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Edition

LAW PRACTICE MANAGEMENT

State Bar of Arizona

Starting Your Law Practice

PRACTICE 2.0

Starting Your Law Practice

A Practical Guide

Practice 2.0
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Law Office Management

Overview

**"A good plan implemented today is better than a perfect plan implemented tomorrow."
— George Patton**

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 communication, 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.

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?

- Your clients or potential clients will always have someone at your office who they can talk to.
- You will have considerably more time to devote to the practice of law and, consequently, you will be more productive.
- 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. On an ongoing basis, you must devote time to training and supervising the work your employees do.
- Before deciding to hire even part-time help, you should be brutally realistic about your budget and your ability to pay for this assistance. Base your assessment on an average of your income over several months, not just during busy times, as you will be committing to pay for personnel even in your slower times.

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 hiring an employee.

- 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.
- Consider whether a virtual receptionist will fill your needs. Members of the State Bar of Arizona receive a discount from Ruby Receptionists, a virtual receptionist service. For a fee, Ruby Receptionists will answer your calls and either route calls to you or take messages. This gives your clients or prospective clients a person, rather than a machine, to talk to when they call and adds a level of professionalism to your practice. When using Ruby, or any out-sourced service, you will still need to be mindful about using the service in a manner that comports with your ethical duties.
- 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 that you can share with applicants. It will also help you write your ad.
- Before you run an advertisement, determine the benefits you can reasonably provide and the hours you need assistance.
- Draft a list of acceptable interview questions.
- When offering employment, make it clear that the first 90 days constitutes a trial period.
- Avoid implying that employment is “permanent.”
- 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. This does not require that you prepare long narratives. Checklists are a good way to organize, analyze your own procedures and policies, and pass them on to individuals you employ.
- If using the services of an independent contractor, review the Sample Independent Contractor Agreement at <http://www.azbar.org/professionaldevelopment/practice20/forms/>
- Train all workers, whether independent contractors or employees, about the importance of confidentiality.

Managing Personnel

Learn how to delegate and use employees to their fullest capabilities. Attorneys sometimes have what's known as a "control problem"; not all are good at delegating lower level tasks so that 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.

- 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:
 - Using secretaries to perform administrative tasks;
 - Using paralegals for research and interviews (under supervision); and
 - Using secretaries or other support staff to field routine inquiries.
- 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.
 - Enhances perception of overall office competence;
 - Reduces phone calls and interruptions to the attorney; and
 - Improves employee morale and underscores their importance to your office and your clients.
- Develop written policies and procedures for your employees, so that 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.
 - Ensures consistent treatment among employees;
 - Ensures consistency and accuracy in performing tasks with established procedures;
 - Prevents ad hoc decision-making from becoming "tradition" and, thus, policy;
 - Provides a framework for dealing with employees' problems – or problem employees;
 - 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!
 - Checklists, checklists, checklists! They are easier to prepare and easy for employees to follow. They provide continuity and guidance without being cumbersome.

Client Selection: Before the Representation

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

Look for "red flags" and listen to your instincts.

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:

- 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.?
- Do you have the expertise and experience needed to handle the case, or can you reasonably obtain it?
- Do you have the resources to perform the work? This includes your time, as well as technological and human resources. This may also include financial resources. For example, if the case will require an expert, you will want to ensure that the client is responsible for paying the expert directly, rather than expecting you to advance that cost. Although you are permitted to advance the costs of litigation, you may not be able to do so. Be sure that you identify any costs in advance, meet with the prospective client, and address the need for them to cover those costs.

You should prepare a case “schedule” outlining what activities will be due at what time – not only does this help to determine whether you have the time available to accept the case, it can also help to predict the cash flow throughout the case, which is important in determining whether you want to accept it.

Client Intake: Beginning the Representation

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;
- Preparing a new matter report (intake sheet) for the client file;
- Preparing a written fee agreement and/or retention letter; and
- Creating a tickler to assure the fee agreement; if mailed or emailed, it is received back from the client – signed, if necessary.
- Information provided to the client should include:
 - General statement of the matter you will be handling. It is usually helpful to reference a case number if one is available, rather than a more general description;
 - The scope or limits of the representation – i.e., what the agreed-on fees include; if you are entering into a limited scope representation, be particularly careful in this description;
 - The rate and basis of the fee;
 - What you will be attempting to accomplish for the client;
 - How you will communicate with your client and how he/she can reach you in an emergency; if you plan on communicating with your client by email, be sure to advise them not to use a shared or work computer;

- How fees will be assessed, including a statement of minimum fees and/or hours; this includes any activities that will result in additional fees if they materialize;
- Your client's responsibility for payment of fees and costs, as well as their responsibility to cooperate in the preparation of the case, including keeping the attorney advised of a current address and phone number;
- Warning that delay or failure to cooperate on the part of the client may prejudice client's rights;
- A reminder to the client that the attorney makes no guarantee;
- Information about your succession plan;
- Your policy regarding handling clients' files and any documents at close of matter; and
- A written acknowledgment by the client that he/she agrees to the terms of representation.

Although you are not required by rule to provide a fee agreement unless you are entering into a contingent fee agreement, it is a good idea to memorialize this information in a fee agreement. Sample fee agreements may be found at <http://www.azbar.org/professionaldevelopment/practice20/forms/>.

Scheduling

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

- A calendaring system must be understood and followed rigorously by all employees to be of any value.
- It is 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.
- A calendaring system should also check for redundancies, scheduling conflicts, cases where one attorney could cover for another, etc.

Any calendar, either 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 a 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 manual calendar as a back-up. Be certain that your office procedures include a time each week to update that manual back-up calendar. This is true even if your calendar is cloud-based.

If your hard drive becomes 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. If your calendar/practice management system is cloud-based, you will likely be able to access your data more easily. However, a backup calendar is still the best practice.

All active matters should have at least one tickler in the system, even if it's a date arbitrarily established for file review. We recommend that you review all active cases at least once a month; once a week is better, if possible. 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 that they would like to. Technology offers many opportunities for lawyers to complete more work in the same amount of time. However, no software program or management system will enable the attorney to handle an infinite volume. Any system can be overwhelmed by volume. For that reason, time management remains an important skill that lawyers must develop.

Develop a system to set priorities for calendared work that is tied to and based upon 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 have neglected to set a tickler in your docket reminding you of this upcoming critical date.

Create blocks of time for major tasks. If you have staff, remember that you must also 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.

Keep meticulous records of all of your time. At the time that the work is done, you may not know 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 and enable you to do the required "look back" at your fee at the conclusion of the case to determine whether your fee is reasonable. 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.

- Record all "legal," but "nonbillable," time:
 - Reading law reviews and case summaries;
 - CLE work;
 - Pro bono work;
 - Developing new business; and
 - Maintaining client relations.
- Record all "non-legal" time, as well:
 - General administrative (ordering supplies, talking to vendors);
 - Paying bills and bookkeeping;
 - Collection of money due to you; and
 - 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 that 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 that the attorney takes.

Communication involves (at a minimum):

- Making sure that the client understands the scope of the representation;
- Making sure that the client understands what fees will be charged, as well as when, why, and how they will be applied;
- Making sure that the client understands how trust money, if any, will be applied;
- Making sure that the client understands whether fees are refundable or nonrefundable. Keep in mind that, if your fee is nonrefundable, you must also advise the client that they may nonetheless be entitled to a refund should the representation end early or if you are discharged per ER 1.5(d)(3);
- Making sure that the client understands what additional actions on his/her part are necessary for prosecuting the matter (additional documentation, last attempt before suit to come to terms with opposing party, etc.);
- Making sure that the client understands that there is no guarantee, in regard to the outcome;
- Making sure that you understand exactly what it is that the client wants you to do;
- Keeping the client informed of the status of the matter, including communication at regular intervals, even if nothing has happened;
- Making sure that the client is aware of how developments may affect the anticipated outcome of the matter;
- 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;
- Sending client copies of all relevant correspondence that you receive or send;

- Sending client copies of all court documents generated during the course of the matter;
- Making sure that the client understands your records retention policy. If you are expecting the client to maintain all of the copies you send them as their client file be sure they understand the importance of keeping them; and
- Updating the 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

A comprehensive trust account manual is available at:
http://www.azbar.org/media/50362/trust_account_manual_1.14.pdf

Keeping track of and protecting client funds is critically important and any staff should be familiar with trust accounting rules, not just attorneys and bookkeepers.

- For receipt of funds;
- For deposit into and disbursement from the trust account; and
- For closing out a client ledger at the end of the representation.

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. Attorneys are responsible for:

- Ensuring the appropriateness of disbursements;
- Ensuring the availability of funds for the particular client before signing trust account checks;
- Conducting regular reviews of client ledgers;
- Reviewing monthly reports of reconciliation of ledgers and transactions register with the bank statement (3-way reconciliations); and
- Reviewing the closing of matters.

Disbursements must be made with sequentially-numbered, pre-printed checks or by electronic transfer, clearly identifying the transaction on the client ledger and general ledger.

- Be sure that your account checks bear the notation “IOLTA Account,” “Client Trust Account,” or a similar designation.
- Avoid confusion by ordering checks and deposits slips for the IOLTA account in a different style or color than those used for the operating account.
- Your trust account must be in an approved bank. A list of approved banks may be found on the Arizona Foundation for Legal Services and Education website.
- Be aware that receiving a non-sufficient funds (NSF) notice from your trust account bank will

lead to an automatic disciplinary investigation.

- Be aware that making disbursements from your trust account that are inappropriate, such as paying for 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 the clients, attorneys should, for business reasons, devote the same care and concern to their general office accounts as they do to their trust accounts.

Failure to properly segregate business funds, withhold employee and other taxes, etc., can result in violations of state and federal laws and IRS regulations.

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. Additionally, bouncing checks, or having sloppy bookkeeping or bill-paying practices, negatively impact your professional reputation. It only takes one bad incident to destroy the level of trust and professionalism that you may have spent years building.

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.

Many excellent, inexpensive software programs available to help manage small business accounts. Some even incorporate built-in sample charts of accounts for law firms.

Most importantly, know yourself—your strengths and weaknesses. If you've never been able to balance your personal checkbook, or if you are not business-minded, hiring professional help in this area may be a priority – even over hiring a receptionist/secretary or paraprofessional help.

**DO NOT WITHDRAW MONEY
FROM YOUR TRUST ACCOUNT
BY USING AN ATM OR DEBIT
CARD
OR BY CASH WITHDRAWAL**

**NO "CASH BACK"
TRANSACTIONS!!**

Billing and Collections

It does not matter how hard you work if you are not sending out timely, accurate bills for your work. It does not matter how much you bill if you are not collecting your bills. Develop a billing system that:

- Enables attorneys to easily adjust bills or billing structure to fit each client or situation;
- **Sends bills out at regular intervals or on-demand;**
- Customizes bills to clients' needs and wishes;
- **Tracks payment and payment histories;**
- Makes one person, or group of people, specifically responsible for assuring that bills are sent out and money is collected.

Consider the following when setting fees:

- All businesses must carefully consider what prices to charge and must develop a specific fee policy — law offices are no exception;
- Consider alternatives to hourly billing; and
- Always use written fee agreements.

Research has shown that the later a lawyer bills for work, the less likely a client is to pay, pay timely, or pay the entire billed amount. Prompt billing may help you realize a higher return on payments from clients. In addition, if you've specified a billing cycle in your fee agreement, you should stick to it. Even if there are no additional charges during the billing period, each client should receive a billing statement, as scheduled in your fee agreement or engagement letter.

When billing clients, remember these tips:

- If possible, set a billing schedule appropriate for each particular client; if your system can accommodate it, allow the client to select the billing or payment date;
- Most clients strongly prefer detailed bills;
- Send informational bills showing services performed, even when no money is due;
- Bills are not only a means to collect money – they are also a great communication tool; and
- 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. A client who is unwilling or unable to supply a reasonable advance is also less likely to pay when billed.

To collect what's owed:

- Make collection part of a particular employee's responsibilities, and include this duty in your office procedures. If you do not have staff, consider the means by which you will collect and allot time monthly to pursue collections; and
- Make sure that 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.

Last-resort options to collect:

- Assignment to a collection agency; or
- Filing suit (if representation has concluded or if the attorney has withdrawn).

NOTE: Be aware that these last-resort options for collection create a conflict of interest and will require that the representation be terminated. As a practical matter, pursuing these options 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.

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 that they don't have time. The longer that you wait to try to collect overdue bills, the less likely it is that you will ever be paid.

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, or 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. Sample fee agreements are available on the Practice 2.0 portion of the Bar's website at <http://www.azbar.org/professionaldevelopment/practice20/forms/>

File Closing, Retention & Destruction

Ariz. Ethics Opinions. 07-02, 08-02 and 15-02 should be helpful to you in developing a file retention policy. All ethics opinions dating to 1985 are available at <http://www.azbar.org/ethics/ethicsopinions>

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

- The client should be informed in the fee agreement or retention letter about what will happen to client documents and client files, when, and under what circumstances;
- The firm should have a written policy specifying how long particular file types will be retained and detailing all procedures involved in file review, storage, and destruction; and
- If you have designated a lawyer who will be responsible for closing your practice in the event of your incapacity, the client should be informed of that and should be provided instructions on how to get that information. See our Succession Planning Manual for more information, <http://www.azbar.org/professionaldevelopment/practice20/successionplanning/>

When a file is closed, the following – at a minimum – should occur:

- The attorney(s) reviews the file and concludes that no further action will be needed; then, they will make a determination, under the retention policy, regarding when the file will be eligible for destruction; and
- The bookkeeper (or attorney) will review the file to verify that the client has paid in full and will confirm that all client funds have been returned and
- If you have staff, the staff member responsible for closing the file has been given written instructions as to what information should be kept, what information should be discarded, and when the file will be eligible for destruction; an appropriate tickler for destruction should be created and information should be recorded concerning the storage location of the file until that time.
 - Information potentially useful for other matters has been removed to a central “bank,”
 - Any property, or original documents, belonging to the client or a third party has been returned; and
 - Any notifications to the client outlined in the retainer agreement have been made and any specified waiting time after notification has occurred.

Files should be properly destroyed; that may include confidential destruction procedures and/or shredding – not simply thrown out in a dumpster.

Use of Technology in Your Law Office

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 that your computer backup and security is done properly.

If you are sharing office space with other law firms, you may share a computer network, which has been set up to ensure that each firm does not have access to any other firm's data. If this is the case, think twice about sharing an electronic calendar with another firm. Unless the data that is entered on the shared electronic calendar is encrypted – 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.

Comment 6 to ER 1.1 (Competence) makes clear that lawyers are responsible for a basic level of knowledge about technology. (“[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”) Lawyers should, therefore, be familiar with cloud computing, encryption, and two-step authentication.

Cloud computing uses remote servers to store and access information via the internet. There are a number of popular cloud computing storage and information sharing platforms, including Dropbox, Box, and Google Drive. Additionally, most practice management software systems are now cloud-based.

One advantage to cloud computing is the ability to access information from anywhere. One consideration in selecting a cloud computing platform is to determine if it offers encryption as the information is being uploaded to the site, while the information is stored on the site, and when the information is accessed from the site. Encryption scrambles data and makes it more difficult for unauthorized parties to access it. If an insufficient level of encryption is offered, consider layering on your own additional encryption. Another option is a private cloud service, which allows you to keep control over your information. However, since a server is local – rather than remote – a natural disaster or power outage may prevent you from accessing your data. When selecting a cloud solution, be sure that you know whether the servers are located in the United States or elsewhere, as the laws of another jurisdiction may govern the privacy and security of your data if it is stored outside of the U.S.

Two-step, or multi-factor authentication, requires a user to enter a password, as well as another piece of information (customarily, a multi-digit code text messaged to the user) in order to verify the user's identity. It can be enabled on a number of platforms, including email, cloud platforms, and even social media. An even more basic option is a lock-code on cell phones and tablets. Many phones offer remote wiping, should the phone be lost or stolen, enabling the owner to remotely erase all of the personal data stored on the phone. Are they foolproof? No, of course not. But a lawyer who accidentally misplaces an unlocked cell phone opens the door to his/her clients' confidential

information being placed into the wrong hands.

Office Recordkeeping and Account Management

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 Ops. 98-07 and 15-02 do not establish a “no-exceptions” or “bright line” rule, they do provide guidance in determining how long various types of client files should be kept. Additional guidance may be obtained from the unclaimed property statute, in the event that a client fails to — even after notice — retrieve their file or documents.

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/her at least once a year, since postal forwarding orders generally expire in a year.

A Few Good Rules

Trust Account Records Per Rule 43, Ariz. R. S. Ct.,

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.

Safekeeping of Client Property Per E.R. 1.15, Rule 42, Ariz. R. S. Ct.,

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), 07-02 (electronic files), 08-02 and 15-02, 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 when developing a written file retention/destruction policy. Once a policy has been developed, it should be consistently followed. Keep in mind, however, that the file belongs to the client. If the lawyer wishes to maintain a copy of the file for his/her own benefit, they may certainly do so at their own expense.

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 that certain items, such as payroll records and personnel information, must be retained. These regulations extend beyond the scope of these exemplary materials; therefore, attorneys should consult their accountants, law firm administrators or human resources staff if they are concerned about compliance in these areas.

Methods of Disposal

There is no officially 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, when choosing a 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/she will be in a better position to defend against a charge, claiming that there was 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.

Business Considerations in Starting Up Your Law Practice

There are a myriad of decisions that 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 that a lawyer must face when establishing his/her own practice.

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, which 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.

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 (which are required in some cities). See their web page at <http://www.azcommerce.com/programs-and-services/small-business-services> or call Small Business Services at (800) 542-5684 (statewide) or (602) 771-1196 (Phoenix metropolitan area). Be sure to in when requesting the packet that you may consider hiring employees later – even if you do not plan to do so at the outset – in order to make sure that information on these requirements will be included in your packet. The packet will be mailed the same day your request is received.

If you plan to hire employees any time in the near future, visit 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 be sure to apply well in advance. Your number will arrive, accompanied by a packet of complex – but critical – information that you will need to read.

You may 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.

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, 1-877-777-4778 elsewhere, or visit your local IRS office to receive this helpful guide.

Furthermore, 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, 1-877-777-4778 elsewhere, or visit your 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.

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 that your municipal zoning regulations and/or subdivision restrictions don't prohibit it. In addition, if you lease your home, you should check your lease documents for provisions that limit use to residential purposes or for any other restrictions that might hinder you from successfully operating your business from that location. Furthermore, there are other issues to address, if you are considering practicing from your home. You must be sure that your home office allows you to protect client confidentiality and provide adequate protection for files and other client property. Your home office environment must also provide privacy for oral communications with your clients, either by phone or in-person, if you plan to meet with clients there.

Is the location, appearance, and layout of your home suitable for meeting with clients? Are you comfortable 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.

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 (to cover profit losses while business is interrupted); employee bonds (if coverage is not provided under professional liability insurance); or “Key Man” insurance (to provide 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 at 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, or if you have contractors (such as courier services) entering your home office.

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. You do not, however, need a trust account, merely because you are engaged in the practice of law. If you have questions about whether you need a trust account, setting up your trust account, or managing your trust account, please call the Practice 2.0 Trust Account Hotline at 602-340-7305.

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 if they have been kept in a trust account; if you are billing after the fees are earned, the remittance of solely earned fees should be deposited directly into your operating account. In addition to complying with ethical requirements, an attorney needs to keep in mind the practical implications of holding earned fees. The Rules of Professional Conduct, in particular ER 1.15 and Rule 43, Ariz. R. S. Ct., make clear that commingling funds in the trust account is prohibited.

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. These funds must be reasonably related to the actual fees assessed for administration of the account and may not constitute a “cushion” to avoid overdrafts.

You should check with your bank (or with several banks) to determine specific policies and costs. Your bank should be able to give you a realistic estimate of the amount of administrative/service charges that you may expect against your account over the course of a year...

When setting up your IOLTA, you should do the following:

Make sure that the bank you have chosen for your IOLTA is on the approved list at <http://www.azflse.org/azflse/IOLTA/allbanks.cfm>;

Print out the following forms, which are available at www.azflse.org/AZFLSE/iolta/lawyersenroll.cfm;

- IOLTA Enrollment Form Instructions;
- Individual Enrollment Agreement Form (return to the address on the bottom); and
- 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.

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 the attorney should open it);
- General ledger/checkbook register;
- Client ledgers and administrative ledger. Each client will have a separate ledger; the administrative ledger is where you will track your funds maintained in the trust account to pay administrative/service charges. The client ledgers must reflect all deposits and disbursements, the dates, the reason, and maintain a running balance of available funds;
- A record of your monthly 3-way reconciliation;
- Copies of all deposits made each month and deposit receipt; and
- Copies of all checks written each month.

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. You may find sample forms on the Practice 2.0 website at <http://www.azbar.org/professionaldevelopment/practice20/forms/>

Be sure to use the correct deposit slip for your trust account. Complete the deposit slip (be sure to include the client (and, if available, matter number) on the slip and make a copy; stamp the back of the check “For Deposit Only” and include 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.

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; and
- Enter all disbursements on the client ledger and general ledger.
- Disburse money from the trust account only 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 (for 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. In fact, you should not have a debit or ATM card for your client trust account.
- 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?

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.

- 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 business days of learning that the deposit did not clear.

This is very risky for attorneys. Practice 2.0 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). Disbursing prior to the funds being collected places all of the risk on you, as you will have to replace any funds that do not clear. Attorneys are frequently swayed by insistent or pleading clients to disburse prematurely. This is not a best practice and should be avoided.

The mandatory Monthly 3-way reconciliations of the IOLTA account

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 (for example, bank statement ends on 1/31/15 and check #555 was written on 2/1/15; 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 Practice 2.0.

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, 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. You are required to maintain your records reflecting the 3-way reconciliation, however, you are not required to submit your records to the State Bar on a regular basis, unless otherwise required.

If you are using software to maintain your client trust account, please remember that most software will not perform this 3-way reconciliation. You will have to produce the records necessary, including the individual client ledgers, and conduct the reconciliation manually.

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.

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 is 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. As with your client trust account, choose a bank that is convenient to your office and/or home to make regular banking easier.

Set up your books and payroll system

Do not wait until after you have hired employees, received payments from clients, or paid a deposit on your lease to set 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.

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

Online: <http://www.azbar.org/membertools/myprofile/addresschange>

By mail: Membership, 4201 N. 24th Street, Suite 100, Phoenix 85016-6288

For questions, please call 602-340-7239.

When you have questions about managing your practice:

Contact Practice 2.0 for questions regarding setting up your practice, closing your practice and everything else in between. Also, contact Practice 2.0 for assistance in setting up, maintaining or closing your IOLTA account. Please call 602-340-7313. For more information on Practice 2.0, please visit <http://www.azbar.org/professionaldevelopment/practice20/>

Law Office Setup Checklist

FORM OF PRACTICE

- Corporation
- Partnership
- Association PLLC/LLC
- Sole proprietor

Taxation

Documentation

Partner compensation/expenses

Benefits to each liability simplicity

Business Licensing

Succession Plan

OFFICE SPACE

Virtual or bricks and mortar location

Security of files/Confidentiality

Consideration of Conflicts of Interest

Set up office

Lease agreement

Visibility/image/area

Cost

ACCOUNTING

Planning/Budget Income

Expenditures

Banking Relationship

Systems

Bank accounts

Personnel and benefits

(Insurance, parking, seminars/dues)

General/Payroll

Trust account

Safe Deposit/Client Property Safekeeping

Internal Controls

chart of accounts

petty cash

check procedures

countersigning of checks

independent reconciliation expense approval

client gifts/entertainment

overtime/meals

mileage/auto reimbursement
cost control payroll/quarterly reports
employee/partner advances

Client Billing

payment procedures/deposits
client costs advanced/cost recovery
word processing duplicating
online services
secretarial overtime
mailing
other:

CLIENT RELATIONS

Setting & Communicating of Fees: Hourly/Per Project
Retainer Agreement/Letter
Recovery of costs
Client Consents/Substitution of Attorney
Conflict Checks
Advertising
Telephone
Client Inquiries
Attorney Referral List
Open House

QUALITY CONTROL

CLE

MCLE

Meetings/Seminars/Committees/Sections
Audio/Visual/Books/Manuals
On-Line Services
Library
Sets specific to practice
Updates
Hard copy v. CD ROM
"Boilerplate"/standardization

CORRESPONDENCE & COMMUNICATION

Business Cards, Announcements, Letterhead, etc.
In-house can save money
Dictation Equipment/Method
Copies (see filing)

CALENDAR

Client matters
Must be dual
Computerized programs
Office matters (meetings, etc.)

FILING SYSTEMS

- Chron Copy
- Firm-wide System
- Centralized or decentralized
- Alpha/numeric
- Maintaining Duplicate Copies of Agreements/
Pleadings/Contract
- Sending cc's and bc's
- Maintenance of documents
- Computer/backup
- Offsite storage
- Written procedure

PERSONNEL

- Leasing vs. Hiring
- Structure of office Policies
- Exempt vs. non-exempt
- Overtime
- Holidays/vacation/sick time
- Safety
- Files
- Benefits
- Sick time/vacation
- Medical/parking, etc.
- Profit sharing/pension plan

COMPUTERS/EQUIPMENT

- Budget
- Types Hardware
- Computer
- Printer
- Network
- Software
- Case and/or Document Management
- Billing/Accounting Calendar/docket
- Timekeeping
- Practice information/
Practice specific
- Other
 - Typewriters
 - Backup
- Procedures/Policies
 - E-Mail
 - Remote access
 - Passwords/Security
 - Social media

INSURANCE

Workers' Compensation Professional
Liability Property
Liability

TELEPHONE SYSTEMS

Adequate Size to Prevent Busies
Good Message Taking/Documentation
After Hours Access
Landline or cellular
Multiple lines?
Virtual receptionist?
VOIP

OFFICE OPERATIONS

Mailing procedures: machines vs stamps
Attorney Service
Overnight Courier/Messengers
Duplication
Outside vs lease vs purchase
Service vs cost
Fax machines?
Scanner
Procedures confidentiality

OUTSIDE SERVICES

Technology
Accounting
Legal

Links to Other Resources

GETTING STARTED

STATE BAR OF ARIZONA, PRACTICE 2.0, Practice management advice program

A member benefit, voluntary and confidential.

<http://www.azbar.org/professionaldevelopment/practice20/>

Entrepreneur's Edge -- Resource Guide to Starting, Operating, and Growing a

Business in Arizona, Arizona Department of Commerce

Link:

http://www.mohave.edu/documents/SBDC/Resources/AZ_Entrepreneurs_Edge.pdf

Arizona Commerce Authority, business resource

Link: <http://www.azcommerce.com/start-up>

United States Small Business Administration, Write Your Business Plan

Link: <https://www.sba.gov/writing-business-plan>

WORKERS COMPENSATION

Industrial Commission of Arizona

Link: <http://www.ica.state.az.us/default.aspx>

Workers Compensation Information, including links to downloadable posters

Link: http://www.ica.state.az.us/Claims/Claims_main.aspx

GETTING CLIENTS AND WORKING WITH CLIENTS

Modest Means Program description and sign-up

Link: <http://www.azflse.org/modestmeans>

Lawyers and Legal Fees – Produced by the State Bar of Arizona

Link: <http://www.azbar.org/workingwithlawyers/topics/lawyerslegalfees>

Client Protection Fund

Link: <http://www.azbar.org/cpf>

MENTORSHIP

Be a mentor or get a mentor

Link:

<http://www.azbar.org/professionaldevelopment/practice20/mentorprogram/> f

TRUST ACCOUNTS

Trust Account Manual -- SBA

Link: http://www.azbar.org/media/50362/trust_account_manual_1.14.pdf

Instructions for opening an IOLTA account with forms

Link: <http://www.azbar.org/professionaldevelopment/practice20/trustaccounting/>

IOLTA enrollment form and program information

Link: <http://www.azflse.org/azflse/IOLTA/lawyersenroll.cfm>

Approved IOLTA Account Financial Institutions

Link: <http://www.azflse.org/azflse/IOLTA/allbanks.cfm>

Opening the Doors to Justice – Interest on Lawyers Trust Accounts

Link: <http://www.azflse.org/azflse/IOLTA/IOLTA4Public.cfm>

FEE AGREEMENTS

Sample Fee Agreements and other forms

Link: <http://www.azbar.org/professionaldevelopment/practice20/forms/>