Law Office Management Overview

More than 50 percent of complaints referred to the State Bar of Arizona are categorized in areas that often involve office management practices and procedures, such as inadequate communications, lack of diligence, disputes regarding scope of representation and fees, errors in declining or withdrawing from cases, conflicts of interest, and trust account management. Attorneys are suspended or disbarred each year for offenses arising from these areas.

These materials will focus on ways in which attorneys can begin the ongoing process of establishing good business procedures that will enable them to provide the best possible voice for their clients. We begin by focusing on how a lawyer can develop systems that specify for each client matter

- the steps involved in the representation;
- the order in which these steps will be performed; and
- the person or persons responsible for assuring that these actions are carried out.

But first ... a few words on hiring and managing the personnel who will help you carry out these procedures.

Even if you operate your office on a shoestring or if you’re a technology whiz, you may want to consider hiring at least part-time clerical, receptionist, and bookkeeping help. Why?

1. Your clients or potential clients will always have someone at your office they can talk to;
2. You will have considerably more time to devote to the practice of law, and consequently, you will be more productive;
3. Secretarial and other clerical work can involve a high level of skill, judgment and attention to detail. Unless you have a background as a secretary or bookkeeper, you may do these jobs poorly.

Be aware, however, that you will not “save” an hour for every hour a staff member performs tasks you would otherwise have to do. You must, on an ongoing basis, devote time to training and supervising the work your employees do.

Hiring

Most lawyers must be frugal in hiring staff, which results in the need to do some careful analysis of your needs and desires before you bring an employee in the door.

1. Analyze the duties that require a law license to perform, then analyze your own strengths, weaknesses, likes and dislikes among those duties that don’t. If you type 100 words per minute, it may not be productive to hire a person whose typing speed is lower than yours to draft documents – unless you hate to type and are proficient at dictation. You may need
someone to assist only with phones, calendaring, filing and copying. If you hunt and peck at
the keyboards, however, a skilled typist may be just what you need. If your budget requires
that you make some tough decisions about staffing, it’s usually more productive to
supplement rather than duplicate your own strengths.

2. Once you’ve determined the tasks you want accomplished, determine the skills an employee
must have to do the job and those that would be desirable but not essential. Use this
information to prepare a job description you can share with applicants. It also will help you
write your ad.

3. Determine before you run an advertisement the benefits you can reasonably provide and the
hours you need assistance.

4. Draft a list of acceptable interview questions.

5. When offering employment, make clear that the first 90 days constitutes a trial period.

6. Avoid implying employment is “permanent.”

7. Give the employee written information on your policies, procedures and expectations right
away; give him or her time to read it, invite and answer questions, then ask the employee to
sign an acknowledgment. It’s a good idea to assemble this information into a personnel
handbook, but a notebook containing all memos or other written forms concerning
procedures is a good start.

**Managing Personnel**

Learn how to delegate and use employees to their fullest capabilities.

1. Attorneys sometimes have what’s known as a “control problem”; not all are good at
delivering lower level tasks so they will have time to pursue higher level
responsibilities. If your employees are competent and well-trained, you should expect
them to be able to do what they’re assigned—typing, research, bookkeeping, etc.—
without constant checking and review. This doesn’t mean, however, that you do not
need to supervise the work of even your most experienced and competent staff.

2. Employees can be busy without being used to their fullest. With the goal of freeing up as
much time as possible for you to practice law, you might consider:
   a. Using secretaries to perform administrative tasks;
   b. Using paralegals for research and interviews; and
   c. Using secretaries or other support staff to field routine inquiries.

3. The “team” concept: Introduce your staff to the client immediately. Let the client know
how much confidence you have in your staff’s ability to perform for the client.
   a. Enhances perception of overall office competence;
b. Reduces phone calls and interruptions to the attorney; and

c. Improves employee morale; underscores their importance to your office and your clients.

4. Develop written policies and procedures for your employees, so they know exactly what you expect of them. Written information on procedures is especially valuable with new employees, when someone has to fill in for an absent employee or if you are frequently unavailable to answer questions.

   a. Ensures consistent treatment among employees;
   b. Ensures consistency and accuracy in performing tasks with established procedures;
   c. Prevents ad hoc decision-making from becoming “tradition” and thus policy;
   d. Provides a framework for dealing with employees’ problems – or problem employees; and
   e. It’s never too soon to begin developing official policies—even if your total staff so far is one part-time secretary. It’s never too late, either!

Client Selection: Before the Representation

Providing the best possible voice for your clients depends heavily on your ability to select the right type of work for your knowledge, skills and resources. There are no sure-fire rules that will guarantee you will never accept a representation you later regret. However, client selection is a skill that can be learned and that improves with practice.

   1. Look for “red flags” and listen to your instincts.

      a. If you can’t communicate well with the potential client at your first meeting, it’s unlikely to get better under the stresses that inevitably occur during handling of a case;
      b. Does your client display classic signs of a potentially difficult client – is unable or unwilling to pay a fee advance; his/her goal appears to be revenge; his/her goal appears to be based on “principle” without regard to economic reality; desires an unrealistic result; has come to you after firing other lawyers on this matter, etc.?
      c. Do you have the expertise and experience needed to handle the case, or can you reasonable obtain it?
      d. Do you have the resources to perform the work? – this includes your time, as well as technological and human resources?
      e. You should prepare a case “schedule” outlining what activities will be due at what time – this not only helps to determine whether you have the time available to accept the case but can help predict the cash flow throughout the case, which also is important in determining whether you want to accept it.

Client Intake: Beginning the Representation

   1. Firms need to set out who has primary responsibility for setting up a new client’s file, including performing a conflict of interest check before undertaking representation;
2. Firm should also prepare new matter report (intake sheet) for client file; and

3. Written fee agreement and/or retention letter should be prepared and a tickler should be created to assure it is received back, signed if necessary, from the client. Information provided to the client should include:
   a. General statement of the matter you will be handling;
   b. The scope or limits of the representation - i.e., what the agreed-on fees include;
   c. What you will be attempting to accomplish for the client;
   d. How will you communicate with your client and how can he or she can reach you in an emergency;
   e. How fees will be assessed, including a statement of minimum fees and/or hours; any activities that, if they materialize, will result in additional fees;
   f. Your client’s responsibility for payment of fees and costs and for cooperating in the preparation of the case, including keeping the attorney advised of a current address and phone number;
   g. Warning that delay or failure to cooperate on the part of the client may prejudice client’s rights;
   h. Reminder to client that the attorney makes no guarantee;
   i. Your policy regarding handling of client’s file and any documents at close of matter; and
   j. Written acknowledgment by client that he/she agrees to terms of representation.

Scheduling

Develop a system, manual or automated, to record all appointments, deadlines, statutes of limitations, etc. as well as “ticklers” for each important event.

1. Calendaring system must be understood and followed rigorously by all employees to be of any value.

2. Important to consider who will be responsible for calendaring, who will be the backup person if the responsible person is absent; and whether any other employees will be permitted to change the calendar.

3. Calendaring system should also check for redundancies, scheduling conflicts, cases where one attorney could cover for another, etc.

4. Any calendar, automated or manual, should have a backup system in place. Even if you use only manual calendars, there should be more than one. A manual calendar could be lost, stolen or rendered unreadable by office emergencies such as water leakage. If you use an automated system and do not have a spare computer or server to which your calendar can immediately be restored, it’s a good idea to have a printout of activities and reminders for at least the next week. If your hard drive become inoperable and you do not have another computer to which you can immediately restore, it might take a few days to repair or replace your computer or server before you can restore your data.
5. All active matters should have at least one tickler in the system, even if it’s a date arbitrarily established for file review. This is to assure that no matter is overlooked or sits too long without attention.

Time Management

Few attorneys have enough time each day to accomplish everything they would like. Technology offers many opportunities for lawyers to complete more work in the same amount of time. No software program or management system, however, will enable the attorney to handle infinite volume. Any system can be overwhelmed by volume. For that reason, time management remains an important skill lawyers must develop.

1. Develop a system to set priorities for calendared work, tied into and based on your docketing system. There’s a piece missing in your system if you set a “to-do” to work on an upcoming hearing as a high priority but you have neglected to set a tickler in your docket reminding you of this upcoming critical date.

2. Work with your staff to create blocks of time for major tasks. Remember that you also must allow time for staff to complete their part of the project. Start as early as is practical. Extreme time pressures invite errors. Save the crunches for events out of your control, not for poor planning.

3. Keep meticulous records of all your time. You may not know at the time the work is done whether or not you will bill for it later. Record it anyway; you can always decide later that it is non-billable. If you are billing matters as flat fees, collecting data on what it costs you (time) to do the work is crucial to setting your fees at a level that will yield a profit. On contingency matters, it’s valuable to determine the profitability of particular kinds of cases. It also may be necessary to determine if your fees were reasonable for the circumstances, or a client may terminate your services (or vice versa) before the case proceeds to its normal conclusion, requiring you to determine the value of your services prior to termination.

4. Record all “legal” but “nonbillable” time:
   a. Reading law reviews and case summaries;
   b. CLE work;
   c. Pro bono work;
   d. Developing new business; and
   e. Maintaining client relations.

5. Record all “non-legal” time as well:
   a. General administrative (ordering supplies, talking to vendors);
   b. Paying bills and bookkeeping;
   c. Collection of money due you; and
   d. Managing, training and supervising your staff.

At the end of a week or month, review these time categories to see whether you are spending too much or too little time in certain areas. Sole practitioners in particular are often amazed by the amount of time their records show they are spending on routine clerical or administrative chores.
This information is valuable in periodically re-assessing whether you need clerical support and, if so, of what quantity and type.

**Communication**

Nothing is more important to good client relations than accurate, understandable and regular communication. In fact, poor communication can also have an impact on the attorney’s ability to handle the case from a legal standpoint.

Poor communication can lead to a minor problem being perceived as major. Excellent communication can make a major problem more manageable.

Ideally, communication with the client should be a part of every action the attorney takes. Communication involves (at a minimum):

1. Making sure the client understands the scope of the representation;

2. Making sure the client understands what fees will be charged, when, why, and how they will be applied;

3. Making sure the client understands how trust money will be applied;

4. Making sure client understands whether fees are refundable or nonrefundable;

5. Making sure client understands what additional actions on his or her part are necessary for prosecuting the matter (additional documentation, last attempt before suit to come to terms with opposing party, etc.);

6. Making sure the client understands there is no guarantee as to outcome;

7. Making sure you understand exactly what it is the client wants you to do;

8. Keeping the client informed of the status of the matter, including communication at regular intervals even if nothing has happened;

9. Making sure the client is aware of how developments may affect the anticipated outcome of the matter;

10. Returning all client phone calls within a reasonable time or assuring that a staff member has done so; a client should never have to wait longer than 48 hours for a response, and client relations considerations often dictate a much shorter response time;

11. Sending client copies of all relevant correspondence you receive or send;

12. Sending client copies of all court documents generated during the course of the matter; and
13. Updating client regularly, even when no money is owed, on how many hours have been billed, what services have been performed, what money for costs have been paid from the retainer, etc.

**Handling Client Funds**

Keeping track of and protecting client funds

1. All staff should be familiar with trust accounting rules, not just attorneys and bookkeepers.
   a. For receipt of funds;
   b. For disbursement from the trust account; and
   c. For closing out a client ledger at the end of the representation.

2. Be aware that safeguarding of client property may involve more than just funds in a trust account. Firms may need to set up safe deposit boxes for this property.

3. Attorneys are responsible for ensuring the appropriateness of disbursements and the availability of funds for the particular client before signing trust account checks, regular review of client ledgers, reviewing monthly reports of reconciliation of ledgers and transactions register with the bank statement, and closing of matters.

4. Disbursements should be made with sequentially numbered, pre-printed checks or, by electronic transfer, clearly identifying the transaction on the client ledger and general ledger. Do NOT withdraw money out of your trust account using a withdrawal slip or an ATM/Debit card.

5. Be sure your account checks bear the notation “IOLTA Account,” “Client Trust Account,” or similar designation.

6. Order checks and deposits slips for the IOLTA account that are different from the operating account, such as the style or color.

7. Be aware that receiving a non-sufficient funds (NSF) notice from your trust account bank will lead to an automatic disciplinary investigation.

8. Be aware that making disbursements from your trust account that are inappropriate, such as paying your bar dues or enrolling for a CLE program, may lead to a disciplinary investigation.

**Handling Other Office Accounts**

Even though the money in an operating or office account belongs to the attorney or the firm rather than to clients, attorneys should, for business reasons, devote the same care and concern to their general office accounts as they do to their trust accounts.
1. Failure to properly segregate business funds, withhold employee and other taxes, etc. can result in violations of state and federal laws and IRS regulations.

2. Bouncing checks—even when they’re not trust account checks—could lead to discipline by the Bar, because writing a bad check is against the law.

3. A law firm is a business, and just like any other business, it will fail if its principals do not have firm control over their profits and losses. Attorneys should set up accounting procedures that properly account for all assets and liabilities, so they can track and control profits and losses. This is useful in practices of all sizes.

4. Many excellent and inexpensive software programs are available to help manage small business accounts. Some come with built-in sample charts of accounts for law firms built in.

**Billing and Collections**

It does not matter how hard you work if you are not timely sending out accurate bills for your work, and it does not matter how much you bill if you are not collecting your bills.

1. Develop a billing system that:
   a. Enables attorneys to easily adjust bill or billing structure to fit client or situation;
   b. Sends bills out at regular intervals or on demand;
   c. Customizes bills to clients’ needs and wishes;
   d. Tracks payment and payment histories;
   e. Makes one person or group of people specifically responsible for assuring that bills are sent out and that money is collected.

2. Setting Fees
   a. All businesses must carefully consider prices to be charged and develop a specific fee policy; law offices are no exception;
   b. Consider alternatives to hourly billing
   c. ALWAYS USE WRITTEN FEE AGREEMENTS.

3. Billing Clients
   a. If possible, set a billing schedule appropriate for particular client; if your system can accommodate it, allow the client to select the billing or payment date;
   b. Most clients strongly prefer detailed bills;
   c. Send informational bills showing services performed even when no money is due; bills are not only a means to collect money, they are a great communication tool;
   d. Require advances against fees—the easiest way to get paid is to already have the money and transfer it (disbursement by pre-numbered check or wire transfer) from your trust account to your operating account as it is earned and billed. Many clients are aware that it is common practice for attorneys to ask for money in advance.
4. Collection

a. Make collection part of a particular employee’s responsibilities and include this duty in your office procedures;
b. Make sure you regularly review the status of your accounts receivable, including how quickly bills are paid; identify slow and non-paying clients and develop a plan to address specific situations.
c. Last-resort options to collect:
   (1) Assignment to collection agency;
   (2) Filing suit (if representation concluded or attorney has withdrawn).
   NOTE: Be aware that these last-resort options for collection may increase the possibility that a client will file a bar complaint or a malpractice claim. Be sure before making this decision that your file is well documented with evidence that the case was properly handled, that fees were reasonable for the work done and that you regularly issued accurate bills to your client for the work.

5. Take advantage of technology for monitoring and taking action regarding your accounts receivable. Many attorneys fail to take action on their accounts receivable early, when the possibility of collection is highest, because they feel they don’t have time. The longer you wait to try to collect overdue bills, the less likely it is that you will ever be paid.

6. ALWAYS USE WRITTEN FEE AGREEMENTS! Your fee agreement may take the form of an engagement letter or the more formal format of a standard fee agreement. Either way, be sure to include a description of the SCOPE, the amount of the FEE and the form of fee collection, e.g. flat fee, contingent fee, or by billable hour. If you are charging the client for reimbursable costs, e.g. copies, postage, filing fees, be sure to itemize the costs and who will be responsible for paying the costs. For more on fee agreements, see ER 1.5, Rule 42, Arizona Rules of Professional Conduct, Ariz.R.S.Ct.

**File Closing, Retention & Destruction**

Ariz. Ethics Ops. 98-07 and 07-02 should be helpful to you in developing a file retention policy. All ethics opinions dating to 1985 are available at [www.myazbar.org/Ethics/](http://www.myazbar.org/Ethics/).

Your file retention/destruction procedures should provide for the following:

1. The client should be informed in the fee agreement or retention letter what will happen to client documents and client files, when, and under what circumstances;

2. The firm should have a written policy specifying how long files of particular types will be retained and detailing all procedures involved in file review, storage and destruction;

3. When a file is closed, the following, at a minimum, should occur:
   a. Attorney(s) reviews file and concludes no further action is needed and makes a determination under the retention policy when the file will be eligible for destruction;
b. Bookkeeper (or attorney) reviews file to verify that client has paid in full and all client funds have been returned;

c. Staff member responsible for closing file has been given written instruction as to what information should be kept and what information should be discarded and when the file will be eligible for destruction; appropriate tickler for destruction is created and information is recorded concerning the storage location of the file until that time;

d. Information potentially useful for other matters has been removed to a central “bank”;

e. Any property belonging to the client or a third party has been returned;

f. Any notifications to the client outlined in the retainer agreement have been made and any specified waiting time after notification has occurred.

4. Files should be properly destroyed – shredding is preferred – not simply thrown out in a dumpster.

Use of Technology in Your Law Office

1. If you are sharing office space with other law firms, you may share a computer network which has been set up to ensure each firm does not have access to any other firm’s data. However, if you are sharing office space with other law firms, think twice about sharing an electronic calendar with another firm. Unless the data that is entered on the shared electronic calendar is cryptic or otherwise maintains confidentiality of client information, and conflicts checking procedures are strictly adhered to, you may be in violation of ERs 1.6, 1.7 and 1.8.

2. Be sure to use strong passwords on your network, your workstations and software containing confidential client data.

3. Attorneys are responsible for ensuring that clients’ electronic information is backed up and secure. If you are particularly savvy with computers and networks, you may be tempted to do your own computer workstation and/or network setup, software installation, etc. Keep in mind, though, that computer networking and security is a specialty these days. Hiring a network technician may be the most cost-effective and time-efficient way to ensure your computer backup and security is done properly.
Office Recordkeeping and Account Management

Record Retention and Disposal

1. In General

The ethical obligations of the attorney in keeping or disposing of files and other records are, unfortunately, not always clear. Many attorneys would prefer that some entity issue a no exceptions rule -- such as “keep all closed files for a designated number of years and then shred them” While Ariz. Ethics Op. 98-07 does not establish a “no-exceptions” or “bright line” rule, it provides guidance in determining how long various types of client files should be kept.

Suggestion: If you are holding property of any type that will need to be returned to a client, it’s a good idea to contact him or her at least once a year, since postal forwarding orders generally expire in a year.

2. Trust Account Records Per Rule 43, Ariz.R.S.Ct.,
   (d)1.E. Every lawyer engaged in the private practice of law in the State of Arizona must maintain, on a current basis, records complying with ER 1.15 and this Rule and such records shall be preserved for at least five years following final disbursement of the funds.

   (a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate account maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. 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.

Closed Files

In addition to the guidelines outlined in Ariz. Ethics Ops. 98-07 (paper files) and 07-02 (electronic files), other practical considerations, such as the attorney’s need for records to defend against a bar complaint or malpractice complaint, should be taken into account in developing a written file retention/destruction policy. Once a policy has been developed, it should be consistently followed.

4. Other Records

In the general course of business, a law firm will accumulate numerous financial and personnel records. At some point the continued retention of all of these records becomes onerous. There are numerous federal and state regulations that set the length of time such items as payroll records and personnel information must be retained. These regulations are beyond the scope of these materials;
attorneys should consult their accountants, law firm administrators or human resources staff if they are concerned about compliance in these areas.

5. Methods of Disposal

There is no “approved” method for disposing of files or records once the time for destruction as specified in the written file retention policy arrives. Two points should be considered, however, in choosing the method of destruction. The first is the attorney’s obligation to preserve client confidentiality: Client files, when and if they are destroyed, must be destroyed in a way that will not compromise clients’ right to have their confidences maintained.

Second, as a practical rule, consistency in the means by which files are destroyed will make it easier to defend against any possible charges that a file was singled out for destruction. In other words, if an attorney destroys a file in accordance with established policy and by an established method, he or she will be in a better position to defend against a charge that there was somehow something “suspicious” about the destruction of the file than will the attorney who burns one file, keeps another needlessly, and shreds a third.

A number of records storage companies are equipped to perform confidential file destruction. One advantage of this method of destruction is the issuance of a certificate of destruction that the attorney can retain as evidence of file destruction.
Small Business Considerations Applying To Starting Up Your Law Practice

There are a myriad of decisions any new business owner must make. The necessity of balancing professional, ethical and practical elements of running a business makes this a particularly challenging process for lawyers. The following materials outline some of the issues with which a lawyer establishing his or her practice must wrestle.

1. Decide on a form of business—sole proprietorship, partnership, professional service corporation, limited liability company or limited liability partnership

This decision will affect all other aspects of your business—how your income is reported, what tax forms you must fill out, how your employees are paid, what benefits and expenses may be deductible, and on and on. It cannot be overemphasized that this is a critical decision and one that should be made only after consultation with your own lawyer, tax consultant, CPA, etc. Many attorneys select a business entity with an unrealistic expectation of the advantages and disadvantages, both tax and liability, that particular forms offer.

2. Licensing and Other Requirements Specific to Your Location

The Arizona Business Connection, a project of the Arizona Department of Commerce, will provide new business owners with a customized packet of information and forms at no charge, including information on applicable taxes and business licenses (required in some cities). See their web page at http://www.azcommerce.com/webapps/SmallBusVR/intro.asp or call Small Business Services at (800) 542-5684 statewide or (602) 771-1196 Phoenix metro area. Be sure to advise in requesting the packet if you may consider hiring employees later, even if you do not do so at the outset, so information on these requirements will be included in your packet. The packet will be mailed the same day your request is received.

3. If you plan to hire employees any time in the near future, go to your local IRS office and fill out Form SS-4, Application for Employer ID Number

Depending on the season, the government can take from ten days to six months to issue this number by mail, so apply well in advance. Your number will come to you accompanied by a packet of complex but critical information that you need to read. You can obtain Form SS-4 at the IRS website: http://www.irs.gov/pub/irs-pdf/fss4.pdf or by calling 602-207-8031 in the Phoenix metropolitan area or 1-877-777-4778 elsewhere.

4. If you plan to hire employees any time in the near future, contact the IRS to obtain Publication 15 Circular E, The Employers’ Tax Guide

This useful publication tells you how much to withhold from your employees’ salaries for income tax and social security. Call 602-207-8031 in the Phoenix metropolitan area or 1-877-777-4778 elsewhere or go to a local IRS office to receive this.
5. **Contact the IRS for Publication 334, Tax Guide for Small Business**

This is an invaluable publication described by the IRS as “a comprehensive navigational aid for federal tax forms.” It tells you what forms to fill out and when. Again, call 602-207-8031 in the Phoenix metropolitan area or 1-877-777-4778 elsewhere or go to a local IRS office to receive this booklet. The IRS also offers tax workshops for small businesses on a regular basis; inquire at your local office for a schedule.

6. **Home Office Considerations**

The State Bar of Arizona has no policy prohibiting you from operating a law office out of your home. Before you commit to this option, however, check to make sure your municipal zoning regulations and/or your subdivision restrictions don’t prohibit it. In addition, if you lease your home, you should check your lease for provisions that limit use to residential purposes or have any restrictions that might hinder your successful operation of your business from that location. There are other issues to address if you are considering practicing from your home. You must be sure your home office allows you to protect client confidentiality and provide adequate protection for files and other client property. Your office environment must also provide privacy for oral communications with your clients, either by phone or in person if you will meet with clients there.

Are the location, appearance and layout of your home suitable for meeting with clients and are you comfortable with bringing clients into your home? If not, you will either need to make arrangements for another meeting place convenient to you and your clients (for example, conference rooms in executive suites can be rented) or handle client matters of a type that enable you to go to the client or require no or few in-person consultations.

7. **Shop for insurance**

As a law office owner, you will need to evaluate your need for and make decisions about various types of insurance, including professional liability insurance (malpractice); general liability insurance (to cover incidents such as injuries to third parties on premises); property insurance (to cover damage to business equipment); workers’ compensation insurance; group medical insurance; life insurance; long-term disability insurance; business interruption insurance (covers profit losses while business is interrupted); employee bonds (if coverage not provided under professional liability insurance); or “Key Man” insurance (provides needed cash flow in case of loss of partner).

For the practitioner just starting out, this may seem like a distressingly long list of potential expenses. Frequently circumstances dictate what types of insurance and what levels of coverage an attorney selects initially. For example, an attorney who chooses to obtain referrals from a lawyer referral service or reduced-fee panel typically must carry professional liability insurance to be eligible. For those lawyers, obtaining professional liability insurance is a necessity. Lawyers whose area of practice requires the employment of highly skilled support staff may have difficulty hiring employees unless medical benefits are provided.

Workers’ compensation insurance is required if you have any regularly employed workers, full or part time.
8. Set up an IOLTA trust account.

Many attorneys receive funds of a type that must be placed in a trust account. If you contemplate receiving any of the types of funds outlined below, you should open an IOLTA (Interest on Lawyers’ Trust Accounts) account.

From a management standpoint, funds which should be held in a trust account generally fall into three categories: (1) funds belonging entirely to a client (for example, advances to be applied against services billed at an hourly rate); (2) funds belonging in part to a client and in part or potentially to the attorney (for example, settlement checks which will be disbursed after cleared to client and attorney); and (3) in some instances, funds belonging to a third party (for example, settlement funds which will be used to satisfy medical or other liens).

In general, the character of the funds, not the amount or the length of time they will remain in the account, dictates where monies received from clients should be deposited.

Fees which have already been earned and billed to the client belong to the attorney and, therefore, do not fall into any of the three categories above. Earned fees should, for that reason, promptly be transferred (disbursed by pre-numbered check or electronic transfer) to an operating account. In addition to complying with ethical requirements, an attorney needs to keep in mind the practical implications of holding earned fees. One area of concern is earned fees being held in a trust account, particularly from one year to the next.

Another consideration in promptly transferring earned fees is that money in the trust account cannot be spent by the lawyer for anything other than expenses directly related to representation of the client on whose behalf the funds are being held. All interest earned from money held in the trust account is paid to the Arizona Foundation for Legal Services and Education, not to the lawyer. For that reason, money that should be refunded or disbursed to a client should be promptly handled and money belonging to the attorney should be promptly transferred.

Many banks require an initial deposit to open any account, including an IOLTA account, and some will close an account that has a zero balance for a specified period. You may keep in your account a small amount of “administrative” funds to cover the costs of maintaining the account, including a minimum amount to keep the account open. In addition, some banks assess a monthly service charge and some charge a fee if an account is inactive for a certain period. You should be aware of any fees that your bank charges. Bank charges generally will show up on a bank statement with no advance notice.

You should check with your bank (or with several banks) to determine specific policies. When setting up your IOLTA, you should do the following:

- Make sure the bank you have chosen for your IOLTA is on the approved list at [http://www.azflse.org/azflse/IOLTA/allbanks.cfm](http://www.azflse.org/azflse/IOLTA/allbanks.cfm);
- Print out the following forms, which are available at [www.azflse.org/AZFLSE/iolta/lawyersenroll.cfm](http://www.azflse.org/AZFLSE/iolta/lawyersenroll.cfm);
  1. IOLTA Enrollment Form Instructions;
  2. Individual Enrollment Agreement Form (return to the address on the bottom); and
  3. Notice to Financial Institution (take with you to the bank).
Deposit administrative funds (enough to cover check order charges as well);
Order checks and deposit slips immediately;
Do not accept overdraft protection on this account; and
Do not accept or order an ATM/Debit card.

9. Recordkeeping system for the IOLTA Account

You will need to decide what type of system will work best for you and your firm. You may choose a manual or automated (accounting program) to keep track of your IOLTA account. You will need to keep the following records:
- Bank statement (only attorney should open);
- General ledger/checkbook register;
- Client ledgers and administrative ledger (each client will have a separate ledger);
- 3-way reconciliation (monthly);
- Copies of all deposits made each month and deposit receipt; and
- Copies of all checks written each month.

10. Depositing and disbursing funds in the IOLTA account

You will need to enter all deposit information on the client ledger and general ledger for a manual system. If you are using an automated system, once you enter the information on the client ledger it will also place it on the general ledger.
- Be sure to use the correct deposit slip for your trust account. Complete the deposit slip (be sure to include who the client is on the slip) and make a copy;
- Stamp the back of the check “For Deposit Only” and the name of your firm;
- Money can be deposited into the trust account by going to the bank or by electronic transfer. You need documentation of any electronic transactions;
- Credit cards are a tricky area right now for advanced fees. Ethics Opinion 08-01 indicated that using credit cards for advanced fees was not appropriate. However, the Supreme Court accepted an emergency petition to allow credit cards. You should review both Ethics Opinion 08-01 and the Order Amending on an Emergency Basis Rule 42, ER 1.15 and Rule 43, Rules of the Supreme Court to determine whether you want to accept the risk of taking credit cards for advanced fees and the best ways to set up your credit card transactions. Please be aware that this recent rule change is still temporary and may change again after further review from the Court. The link to this rule change is: http://www.supreme.state.az.us/rules/2008%20Rules%20a/R-08-0030.pdf

You will also need to enter all disbursement information on the appropriate ledgers (client and general).
- Wait at least 10 business days for the deposit to clear the payor’s bank. You may call the payor’s bank (not your bank) and inquire as to whether the check has cleared. Also see “Disbursing against Uncollected Funds” for additional information;
- Verify with the client ledger and general ledger that the money is available to be disbursed. Enter all disbursements on the client ledger and general ledger;
- Disburse money from the trust account by pre-numbered check or electronic transfer which generates a record of the transaction. Be sure to use the correct check for the trust account,
include the name of client and why check is written on the memo field of check (example: Jones/earned fees or Jones/filing fees) and make a copy; and

- Do not disburse money by going to bank and withdrawing cash or using the ATM or debit card.

Disbursing against Uncollected Funds (exception to waiting for a deposit to clear) (Rule 43 (d)(3) Ariz.R.S.Ct.)

- You may disburse against uncollected funds if the deposit is a limited-risk deposit. What are limited-risk deposits and risks of disbursing against them:
  a. Certified checks, cashier’s checks, bank checks, official checks, treasurer’s checks, money orders, other instruments in which the payer is a bank, savings and loan association, or credit union, checks issued by United States or Arizona or any agency or political subdivision of the state, checks or drafts issued by insurance companies, title insurance companies, or a licensed title insurance agencies authorized to do business in this state are limited-risk deposits.
  b. You must have personal funds available to cover any limited-risk deposit that does not clear. You must deposit the money into the trust account within three (3) business days of learning that the deposit did not clear.

- This is very risky for attorneys. LOMAP strongly suggests that you wait for all deposits to clear the payor’s bank prior to disbursing against the funds (even though this rule allows for the above exceptions).

11. Monthly 3-way reconciliations of the IOLTA account (required)

- Open and review your bank statement every month. Staff should not open the bank statement.
- If there was a bank charge that you were not aware of until you received the bank statement, add this to your general ledger and adjust as necessary. You will also need to add this to your administrative ledger and adjust as necessary. There is a place on the reconciliation for bank charges.
- Reconcile the bank statement to the general ledger, checking off all checks and deposits that have cleared. Subtract checks and add deposits that have not cleared AS OF the ending date of the bank statement (example – bank statement ends on 1/31/05 and check #555 was written on 2/1/05. You would not include this transaction on this month’s reconciliation). You may use the back of the bank statement to complete this part of the reconciliation or the 3-way reconciliation worksheet provided by LOMAP.
- Add the total of your client ledgers, including the administrative ledger together. Again use only transactions up to the ending date of the bank statement. Write this number on the 3-way reconciliation worksheet.
- Take the balance on the general ledger, again, as of the ending date of the bank statement. Write this amount on the 3-way reconciliation worksheet.
- All three figures should match on the 3-way reconciliation worksheet, the reconciled bank statement, total of client ledgers and general ledger. If they match, congratulations – your trust account is reconciled. If they do not match, you must review your records to find the problem.
9. Set up an operating account

Your operating account, or your business account, is the account into which any funds for your firm, except those that must go to the trust account, are deposited and out of which all expenses relating to the operation of the business are paid.

1) When you go to a bank to set up this account, you will probably be advised to set up a commercial or business account. There is no Bar regulation that you keep your operating account in a commercial, as opposed to a personal, checking account, although from a management standpoint it’s good practice to not use the same account for both your personal and business needs. Commercial accounts may offer certain advantages to you, depending on the bank, and they are correspondingly more expensive to maintain.

10. Set up your books and payroll system

Don’t wait until after you have hired employees, received payments from clients, or paid a deposit on your lease before setting up a bookkeeping system. Having your books set up in advance allows you to start on Day 1 organized, in control, and in compliance with state and federal laws. Many small firms contract with an independent bookkeeper or accountant to handle their books on a part-time basis. If you choose this option, be sure to ascertain that your bookkeeper is not only generally competent but also knowledgeable about matters pertaining only to law firms, such as trust accounting. Remember that you remain responsible for training and supervising to assure that your trust account is properly maintained.

11. Notify the State Bar of Arizona of your new office address

Don’t forget to notify the State Bar Resource Center if you change your address or phone number:
   - By email: Membership@staff.azbar.org
   - By fax: 602-271-4930, or
   - Online: http://www.myazbar.org/Members/address.cfm
   - By mail: Membership, 4201 N. 24th Street, Suite 200, Phoenix 85016-6288

For questions, please call 602-340-7239.

12. Questions

Contact LOMAP for questions regarding setting up your practice, closing your practice or everything else in between. Also contact LOMAP for assistance in setting up, maintaining or closing your IOLTA account. Please call 602-340-7313. Website: http://www.myazbar.org/Members/LOMAP