep in mind that the client could be a future referral for other matters. Try to refer the client to another lawyer or suggest other ways that the matter might be resolved.

Other matters that might raise warning flags are as follows:

- Divorce cases where the parties are seriously in debt (unless paid in advance).
- Hurt feelings case, where damages are nominal, but feelings are hurt (for example, a barroom brawl, defamation).
- Cases totally without merit.
- Vengeance cases without merit.
- Meritless cases where client doesn't care about the money, just the principle (but, they DO care about the money).
- Cases which may have merit but with large client expenses (e.g., expert fees) that the client cannot afford. You should not advance costs in these cases.
- If you have a totally miserable client or case that you really don't like, consider the 100% refund of monies given to you by the client, including expenses if necessary.

So you have accepted representation, is it possible to withdraw?

Yes, but your ability to do is restricted by Rule of Professional Conduct 1.16 which states that you may withdraw from representation if:

- Doing so will not have material adverse effect on client's interests;
- Client persists in action involving your services that you reasonably believe is criminal or fraudulent;
- Client has used your services to perpetrate crime or fraud;
- Client insists on action that you consider repugnant or with which you have fundamental disagreement;
- Client fails substantially to fulfill obligation to you regarding your services and has been given reasonable warning that you will withdraw unless obligation is fulfilled;
- Representation will result in unreasonable financial burden on you OR has been rendered unreasonably difficult by client;
- Other good cause for withdrawal exists.

Under certain circumstances, you shall withdraw from representation if:

- Representation will result in violation of rules of professional conduct or other law;
- Your physical or mental condition materially impairs your ability to represent the client
- You're discharged.



Positive Online Presence

BUILDING A POSITIVE ONLINE PRESENCE

The first sources potential clients go to for lawyer recommendations are friends and relatives. The second source is the internet. Before you embark on your first law office, take time to cultivate a positive, relevant, online presence that gets you at the top of search requests. That might require you to separate your personal life from your business life so that you can develop an online professional presence. This might also require you to take any corrective actions, if possible, to remove content that is not helpful. You want to make sure that when potential clients and potential employers search online for you, they see your best foot forward.

Reputation management companies such as Reputation Defender and Reputation.com charge hundreds of dollars to manage your online presence with actions that you can do easily yourself. Rather than spend money on these companies, you can accomplish much of this yourself some fairly easy steps. As follows:

- ***Search yourself.***

Take a look at what others will see when searching for your name. Google yourself and see what happens. Set up a Google alert for your name to be advised of any future content which contains your name.

- ***Obtain a domain name:***

Choose and buy a business domain name. Opt for a domain name that is simple to remember, not too long, to the point, professional, and not too cute. Do not choose a name that is misleading.

- ***Join social networks:***

If you have not done so already, take advantage of social networking and create Facebook, LinkedIn, Twitter and Google+ accounts, if you have not already done so. You have content control over these sites which makes them valuable to you for marketing purposes. Create these accounts in your office name before someone does. Consider creating YouTube and Vimeo accounts as well in the event you want to post relevant video for your practice.

- ***Optimize your online presence on social media:***

In the content that you post, repeat your name and firm name as many times as possible on these sites and customize the URL with your name. Some sites will allow you to link to other social media sites. Cross pollinate your business content (articles, posts, video, podcasts, etc.) on many platforms.

- ***Privatize your private online life and create a public online business life:***

Review your existing social media accounts and make corrections to posted content and privatizing accounts where needed and open separate public accounts for your law office. Check your sites often to ensure the privacy rules for the social media tool have not changed such that your private account which you thought was private has been changed to public.

Claim your work identity on social media before someone else does. If and when you gain traction, you want to be sure that your name is not being used by someone else.

The mere act of creating business Facebook, LinkedIn and Twitter business accounts creates a positive impression on potential clients. You control the content in these accounts, so take advantage of them. These accounts can counterbalance online information that you do not control. Actively contribute to your business Facebook, LinkedIn and Twitter accounts. Engage in forum discussions where potential clients are.

Websites:

Create a simple static website for your firm. Use your website to post a solid and interesting professional biography for yourself and any others in your office. Post quality professional and casual photographs. Be generous about your accomplishments. List community activities. Write content for your website that shows off your expertise and expresses positive values. Use tags to associate your name with keywords (common words that may be used in a search request) for your practice area of law so that your name appears high on a search list. If you add helpful links to your website, make sure that the links remain viable links. Websites with dead links will not leave the user with a good impression.



WordPress, Wix, and other website platforms (Weebly, Webs or Yola) offer basic website design for free. Look for a platform with an easy content management system that is also easy to index and tag for search engine optimization (SEO). These free website platforms and other website platforms offer plugins for additional functionality so that you can add videos, a carousel for your top bar with rotating messages or photos, a forum (if so, opt to always moderate who posts so that you can delete offensive posts you) or other functions. WordPress has a plug in for Google Analytics to connect to your blog or website so that you can determine how many times your site has been viewed. Make your website mobile friendly. The vast majority of adult cell phone users rely on their cellphones to go online. If your site is not mobile friendly, these users may not be able to view your site properly, particularly your contact information.

Content:

Creating content for social media takes time. The trick is to create the content once and publish it everywhere. If you have written an article or content for your blog, find other outlets for it – Facebook, LinkedIn, Twitter, etc. You might create an e-newsletter to discuss a new case affecting potential clients. Offer to be a contributor to a potential client’s website, trade websites, or a lawyer centric website and add back links to your website. Avail yourself of social media management tools which will allow you to cross post across many platforms (e.g., Hootsuite) with one click.

Sites that You Cannot Control:

Lawyer profile sites and directories can help get your name out there. They offer little or no control over content, but offer free high rankings and SEO optimization. But, you need to be careful with them because the content on these sites is often not under your control. You may be tempted to join high powered sites such as AVVO, Justia, FindLaw, Lawyers.com/Martindale.com, Yelp or BBB.org. These can be enticing because of their sheer size and their ability to get you at the top of search requests. Their Search Engine Optimization power certainly can lead to potential client clicks. However, before you use these sites, acquaint yourself with them and research the pros and cons of doing so.



Many of these sites will seduce you by allowing you to list yourself free of charge, and then offer enhanced placement at a charge. Before you spend the money, do sample searches for attorneys who practice the same area of law in your geographical area and analyze those results to determine if doing so would be worthwhile as part of your marketing effort.

Probably the most aggressive of these sites is AVVO which provides rankings of lawyers. All lawyers will begin with a default ranking. Do not claim your AVVO webpage unless you are ready to put the time into increasing your rating. If your score is low, AVVO prompts you to complete your profile. If you want to spend the time and you have enough information to add, you can increase your ranking by completing your profile. Many dislike AVVO because it is impossible to remove information that is deleterious. Educate yourself on how AVVO works. Your AVVO ranking increases by adding to your profile certain tasks – e.g., speaking at CLEs, litigating cases, and a host of other tasks. Learn what these rate enhancing tasks are and have them accomplished before you claim your website.

Justia offers a lawyer directory sorted geographically and by area of practice. You can add video, twitter feed, a blog feed, social profiles and more.

Yelp is now the top local marketplace online directory. While Yelp is most often affiliated with restaurant reviews, it is increasingly used for service oriented businesses too. Yelp results are displayed prominently and are geographic centric. The Yelp site is mobile friendly as well. The downside of Yelp is that once you are on Yelp, you cannot get off. Also you should constantly monitor for negative comments.

No matter which sites you use, abide by your obligations with respect to client confidentiality. Post no false or misleading communications about your fields of practice and post no fake reviews.

Negative Online Comments:

Create a Google alert or use other free tools to alert you when a comment is posted about you. Do not ignore negative comments.

- For those sites where you can control the content, remove the offending comments.
- For those sites where you do not control the content and cannot remove the offending comment, respond quickly in a non-defensive manner while at all times, respecting your obligations as to client confidentiality despite the negative comment. If you know the person, try to contact them and try to work it out.
- Positive online reputation is the best free lead generation for clients.

IRL – In Real Life:

Online reputation is one thing. Your reputation in real life is another where opportunities abound. Just as with your online reputation, you need also to build your real life reputation as well. Prepare and:

- Be confident.
- Go where the non-lawyers are.
- When people ask what you do, don't say "everything."
- Have that elevator speech ready.
- Let everyone know you are a lawyer.
- Try to target your practice area.
- Be wary of marketing services.
- Make sure your contact info is on website.
- Charge slightly less than established firms.
- Don't tell people you are new unless they ask.

Identify opportunities in your real life:

- Go to a Meetup for entrepreneurs or for a group related to your practice area. Volunteer to give a presentation at the MeetUp.
- Volunteer for civic associations. Join groups that are interesting to you.
- If you have children who play sports, that is a bonanza in terms of meeting many people from all walks of life.
- Engage!
- Existing clients! Be a problem solver for them (even non legal issues) and they will refer you to others.
- Big firm, small firm pipeline: Large firms often have conflict issues which preclude representation. These firms will consequently need to refer cases due to those conflicts - let them know about you.
- Become acquainted with practitioners in complimentary practice areas or even shared practice areas. For example, if you are an employment discrimination lawyer, tell your colleague who does worker's compensation.
- Offer to give CLE presentations for the state or local bar associations.
- Join the LSBA's Solo and Small Firm Section, become active and attend their functions.

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



CHAPTER 4

Client Communications and Client Relations: BEGINNER'S TIPS



Lawyers are in the communication business. Lawyers must communicate regularly and often must deliver bad news well. In so doing, lawyers need to be clear, concise and sympathetic. Lawyers should avoid the tendency to over explain and lapse into safe legalese to get over the tension of a difficult discussion. Rather, the lawyer should give the client time to process the information that was just delivered.

While communicating clearly, lawyers must also avoid creating unreasonable client expectations. When discussing judgment value of your client's case or whether the desired result that the client can be reached, lawyers should never guarantee a result.

Setting and managing a client's expectations from the beginning to the end is a critical skill for a lawyer.

This chapter augments the LSBA's online *Practice Aid Guide: The Essentials of Law Office Management*, in particular:

- Chapter 1, Establishing the Attorney-Client Relationship
- Chapter 2, Conflicts of Interest
- Chapter 3, Fees, Billing and Trust Accounts
- Chapter 4, Maintaining the Attorney Client Relationship and Law Office Procedure
- Chapter 7, Termination of Representation.

You are encouraged to refer to these chapters for more information and forms.



FROM THE START

Effective communication starts from the very beginning.

The Conflict Check

Before you accept a client, you need to determine whether you can deliver conflict free representation. While you may be tempted to avoid this step because you are just starting. Start developing your conflict list to which you will refer throughout your career. Inform potential client that you need to conduct a conflict check before accepting representation.

How Do I build a conflict database?

Construct your database by assembling contact information for each matter that you accept. Be sure to include married and maiden names, “doing business as” identities and related corporate names. Include in your conflict database:

- Client Names
- Opponent names and potential opponents
- Opening and closing dates for files
- Nature of the matter

Best practices:

If you are conflicted and unable to resolve the conflict, send a written communication declining representation so that it is clear to the potential client that you are unable to accept representation. .

Create easy access to client and case information:

If you have accepted representation, ensure easy access to basic file information. Create an electronic file entitled “New Case Memo” or similar name for each matter with the following information:

- Client contact information
- Opponent information including opposing counsel contact information
- Case information (style of case, if lawsuit has been filed)
- Court contact information including clerk of court and judge chambers contact information.
- Fee arrangements with client

The New Case Memo assures easy access to contact information for clients, opponents and the court.

The engagement letter or retention agreement:

After you have accepted representation, it is important to memorialize your relationship with your client through written communication. Such a communication serves two important purposes: it helps manage your client’s expectations and also serves as excellent evidence should a complaint be filed against with respect to that representation.

You should draft a letter of engagement or retention agreement that you can adapt and use routinely. Have you client date and sign the letter.

An engagement letter or retention agreement should discuss:

- Scope of representation
- Fee arrangement
- Handling of expenses
- Retainer fees or deposits
- How and with whom you will communicate

Be specific when defining the scope of representation.

Lay clients will often assume that once you have accepted a matter, you are his or her attorney for all matters for the client. Be clear with your client about each matter that are assuming.

Specify the task. This is particularly important if you are representing a client for a particular limited purpose. Avoid overly broad statements. For example, “estate planning” could be construed by the client to encompass any and all aspects of estate issues that the clients might have, when you thought that you were being retained only to write a last will and testament.

Be as specific as possible. This is for your protection in the event that a client claims that you failed to do “x,” when you were not retained for task “x.”

For example, state that:

- “I will represent your interests with respect to the automobile accident on December 12, 2015,” OR
- “I am confirming that you have retained me for the limited purpose of drafting a petition for divorce, and are not wanting my services for any other task.”

Also specifically state that if you accept to do additional tasks beyond which is defined in your engagement or retention letter, you and your client will confirm this in writing.

Fees and Costs:

Your engagement letter or retention agreement should explain carefully your legal fee arrangement and the payment of fees and costs of the representation. At all times, the client should be aware, preferably in writing, of your financial arrangement with him or her. Specifically, your agreement should explain:

- The type of fee arrangement (hourly? contingency? flat fee?).
- The amount of any advance deposit that is necessary and how it will be drawn against.
- The billing cycle and when payment is expected.
- The amount that it is likely to cost the client.
- In the case of an hourly rate, the exact amount of the hourly rate and, if possible, an estimate of the hours necessary to handle the matter.
- In the case of a flat fee, exactly what will and will not be covered by the flat fee.
- In the case of a contingency fee, the percentage that will be charged by the lawyer and any other deductions that will come out of the recovery in terms reasonably understood by the client.
- The charges for identifiable direct costs/expenses, such as photocopies, long distance calls, and computer research.
- The additional expenses that will or are likely to be incurred on behalf of the client. This should be projected at the commencement of the relationship, if possible. As incurred, the exact amount of the expenses should be reported to and authorized by the client, even in contingency fee contract situations where costs are being advanced by the lawyer.
- Any changes in the basis or rate of the fee or expenses.

After the attorney-client relationship has commenced, the client should be informed preferably in writing of the status of the case on a periodic, preferably monthly, basis and the work being done to earn the fee.



TIP:

Include a sample calculation to show how expenses and costs, and your attorney fees are to be paid from a judgment or settlement proceeds. Many client complaints concern litigation costs and expenses because the client is not made aware of what costs and expenses the client will be paying. In a typical contingent arrangement, clients should be made aware that your fees will come out first and then expenses for the litigation.



TIP:

Explain the expenses that the client will bear whether they be filing costs, deposition costs, or expert fees. You might consider not charging for minor items such as copying costs (if minor), short phone calls and parking.

Familiarize yourself with Rule 1.5 of the Rules of Professional Conduct which governs fees. It is long and complicated, but the basic premise, regardless of the type of fee (contingent, fixed or hourly), is: *a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses*. This means that the work and effort expended by you on the client's behalf should match the fee and expenses charged by an *objective* standard. The factors determining whether a fee is reasonable are set forth in Rule 1.5(a).

The bottom line is that even for contingency fee or flat fee matters, your file should reflect the work that you have done. Keeping time records is the best way to do that, as is keeping notes and documentation of your work. If you have spent the afternoon at the library, be sure the research makes it into the file. If you talked to someone on the phone, make a memo to the file. Not only will your efficiency be increased by this recordkeeping, but you will be protecting yourself from client complaints and dissatisfaction.

Handling of Retainer Fee or Deposits:

Your engagement letter or retention agreement should state the amount received from your client, if any, and an explanation of how the monies will be drawn.

How to Communicate and With Whom:

Your attorney client relationship is with your client, and not with their relative or best friend. Hence, communication about the representation is restricted to only your client (or experts). If your client desires to open the communication channels to someone other than the client, then have the client indicate that in writing and include that in your engagement letter or retention agreement. If the client does not grant that permission, explain to your client that you will not discuss the matter with anyone except the client. This issue arises most often with an incarcerated client and sometimes in a family law matter. Any changes to the communication arrangement should be followed up in writing. This combats any complaints that you did not return calls from the client's relatives or friends.

You might also describe how you will communicate with your client. If you intend to communicate with your client by email, indicate that. You might also set the ground rules about your communication with your client to reduce the expectation that you will be available on a 24/7 basis.



COMMUNICATION ORGANIZATION AND MAINTENANCE

The challenge of client communication is due chiefly from the multiple sources from which it comes. Each communication is just as important as the other no matter how it arrives. Create strategies to preserve communications from whatever source. The typical sources are:

- In person
- Landline
- Cell phone
- Email
- Traditional Mail
- Texting

The method of storing and memorializing the communication is a challenge that can be met with certain strategies.

In Person:

Take notes of your meetings or communications with your client. Create a memo to the file with the highlights of that communication so that you have a record of it. Place it in the correspondence subfile for the matter.

Landline:

If you have a landline, always be able to retrieve landline messages remotely. Never limit the number of messages, and clear your voice mail box so that a client can always leave you a message. Prompt callers to leave their name and number. Include your email address should the client prefer to contact by email instead. Memorialize the gist of phone messages in an email to yourself so that you have a record of the message.

Cell Phone Strategy:

Lawyers dispute the wisdom of giving clients a cell phone number because it gives the client the expectation that you will be available at any time. Consider whether you should give a client your cell phone number. If you use your cell to communicate with your clients, know your device. Select ring tones that will tell you from whom the incoming call is. Refrain from answering calls from numbers you do not know and let an unknown caller go to voice mail so you can assess whether you should return the call. Learn how to forward messages from phone to phone. As with a landline, never have a full voice mail box. Clear out your messages regularly. Email yourself about important client voice mail so that you have a record of it.

Email:

Businesses receive on average of 110 emails per day. The temptation is to respond to email as they arrive. However, studies indicate that doing so is inefficient. You might think that you are able to multitask, but studies indicate that multitasking is a myth. Recovery after reading a short email interrupts our train of thought and it takes minutes to get back on task. Further, bouncing from activity to activity impairs our ability to stay on task. Try to respond to email at set times during day (e.g., three times a day). Turn off email notifications in Outlook.

Discipline the email beast. Adopt a “Delete, Do, Delegate or Delay” rule where each email falls into one of these categories. Save and sort emails. With Outlook, drag and drop email to client e-folders. Most case management systems have built in email management. (Old school: print and file your email)



TIP:

Separate your business from personal email accounts.

Traditional Mail:

File hard copy and/or scan a pdf of the communication to appropriate computer file.



TIP:

Obtain a desk top scanner to reduce the amount of paper in hour office.

Text messaging with clients?

Is it wise to give your clients your cell phone number? Do you open yourself for a 24/7 availability expectation? Text messages are often misconstrued. Autocorrect disasters are common. If you do text with your clients, do not have substantive exchanges with your client, and never have settlement discussions via text. If you wind up having a substantive text exchange with your client, memorialize it by separate email or traditional letter to ensure a mutual understanding of the conversation. Best to save text exchanges for short messages as in “I am here.”

- For all communications, set a regular time of the day that you return messages from whatever source from which they come.
- Return client inquiries within week; not later.
- Return calls when call length can be controlled – at the end of the day or at lunch.
- Can’t return call? Acknowledge client’s message.
- **No Staff?** Send an email/voice mail/out of office assistant to explain.
 - TIP: “*67” – Use this before dialing to conceal your number.
- **Staff?** Have staff call client and explain:
 - E.g., “She is in trial, but wanted you to know she received your message and that she will be returning your call as soon as she is able.”
 - E.g., “She is in trial, but wanted you to know she received your message and that she will be returning your call as soon as she is able.”

What are you communicating with your client about?

Advise them of anything with a date.

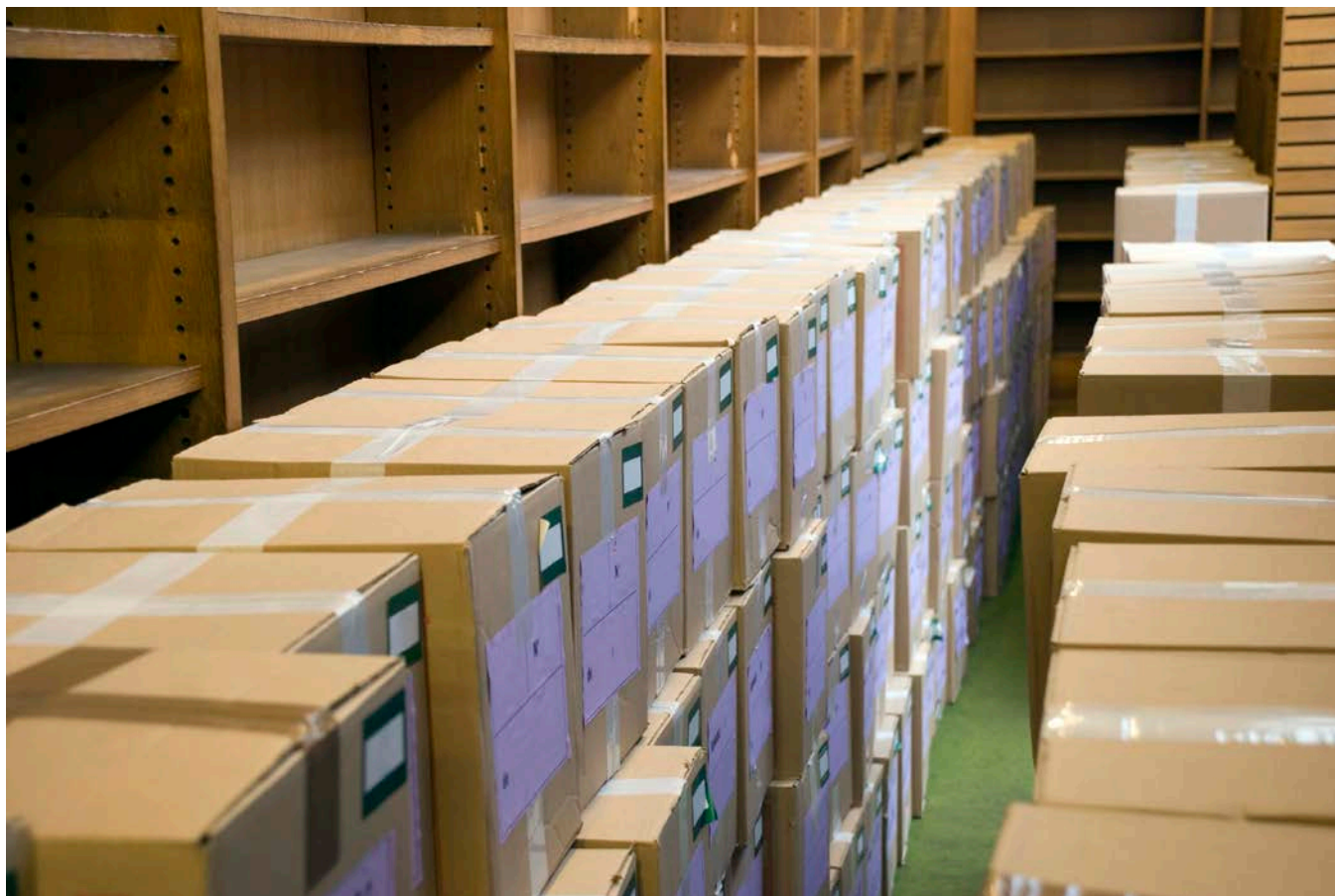
Advise Client of Pleadings, Deadlines, Court Orders, Settlement Discussion -



TIP:

Even if nothing is happening, communicate regularly to let them know that you are paying attention.

Bad news? Tell it and get it over with. Bad news rarely improves over time.



FILE CLOSING:

Be clear, even at the end. Decide when you are closing the file. Send a closing letter to the client. Destroy duplicative documents. Return original documents to the client. The date you close the file will be important to the tolling of malpractice claims. When a matter closes is also relevant to conflict check.

Should you have a fee dispute with your client, never hold the file hostage. The file belongs to the client even if the client has not paid you. Also there is no such thing as a nonrefundable fee. To say so will put you amiss with disciplinary counsel.

See Appendix # 9, Client Communication Checklist.



PROCRASTINATION:

Every lawyer suffers from this demon from time to time. It is a defeatable enemy. It is caused by disorganization, fear and/or perfectionism.

“The best is the enemy of the good.”

Francois-Marie Arouet (a.k.a. Voltaire) (1694 - 1778).

If you have a difficult client or bad news to deliver, remember the frog rules:

- **Frog Rule #1.** “If you have to eat two frogs, eat the ugliest one first.”
- **Frog Rule #2.** “If you have to eat a live frog at all, it doesn’t pay to sit and look at it for very long.”

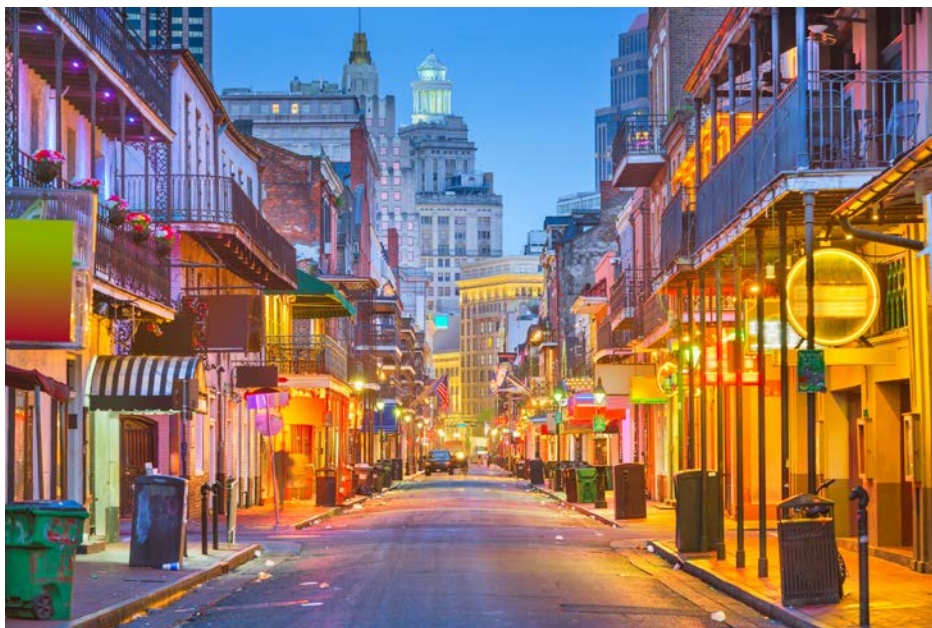
Adapted from Mark Twain and Brian Tracy, *Eat That Frog*

Overwhelmed? You are not alone. Take care of yourself. Don’t isolate; ask for help. Associate another attorney if you need to. Start with the worst file. Chip away at it.

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

CHAPTER 5

Time and Billing; Preventing Fee Disputes



HAVING THE MONEY TALK WITH YOUR CLIENTS

Talking about money is difficult, but it is essential for a successful law practice. It is particularly difficult when representing those with limited means. At times, you might even feel that it is not ok to be paid.

There are various reasons. You might be anxious about possible fee disputes and disciplinary complaints. You might encounter clients whom you thought were potentially fee generating who have morphed into low or *pro bono* clients. Or, you might have a dissatisfied or mad client.

It is hard to talk about money. However, you provide a valuable service to your clients! You are entitled to be paid for your services!

Aim towards making the conversation about money akin to breathing – an automatic discussion.

How to have that conversation:

- Do it in the beginning, in the middle, and at the end.
- Do it in person
- Know who you are talking to.
- Show it; don't just say it.
- Don't be ashamed of your fees.
- Listen to your client.
- Resolve your own issues about money.

A critical time to have the money discussion is at the very beginning. The discussion not only should include how you are to be paid, but also must include how expenses and costs are to be paid. Many complaints from clients about their attorneys arise from the fact that they were unaware of the costs and expenses that would be borne by the client. You should reinforce that initial discussion about money by having it again throughout the representation, especially when costs are incurred that are to be borne by the client.

Have the money discussion in person so you can pick up on your client's body language and answer any questions they have. Avoid having this discussion by phone or email (and never by text). Put your client at ease, so that they can easily ask the questions that they need to ask.



Know who you are talking to. Get to know your client and a little about their back ground. Adapt your discussion to the education and mindset of your client. Do not over talk your client or lapse into legalese. Explain the money situation in terms that your client can understand.

Illustrate by example how the fees will be paid and how expenses and costs will be paid. Give your client an example. For example, if your suit is a personal injury suit, create a hypothetical example on a piece of paper how fees would be paid, and how costs and expenses would be paid. Make sure that your client understands that your example is not an indication of how his or her particular case will go and that the example is just for purposes of explaining the monetary aspect of the matter.

Do not be ashamed of your fees. You are entitled to be paid. You went to law school and studied hard to be where you are. Be confident of the fees that you are charging. Before setting your fees with a client, ask your colleagues about fees and get a sense that your fees are in ballpark of fees for the particular matter that you are taking and for your experience level.

Listen to your client. Allow them to share their doubts and concerns.

Resolve your own issues about money. Your ability to have effective discussions about money with your clients will depend on your resolving your own issues about money. Put your financial house in order before taking on clients.



LITTLE THINGS GO A LONG WAY AND THE IMPORTANCE OF THE ENGAGEMENT LETTER/RETENTION AGREEMENT

Pave the way for your money discussion by building good will at the beginning and throughout the representation. Little things will go a long way. For example:

- Have a comfortable meeting place for your clients.
- Be flexible when scheduling your meeting times and locations (particularly with regard to clients whose work schedule will not allow them to leave the workplace.
- Offer paid parking.
- Offer coffee/water and other refreshments.
- Ensure polite staff if you have them.
- Consider not charging them for short phone calls.
- Consider not charging for mail and nominal copying costs.
- Offer a discount for paying fees by a due date.
- Keep in touch with your client throughout the representation, even when nothing is happening, so that your client knows that they are still on your radar.

As discussed above, your engagement letter or retention agreement is your first opportunity to lay the groundwork for managing your client's expectations on a number of fronts, including money. Before you meet with clients, draft a routine engagement letter/retention agreement that you can adapt for your client.

Take advantage of your engagement letter or retention agreement to explain clearly in written form how you will be paid and how expenses will be paid. Establish your credibility with your client. Tell your client that you will send a letter confirming fee arrangement by "x" day and send it the next day. Make sure that there is a clear understanding with your client when their fee payment is due. Indicate that there is mutual right to terminate services.

Setting expectations early avoids sticker shock later then fees are due, and helps to prevent fee disputes.

Have your client sign the letter or agreement, and scan and retain an executed copy in your file. It will be the best evidence of what was discussed with your client should there be a fee dispute later.



TIME KEEPING AND STRATEGIES.

You may think that the monetary arrangement with your client is such that recording your time is irrelevant. However, whether your client's matter is contingent, hourly or based upon a fixed fee or shared fees, recording your time throughout the representation is important. Should there be a dispute regarding your fees, your recorded time along with your work product will be the best evidence of the value of your fees. You need to be able to prove that your fees are reasonable.

While lawyers do not anticipate being terminated or replaced by another lawyer in a matter, it happens. When this happens, disputes may arise between the first lawyers and the subsequent lawyer over attorney fees. Resolutions of these disputes will depend on the relative time that each lawyer has put into the case.

Further, at all times, an attorney must be able to provide an accounting of to the client of the attorney time expended on a matter.

A lawyer is bound to charge only reasonable fees.

When should I record my time?

Record time as contemporaneously to the task as possible. If unable to do so, create methods to capture time after the fact by emailing or voice mailing yourself an entry, or even texting yourself for later recordation. What you want to avoid is reconstructing your time at the end of a month or several months. Reconstructing time is almost always inaccurate.

Record time contemporaneously:

- To protect fee in dispute and
- To provide client with accounting of time.

What Do I Track?

You should record all time, even if you later edit it out or even never bill it. You should document everything that you have done in a file. Record all time.

The only way the client knows the value of your work is through reporting what you do. Also, you need to be prepared to render an accounting whenever the client asks for it.

Lawyers can charge only “reasonable fees” under Rule 1.5, no matter form of billing.

Confirm conversation.

How do I track my time?

You might opt for an old school method by recording your time in a small notebook or a stack of index cards with your client’s names on it. Or you might opt for one of the app tools that assist with capturing time. Many case management programs integrate time capturing and invoicing tools.

Whatever your method, stick with it. Keep in mind that when it comes time to assemble invoices, the fewer source documents for your time information, the easier it will be to put together the invoice. You will reduce the chance of errors this way as well.

If you want to explore the technology route, search the internet for a good time capture tool. There are many apps and programs that are as easy to use as your cellphone. Three excellent timekeeping apps for lawyers (there are many) are as follows:

- *iTimeKeep by Bellefield Systems, LLC:*
iOS, Android
This app allows you to record time on your smartphone and enter time information manually into your desktop or laptop upon return to the office. The app also connects with other document management tools such as Tabs3, ProLaw, Juris, PCLaw, Time Matters, Timeslips and more. There is a free stand alone version with extra features offered at a cost.
- *Time Master + Billing by On-Core Software*
iOS, Android
This app integrates easily with QuickBooks and DropBox and is offered at a one time costs of \$9.99 (an invoicing module for desktop an additional one time cost of \$9.99)
- *Bill4Time by Broadway Billing Systems*
iOS, Android
This tool offers a comprehensive time keeping and billing system with integration with LawPay. There is a free app download but this tool is better with the offered software packages with pricing starting at \$9.99 for your desktop.



EFFECTIVE TIME KEEPING NARRATIVE

Often overlooked by lawyers is the narrative used to describe the time expended in a file. Lawyers will often use the same vocabulary over and over in the statement for services rendered and lose the opportunity to explain better the value of their time. This is particularly important to the lay client who might not understand how time consuming the practice of law can be.

- Develop an effective time entry vocabulary.
- Tell a story with your narrative.
- Avoid long narratives for large blocks of time.
- Avoid lazy wording.
- Avoid abbreviations.

When developing an effective time entry vocabulary, vary your action verbs. “Analyzed” is a good word, but not when you use it too often. Try instead, “studied,” “reviewed in detail,” “evaluated,” or “interpreted.” For “review,” use “examined,” “inspected,” or “assessed.” Use a thesaurus for word inspiration.

Use your invoice as an opportunity to educate your lay client about what you have done to earn your fee.

Tell a story with your entries, but avoid describing large blocks of time with little detail because clients will view this as inefficiency. Detail your time sufficiently.

Consider the following example:

- 6.5 hrs: Trial prep.
- vs.
- 6.5 hrs: Trial preparation – Reviewing expert witness depositions and preparing cross-examination of expert; drafting witness subpoena; marshalling exhibits for case in chief; telephone conference with witness Richard Goodman re: possible trial testimony.

Avoid lazy wording. Keep in mind that your client will be reviewing this statement to understand what you have done to earn your fee.

Some other words to avoid:

- “File review” – Add detail. Why were you looking at the file?
- “Trial preparation” Describe the tasks that you were doing to prepare for trial. Analyzing discovery? Preparing cross-examination questions?
- “Conference” with no explanation of what was discussed.
- “Conferring” too many times with one person (change to strategy meeting with Joe Smith regarding, e.g., “handling of hostile witness.”)
- “Research” – Some clients do not understand that lawyers need to research the law. Often they expect that you already know the law. If you have a client that is sensitive to this, try another tactic. Instead of saying legal research regarding the rights of domiciliary parent who wishes to leave jurisdiction with minor child,” personalize it to the case. Try “Analyzing Mrs. Jones’ legal rights to leave jurisdiction with minor child Tom.”

Avoid abbreviations. While they might make sense to you, they may not mean anything to your lay client. Use simple language. Avoid legalese when describing billable activities.



BILLING AND COSTS STRATEGIES

Billing is an opportunity to inform your client of your value and to market yourself. Take advantage of it.

When do I bill?

You should bill regularly and accurately for prompt payment. A good tip is to send an invoice before a trial, mediation or arbitration. This is particularly effective for a cost and rate sensitive client who is resistant to settlement. It helps the client to become informed and to understand better his or her exposure from a financial point of view.

Costs are often a hot point. If you have used an effective engagement letter or retention agreement, your client should have been made aware of how costs will be incurred during the representation and how those costs will be paid. In addition to the engagement letter or retention letter, you should also keep clients apprised of costs as they are incurred. Inform clients of the costs of court filing, deposition and transcripts, expert fees, mailing charges, etc..

Account regularly to the client about any funds in trust.

Resolve slow or no payment quickly. If you are unable to prompt payment, cut your losses as soon as it becomes apparent that you won't get paid. Keep in mind that if you are close to a trial date, the court might not allow you to withdraw even if nonpayment is occurring.

Include in your engagement letter or retention agreement, that withdrawal may occur for nonpayment.

Create a sense of urgency in your bill. Include a due date.

Pay attention to how your clients would like to be billed and comply with their wishes.

- Ask your client where to send the bill.
- Send a bill to your client only after the client is aware that the work has been done. If your client is not aware of the work on the bill, send a substantive letter first and then follow it up with the bill.
- Do not charge your client for questions about the bill.
- Consider not charging your client for copies or messenger services.
- Ask your client about the amount of detail that he or she desires in the statement. On occasion, a client might not want the reader of the bill to know litigation details.



LOW BONO OR PRO BONO BILLING

Lawyers are often called upon to do favors for existing clients, friends or family, and many times with an expectation that services would be at a discount or done *pro bono*. One of the risks of doing these favors is that the recipient is not aware of the value of your time when you do these favors.

Consider sending a discounted bill for work done for friends, relatives or needy client to prove subtle point. Show all time that you expended on the task, the value of those tasks and the amount discounted. Send a “no bill” bill if you are discounting the services completely.

- E.g.:
Professional services:
Speeding traffic ticket; court appearance . . . \$350 (less courtesy discount (\$350))

AMOUNT DUE

- 0 -

See Appendix #10, Time and Billing Checklist



LSBA FEE DISPUTE ARBITRATION PROGRAM

What if my client is not paying me?

When a payment is late, act as soon as possible and be direct. Remind them to adhere to payment schedule to continue receiving legal services. It's important to resolve nonpayment issues as soon as they arise. If you have to part ways with client for nonpayment, part ways before bill gets too high.

If you cannot resolve slow or no payment issues, consider the LSBA's Fee Dispute Arbitration Program. Since 1993, LSBA's Attorney Fee Dispute Arbitration Program has brought 1000s of fee disputes to resolution as alternative to court as a service to its Members. It is quick, confidential, inexpensive, informal and final.

The mission of the program is "to give timely, reasonable, and final resolution of disputes over fee issues between clients and their lawyers as well as disputes between lawyers with their fellow attorneys outside of the civil court system through the use of arbitration."

The program is voluntary and requires the consent of all parties to proceed.

The costs are minimal. All disputes over \$10,000 will cost each party \$100. If under \$10,000 and between a lay person and an attorney, the cost is \$50. Attorney v. attorney disputes are \$100 each. The arbitrators resolving the dispute serve voluntarily and at no cost. If an attorney-attorney matter is particularly time consuming, arbitrators will charge nominal fee.

The LSBA maintains a statewide pool of arbitrators who are your colleagues from around the state. The layperson serving panels have prior experience with the Disciplinary Board or like organizations. All arbitrators receive training to arbitrate attorney fees.

The only issue resolved in the program is the reasonableness of attorney fees. These issues are not resolved during the LSBA's fee dispute arbitration process:

- Will not address malpractice claims.
- Will not resolve whether there was misconduct.
- Will not review the sufficiency of your work, settlement or judgment.

A fee dispute arbitration will not preclude a disciplinary complaint, but if the complaint is based on a claim of excessive fees (almost all are), arbitration will resolve this claim. The Louisiana Attorney Disciplinary Board would retain jurisdiction over misconduct claims not involving fees. Disciplinary counsel may recommend to an attorney to submit dispute matter to LSBA's arbitration program in lieu of disciplinary action.

The LSBA's arbitration proceedings are confidential. While the fact of the arbitration can be shared with Disciplinary Counsel, file materials and result are not absent a subpoena.

The best matters for the LSBA's fee dispute arbitration are disputes that are:

- Document light
- Not requiring discovery (or very little)
- Not requiring many witnesses, particularly those requiring subpoena
- Not pending before another tribunal

Generally, the LSBA will not accept matter if issue of attorney fees is in front of another tribunal. If you have intervened in suit for your fee, LSBA will not accept matter for arbitration without court order allowing it, and even then, all parties have to agree.

At all times, under Program Rule 3, the "LSBA has the right to refuse any application for arbitration without assigning any reason therefore." This may happen:

- if party refuses to submit entire fee dispute
- if parties disagree on whether matter is ripe
- if matter is document intensive, or requires much discovery, or is particularly complicated
- If dispute does not concern attorney fees
- If dispute does not concern attorney-client relationship

The LSBA arbitration process will result in binding final arbitration. Arbitration rulings are executory and would require court intervention, if no compliance.

The LSBA encourages you to work out differences with your client before coming to arbitration. If you think that discussing arbitration with your client will help, do so. If client communication is not feasible, file your petition to arbitrate with the fee, and staff will contact your client to encourage him or her to arbitrate. We will answer any questions that they may have about process.

For more information about the program and for the petition to arbitrate, visit the Lawyer Fee Dispute Resolution webpage on the LSBA website.

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

CHAPTER 6 Practice Resources



LSBA RESOURCES

The LSBA offers a number of services with which you should become familiar and which can assist as you start your own practice.

As follows:

- **Practice Management Counsel**
 - ♦ Law Office Management and Technology Programming
 - ♦ Practice Advice
 - ♦ Year round, low or no cost CLE programming on law office management
 - Annual Solo, Small Firm and Technology Conference
 - Four Corners Seminars
 - Management Mondays and Tech Tuesdays CLE series
 - Personalized law office management advice:

Contact: Shawn L. Holahan, shawn.holahan@lsba.org, ((504) 619-0153)
- **Ethics Counsel:**
 - ♦ Ethics Advisory Service:
 - ♦ Online Public Ethics Advisory Opinions

Contact: Eric Barfield (ebarfield@lsba.org; (504) 619-0122)).
- **Lawyer Advertising Issues?**
 - ♦ Consult the Lawyer Advertising Webpage

Contact: Richard Lemmler (rlemmler@lsba.org ; (504) 619-0144)
- **Fee Dispute Arbitration Program**
 - ♦ LSBA's *Practice Aid Guide: Essentials of Law Office Management!!!*
 - Revised in 2017!! Forms and Sample Letters!! Online!!
 - Establishing, Maintaining and Terminating Attorney Client relationship
 - Conflicts of Interest
 - Fees, Billing and Trust Accounts
 - File Management
 - Calendar Control
 - Ethics and Professionalism
 - Lawyer Advertising
 - Disaster Planning
 - Closing Your Practice
 - Practice Aid Guide
- **LSBA Website**
 - ♦ On Demand Video Training
 - ♦ Online Tech Center
- **Tech Discounts:**
 - ♦ Clio
 - ♦ Cosmolex
 - ♦ Dell
 - ♦ LawPay
 - ♦ LexisNexis
 - ♦ MyCase
 - ♦ ShareFile

- ♦ TechnoLawyer
- ♦ RocketMatter

- **Lending Library**
 - ♦ Curated List of Current Popular Legal Technology and Law Practice Management Titles
 - ♦ FREE to borrow.

- **LSBA's Solo and Small Firm Section**
 - ♦ \$25
 - ♦ Solo and Small Firm Listservs
 - ♦ Quick answers from colleagues all around the state.
 - ♦ CLE Lunches; Camaraderie; Networking!



APPENDICES

Appendix 1: Business Plan Template

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

Appendix 3: Opening a Law Office Checklist

Appendix 4: Sample Legal Malpractice Policy with Mandatory Louisiana Endorsements

Appendix 5: Professional Liability Policy Highlights

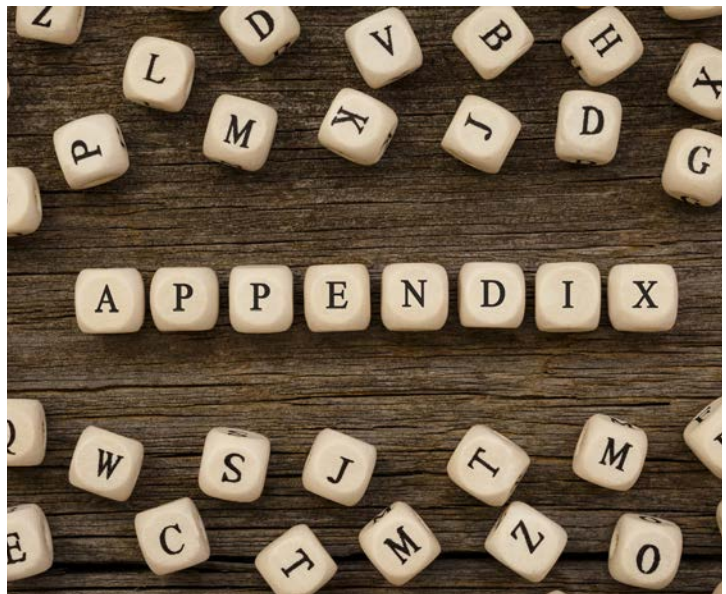
Appendix 6: Cyber Insurance Policy Highlights

Appendix 7: Workers' Compensation Insurance Highlights

Appendix 8: Quick Tips on Acquiring Clients Checklist

Appendix 9: Client Communication Checklist

Appendix 10: Time & Billing Checklist



Firm Name/Logo

Business Plan

Prepared on [date]

Firm Name

Address

City, ST ZIP

Phone:

Email:

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| Part III. Market Analysis | 4 |
| Part IV. Organization & Management | 5 |
| Part V. Services | 6 |
| Part VI. Marketing Strategy | 7 |
| Part VII. Financials | 8 |

* To update the Table of Contents, right-click over the current table, click **Update** Field, check the radio button **Update Entire Field**. Confirm by clicking **Ok**.

*Remember to incorporate visuals here as often as possible. Visuals help quickly convey information and break up otherwise blocky text. Visuals include tables, charts, graphs, pictures, and more.

Part I. Executive Summary

Mission Statement

This should be something you can easily repeat. Keep it short and sweet!

Core Values

Keep this to 2-4 values

Unique Selling Proposition

One or two sentences

Company Description

One or two sentence summary

Market Analysis

One or two sentence summary

Organization & Management

One or two sentence summary

Services

One or two sentence summary

Marketing Strategy

One or two sentence summary

Financials

One or two sentence summary

Part II. Company Description

Mission Statement

This should be something you can easily repeat. Keep it short and sweet!

Core Values

Keep this to 2-4 values

Practice Areas / Legal Niche

Type of legal services provided and/or specific niche (client-based niche or practice-based niche)

Geographic Location & Areas Served

Identify where your offices are located and the geographic areas that you serve.

Legal Structure & Ownership

State whether you are a LLC, S-Corp or other legal entity. If you are something other than a sole proprietor, identify the ownership structure of your firm.

Firm History

If your law firm is already in existence, write a brief history that summarizes firm highlights and achievements.

Part III. Market Analysis

Industry Description

Summarize where your particular legal niche is today, where it has been and which trends will likely affect it in the future. Identify everything from actual market size to project market growth.

Target Audience

Identify your ideal client persona. Use demographics such as location, age, family status, occupation and more. Map out their motivations behind their seeking your services.

Competitive Analysis

Dive into details about your competitors. What do they do well? Where do they fall short? How are they currently underserving your target market? What challenges do you face by entering legal practice in your field of choice?

Projections

Provide specific data on how much your target audience has to spend and then narrow that down to identify how much you can charge per service

Part IV. Organization & Management

Organizational Structure

Insert org chart here. Briefly describe the chart in narrative form.

Ownership Information

Reiterate the legal structure of your law firm. Then include the name(s) and ownership interest of each party involved.

Management Profiles

This section goes into detail about you and any others who may have ownership interest in the firm. Do not be afraid to brag a bit! Be sure to answer these questions:

- What is your educational background?
- What experience do you currently have?
- Why are you the right person to run your firm?

Personnel Plan

This optional section identifies your personnel needs, including position titles and annual salaries.

Part V. Services

The Problem

What pain points do your preferred clients experience? What can they do right now to alleviate those pain points? Answer these questions, and then take the extra step to explain how those current solutions fail to adequately address their problems.

The Solution

This describes how your solutions better resolve your prospective market's needs. This not only includes the actual work you do, but the benefits that each client will receive based on your work.

Competitor Review

Describe your competition here. For instance, which other solo attorneys and firms provide the same solutions as you? What are your advantages over these competitors? What do you differently when providing your solutions? How will clients gain additional benefits by seeking out your services instead of working with your competitors?

Part VI. Marketing Strategy

Positioning

How will you position your law firm and your services? What will you say to present your practice in the best light? What short statements can you use to entice a potential client to pursue your services?

Pricing

How much will you charge? How does that fit within the legal industry? Within your niche industry? What do clients receive for that price?

Promotion

Which sales channels and marketing activities will you pursue to promote your practice? Who is in charge of these activities? Even if you plan to build your law firm on the basis of word-of-mouth referrals, you must remember that most referrals will still look for information about you before contacting you. Know where they will look and ensure you are there.

Part VII. Financials

Start-Up Budget

How much starting capital do you need?

Operating Budget

How much money will it cost to keep your practice operating on a month-to-month basis?

Balance Sheet

What are your assets, liabilities and equities?

Forecasts

How many cases will you need to close each month to break even? How many cases would you need to close to make a profit?

Profit and Loss Statements

What is your projected profit and loss for the year? If your firm is already in business, include up to 3 years of past profit and loss statements here.

Deciding Which Form of Practice is Right for You

The following is a brief summary of *some* of the *major* differences between the forms of practice available to lawyers and law firms. It is **NOT** intended to be the only source of information you consult before making your decision! Please retain the services of a tax consultant and/or other lawyer to help you analyze your individual situation. It is strongly suggested that any tax consultant with whom you work have a history of assisting similarly-sized law firms.

Sole Proprietorship

Who can operate in this form: anyone who wishes to be the sole owner of a practice?

Taxes – file Schedule C, profit or loss from business, with individual 1040

Liability – full liability

Advantages – extremely simple to set up and maintain; tax parity has been achieved in many areas in the past

Disadvantages – some limitation on tax deductions for business expenses; full liability may place personal assets at risk; not an option for more than one person practicing together

Partnership

Who can operate in this form: any two or more individuals or PCs who wish to practice together as owners of the firm

Taxes – partners file IRS Form 1065 (Partnership Return of Income) and submit Form K-1 with their individual 1040s, along with the Louisiana state tax forms

Liability – full liability for acts of malpractice by any of the partners; full liability for business debts and other obligations of the partnership

Advantages – simple to set up and maintain; easy to file taxes

Disadvantages – liability for malpractice on the part of other partners; liability for debts of the partnership; personal assets may be at risk; some limitation on tax deductions for business expenses; must be reformed when a partner leaves (unless specific provisions made in partnership agreement)

Professional Corporation

Who can operate in this form: any one or more individuals who wish to own a firm and who want the advantages of a corporate form

Taxes – depending on whether the corporation itself has remaining income after paying its shareholders, the PC may fill out separate income tax forms, state and Federal, on its own behalf along with other state (usually Form 600S) and Federal (including F1120 first year of existence) informational reports and forms

Liability – liability for individual acts of malpractice only; liability for debts and obligations of the practice only to the extent of the shareholder's share in the PC

Advantages – frequently best position from a tax and tax deduction standpoint; limited liability

Disadvantages – complexity; maintenance expenses; sometimes an unwarranted sense of full protection from liability; cannot be practiced across state lines

Limited Liability Company

Who can operate in this form: any one or more individuals, existing partnership, or existing professional corporation that wish to begin or convert a practice; must have at least two members to be treated as a partnership for Federal tax purposes

Taxes – depending on structure and governance of the LLC, this entity can be taxed as a corporation or as a partnership; almost all law firms who choose this form wish to be taxed as a partnership, which is generally possible

Liability – liability for individual acts of malpractice only; liability for debts and obligations of the practice only to the extent of the owner's share in the company

Advantages – ease of setup and maintenance combined with limitation on liability for others' malpractice and business debts; fairly good tax situation

Disadvantages – in order to be treated as a partnership, must have at least two members; S corporation can have one shareholder; although all states allow single member LLCs, not permitted to elect partnership classification for Federal tax purposes; files Schedule C as a sole proprietor unless it elects to file as a corporation

Limited Liability Partnership

Who can operate in this form: an existing general partnership that wishes to make a limited liability election

Taxes – should always be classified as a partnership for Federal tax purposes

Liability – same as LLC

Advantages – extremely easy to set up notice of election and other advantages of LLC

Disadvantages – individual partners can commit the partnership to formal business agreements without the consent of the other partners; money and property contributed to the LLP becomes owned by the partnership unless otherwise stated, and the contributor is not entitled to its return except as stated in the partnership agreement

Issue Checklist when Beginning a New Practice

BASICS

- ☐ Name
- ☐ Registration with LSBA
- ☐ Registration with State and Federal Courts
- ☐ Entity
- ☐ Sole Prop, LLC, etc?
- ☐ Tax ID - Get from IRS
- ☐ Bank Accounts
- ☐ Trust
- ☐ Get deposit slips!
- ☐ Operations Account
- ☐ Order Checks
- ☐ Insurance
- ☐ Malpractice
- ☐ Work Comp if necessary
- ☐ Website (WordPress/Weebly/Google Sites/etc.)
- ☐ Domain (keep it short)
- ☐ Email (keep it short)
- ☐ Hosting
- ☐ Business Cards (Do last)

Issue Checklist for Law Office with Staff or in Partnership

- What form of business entity will your new practice be (i.e., LLC, general partnership, etc.)?
- Do you have a written agreement signed by all the partners/shareholders?
- What is your plan for partner/shareholder compensation?
- What is your plan for associate compensation?
- What number and types of support staff will you require (i.e., three secretaries, two paralegals, one receptionist, and one bookkeeper)? Will all be full-time or will some be part-time?
- How will you be compensating support staff?
- How do you plan to attract and hire needed support staff?
- What benefits will be offered to partners, associates, and support staff?
- How will the firm be managed? By a managing partner or management committee? By other means? What will the managing partner(s)' duties be? Will some of the firm's management be delegated to non-attorney personnel, such as an office manager/legal administrator? If so, which functions?
- Where are your offices going to be located? Will you be renting office space or purchasing? What amenities, if any, are included in your rent (utilities, use of existing staff, phone lines, agreement to wire premises for Internet)? Do you have a signed lease?
- How does the firm plan to fund itself in the initial stages? Personal loans, a business line of credit, capital contributions by partners, a combination of these things? Has a bank been approached with a written business plan?
- Has the firm developed a written budget and income forecast for the first year?

APPENDIX 3

Issue Checklist when Beginning a New Practice



- Does the firm have a written marketing plan? What will be done in the first year to retain existing clients and attract new ones? Have specific plans and responsibilities been assigned? Does the marketing plan address issues such as whether growth is anticipated, and if so, how quickly the firm intends to grow?

- What arrangements have been made for choosing and purchasing (or leasing) the following office equipment:
 - Computers
 - Printers
 - Copiers
 - Scanners, shredders, and postage equipment

- What arrangements have been made for choosing and purchasing the following computer software:
 - Network operating systems
 - Desktop operating systems
 - Word processing (including office suites)
 - Timekeeping/billing
 - General ledger accounting
 - Trust accounting
 - Practice (Case) management/calendaring
 - Litigation support

- How will staff and attorneys be trained on office systems?

- Has the firm developed a policies and procedures manual for employees?

LAWYERS PROFESSIONAL LIABILITY POLICY

CNA



CONTINENTAL CASUALTY COMPANY
333 S. WABASH AVENUE
CHICAGO, IL 60604

LAWYERS PROFESSIONAL LIABILITY POLICY

THIS IS A CLAIMS MADE AND REPORTED POLICY. IT APPLIES ONLY TO THOSE CLAIMS THAT ARE BOTH FIRST MADE AGAINST AN INSURED AND REPORTED IN WRITING TO THE COMPANY DURING THE POLICY PERIOD. PLEASE REVIEW THIS POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

I. INSURING AGREEMENT

A. Coverage

The **Company** agrees to pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** shall become legally obligated to pay as **damages** and **claim expenses** because of a **claim** that is both first made against the **Insured** and reported in writing to the **Company** during the **policy period** by reason of an act or omission in the performance of **legal services** by the **Insured** or by any person for whom the **Insured** is legally liable, provided that:

1. no **Insured** gave notice to a **prior insurer** of such **claim** or a **related claim**;
2. no **Insured** gave notice to a **prior insurer** of any such act or omission or **related act or omission**
3. prior to the date an **Insured** first becomes an **Insured** under this Policy or became an **Insured** under the first policy issued by the **Company** (or its subsidiary or affiliated insurers) to the **Named Insured** or any **predecessor firm**, whichever is earlier, of which this Policy is a renewal or replacement, no such **Insured** had a basis to believe that any such act or omission, or **related act or omission**, might reasonably be expected to be the basis of such **claim**;
4. there is no other policy, whether primary, contributory, excess, contingent or otherwise, which provides insurance to any **Insured** for the **claim** based on or arising out of an act or omission in the performance of **legal services** by such **Insured** or by any person for whom such **Insured** is legally liable while "affiliated" with a firm other than the **Named Insured**. As used herein, "affiliated" includes acting as Of Counsel for a firm other than the **Named Insured**.

B. Defense

The **Company** shall have the right and duty to defend in the **Insured's** name and on the **Insured's** behalf a **claim** covered by this Policy even if any of the allegations of the **claim** are groundless, false or fraudulent. The **Company** shall have the right to appoint counsel and to make such investigation and defense of a **claim** as is deemed necessary by the **Company**. If a **claim** shall be subject to arbitration or mediation, the **Company** shall be entitled to exercise all of the **Insured's** rights in the choice of arbitrators or mediators and in the conduct of an arbitration or mediation proceeding.

C. Settlement

The **Company** shall not settle a **claim** without the written consent of the **Named Insured**.

D. Exhaustion of limits

The **Company** is not obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **claim** after the applicable limit of the **Company's** liability has been exhausted by payment of **damages** or **claim expenses** or by any combination thereof or after the **Company** has deposited the remaining available limits of liability into a court of competent jurisdiction. In such case, the **Company** shall have the right to withdraw from the further investigation, defense, payment or settlement of such **claim** by tendering control of said investigation, defense or settlement of the **claim** to the **Insured**.

II. LIMITS OF LIABILITY AND DEDUCTIBLE

A. Limit of liability - each **claim**

Subject to paragraph B. below, the limit of liability of the **Company** for **damages** and **claim expenses** for each **claim** first made against the **Insured** and reported to the **Company** during the **policy period** shall not exceed the amount stated in the Declarations for each **claim**.



B. Limit of liability - in the aggregate

The limit of liability of the **Company** for **damages** and **claim expenses** for all **claims** first made against the **Insured** and reported to the **Company** during the **policy period** shall not exceed the amount stated in the Declarations as the aggregate.

C. Deductible

The deductible amount stated in the Declarations is the total amount of the **Insured's** liability for all **claims** and applies to the payment of **damages** and **claim expenses** for **claims** first made and reported to the **Company** in writing during the **policy period**. The deductible shall be paid by the **Named Insured**, or upon the **Named Insured's** failure to pay, jointly and severally by all **Insureds**. The limits of liability set forth in the Declarations are in addition to and in excess of the deductible.

If a **claim** is based on or arises out of the rendering of eleemosynary (pro bono) **legal services**, no deductible will apply but only where at the time of retention, there was approval by the appropriate committee or lawyer within the **Named Insured** that the matter would be handled without compensation.

D. Multiple **insureds, claims** and claimants

The limits of liability shown in the Declarations and subject to the provisions of this Policy is the amount the **Company** will pay as **damages** and **claim expenses** regardless of the number of **Insureds, claims** made or persons or entities making **claims**. If **related claims** are subsequently made against the **Insured** and reported to the **Company**, all such **related claims**, whenever made, shall be considered a single **claim** first made and reported to the **Company** within the **policy period** in which the earliest of the **related claims** was first made and reported to the **Company**.

E. Supplementary payments

Payments made under paragraphs 1., 2. and 3. below will not be subject to the deductible. All supplementary payments are in addition to the limits of liability.

1. Loss of Earnings

The **Company** will reimburse each **Insured** up to \$500 for loss of earnings for each day or part of a day of such **Insured's** attendance, at the **Company's** written request, at a trial, hearing or other alternative dispute resolution proceeding, including arbitration proceeding or mediation, involving a **claim** against such **Insured**, but in no event shall the amount payable hereunder exceed \$15,000 per **Insured** despite the number of days an **Insured** is in attendance, or the number of trials, hearings or arbitration proceedings that an **Insured** is required to attend. In no event shall the amount payable per **policy period** exceed \$50,000 despite the number of **Insureds** hereunder or the number of such proceedings.

2. Disciplinary Proceedings

The **Company** will reimburse the **Named Insured** up to \$50,000 for each **Insured** and all **Insureds** in the aggregate, for attorney fees and other reasonable costs, expenses or fees (the "Disciplinary Fees") paid to third parties (other than an **Insured**) resulting from any one **Disciplinary Proceeding** incurred as the result of a notice of such **Disciplinary Proceeding** both first received by the **Insured** and reported in writing to the **Company** either during the **policy period** or within 60 days after termination of the **policy period**, arising out of an act or omission in the rendering of **legal services** by such **Insured**. Except as set forth below, the amount payable hereunder shall not exceed \$100,000 despite the number of such proceedings.

In the event of a determination of **No Liability** of the **Insured** against whom the **Disciplinary Proceeding** has been brought, the **Company** shall reimburse such **Insured** for Disciplinary Fees, including those in excess of the \$50,000 cap set forth above, up to \$100,000. In no event



shall the amount payable hereunder exceed \$100,000 despite the number of **Insureds** hereunder or the number of such proceedings.

3. Subpoena Assistance

In the event the **Insured** receives a subpoena for documents or testimony arising out of **legal services** rendered by the **Insured** and the **Insured** would like the **Company's** assistance in responding to the subpoena, the **Insured** may provide the **Company** with a copy of the subpoena and the **Company** will retain an attorney to provide advice regarding the production of documents, to prepare the **Insured** for sworn testimony, and to represent the **Insured** at the **Insured's** depositions, provided that:

- a. the subpoena arises out of a civil lawsuit to which the **Insured** is not a party; and
- b. the **Insured** has not been engaged to provide advice or testimony in connection with such lawsuit, nor has the **Insured** provided such advice or testimony in the past.

The **Company** will pay such attorney's legal fees excluding any disbursements. Any notice the **Insured** gives the **Company** of such subpoena shall be deemed notification of a potential **claim** under Section V.A. of this Policy.

4. Crisis Event Expense

The **Company** will reimburse the **Named Insured** up to \$20,000 for **Crisis Event Expenses** that result from a **Crisis Event** first occurring and reported in writing to the **Company** during the **policy period**.

5. Regulatory Inquiry

If, during the **policy period**, a state licensing board, self regulatory body, public oversight board or a governmental agency with the authority to regulate the **Insured's legal services** or any entity acting on behalf of such entities initiates an investigation of the **Insured** arising from an actual or alleged violation of a **privacy breach notice law** or any law referenced under the definition of **privacy injury and identity theft** that occurred in the rendering of **legal services** and which the **Insured** reports to the **Company** in accordance with Section V.A. of this Policy, the **Company** agrees to pay attorney fees, attorney costs and court costs (excluding such attorney fees and costs incurred as a result of services performed by the **Insured**) incurred in responding to the investigation. The maximum amount the **Company** will pay for such attorney fees and costs is \$20,000, regardless of the number of investigations or the number of **Insureds** who are subject to such investigations.

6. Medicare, Medicaid, and SCHIP Extension Act of 2007

Subject to the definition of **damages** set forth in Section III. DEFINITIONS of the Policy, the **Company** will reimburse the **Named Insured** for attorney fees and other reasonable costs or expenses incurred in responding to a demand pursuant to the recovery rights of the Centers for Medicare and Medicaid Services (CMS) under the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA). The maximum amount the **Company** will pay for such attorney fees, costs and expenses is \$25,000 per **policy period**, regardless of the number of such demands or the number of **Insureds** who are subject to such demands.

F. Risk Management Incentives

In the event that a **claim** is eligible for more than one Risk Management Incentive, the **Insured** shall receive the benefit of the highest deductible credit. In no way shall this section be construed to afford more than one Risk Management Incentive per **claim**.

1. Mediation

If mediation of a **claim** takes place either without institution of arbitration proceeding or service of suit or within sixty (60) days of the institution of such proceedings or service of suit, and such **claim** is ultimately resolved for an amount acceptable to the **Insured** and the **Company** by the



process of mediation, the **Insured's** deductible, applying to the **claim**, will be reduced by 50%. In no event shall the amount of the deductible waived hereunder exceed \$25,000.

2. Engagement Letters

If the **Insured** utilized an engagement letter in connection with the **legal services** that are the subject of a **claim**, and such **claim** is otherwise covered under the Policy, then the **Insured's** deductible applying to such **claim** will be reduced by 50%, provided that the engagement letter:

- a. includes, at a minimum, the following information:
 - i. a specific description of the scope of **legal services** to be performed by the **Insured**;
 - ii. the identity of all clients for whom the **Insured** agreed to perform such **legal services**;
 - iii. the fee arrangement for such **legal services**; and
 - iv. a description of the **Named Insured's** file retention and destruction policy; and
- b. was signed by all clients identified in such engagement letter prior to the **Insured's** commencement of representation of such clients for the **legal services** described in the engagement letter, but in no event more than thirty (30) days after the commencement of such representation.

In no event shall the amount of the deductible waived hereunder exceed \$25,000.

G. Pre-claim Assistance

Until the date a **claim** is made, the **Company** may pay for all costs or expenses it incurs, at its sole discretion, as a result of investigating a potential **claim** that the **Insured** reports in accordance with Section V. CONDITIONS, Paragraph A, Notice, subparagraph 2, Notice of Potential **Claim**. Such payments are in addition to the limits of liability and not subject to the deductible.

III. DEFINITIONS

The following defined words shall have the same meaning throughout this Policy, whether expressed in the singular or the plural. Wherever appearing in bold print in this Policy:

"Bodily injury" means injury to the body, sickness or disease sustained by any person, including death resulting from such injuries; or mental injury, mental anguish, mental tension, emotional distress, pain or suffering or shock sustained by any person whether or not resulting from injury to the body, sickness, disease or death of any person.

"Claim" means a demand, including the service of suit or the institution of any alternative dispute resolution proceeding, received by the **Insured** for money or services arising out of an act or omission, including **personal injury**, in the rendering of or failure to render **legal services**. **"Claim"** also means **privacy claims** and **client network damage claims**.

"Claim expenses" mean:

- A. fees charged by attorneys designated by the **Company** or by the **Insured** with the **Company's** written consent;
- B. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** if incurred by the **Company**, or by the **Insured** with the written consent of the **Company**, including, but not limited to, premiums for any appeal bond, attachment bond or similar bond but without any obligation of the **Company** to apply for or furnish any such bond;
- C. all costs taxed against an **Insured** in defense of a **claim**; and
- D. all interest on the entire amount of any judgment which accrues after entry of the judgment and before the **Company** has paid that part of the judgment which does not exceed the limits of liability stated in Section II A. above.

Claim expenses with respect to a **claim** will be paid first and payment will reduce the amount available to pay **damages**. **Claim expenses** do not include fees, costs or expenses of employees or officers of the **Company**, other than fees, costs and expenses charged by the **Company's** employed attorneys who may be designated to



represent the **Insured**, with the **Insured's** prior consent. Nor shall **claim expenses** include salaries, loss of earnings or other remuneration by or to any **Insured**.

"Client network damage claim" means a demand, including the service of suit or the institution of any alternative dispute resolution proceeding, received by the **Insured** for money or services alleging that a **security breach** or **electronic infection** caused **network damage** to a client's **network** in the rendering of **legal services**.

"Company" means the insurance company named in the Declarations.

"Computer virus" means unauthorized computer code that is designed and intended to transmit, infect and propagate itself over one or more **networks**, and cause:

- A. a computer code or programs to perform in an unintended manner;
- B. the deletion or corruption of electronic data or software; or
- C. the disruption or suspension of a **network**.

"Confidential commercial information" means information that has been provided to the **Insured** by another, or created by the **Insured** for another where such information is subject to the terms of a confidentiality agreement or equivalent obligating the **Insured** to protect such information on behalf of another.

"Crisis event" means:

- A. death, departure or debilitating illness of a **Principal Insured**;
- B. dissolution of the **Named Insured**; or
- C. incident of workplace violence;

that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

"Crisis event expenses" mean reasonable fees, costs and expenses incurred by the **Named Insured** for consulting services provided by a public relations firm to the **Named Insured** in response to a **Crisis Event**.

"Damages" mean judgments, awards and settlements (including pre-judgment interest), provided any settlements are negotiated with the assistance and approval of the **Company**. Notwithstanding anything to the contrary contained herein, **Damages** also include those amounts the court is permitted to impose on a debt collector as set forth in 15USC§1692k(a). **Damages** do not include:

- A. legal fees, costs and expenses paid or incurred or charged by any **Insured**, no matter whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise, and injuries that are a consequence of any of the foregoing;
- B. civil or criminal fines, sanctions, penalties or forfeitures, whether pursuant to law, statute, regulation or court rule, including but not limited to awards under 18 U.S.C. §1961, et. seq., Federal Rules of Civil Procedure 11 or 28 U.S.C. §1927 and state statutes, regulations, rules or law so providing, and injuries that are a consequence of any of the foregoing;
- C. punitive or exemplary amounts;
- D. the multiplied portion of multiplied awards;
- E. injunctive or declaratory relief;
- F. any amount for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order.

"Denial of service attack" means an attack executed over one or more **networks** or the **Internet** that is specifically designed and intended to disrupt the operation of a **network** and render a **network** inaccessible to authorized users.

"Disciplinary Proceeding" means any pending matter, including an initial inquiry, before a state or federal licensing board or a peer review committee to investigate charges alleging a violation of any rule of professional conduct in the performance of **legal services**.

"Electronic infection" means the transmission of a **computer virus** to a **network**, including without limitation, such transmission to or from the **Named Insured's network**.



"Electronic information damage" means the destruction, deletion or alteration of any information residing on the **network** of any third party.

"Insured" means the **Named Insured, predecessor firm** and the persons or entities described below:

- A. any lawyer (including a government affairs advisor or lobbyist), partnership, professional corporation, professional association, limited liability company or limited liability partnership who is or becomes a partner, officer, director, stockholder-employee, associate, manager, member or employee of the **Named Insured** during the **policy period** shown in the Declarations;
- B. any lawyer previously affiliated with the **Named Insured** or a **predecessor firm** as a partner, officer, director, stockholder-employee, associate, manager, member or salaried employee but only for **legal services** performed on behalf of the **Named Insured** or a **predecessor firm** at the time of such affiliation. The term "previously affiliated" as used herein does not include a lawyer who, during the **policy period** and while affiliated with the **Named Insured**: a) voluntarily ceases, permanently and totally, the private practice of law; or b) dies or becomes **totally and permanently disabled**. Such lawyer will be deemed to be an **Insured** under paragraph A. above;
- C. any lawyer, law firm, partnership, professional corporation, professional association, limited liability company or limited liability partnership who acts as Of Counsel to the **Named Insured** or any non-employee independent contractor attorney to the **Named Insured**, but only for **legal services** rendered on behalf of the **Named Insured** and only if a fee insured or, in the event of a contingency fee, would have insured, to the **Named Insured**. No fee need insure to the **Named Insured** where eleemosynary (pro bono) **legal services** are rendered by such Of Counsel **Insured** where at the time of retention, there was approval by the appropriate committee or lawyer within the **Named Insured** that the matter would be handled without compensation. Any lawyer, law firm, partnership, professional corporation, professional association, limited liability company or limited liability partnership who previously qualified as an **Insured** under paragraph A. above, but gave up the position of partner, officer, director, stockholder-employee, associate, manager, member or employee to act exclusively as Of Counsel to the **Named Insured**, will be deemed to be an **Insured** under paragraph A. above;
- D. any person who is a former or current employee, other than an employed lawyer, of the **Named Insured** or any **predecessor firm**, but solely for services performed by such person within the course and scope of their employment by the **Named Insured** or any **predecessor firm** and provided that the services in dispute are **legal services** of the **Named Insured** or any **predecessor firm**;
- E. the estate, heirs, executors, administrators, assigns and legal representatives of an **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would have been provided coverage under this Policy; and
- F. the spouse or domestic partner of an **Insured**, but only to the extent that such **Insured** is provided coverage under this Policy.

"Internet" means the worldwide public **network** of computers as it currently exists or may be manifested in the future, but **Internet** does not include the **Named Insured's network**.

"Legal services" mean:

- A. those services, including eleemosynary (pro bono) services, performed by an **Insured** for others as a lawyer, arbitrator, mediator, title agent or other neutral fact finder or as a notary public. Any title agency or company, on whose behalf the **Insured** acts as title agent or designated issuing attorney, is not an **Insured** under this Policy;
- B. those services performed by an **Insured** as an administrator, conservator, receiver, executor, guardian, trustee or in any other fiduciary capacity and any investment advice given in connection with such services;
- C. those services performed by an **Insured** in the capacity as a member, director or officer of any professional legal association, including any Bar Association and any similar organization or association, its governing board or any of its committees;
- D. those services performed by an **Insured** as an expert witness, provided that such **Insured** was retained to offer expert opinion on issues related to the law, legal procedure or practice, or the legal profession; or
- E. those services performed by an **Insured** as an author or publisher of legal research papers or legal materials or the presenter of legal seminars or materials, but only where such services are performed without compensation or compensation attributable per publication, presentation or seminar is less than \$25,000.



"**Named Insured**" means the persons and entities designated in the Declarations.

"**Network**" means a party's local or wide area network owned or operated by or on behalf of or for the benefit of that party; provided, however, **network** shall not include the **Internet**, telephone company networks, or other public infrastructure network.

"**Network Damage**" means:

- A. the unscheduled and unplanned inability of an authorized user to gain access to a **network**;
- B. **electronic information damage**; or
- C. the suspension or interruption of any **network**.

"**Non-public personal information**" means personal information not available to the general public from which an individual may be identified, including without limitation, an individual's name, address, telephone number, social security number, account relationships, account numbers, account balances, and account histories.

"**Personal injury**" means an injury arising out of: false arrest, detention, or imprisonment; wrongful entry, or eviction, or other invasion of the right of private occupancy; libel, slander, or other disparaging or defamatory materials; a writing or saying in violation of an individual's right to privacy; malicious prosecution or abuse of process.

"**Policy period**" means the period of time between the inception date and time shown in the Declarations and the date and time of termination, expiration or cancellation of this Policy.

"**Predecessor firm**" means any sole proprietorship, partnership, professional corporation, professional association, limited liability corporation or limited liability partnership engaged in **legal services** and:

- A. to whose financial assets and liabilities the firm listed as the **Named Insured** in the Declarations is the majority successor in interest;
- B. of which the **Named Insured** retained 50% or more of the lawyers; or
- C. was previously deemed to be a predecessor firm under the lawyers professional liability policy issued by the **Company** immediately preceding this Policy.

"**Principal Insured**" means an **Insured** member of the board of managers, director, executive officer, natural person partner, owner of a sole proprietorship, principal, risk manager or in-house general counsel of the **Named Insured**.

"**Prior insurer**" means an insurer, including the **Company** and any subsidiary or affiliate of the **Company**, who has issued a lawyers professional liability insurance policy that is applicable to a **claim**, such policy having an inception date prior to the **policy period**.

"**Privacy breach notice law**" means any statute or regulation that requires an entity who is the custodian of **non-public personal information** to provide notice to individuals of any actual or potential privacy breach with respect to such **non-public personal information**. **Privacy breach notice laws** include Sections 1798.29 and 1798.82- 1798.84 of the California Civil Code (formerly S.B. 1386) and other similar laws in any jurisdiction.

"**Privacy claim**" means a demand, including the service of suit or the institution of any alternative dispute resolution proceeding, received by the **Insured** for money or services and alleging **privacy injury and identity theft** that occurred in the rendering of **legal services**.

"**Privacy injury and identity theft**" means:

- A. any unauthorized disclosure of, inability to access, or inaccuracy with respect to, **non-public personal information** in violation of:
 - 1. the **Named Insured's privacy policy**; or
 - 2. any federal, state, foreign or other law, statute or regulation governing the confidentiality, integrity or accessibility of **non-public personal information**, including but not limited, to the Health Insurance Portability and Accountability Act of 1996, Gramm-Leach-Bliley Act, Children's Online Privacy Protection Act, or the EU Data Protection Act.
- B. the **Insured's** failure to prevent **unauthorized access to confidential commercial information**;

"**Privacy policy**" means the **Named Insured's** policies in written or electronic form that:



- A. govern the collection, dissemination, confidentiality, integrity, accuracy or availability of **non-public personal information**; and
- B. the **Insured** provides to its clients, customers, employees or others who provide the **Insured** with **non-public personal information**.

"No Liability" means that with respect to an **Insured** who is the subject of a **Disciplinary Proceeding**, there is a:

- A. final determination of no liability;
- B. a determination of no further action; or
- C. the matter is abandoned by the disciplinary authority.

In no event shall the term **"No Liability"** apply to a **Disciplinary Proceeding** for which a settlement has occurred.

"Related acts or omissions" mean all acts or omissions in the rendering of **legal services** that are temporally, logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

"Related claims" mean all **claims** arising out of a single act or omission or arising out of **related acts or omissions** in the rendering of **legal services**.

"Security breach" means the failure of the **Named Insured's network** hardware, software, firmware, the function or purpose of which is to:

- A. identify and authenticate parties prior to accessing the **Named Insured's network**;
- B. control access to the **Named Insured's network** and monitor and audit such access;
- C. protect against **computer viruses**;
- D. defend against **denial of service attacks** upon the **Named Insured** or unauthorized use of the **Named Insured's network** to perpetrate a **denial of service attack**; or,
- E. ensure confidentiality, integrity and authenticity of information on the **Named Insured's network**.

"Totally and permanently disabled" means that an **Insured** is so disabled as to be wholly prevented from rendering **legal services** provided that such disability:

- A. has existed continuously for not less than six (6) months; and
- B. is reasonably expected to be continuous and permanent.

"Unauthorized access" means any accessing of information in the **Insured's** care, custody or control by unauthorized persons or by authorized persons accessing or using such information in an unauthorized manner.

Unauthorized access also includes:

- A. theft from the **Insured** of any information storage device used by the **Insured** to:
 - 1. store and retrieve information on the **Insured's network**; or
 - 2. transport information between the **Insured** and authorized recipients;
- B. any unauthorized use by the **Insured** of information in the **Insured's** clients' care, custody or control if accessed by the **Insured** in the course of rendering **legal services**.

IV. EXCLUSIONS

This Policy does not apply:

- A. Intentional Acts

to any **claim** based on or arising out of any dishonest, fraudulent, criminal, malicious act or omission or intentional wrongdoing by an **Insured** except that:

- 1. this exclusion shall not apply to **personal injury**;
- 2. the **Company** shall provide the **Insured** with a defense of such **claim** unless or until the dishonest, fraudulent, criminal, malicious act or omission or intentional wrongdoing has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of the **Company's** rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**;
- 3. this exclusion will not apply to any **Insured** who is not found to have personally committed the dishonest, fraudulent, criminal, malicious act or omission or intentional wrongdoing by any trial verdict, court ruling, or regulatory ruling.



B. **Bodily Injury/Property Damage**

to any **claim** for **bodily injury**, or injury to, or destruction of, any tangible property, including the loss of use resulting therefrom except that this exclusion of **bodily injury** does not apply to mental injury, mental anguish, mental stress, humiliation or emotional distress caused by **personal injury**;

C. **Status as Beneficiary or Distributee**

to any loss sustained by an **Insured** or **claim** made against an **Insured** as beneficiary or distributee of any trust or estate;

D. **Contractual Liability**

to any **claim** based on or arising out of an **Insured's** alleged liability under any oral or written contract or agreement, unless such liability would have attached to any **Insured** in the absence of such agreement;

E. **Insured vs. Insured**

to any **claim** by or on behalf of an **Insured** under this Policy against any other **Insured** hereunder unless such **claim** arises out of **legal services** by an **Insured** rendered to such other **Insured** as a client;

F. **Capacity as Director, Officer, Fiduciary**

to any **claim** based on or arising out of an **Insured's** capacity as:

1. a former, existing or prospective officer, director, shareholder, partner, manager or member (or any equivalent position) of any entity if such entity is not named in the Declarations; or
2. a trustee of a pension, welfare, profit-sharing, mutual or investment fund or investment trust; or
3. a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto or any other similar state or local law;

except that this exclusion does not apply to a **claim** based on or arising out of an **Insured's** capacity as a member, director or officer of any professional legal association, including any Bar Association and any similar organization or association, its governing board or any of its committees.

G. **Capacity as Public Official**

to any **claim** based on or arising out of an **Insured's** capacity as a public official or an employee or representative of a governmental body, subdivision or agency unless such **Insured** is deemed as a matter of law to be a public official or employee or representative of such entity solely by virtue of rendering **legal services** to it;

H. **Owned Entity**

to any **claim** based on or arising out of **legal services** performed, directly or indirectly, for any entity not named in the Declarations, if at the time of the act or omission giving rise to the **claim**, the percentage of ownership interest, direct or indirect, in such entity by any **Insured**, or an accumulation of **Insureds**, exceeded 10%.

V. **CONDITIONS**

A. **Notice**

1. **Notice of Claims**

The **Insured**, as a condition precedent to the obligations of the **Company** under this Policy, shall as soon as reasonably possible after learning of a **claim** give written notice to the **Company** during the **policy period** of such **claim**. The **Company** agrees that the **Insured** may have up to, but not to exceed, sixty (60) days after the Policy expiration to report a **claim** made against the



Insured during the **policy period** if the reporting of such **claim** is as soon as reasonably possible.

2. Notice of Potential **Claims**

If during the **policy period** the **Insured** becomes aware of any act or omission that may reasonably be expected to be the basis of a **claim** against the **Insured** and gives written notice to the **Company** of such act or omission and the reasons for anticipating a **claim**, with full particulars, including but not limited to:

- a. the specific act or omission;
 - b. the dates and persons involved;
 - c. the identity of anticipated or possible claimants;
 - d. the circumstances by which the **Insured** first became aware of the possible **claim**,
- then any such **claim** that arises out of such reported act or omission and that is subsequently made against the **Insured** and reported to the **Company** shall be deemed to have been made at the time such written notice was given to the **Company**.

B. Reimbursement of the **Company**

Subject always to the **Insured's** right to consent to settlement, as set forth in Section I. INSURING AGREEMENT, paragraph C, Settlement, if the **Company**, in the exercise of its discretion and without any obligation to do so, pays any amount within the amount of the deductible, the **Named Insured**, or upon the **Named Insured's** failure to pay, the **Insureds**, jointly and severally, shall be liable to the **Company** for any and all such amounts and, upon demand, shall pay such amounts to the **Company**.

C. Territory

This Policy applies to an act or omission taking place anywhere in the world, provided that the **claim** is made and suit is brought against the **Insured** within the United States of America, including its territories, possessions, Puerto Rico or Canada.

D. Other insurance

If there is other insurance that applies to the **claim**, this insurance shall be excess over such other valid and collectible insurance whether such insurance is stated to be primary, contributory, excess, contingent or otherwise. When there is such other insurance, the **Company** will pay only its share of the amount of any **damages** and **claim expenses**, if any, that exceed the sum of:

1. the total amount that all such other insurance would pay for with respect to such **claim** in the absence of this insurance; and
2. the total of all deductible and self-insured amounts under all that other insurance.

This paragraph does not apply to any other insurance that was bought specifically to apply in excess of the Limits of Liability shown in the Declarations of this Policy.

When this insurance is excess, the **Company** will have no duty under this Policy to defend the **Insured** against any **claim** if any other insurer has a duty to defend the **Insured** against that **claim**. If no other insurer defends, the **Company** will undertake to do so, but it will be entitled to the **Insured's** rights against all those other insurers.

E. Assistance and cooperation of the **Insured**

1. The **Insured** shall cooperate with the **Company** and, upon the **Company's** request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving of evidence, obtaining the attendance of witnesses, and the conduct of suits and proceedings in connection with a **claim**.
2. The **Insured** shall assist in the enforcement of any right of contribution or indemnity against any person or organization who or which may be liable to any **Insured** in connection with a **claim**.



3. The **Insured** shall not, except at its own cost, voluntarily make any payment, assume or admit any liability or incur any expense without the consent of the **Company**.

F. Action against the **Company**

No action shall lie against the **Company** by any third party, unless, as a condition precedent thereto:

1. there shall have been full compliance with all the terms of this Policy; and
2. the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the **Company**.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the **Company** as a party to any action against an **Insured**, nor shall the **Company** be impleaded by the **Insured** or his legal representative.

G. Bankruptcy or Insolvency

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the **Company** of any of its obligations hereunder.

H. Subrogation

In the event of any payment under this Policy, the **Company** shall be subrogated to all the **Insured's** rights of recovery thereof against any person or organization. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure and collect upon such rights. The **Insured** shall do nothing to prejudice such rights.

I. Changes

Notice to any of the **Company's** agents or knowledge possessed by any such agent or any other person shall not act as a waiver or change in any part of this Policy. It also will not prevent the **Company** from asserting any rights under the provisions of this Policy. None of the provisions of this Policy will be waived, changed or modified except by written endorsement, signed by the **Company**, issued to form a part of this Policy.

J. Assignment

No assignment of interest of the **Insured** under this Policy shall be valid, unless the written consent of the **Company** is endorsed hereon.

K. Cancellation/ Nonrenewal

1. This Policy may be canceled by the **Named Insured** by returning it to the **Company**. The **Named Insured** may also cancel this Policy by written notice to the **Company** stating at what future date cancellation is to be effective.
2. The **Company** may cancel or non-renew this Policy by written notice to the **Named Insured** at the address last known to the **Company**. The **Company** will provide written notice at least sixty (60) days before cancellation or non-renewal is to be effective. If the **Company** cancels this Policy because the **Insured** has failed to pay a premium when due or has failed to pay amounts in excess of the limit of the **Company's** liability or within the amount of the deductible, this Policy may be canceled by the **Company** by mailing to the **Named Insured** written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The time of surrender of this Policy or the effective date and hour of cancellation stated in the notice shall become the end of the **policy period**. Delivery (where permitted by law) of such written notice either by the **Named Insured** or by the **Company** shall be equivalent to mailing.
3. If the **Company** cancels this Policy, the earned premium shall be computed pro rata. If the **Named Insured** cancels this Policy, the **Company** shall retain the customary short rate



proportion of the premium. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

4. The offering of terms and conditions different from the expiring terms and conditions shall not constitute a refusal to renew.

L. Entire contract

By acceptance of this Policy the **Insured** agrees that:

1. all of the information and statements provided to the **Company** by the **Insured** are true, accurate and complete and shall be deemed to constitute material representations made by all of the **Insureds**;
2. this Policy is issued in reliance upon the **Insured's** representations;
3. this Policy, endorsements thereto, together with the completed and signed application and any and all supplementary information and statements provided by the **Insured** to the **Company** (all of which are deemed to be incorporated herein) embody all of the agreements existing between the **Insured** and the **Company** and shall constitute the entire contract between the **Insured** and the **Company**; and
4. the misrepresentation of any material matter by the **Insured** or the **Insured's** agent will render this Policy null and void and relieve the **Company** from all liability herein.

M. **Named Insured** sole agent

The **Named Insured** shall be the sole agent of all **Insureds** hereunder for the purpose of effecting or accepting any notices hereunder, any amendments to or cancellation of this Policy, for the completing of any applications and the making of any statements, representations and warranties, for the payment of any premium and the receipt of any return premium that may become due under this Policy, and the exercising or declining to exercise any right under this Policy.

N. Liberalization

If the **Company** adopts any revision that would broaden coverage under this policy form G-118011-A without additional premium at any time during the **policy period**, the broadened coverage will immediately apply to this Policy except that it will not apply to **claims** that were first made against the **Insured** prior to the effective date of such revision.

O. Notices

Any notices required to be given by an **Insured** shall be submitted in writing to the **Company** or its authorized representative. If mailed, the date of mailing of such notice shall be deemed to be the date such notice was given and proof of mailing shall be sufficient proof of notice.

P. Trade and Economic Embargoes

This policy does not provide coverage for **Insureds**, transactions or that part of **damages** or **claims expenses** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

VI. **EXTENDED REPORTING PERIODS**

As used herein, "**extended reporting period**" means the period of time after the end of the **policy period** for reporting **claims** that are made against the **Insured** during the applicable **extended reporting period** by reason of an act or omission that occurred prior to the end of the **policy period** and is otherwise covered by this Policy.

A. Automatic **extended reporting period**

If this Policy is canceled or non-renewed by either the **Company** or by the **Named Insured**, the **Company** will provide to the **Named Insured** an automatic, non-cancelable **extended reporting period** starting at the termination of the **policy period** if the **Named Insured** has not obtained another policy of



lawyers professional liability insurance within sixty (60) days of the termination of this Policy. This automatic extended reporting period will terminate after sixty (60) days.

B. Optional **extended reporting period**

1. If this Policy is canceled or non-renewed by either the **Company** or by the **Named Insured**, then the **Named Insured** shall have the right to purchase an optional **extended reporting period**. Such right must be exercised by the **Named Insured** within sixty (60) days of the termination of the **policy period** by providing:
 - a. written notice to the **Company**; and
 - b. with the written notice, the amount of additional premium described below.
2. The additional premium for the optional **extended reporting period** shall be based upon the rates for such coverage in effect on the date this Policy was issued or last renewed and shall be for one (1) year at 100% of such premium; two (2) years at 150% of such premium; three (3) years at 175% of such premium; six (6) years at 225% of such premium; or, for an unlimited period at 250% of such premium.
3. The premium for the optional **extended reporting period** is due on its effective date. This optional **extended reporting period** is non-cancelable and the entire premium shall be deemed fully earned at its commencement without any obligation by the **Company** to return any portion thereof.

C. Death or disability **extended reporting period**

1. If an **Insured** dies or becomes **totally and permanently disabled** during the **policy period**, then upon the latter of the expiration of: the **policy period**; any renewal or successive renewal of this Policy; or any automatic or optional **extended reporting period**, such **Insured** shall be provided with a death or disability **extended reporting period** as provided below.
 - a. In the event of death, such **Insured's** estate, heirs, executors or administrators must, within sixty (60) days of the expiration of the **policy period**, provide the **Company** with written proof of the date of death.
 - b. If an **Insured** becomes **totally and permanently disabled**, such **Insured** or **Insured's** legal guardian must, within sixty (60) days of the expiration of the **policy period**, provide the **Company** with written proof that such **Insured** is **totally and permanently disabled**, including the date the disability commenced, certified by the **Insured's** physician. The **Company** retains the right to contest the certification made by the **Insured's** physician, and it is a condition precedent to this coverage that the **Insured** agree to submit to medical examinations by any physician designated by the **Company** at the **Company's** expense. This **extended reporting period** is provided until such **Insured** shall no longer be **totally or permanently disabled** or until the death of such **Insured** in which case subparagraph a. hereof shall apply.
2. No additional premium will be charged for any death or disability **extended reporting period**.

D. Non-practicing **extended reporting period**

1. If an **Insured** retires or otherwise voluntarily ceases, permanently and totally, the "private practice of law" during the **policy period** and has been continuously insured by the **Company** for at least three (3) consecutive years, then such **Insured** shall be provided with an **extended reporting period** commencing upon the latter of the expiration of: the **policy period**; any renewal or successive renewal of this Policy; or any automatic or optional **extended reporting period**.
2. This **extended reporting period** is provided until such **Insured** shall resume the "private practice of law" or until the death of such **Insured** in which case subparagraph C.1.a. hereof shall apply.
3. No additional premium will be charged for any non-practicing **extended reporting period**.

As used herein, the "private practice of law" means the practice of law performed by an **Insured** for a fee, including hourly, contingent or lump sum, as a sole practitioner or as a partner, officer, director, stockholder-employee, associate, manager, member or employee, of a law firm, or any agreement to act as an independent contractor or "Of Counsel" to a law firm. "Private practice of law" does not include the



practice of law by an **Insured** on an eleemosynary (a pro bono) basis or services performed by an **Insured** solely as a mediator or arbitrator.

E. **Extended reporting periods** limits of liability and deductibles

1. Automatic and optional **extended reporting periods** limits of liability and deductibles
 - a. Where the **Company** has the right to nonrenew or cancel this Policy, and it exercises that right, then the **Company's** liability for all **claims** reported during the automatic and optional **extended reporting periods** shall be part of and not in addition to the limits of liability for the **policy period** as set forth in the Declarations and Section II.A. and B. of this Policy. The deductible applicable to such **claims** shall be part of and not in addition to the deductible as set forth in the Declarations and Section II.C. of this Policy.
 - b. If this Policy is canceled by the **Named Insured** or if the **Company** offers to renew this Policy, and the **Named Insured** refuses such renewal offer, then the **Company's** liability for all **claims** reported during the automatic and optional **extended reporting periods** shall be reinstated to the limits of liability applicable to this Policy as set forth in the Declarations and Section II.A. and B. of this Policy. The deductible applicable to such **claims** shall be reinstated to an amount equal to the deductible as set forth in the Declarations and Section II.C. of this Policy.
2. Separate death or disability and non-practicing **extended reporting period** limits of liability
 - a. Limit of Liability - Each "Claim"

Subject to paragraph B. below, the **Company's** limit of liability for each **claim** first made against the **Insured** and reported to the **Company** during the death or disability **extended reporting period** or non-practicing **extended reporting period** shall not exceed the amount stated in the Declarations as the "Each **Claim** Death or Disability and Non-Practicing **extended reporting period** limit of liability".
 - b. Limit of Liability - In the Aggregate

The limit of liability of the **Company** for all **claims** first made against the **Insured** and reported to the **Company** during the death or disability **extended reporting period** or non-practicing **extended reporting period** shall not exceed the amount stated in the Declarations as the "Aggregate Death or Disability and Non-Practicing **extended reporting period** limit of liability".
 - c. No Deductible

No deductible shall apply to **claims** first made against the **Insured** and reported to the **Company** during the death or disability **extended reporting period** or non-practicing **extended reporting period**.

F. **Elimination of right to any extended reporting period**

There is no right to any **extended reporting period**:

1. if the **Company** shall cancel or refuse to renew this Policy due to:
 - a. non-payment of premiums; or
 - b. non-compliance by an **Insured** with any of the terms and conditions of this Policy; or
 - c. any misrepresentation or omission in the application for this Policy; or,
2. if during the **Policy Period** such **Insured's** right to practice law is revoked, suspended or surrendered at the request of any regulatory authority for reasons other than that the **Insured** is **totally and permanently disabled**.

G. **Extended reporting period** not a new policy



It is understood and agreed that the **extended reporting period** shall not be construed to be a new policy and any **claim** submitted during such period shall otherwise be governed by this Policy.


VII. HEADINGS

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

IN WITNESS WHEREOF, the **Company** has caused this Policy to be executed by its Chairman and Secretary, but this Policy shall not be binding upon us unless completed by the attachment of the Declarations.

Chairman

Secretary


_____



AMENDMENT OF TERMINATION PROVISIONS LOUISIANA

It is understood and agreed that Condition K. Cancellation/Nonrenewal is deleted and replaced in its entirety by the following:

K. Cancellation/Nonrenewal

1. Cancellation

- a. This Policy may be canceled by the **Named Insured** by returning it to the **Company**. The **Named Insured** may also cancel this Policy by written notice to the **Company** stating at what future date cancellation is to be effective.
- b. The **Company** may cancel this Policy by mailing to the **Named Insured**, or by delivery of a written notice of cancellation to the last mailing address known to the **Company**. Notice will state the effective date of cancellation.
- c. If the Policy has been in effect for less than 60 days and is not a renewal, the **Company** will provide written notice at least:
 - (1) 10 days before the effective date of cancellation if the **Company** cancels this Policy because the **Insured** has failed to pay a premium when due; or
 - (2) 60 days before the effective date of cancellation if the **Insured** has failed to pay amounts in excess of the limit of the **Company's** liability or within the amount of the deductible or if the **Company** cancels for any other reason.

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the **Named Insured** or by the **Company** shall be equivalent to mailing.
- d. If this Policy has been in effect for 60 days or more, or if it is a renewal of a policy issued by the **Company**:
 - (1) The **Company** may cancel upon 10 days written notice for nonpayment of premium; or
 - (2) The **Company** may cancel upon 30 days written notice for one or more of the following reasons:
 - (a) Material misrepresentation or fraud made by the **Named Insured** or with the **Named Insured's** knowledge in obtaining the Policy or in pursuing a **claim** under the Policy;
 - (b) Activities or omissions by the **Named Insured** which change or increase any hazard insured against;
 - (c) The **Insured's** failure to comply with loss control recommendations;
 - (d) Change in the risk which increases the risk of loss after the **Company** issued or renewed this Policy including any increase in exposure due to regulation, legislation, or court decision;
 - (e) Determination by the Commissioner of Insurance that the continuation of this Policy would jeopardize the **Company's** solvency or would place the **Company** in violation of the insurance laws of this or any other state;
 - (f) The **Insured's** violation or breach of any policy terms or conditions; or
 - (g) Any other reasons that are approved by the Louisiana Commissioner of Insurance.
- e. If the **Company** cancels this Policy, the earned premium shall be computed pro rata. If the **Named Insured** cancels this Policy, the refund will not be less than 90% of the pro rata unearned premium, rounded to the next higher whole dollar. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation. If the unearned premium is not returned within 30 days, interest of one-half percent per month will accrue.

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- f. Unearned premium/commission is to be returned within 30 days after the **Named Insured** cancels the policy.
- g. The **Company** will provide the **Named Insured**, upon receipt of a written request by the **Named Insured**, a written statement setting forth the reason for cancellation, provided the **Named Insured** agrees in writing to hold the **Company** harmless from liability for any communication giving notice of or specifying the reasons for cancellation or for any statement made in connection with an attempt to discover or verify the existence of conditions which would be a reason for cancellation under this regulation.

2. Nonrenewal

- a. If the **Company** decides not to renew this policy, it will mail or deliver written notice of nonrenewal to the **Named Insured** at the mailing address last known to the **Company**, at least 60 days prior to:
 - (1) the expiration date of this Policy, if the Policy is written for a term of one year or less; or
 - (2) the anniversary date if this policy is written for a term of more than a year or with no fixed expiration date.
 Notice will state the effective date of nonrenewal. Such notice will include the **Named Insured's** loss run information for the period the policy was in force within, but not to exceed, the last 3 years. Delivery of such written notice by the **Company** shall be the equivalent of mailing.
- b. The **Company** is not required to mail notice of nonrenewal if:
 - (1) The **Company** has manifested in good faith its willingness to renew; or
 - (2) The **Named Insured** has failed to pay any premium required for this Policy or fails to pay amounts in excess of the limit of the **Company's** liability or within the amount of the deductible; or
 - (3) The **Named Insured** fails to pay the premium required for renewal of this Policy.
- c. The **Company** is not required to provide notice if:
 - (1) The **Company** or another company within the **Company's** insurance group offered to issue a renewal policy; or
 - (2) The **Named Insured** has obtained replacement coverage or has agreed in writing to obtain replacement coverage.
- d. The offering of terms and conditions different from the expiring terms and conditions does not constitute a refusal to renew.

3. Renewal

- a. The **Company** will mail or deliver to the **Named Insured** at the address shown on the Policy, written notice of any rate increase, change in deductible, or reduction in limits of liability at least 30 days prior to the expiration date of the policy. If the **Company** fails to provide such 30 day notice, the coverage provided to the **Named Insured** at the expiring policy's rate, terms and conditions shall remain in effect until notice is given or until the effective date of replacement coverage obtained by the **Named Insured** whichever first occurs.
- b. Notice is considered given 30 days following date of mailing or delivery of the notice. If the **Named Insured** elects not to renew, any earned premium for the period of extension of the terminated policy shall be calculated pro rata at the lower of the current or previous year's rate. If the **Named Insured** accepts the renewal, the premium increase, if any, and other changes shall be effective the day following the prior policy's expiration or anniversary date.
- c. This section shall not apply to:

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- (1) Changes in a rate or plan filed with the insurance rating commission and applicable to an entire class of business.
- (2) Changes based upon the altered nature or extent of the risk insured.
- (3) Changes in policy forms that are filed and approved with the Commissioner and applicable to an entire class of business.
- (4) Changes requested by the **Named Insured**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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**PUNITIVE DAMAGES COVERAGE ENDORSEMENT**

It is understood and agreed that Section III., DEFINITIONS, definition of **Damages**, subitem C., punitive or exemplary amounts, is deleted in its entirety but only where the law applicable to the **claim** mandates such coverage.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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AMENDATORY ENDORSEMENT - LOUISIANA

It is understood and agreed that the Policy is amended as follows:

- I. The Section entitled INSURING AGREEMENT, paragraph entitled Defense, is deleted in its entirety and replaced by the following:

Defense

The **Company** shall have the right and duty to defend in the **Insured's** name and on the **Insured's** behalf a **claim** covered by this Policy even if any of the allegations of the **claim** are groundless, false or fraudulent. The **Company** shall have the right to appoint counsel and to make such investigation and defense of a **claim** as is deemed necessary by the **Company**. If a **claim** shall be subject to arbitration or mediation, it will be submitted to arbitration or mediation if the **Company** and the **Named Insured** mutually agree to do so. In the event of arbitration, the decision of the arbitrators shall be non-binding and provided to both the **Company** and the **Named Insured**, and the arbitrators' award shall not include attorney's fees or other costs. In the event of mediation, either the **Company** or the **Named Insured** shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least sixty (60) days shall have elapsed from the date of the termination of the mediation.

- II. The Section entitled INSURING AGREEMENT, paragraph entitled Exhaustion of limits, is deleted in its entirety and replaced by the following:

Exhaustion of limits

The **Company** is not obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **claim** after the applicable limit of the **Company's** liability has been exhausted by payment of **damages** or **claim expenses** or by any combination thereof. In such case, the **Company** shall have the right to withdraw from the further investigation, defense, payment or settlement of such **claim** by tendering control of said investigation, defense or settlement of the **claim** to the **Insured**.

- III. The Section entitled DEFINITIONS, definition of "**Claim expenses**," is deleted in its entirety and replaced by the following:

"**Claim expenses**" mean:

- A. fees charged by attorneys designated by the **Company** or by the **Insured** with the **Company's** written consent;
- B. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** if incurred by the **Company**, or by the **Insured** with the written consent of the **Company**, including, but not limited to, premiums for any appeal bond, attachment bond or similar bond but without any obligation of the **Company** to apply for or furnish any such bond;
- C. all costs taxed against an **Insured** in defense of a **claim**; and
- D. all interest on the entire amount of any judgment which accrues after entry of the judgment and before the **Company** has paid that part of the judgment which does not exceed the limits of liability stated in Policy Section II A.

Claim expenses do not include fees, costs or expenses of employees or officers of the **Company**, other than fees, costs and expenses charged by the **Company's** employed attorneys who may be designated to represent the **Insured**, with the **Insured's** prior consent. Nor shall **claim expenses** include salaries, loss of earnings or other remuneration by or to any **Insured**.

- IV. The Section entitled EXCLUSIONS, paragraph entitled Capacity as Director, Officer, Fiduciary, is deleted in its entirety and replaced with the following:

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Capacity as Director, Officer, Fiduciary

to any **claim** based on or arising out of an **Insured's** capacity as:

1. a former, existing or prospective officer, director, shareholder, partner, manager, or member (or any equivalent position) of any entity, if such entity is not named in the Declarations; or
2. a trustee of a pension, welfare, profit-sharing, mutual or investment fund or investment trust, if such entity is not named in the Declarations; or
3. a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto or any other similar state or local law;

except that this exclusion does not apply to a **claim** based on or arising out of an **Insured's** capacity as a member, director or officer of any professional legal association, including any Bar Association and any similar organization or association, its governing board or any of its committees;

V. The Section entitled CONDITIONS is amended as follows:

- A.** The paragraph entitled Notice, sub-paragraph entitled Notice of **Claims**, is deleted in its entirety and replaced by the following:

The **Insured**, as a condition precedent to the obligations of the **Company** under this Policy, shall as soon as reasonably possible after learning of a **claim** give written notice to the **Company** during the **policy period** of such **claim**. The **Company** agrees that the **Insured** may have up to, but not to exceed, 60 days after the expiration of the **claims-made relationship** to report a **claim** made against the **Insured** during the **policy period**, provided that the reporting of such **claim** is as soon as reasonably possible. Breach of this condition shall not result in exclusion of the **claim** with respect to an **Insured** who did not know of such **claim** provided that such **Insured** complies with this condition as soon as reasonably possible after learning of such **claim**.

As used herein, the term **claims-made relationship** means that period of time between the effective date of the first claims-made policy issued by the **Company** to the **Named Insured** and the termination, cancellation or non-renewal of the last consecutive claims-made policy between the **Named Insured** and the **Company**, where there has been no gap in coverage, but does not include any period covered by Extended Reporting Period coverage.

- B.** The paragraph entitled Subrogation, is deleted in its entirety and replaced by the following:

Subrogation

If the **Company** makes any payment under this Policy and the person to or for whom payment is made has a right to recover damages from another, the **Company** shall be subrogated to that right. However, the **Company's** right to recover is subordinate to the **Insured's** right to be fully compensated. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure and collect upon such rights. The **Insured** shall do nothing to prejudice such rights.

- C.** The paragraph entitled Entire contract, sub-paragraph 4 is deleted in its entirety and replaced by the following:

4. no oral or written misrepresentation or warranty made in the negotiation of an insurance contract, by the **Insured** shall be deemed material or defeat or void the contract or prevent it attaching, unless the misrepresentation or warranty is made with the intent to deceive.

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VI. The Section entitled **Extended Reporting Periods**, paragraph entitled Death or disability **extended reporting period**, sub-paragraph 1.b., is deleted in its entirety and replaced by the following:

- b. If an **Insured** becomes **totally and permanently disabled**, such **Insured** or **Insured's** legal guardian must, within sixty (60) days of the expiration of the **policy period**, provide the **Company** with written proof that such **Insured** is **totally and permanently disabled**, including the date the disability commenced, certified by the **Insured's** physician. The **Company** retains the right to contest the certification made by the **Insured's** physician. Under such circumstances, the **Insured** must agree to submit to medical examinations by any physician designated by the **Company** at the **Company's** expense. This **extended reporting period** is provided until such **Insured** shall no longer be **totally or permanently disabled** or until the death of such **Insured** in which case subparagraph a. hereof shall apply.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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AMENDATORY ENDORSEMENT - ACTION AGAINST COMPANY PROVISION - LOUISIANA

It is understood and agreed that Condition F. Action Against Company is deleted and replaced in its entirety by the following:

F. Action against the **Company**

A person or organization may bring a **claim** against the **Company** including, but not limited to a **claim** to recover on an agreed settlement or on a final judgment against an **Insured**; but the **Company** will not be liable for any amounts that are not payable under the terms of this Policy or that are in excess of the applicable limit of liability. An agreed settlement means a settlement and release of liability signed by the **Company**, the **Insured**, and the claimant or the claimant's legal representative.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy and expires concurrently with said Policy unless another effective date is shown below.

By Authorized Representative _____

(No signature is required if issued with the Policy or if it is effective on the Policy Effective Date)

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Insured Name: «CusChangeName»

Policy No: «PolNumber»

Endorsement No: «Sequence»

Effective Date: «EndoEffectiveDate»

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CONTINENTAL CASUALTY INSURANCE COMPANY
CNA PLAZA
CHICAGO, ILLINOIS 60685

LAWYERS PROFESSIONAL LIABILITY POLICY
AMENDATORY ENDORSEMENT
ALTERNATIVE DISPUTE RESOLUTION PROVISION -
LOUISIANA

It is understood and agreed that Condition E. Alternative Dispute Resolution is deleted in its entirety.

All other terms and conditions of the Policy remain unchanged.

POLICY NO. _____

THIS ENDORSEMENT FORMS A PART OF THE ABOVE-REFERENCED POLICY, AND TAKES EFFECT ON THE EFFECTIVE DATE AND HOUR OF SAID POLICY UNLESS ANOTHER EFFECTIVE DATE IS SHOWN BELOW, AND EXPIRES CONCURRENTLY WITH SAID POLICY.

ISSUED TO:

EFFECTIVE DATE OF
THIS ENDORSEMENT _____

Complete only when this Endorsement is not prepared with the Policy or is not to be effective with the Policy.

Countersigned by _____
AUTHORIZED REPRESENTATIVE

Policy Highlights

Lawyers Professional Liability Program

- **Limits of Liability** range from a minimum of \$100,000 per claim/\$300,000 aggregate up to a maximum of \$10M/\$10M. Claims expense outside limits coverage is available, subject to underwriting.
- **Deductibles** range from \$1,000 to \$100,000 on either aggregate or per-claim basis. Optional first dollar defense coverage is available, subject to underwriting.
- **Broad definition of Legal Services** includes Arbitrator, Mediator, Title Agent, Notary Public and customary Fiduciary Capacities such as Administrator, Conservator, Executor, Trustee and Guardian together with investment advice given in connection with fiduciary activities.
- **Broad definition of Insured** includes the Firm Predecessor Firm and Lawyers within the Firm (Partners, Associates, Directors, Officers and Employees). Also covers Of Counsel and/or Independent Contractors for work performed on behalf of the Firm.
- **Supplementary payments up to \$500** per day for loss of earnings while in attendance at a trial, hearing, arbitration proceeding or mediation for a covered claim against the Insured. Maximum limit is \$15,000 per Insured. Maximum aggregate limit is \$30,000 despite the number of Insureds or the number of such proceedings.
- **Supplementary payments up to \$20,000** for each Insured and all Insureds in the aggregate for attorney fees and other reasonable costs, expenses or fees resulting from any one Disciplinary Proceeding received by the Insured and reported to the Company during the policy period involving covered legal services. Maximum limit is \$100,000 despite the number of proceedings. In the event of a determination of No Liability, the Company will reimburse the Insured up to a maximum of \$100,000 regardless of the number of Insureds or the number of proceedings.
- **50% reduction of the deductible**, up to a maximum of \$25,000, if mediation of a claim takes place either without institution of arbitration proceeding or service of suit or within 60 days of the institution of such proceedings or service of suit, and the claim is resolved by the process of mediation.
- **Assistance in responding to a subpoena** arising out of legal services rendered by an Insured including production of documents and preparation of sworn testimony, provided the subpoena arises out of a lawsuit to which the Insured is not a party.
- **Coverage is provided** for claims arising out of legal services by an Insured rendered to another Insured as a client.
- **Optional Extended Reporting Period** is available for a one year, two year, three year, six year or for an unlimited period.
- **Non-Practicing Extended Reporting Period** at no extra charge for retiring or non-practicing lawyers who have been continuously insured by the Company for at least three consecutive years.
- **Death or Disability Extended Reporting Period** at no extra charge.
- **Full Prior Acts Coverage** available.
- **Policy requires Insured's consent** in order to settle claims.



This information is for illustrative purposes only and is not a contract. It is intended to provide a general overview of the products and services offered. Only the policy can provide the actual terms, coverages, amounts, conditions and exclusions.

CNA's Commitment to the Profession **Lawyers Professional Liability Program**

- Largest writer of Lawyers Professional Liability in the U.S.
- More than 45 years of experience insuring attorneys in the private practice of law
- More than 150,000 attorneys insured with the Program
- Sponsored by bar associations in Arkansas, Colorado, Connecticut, Louisiana, Massachusetts and Washington State
- Largest writer of federal and state judges professional liability in the U.S.
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- Rated "A" (Excellent), XV (> \$2 billion) by A.M. Best
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Network security and privacy risks are becoming commonplace.

- As businesses of all types increase their reliance on technology to store their data or their clients' data on computers, they face increased computer attacks, viruses and security breaches.
- Traditional coverage forms alone typically fall short of covering network security and privacy injury risks.

CNA provides broad insurance coverage to address those risks.

- We offer the underwriting and risk management expertise to help build effective risk strategies.
- We offer various options to address your cyber-risk exposures or needs.

CNA's appetite includes:

- | | | |
|-------------------------|----------------|-----------------------------------|
| • Agricultural/Forestry | • Mining | • Manufacturing |
| • Health Care | • Oil & Gas | • Transportation Services |
| • Retail | • Construction | • Wholesale Trade |
| • Telecommunications | • Technology | • Miscellaneous Service Providers |
| | | ... we will consider many more |

Basic Coverage Highlights

• Network Security Liability

- Provides coverage for a claim of network damage alleging a wrongful act that results in a security breach of the insured entity's network.
- Network Damage includes the inability to gain access to the network, and destruction or alteration of a third party's information residing on the network.

• Basic Privacy Injury Liability

- Provides coverage for a claim of privacy injury alleging a wrongful act that results in a security breach of the insured entity's network.
- Privacy injury includes unauthorized disclosure or the insured's failure to prevent unauthorized access to nonpublic personal information or to nonpublic corporate information residing on the insured's network.

Optional Coverages Available

- Laptop Computer Breach Privacy Liability
 - Covers claims for privacy injury as a result of the loss or theft of an insured's laptop or removable storage device.
- Broad Form Privacy Injury Liability
 - Covers information in printed form and in the insured's care, custody or control.
 - Coverage also includes Rogue Employee for whose wrongful act the insured is legally responsible.
- Privacy Regulatory Proceedings
 - Covers loss due to Privacy Regulation Proceedings alleging a violation of any Security Breach Notice Law.
 - Covers civil fines, sanctions or penalties imposed under a Privacy Regulation Proceeding for a violation of a Security Breach Notice Law.
 - Coverage also includes Rogue Employee for whose wrongful act the insured is legally responsible.
- Privacy Event Expense
 - Reimbursement for reasonable expenses incurred by the insured entity to comply with a Security Breach Notice Law or respond to a Privacy Event (including setting up a call center and providing credit monitoring services).
- Network Extortion Expense
 - Reimbursement for reasonable expenses incurred by the insured entity to respond to a network extortion or demand.

Broad coverage for Technology and Telecommunications Professional Liability is provided as one part of the Epac ExtraSM policy. Epac ExtraSM allows insureds to package multiple coverages on one policy form.

Epac ExtraSM

Network Security and Privacy Injury

Coverage Scenarios

Manufacturing

The Facts: A contract manufacturer stores its customer's designs on its network. The designs are used in the production of custom assemblies in accordance with customer specifications. The manufacturer's network is infected with a virus which corrupts the customer's design specifications, resulting in damage to information in the manufacturer's care. The customer sues the manufacturer seeking recovery of late delivery penalties imposed by its downstream customer.

The Bottom Line: Defense costs totaled \$500,000 and \$250,000 for indemnity, customer damages.

Retail

The Facts: A hacker penetrates a retailer's network security and steals credit card information from a database containing stored transaction data. The hacker uses the harvested information to make purchases and to fraudulently obtain loans in each cardholder's name. Cardholders sue the retailer to recover their cost to repair credit and discharge fraudulent loans and seek damages for emotional distress. The banks who issued the cards compromised in the attack also sue the retailer to recover card re-issuance and cardholder notification costs.

The Bottom Line: Defense costs totaled \$750,000 and \$1.75M to repay banks and cardholders for the damages they incurred.

Healthcare

The Facts: A doctor's practice sustains a network security breach. The attacker steals patient records including financial information and health benefits account data. Data is re-sold to individuals who use benefits information to fraudulently obtain medical services. Legitimate patients sue seeking compensation for emotional distress in addition to other consequential damages. The legitimate patients' health insurance carriers sue the doctor's practice to recover reimbursements made for fraudulently obtained health services.

The Bottom Line: Defense costs totaled \$300,000 and \$500,000 to reimburse the health insurance carriers.

Construction

The Facts: A small construction firm maintains employee and 1099 contractor records on their network. The records contain private personally identifiable information for tax reporting, including social security numbers/tax payer IDs. The firm's network security is breached. The attacker steals personal records. The firm must notify all affected individuals in writing. It also purchases one year's worth of credit monitoring services on their behalf to detect unauthorized activity in their credit accounts. Later, the attacker sells the stolen information to an ID theft ring. The ID thieves age the information for a year (after credit monitoring stops). They then begin using it to fraudulently obtain credit in the name of the compromised individuals. The affected individuals sue the firm for breach of privacy and seek consequential damages.

The Bottom Line: Defense costs totaled \$500,000, privacy expenses were \$100,000 and customer damages were \$900,000.

Technology

The Facts: A mid-sized technology company hosts web sites for retailers. Retailers rely on web site availability to generate e-commerce income. The technology company's site is disrupted by a virus. Their customers' ability to generate income is disrupted. Customers sue the company to recover lost income.

The Bottom Line: Defense costs totaled \$100,000 and \$500,000 for indemnity and customer damages.

To learn more about CNA's Management and Professional Liability offerings, contact your agent or broker.

www.cnapro.com
800-852-0393



The examples in this material are for illustrative purposes only and any similarity to actual individuals, entities, places or situations is unintentional and purely coincidental. The examples are not intended to establish any standards of care, to serve as legal advice appropriate for any particular factual situations, or to provide an acknowledgement that any given factual situation is covered under any CNA insurance policy. One or more of the CNA companies provide the products and/or services described. The information is intended to present a general overview for illustrative purposes only. It is not intended to constitute a binding contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Copyright © 2010 CNA. All rights reserved. EpacExNETProdSm0510



We can show you more.®

Workers' Compensation Solutions from CNA



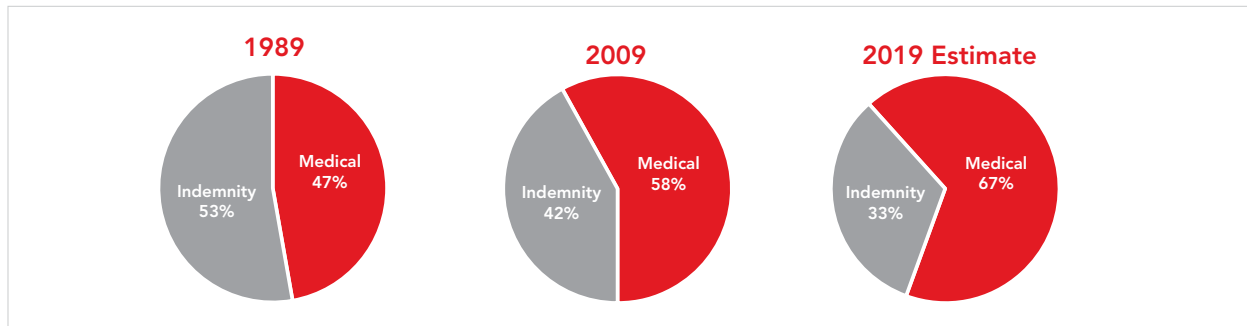
www.cna.com

A commitment to your employees A commitment to your company

Take a look around your company. Chances are, your workplace has changed in the past 10 years. Your workforce has changed as well. Regardless of industry, the U.S. workforce is aging. The U.S. Bureau of Labor Statistics has estimated that 25 percent of the workforce will be age 55 or older by 2020.¹ This aging workforce brings with it the potential for escalating workers' compensation costs, particularly since older employees typically experience more severe workplace injuries and illnesses than younger ones.

This aging trend has had an impact on what drives workers' compensation costs. Lost-time (indemnity) claims previously accounted for the majority of workers' compensation costs. Today, medical expenses are the most significant driver of workers' compensation costs.

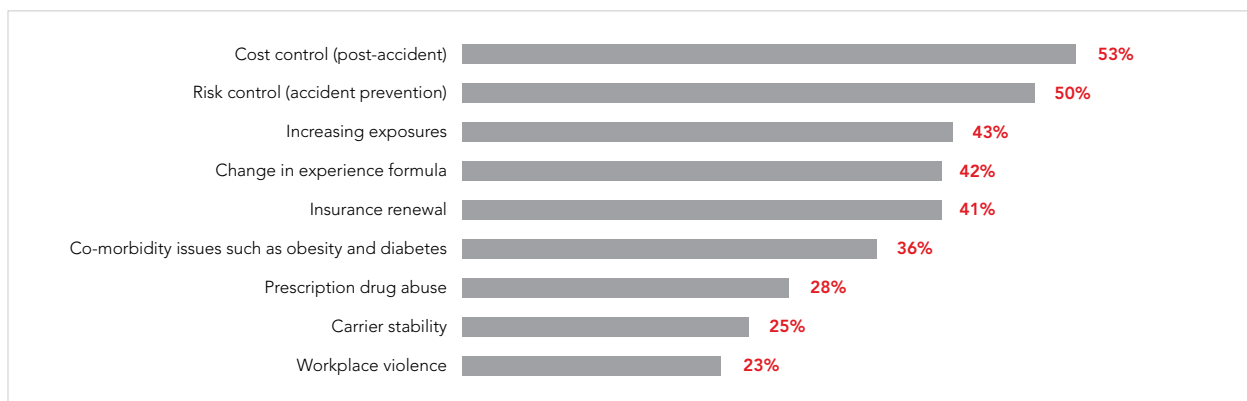
Industry Workers' Compensation Cost Drivers



Sources: Insurance Information Institute (2009 data) and National Council on Compensation Insurance (1989 data and 2019 estimate).

One of the most effective ways to reduce these costs is through a commitment to workplace safety. Participants in a recent survey agreed that a safe work environment is a top priority. They cited accident prevention, along with post-accident cost control, as their top workers' compensation concerns.

2013 Workers' Compensation and Safety Survey



Source: Zywave

¹ "Economic Projections," (press release) Bureau of Labor Statistics, Feb. 1, 2012.

The CNA approach

CNA believes that by focusing on four areas, a company can optimize its workers' compensation strategy and reap the greatest benefit in terms of reduced costs and improved productivity.

Build a safety culture

A safety-focused work culture attracts safety-minded employees. With a strong safety culture, both management and employees are engaged in the process and share responsibility for accident prevention and effective injury management. Employees feel comfortable voicing their suggestions and concerns and may be involved in developing and revising safety procedures. If an accident happens everyone knows what to do and how to report the incident.

CNA can help your company gauge its safety culture. Our Workplace Perception Survey can provide critical insight into how employees view your company's commitment to safety. This survey provides a channel to anonymously provide feedback on corporate culture, the effectiveness of the communication process and safety efforts, as well as employee and management accountability. Survey results can identify opportunities to improve in each of these areas.



Four Elements of Workers' Compensation Success



A commitment to safety is the key to a successful workers' compensation process and cost containment. A successful process creates a better work environment and improves productivity. And a commitment to workplace safety makes your company an attractive place to work, helping you retain employees and reduce employee turnover.

+ Safety screen

Companies with safety in their DNA want to make sure they hire employees with the same mindset. A job interview provides an opportunity to gauge a potential employee's safety commitment. Including a section on your company's safety policies and procedures in employee orientation reinforces your safety culture from day one.

Understand your risks

CNA Risk Control consultants provide onsite expertise. They may conduct a risk assessment to determine the best ways to minimize workplace hazards.

Your CNA Risk Control consultant will discuss critical workers' compensation elements with you, such as an injury management process and evaluating your claim trends. A detailed report will offer practical, proactive solutions that address your exposures. The report includes a scorecard that shows how your organization rates against comparable companies in critical areas, such as manual material handling. Your consultant is an ongoing resource who can help your company stay abreast of ever-changing government regulations and industry standards, as well as help address workforce and workplace changes within a safety culture.



Connect safety and lean

The same lean management principles that create a more efficient work environment can also create a safer one. CNA offers a lean educational program that can help your company create a sustainable process that improves productivity and quality while minimizing risk. With this hands-on educational training, you are in the driver's seat as you learn about safety and lean.

This program starts by defining potential risks and / or areas for lean improvement. This is followed by classroom and workplace training sessions, which are designed to develop a self-sustaining employee team that understands lean concepts and principles and can successfully apply them. Metrics are then developed to ensure that your solutions are effective and meet your company's stated goals.



What's your MOD?

A company's experience modification rating (MOD) is one of the most important factors in determining its workers' compensation premium. The frequency and size of workers' compensation claims determine a company's rating and ultimately, its premium. As a general rule, the lower the MOD, the lower the premium.



Case Study

Improving productivity while reducing injuries

As a result of the poor quality parts resulting from a particular plasma cutter, a metal fabricator was spending nearly \$900,000 extra in labor and production costs due to extensive grinding needed to bring parts into specifications. The process also increased employee exposure to musculoskeletal disorders due to the additional manual handling of parts and exposure to vibration from the grinders.

With cost and efficiency benefits in mind, the CNA Risk Control consultant recommended the purchase of a high-definition plasma cutter and additional work station improvements. The manufacturer purchased the machine and, as a result, experienced substantial productivity and efficiency gains.

The company also achieved annual labor savings of more than \$500,000 and was able to reduce overall fabrication costs per pound of steel by 20 percent. Equally important, the manufacturer's OSHA Recordable Incident Rate dropped by 39 percent.

+ Stay out of the stats

According to the U.S. Bureau of Labor Statistics' latest data, nearly 3 million workplace injuries occur a year. Nearly half of this group either missed work or had a job restriction resulting from a reported incident.² A strong safety culture helps keep your company from being part of this statistic.

Injury management

The earlier an injury is treated and managed, the sooner your employee may be able to recover and return to work. In some cases, it is possible for the injured employee to remain on the job during the healing process. This can mean fewer lost days, minimized wage loss for your employee and a focus on work ability—not the disability—all translating into greater employee morale.

Successful injury management involves collaboration between your company, your injured employee, CNA and the medical provider. It is imperative that you start the process by filing a claim, preferably the same day as the incident. CNA can help you identify quality, cost-effective medical resources for your employee. A robust return-to-work process that offers your injured employee transitional, light-duty work options is also a key component of injury management. This process will help your injured worker return to the job as soon as it is medically possible.

Effective and supportive claim handling

Consistent and seamless from claim reporting to resolution—that is the CNA approach to claim handling. Available 24/7, our highly experienced professionals specialize in handling specific types of claims. CNA claim professionals become certified in their claim line of business by meeting predefined requirements and standards through internal certification programs and a comprehensive claim continuing education curriculum. At CNA, our claim professionals provide the time and attention necessary to process your claim, resulting in a fair outcome with a timely resolution. To learn more about CNA claim services please visit www.cna.com/claim.

+ How to create a return-to-work success story

Without the right components, a return-to-work program will not deliver the desired results. Companies with successful programs typically:

- Develop written policies and procedures.
- Communicate the program to employees at all levels of the organization.
- Maintain current job descriptions that outline the physical demands of various jobs and the work environment.
- Develop an inventory of transitional work activities and options for key positions.
- Contact the insurance company as soon as possible after an occurrence.
- Conduct a thorough investigation to determine what caused the accident and make workplace adjustments to prevent similar accidents.
- Maintain regular contact with the injured employee throughout the course of recovery.
- Encourage employee participation in transitional work assignments throughout the healing process.



² "Workplace Injury and Illness Summary," (press release) Bureau of Labor Statistics, Oct. 25, 2012.



+ Case Study

Return-to-work creates a business opportunity

A contractor that specialized in large telecommunications and utility relocations for road and infrastructure improvements was averaging 1-2 lost time workers' compensation claims a year with an experience modification rating (MOD) of .89. The company had been experiencing a slow increase in this rating. New changes in how MOD is calculated threatened to push this contractor's rating over the 1.0 threshold, which would affect the company's ability to successfully bid on new business.

The owner decided it was in the company's best interest to set up a process to get injured employees back to work on transitional duty. To start the process, the contractor brought the injured employee back to handle duties, such as utility locate coordination, which the owner had been handling himself. This meant that these important duties were now monitored on a daily basis. This also freed the owner to visit job sites and bid on new work.

This move was so successful that when the employee returned to work on a full-time basis, it was in a newly created position that incorporated the transitional duties. The new emphasis on utility locate coordination reduced downtime from line strikes and saved claims / utility repair dollars, which easily paid for any return-to-work costs and made his employees and public safer.

Additional resources

CNA provides a broad array of resources to help your company develop and maintain a workers' compensation process. You will find these and other resources at www.cna.com/riskcontrol.

Online calculators

These electronic tools can show you the difference that a timely notice of loss and transitional work option can make in containing your workers' compensation expenses.

Return-to-work materials

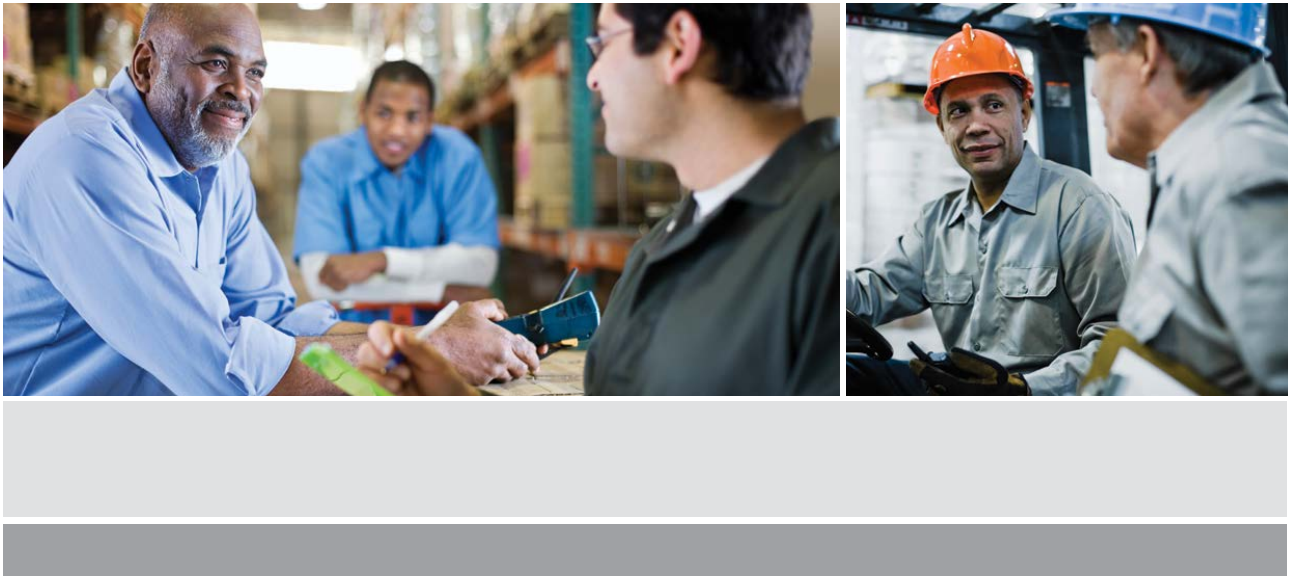
CNA offers an array of materials that can help your company start a return-to-work program or improve an existing one. These include educational brochures, job descriptions, a preferred medical provider locator tool and other materials to help guide the process when an employee is injured. Industry-specific materials are available for contractors and manufacturers.

Self-audit return-to-work worksheets

An excellent starting point for assessing your company's return-to-work readiness, the worksheets map out the effectiveness of your return-to-work program.

Your risk control SORCE®

From a small business to a large commercial enterprise, exposure to risk can result in business loss and interruption. CNA's School of Risk Control Excellence (SORCE®) can educate you in industry-leading loss prevention, risk management and risk transfer techniques. SORCE® *On Demand* provides instant access to our library of risk control courses.



To learn more about how CNA can help your company improve productivity while preventing employee injuries, please call us at 866-262-0540 or visit www.cna.com.



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Quick Tips on Acquiring Clients

Personal Tips

- Be confident.
- Go where the non-lawyers are.
- When asked what you do, don't say "everything."
- Let everyone know you are a lawyer.
- Try to target your practice area.
- Be wary of marketing services.
- Make sure your contact info is on website.
- Charge slightly less than established firms.
- Don't tell people you are new unless they ask.
- Join Meetups for entrepreneurs or groups related to your practice area. Give a presentation.
- Volunteer for civic associations.
- Join groups of interest to you.
- Volunteer to give a CLE presentation at your local or state bar.
- Be a problem solver for existing clients (beyond representation).
- Develop contacts with large firms which often refer matters due to conflict.
- Become acquainted with practitioners in complimentary or shared practice areas.
- Avoid meritless cases.

Online Tips

- Claim your identity on social media before someone else does.
- Separate personal and business online lives.
- Actively contribute to your business social media accounts.
- Create a positive online presence through websites under your control.
- Be careful about creating a positive online presence on websites over which you have no control.
- Address negative online issues immediately through removal of offending content. If removal not possible in the event of a website over which you have control, draft a response that is appropriate for the site. Be mindful of your attorney-client responsibilities when responding.
- Create a simple website for your firm. Use keywords to increase viewers of your webpage.
- Volunteer to guest post on trade, client or lawyer centric blogs.

Other Useful Items

- Have a retainer contract ready before you meet the client

Client Communication Checklist

- Effective client communication starts before representation.

Conflict Check And Declining Representation

- Before accepting the matter, determine whether you can deliver conflict free counsel through conflict check.
- If conflicted, send letter declining representation.
- Don't feel compelled to take any case. Consider the merits of a client's matter, the client's goals and whether you can achieve them.
- Create easily accessible client contact info along with opponent and court contact info for each matter.

Engagement Letter

- Draft a form retention or engagement letter.
- After accepting representation, send engagement letter which includes:
 - Scope of representation
 - Fee arrangement
 - Explanation of how expenses will be handled and who pays them
 - How and with whom you will communicate.
 - Method of communication.
 - Handling of retainer fee or deposits

Returning Calls And Messages

- Never have full voice mail boxes.
- Set regular time to respond to email and phone calls.
- Return client's inquiries, even if there is nothing to report, no later than a week - the earlier, the better.
- Better yet, call you client before they call you.
- If you can't return a client's call or message, acknowledge their inquiry with an email that you will be in touch as soon as you are able.
- Be wary of creating an expectation of 24/7 availability.
- Think twice about giving your client your cell phone number.
- Think twice about texting your client (never use texting for substantive discussion).
- Advise clients of anything with a date on it.
- Bad News? Get it over with, even if the bad news is that nothing has happened.

Preserving Communications

- Memorialize oral communications via email to you and your client.
- Follow "Delete, Do, Delegate or Delay" rule for all email.
- Save and sort emails for each matter.
- File hard copy communications, or scan and save electronically.

File Closing

- Send closing letter to client and return original documents

Client Disputes

- Charge only reasonable fees.
- Even if the client has not paid you, never hold the file hostage. The file belongs to the client.
- There is no such thing as nonrefundable fees.
- Consider LSBA fee dispute arbitration program to resolve fee disputes.
- Consider the return of a fee in certain cases.

Time and Billing Checklist

- Put your fee agreement in writing, and explain how expenses will be paid. Consider adding in the letter that withdrawal may occur for nonpayment.
- Consider a cloud service for tracking time and billing.

Tracking Time

- Track all time, even if time is unbilled later.
 - ♦ Whether hourly, contingent, shared fee arrangement or retainer, record your time.
- Record contemporaneously, if possible.
 - ♦ Use mobile apps to capture time on the run.
- If unable to record time contemporaneously, email yourself time entries.
- Include complete description of services rendered.
- Get a thesaurus.
- Develop time entry vocabulary.
 - ♦ Avoid saying “research,” consider analyzing instead.
- Tell a story of your service through time entries.
- Avoid billing large amounts of time with long narratives.
- Don’t charge for clerical time, five minute phone calls or calls about your bill.
- Avoid abbreviations and legalese.
- Document everything – best evidence in the event of a dispute.

Billing

- Bill regularly and accurately (not three months after work performed).
- Consider sending bill before trial or mediation to foster productive settlement discussion.
- Keep accurate records about expenses and costs (filing fees, expert witness fees, mailing costs, deposition costs, etc.)
- Account to client regularly regarding funds in trust.
- Resolve slow or no payment quickly.
 - ♦ If you need to part ways for nonpayment, do so before bill gets too high.
- Send bill to the right person.
- Don’t charge for inquiries regarding your bill.
- Consider not charging for copies or messenger services.
- Don’t send a bill when client is unaware that you have done anything in the case.
- Consider discounted bills when appropriate, indicating value of the services that you are discounting or comping.
- Put a due date on your bill.
- Consider LSBA Fee Dispute Arbitration program to resolve disputes about fees.

Do you need a conference room for a meeting or mediation? LSBA members can book rooms at the Louisiana Bar Center at no additional cost!



- ▶ Centrally located in the New Orleans CBD in a historically significant building across from Lafayette Square, 601 St. Charles Ave., next to Gallier Hall
- ▶ Free Wifi
- ▶ Wheelchair/ADA accessible
- ▶ Newly installed state-of-the-art video conferencing system available upon request
- ▶ Screens, monitors and projectors available in every room
- ▶ Refreshments available

For more information or to book a room on a first-come, first-served basis, visit www.lsba.org/goto/meetingrooms or call Mike Montamat, LSBA Operations Coordinator, at (504)619-0140.

A complimentary benefit of membership in the Louisiana State Bar Association!



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