

MORE

Secrets of
The Business
of Law[®]

**Ways to Be More Effective,
Efficient and Profitable**

by Edward Poll

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Starting Off on the Right Foot

“As the proverb says, ‘a good beginning is half the business’ and ‘to have begun well’ is praised by all.”

— Plato

“What you have to do and the way you have to do it is incredibly simple. Whether you are willing to do it, that’s another matter.”

— Peter F. Drucker



Opening Your Own Office: What Will It Cost?

Like many lawyers today, you might be feeling a call to go solo, to open your own office, and to build your own destiny. It's a tough decision to make. And as those who make it know, there's so much to do and so little time to do it, it's hard to know where to start should you choose to set out on your own. To help guide your thinking, let's take a look at the major expenses of opening a solo practice.

Office Space

Obviously, you need a place to practice. Today, there is more than one option. First, you can work out of your home. This is the least expensive route since you are already paying rent or a mortgage, and you will not have to duplicate the expenditure by renting separate office space. But there are distinct disadvantages, such as being out of the mainstream of lawyer and client contacts, as well as having to convert living space into an office that is separated in an effective way so that you can concentrate and perform your work. This approach may also increase your marketing expenses by increasing your travel costs to reach clients and compelling you to go outside of your home to a restaurant or other facility to meet clients and prospects as well as to interact with other attorneys.

Another solution is to rent barrister or executive space from landlords who specialize in short-term rental agreements with lawyers and other professionals. The cost of this space is less than that of a full suite of offices, but more than the cost of working out of your home. In an executive-space arrangement for an office and secretarial bay, plus a telephone, library and photocopy services, figure on about \$2,500 per month. Since each geographic area has its own cost scale, use this figure only as a guide or starting point.

Yet another option is renting an office in an existing law firm on a month-to-month basis. The law firm reduces its cost of operation this way, and, depending on the practice areas of both the sub-tenant (you) and the tenant (the law firm), there may be an opportunity to refer work back and forth. Also, in this arrangement you may be able to offer a certain number of hours per month (10, for example) in exchange for the space. This approach would clearly reduce your monthly cash outlay.

Equipment, Supplies and More

After you've obtained the space, you'll need to furnish it. In some cases, you will be able to rent a furnished office. If not, you'll need to either rent or purchase furniture. That furniture will include your desk and chair, client chairs (two minimum), a couch, filing cabinets, side table and other related items depending on the size of the office and your personal taste. (Suggestion: Do not use your couch and chairs to store your "active" files, no matter how tempting!)

If you are in your own office, as opposed to a suite with other professionals, order the requisite number of telephones: your primary office phone on your desk, another phone on the side table in easy reach for your clients to use, and a phone for the receptionist. Use a phone system with all the bells and whistles and learn how to use them; this will make you money! The telephone is the least-expensive mode of marketing. Pay attention to both it (the phone system) and your telephone policies.

Start-up costs also include stationery and other office supplies. Don't scrimp on stationery or business cards; these items should convey your professionalism to the world. They are often your image before the prospect ever sees you. About \$500 should be sufficient here for your initial supply, perhaps slightly more if you include printed announcements.

Library costs used to be a large expense item. Today, you can get much of your research needs without books (and without the real estate space to house them) by contacting Thompson West, Lexis, Loislaw and others for electronic access to huge libraries of information. You may still want to acquire some books in hard copy and keep them close to your desk for frequent use. These include form books, treatises in your specialty practice area and the like. The space required for these books will be substantially less than in earlier days.

Technology represents one of the largest start-up costs. The latest and greatest versions of a computer (PC or laptop with built-in fax), printer, monitor, scanner and related items can, depending on your needs, be purchased for less than \$5,000. This hardware typically comes with some software for word processing, spreadsheets and other basic office applications already installed.

Other software requirements will vary depending on your needs. The price can go from a few hundred dollars for the basics, including QuickBooks or another accounting package or practice specialty item (family law, for example), to several thousands of dollars for technical or uniquely specialized programs (litigation support programs and so on). And here, don't be fooled by the initial cost of the software. The real and larger cost is the time and effort required to learn how to use the software effectively and efficiently. Also, don't forget to add in the time necessary to get staff over the initial learning curve.

Let's turn to the Internet. Clearly, in today's world, you need to be connected. While this charge may not be more than \$50 per month, that is just the first step. You should build a Web site and maintain it. The design cost here may be as little as a few hundred dollars or as much as \$10,000, depending on the nature of your practice and the level of sophistication of your prospective clients; the greater their sophistication, the greater must be the sophistication of your site. And then there is the monthly or yearly site maintenance fee that should include periodic, but simple, changes to the site. This may cost another \$100 and up per quarter. A very valuable feature is the capability to make content changes yourself instead of having to go back to your Web programmer each time. But this functionality must be built into the site from the beginning and does make the initial cost of the site more expensive. And, again depending on your prospective clientele, you may need

to get into the more sophisticated, and more expensive, intranet capability.

“Road warrior” equipment such as cell phones, personal information managers (PIMs), personal digital assistants (PDAs), related portable peripherals and the like can also add significantly to your expenses. Even combining a cell phone and a PDA can, by itself, still cost a few hundred dollars in today’s market. The monthly charges to operate these units can vary significantly depending on your usage.

Insurance

Before you open your doors to business, there is another major expenditure: errors and omissions insurance. Many lawyers are not currently attracting enough business in terms of fee-paying clients to meet all their expenses on a regular basis. They are thus forced to go without malpractice insurance, also called “going bare.” If you have nothing to lose, or if you have no assets such as a house or securities account, then your downside may not be that great if you are sued by a client and have a judgment entered against you. However, this is not an appealing prospect.

It is better to carry an insurance policy. Consider it just another cost of doing business. If you’re a new lawyer, there are insurance companies that provide coverage at nominal rates because they figure you don’t have a long history of mistakes behind you, and you’re probably as current with the law as anyone can be, having recently left law school. If you’ve been in practice for a while, the cost of the insurance coverage may be upwards of \$2,500 per year, depending on your practice area.

Other important insurance policies that should be considered are: general liability, sexual harassment, and business

interruption. These three, separately or together, will add to your protection and should cost from \$500 to \$1,500 total.

Employee Compensation

While you could practice truly alone for a while, you will eventually want a secretary and, hopefully, a filing clerk and paralegal. In the early stages of your practice, staff personnel can be hired on a part-time basis for, say, 20 hours per week, spread out during the week.

Later, you may want to engage another attorney, without the concomitant overhead. One way to do this, at least until you bring in enough work on a regular basis to afford hiring a full-time associate, is to hire contract legal work. There are lawyers who, for lifestyle or other reasons, don't want to work full-time. They are good lawyers and are willing to work for fees in the area of \$50 per hour. When you can charge your clients \$100, or more, for this work, you are way ahead of the game. You not only save on overhead, but you avoid a long-term commitment before being ready to make it because of the lack of certainty of repeat business.

Marketing Expenses

Another out-of-pocket expense item is the cost of marketing. Marketing, also called "practice development," simply means getting and keeping clients. Advertising, developing and distributing brochures and announcements for your practice, travel and entertainment to network with prospective clients, public speaking, leading seminars, publishing newsletters, maintaining a Web site ... these are all marketing activities. And they all cost money.

While marketing is an essential part of starting and maintaining a law practice, the key to controlling its costs is this: Marketing has to be carefully planned. Don't make

decisions to spend money on advertising or brochures on the spur of the moment. A well-conceived marketing plan takes into account the firm's goals and direction and considers all marketing options in coming up with the most appropriate strategy.

The Cost of Accounts Receivable

Another expense in starting a law practice that is little discussed is the impact of creating and carrying accounts receivable. The average length of time it takes a client to pay a lawyer's bill is about 120 days, according to several statistics I've seen. Let's see how this develops.

First, it takes you 30 days to do the work and get a billing statement out of your office, assuming the best of circumstances. It will take the client at least 30 days to process payment. That's 60 days. And if it takes you, or the client longer to process the statement or payment, *voila*, you're at 120 days. There are ways to reduce this figure, but let's work from the average so we can assure your survival and success. Thus, for at least the first four months, you will not be collecting any revenue! And that assumes that you can get a fee-paying, economically viable and satisfied client on the first day (or at least the first few days) of opening your door. This absence of revenue, while not an expense, must be considered in determining the cost of opening your law office.

One way to soften this blow is with a reserve of funding. Whether from savings or a loan, a good rule of thumb is: After your initial start-up costs, have a reserve of money equal to your anticipated first six months of cash outflow. That amount should be calculated by using both the office expenses anticipated and your living expenses (taking into account that there will be no compensation from the law practice during this time).

Keeping Track

All this expense (and revenue) information should be plotted onto a spreadsheet month by month for the next 18 months, and maintained on a rolling calendar basis. When you get the information for last month and compare the actuals with the projected, you then go to the end of the 18 months and add the next month, thereby always maintaining an 18-month projection.

Psychologists tell us that we tend to achieve what we visualize. Or, said from the perspective of the avid cyclist that I am, my bike tends to go where I look. If I look only at the road directly in front of my wheel, I can easily crash. If I look farther down the road, I will reach that spot even if there is a curve in the road.

Needed Support

A final cost consideration for opening a law office is not really financial in nature. You must have the support of your family, your spouse or your significant other. Without their emotional support, you will not have the peace of mind necessary to succeed. Do not dismiss this aspect as being assumed or insignificant. With the emotional (and sometimes financial) support of your loved ones, you can conquer the world. ■



How to Write an Engagement Letter: Avoiding Problems from the Start

The best time to ensure a healthy lawyer-client relationship is at the *beginning* of the engagement. That's why it is a fundamental business and professional necessity that lawyers have a signed engagement letter for a new client, stating each party's responsibilities for making the engagement a success. You will have an easier time meeting your client's expectations and collecting your fee if you incorporate all essentials in this critical document. Make sure clients understand that they're entering a two-way relationship. The lawyer

agrees to perform to the best of his or her ability in accord with professional standards, and the client agrees to communicate and cooperate fully—which includes paying the bill.

The Basic Points of Engagement

At a minimum, the following points should be covered in the engagement letter, with both lawyer and client stipulating and agreeing to the facts stated:

- Who the lawyer is representing
- The scope of the representation—what the lawyer will and will not do
- The fee to be charged and how it will be calculated
- When the fee is to be paid
- The consequences of non-payment, including the lawyer's right to withdraw
- Budgeting and staffing
- Frequency and method of communications from lawyer to client
- The client's responsibilities, including payment in accord with the agreement
- Dispute resolution procedures if either party to the engagement has a dispute with the other
- Resolution of conflicts of interest or other ethical issues

This list is heavily weighted to the financial side, for good reason: Stipulating payment rates and terms up front is the best way to get paid.

Budgets

In every engagement letter, indicate that you will formulate a budget that addresses events, time and money; that the client will pay for such a budget; and that the client will accept it before further work is performed. This significantly increases the chances of collecting your fee because the client understands what to expect.

Ancillary Expenses

Every ancillary charge should be specified in the letter. However, be aware that even if your agreement with a client lets you charge for opening a file on each matter or for photocopying a file before giving it to a client on request, clients may resent perceived “nickel and diming” on charges they consider overhead.

Communications

Communication, or lack thereof, is the single most cited reason for client dissatisfaction. The engagement letter should state explicitly that you will notify the client in advance of any major expenditure, especially those not included in the approved budget. If you suspect a slowdown by the client in connection with payment of your fees is due to client dissatisfaction, immediately confirm your suspicion and find out why the client is unhappy.

If returned phone calls within two hours are part of your regular hourly rate, tell the client that your response time will be 24 hours at a lower price. When you get agreement on things like this up front, your chances of collecting your fee go up significantly because the client understands what to expect.

Trust Accounts and Retainer Fees

Another crucial area for stipulation in engagement letters involves trust accounts. Flat fees or retainers can be withdrawn from a client's trust account as specified in the engagement agreement. Withdrawal can be predicated upon reaching specific events such as: a date certain, the filing of a complaint, or the signing of a settlement or merger agreement.

Even retainer fees can be deposited into a general account if the agreement says that the retainer is not for future work but for the lawyer specifically being engaged (and thus taken off the market). Some lawyers will split the fee, making part of it a nonrefundable retainer and placing the balance into the trust account for withdrawal as the work is performed. This method makes a clear distinction between the two elements, again as specified by an event or date that triggers a withdrawal from the trust account and places it into your general or operating account. This avoids waiting for the client to say "yes" after the fact and allows you to get the money sooner.

Get It Right from the Get-Go

Going through the process of negotiating with the prospective client to prepare the engagement letter and detailing the service to be provided can avoid unrealistic client expectations or demands. Your client will also understand that your estimates, whether of time or outcome or costs, are not guarantees but only informed estimates.

Note also that discussing engagement terms will frequently uncover the client who will express irritation with delay, who will chronically complain about everything, who will demand constant or instant attention, or who expects unrealistic or abnormal handholding.

Clients who cannot or will not discuss or agree on fees, or who will not sign a fee agreement or pay a retainer, should be suspect. Clients who want to start now and pay later, or nitpick over the fee, may be broadcasting a subsequent fee dispute or claim. Beware also of clients who do the following:

- Insist that their matter is “life and death”; such clients will often be future sources of last-minute emergencies that at best are irritating and at worst can result in errors under pressure.
- Use pressure tactics to urge that their matter be handled first once the engagement begins.
- Demonstrate a bad attitude toward lawyers and the judicial system, or suggest that they know better than the lawyer what needs to be done.
- Cannot articulate what they want you to achieve.

Rejecting such clients before representation will minimize the aggravation of fee collection difficulties as well as possible malpractice claims. The time to make it clear is right at the start—as revealed in preparing the engagement letter. ■



Collaborate with Clients on the Budgeting Process

Effective preparation of an engagement agreement is crucial to avoiding future disagreements with a client, especially over payment. In that light, preparation of a budget is central to any good engagement agreement.

Studies show that virtually all Fortune 500 companies have a written strategic plan (compared to fewer than half of even the most successful smaller companies). Accordingly, since budgets are the essence of a plan, any lawyer's corporate clients in particular will welcome (and should pay for) a clear and specific budget before starting a new matter.

The Elements of Collaboration

Budgeting begins by getting as much information as possible from the client about goals and expectations. Information should cover parties, claims, anticipated strategies and desired outcomes. “Winning” may not be one of them. A client may wish to delay the final outcome for political or financial reasons, for example, believing that a continued threat of litigation may bring a negotiated resolution. Understanding the client’s objectives is the prerequisite of the budgeting process. Remember, the key here is not just preparing the budget, but involving the client in the preparation.

The client should also formally approve the final budget. Without client buy-in, the process is meaningless. Such assent minimizes difficulty in securing payment at the end of a matter.

Note that budgeting the representation does not translate to a fixed fee. A budget can only be an estimate of what’s going to happen. The lawyer should not strive for the highest possible fee; the client should not desire the cheapest lawyer in town.

The budget document should be periodically reviewed, with the client again approving any necessary changes. Clients should also receive ongoing information on how much they have already invested in the litigation, negotiation or transaction.

The budgeting process, including all subsequent communication, must be a collaborative effort. If the parties can’t trust one another, if the client and the lawyer behave as adversaries, the representation will likely be unsuccessful and there will likely be difficulty in collecting the fee.

Collaboration means communication. Because lawyer and client will each have unique information at any given time,

both must advance the process together. Honesty, openness and candor right from the start will make the entire representation easier and more successful.

The Process in Action

Several years ago, an assistant general counsel for a major multinational corporation gave me an excellent example of how the process should work. By creating a budget, she said her company saved close to a half-million dollars in one litigation. I asked her if they achieved that result by negotiating a reduction in the hourly rates of outside counsel. She replied that it simply required deciding during the budgeting process not to do things the law firm might otherwise have done.

For example, the law firm suggested taking 30 depositions. The general counsel reviewed the proposed individuals and decided that only 19 could provide useful information. The law firm expressed concern over being accused of negligence or malpractice if one of the canceled depositions proved to be a key information source. The client responded by saying, “We are in the business of taking reasonable risks. If we agree on what should be and what need not be done, and something goes wrong later on, that’s our responsibility, not yours.”

The result was agreement, lower costs and a successful engagement—a win-win situation by anyone’s definition. ■