



Law Office Management Assistance Program

START UP KIT: ESSENTIALS FOR SUCCESS

INTRODUCTION

You have made the decision to start your law office. This is a very exciting decision which, done properly and with care, will establish the basis for long term success. Planning for success includes a thoughtful analysis of what services you are qualified to provide, where you will provide those services, how will you market your services, how will you deliver your services, how will you charge and bill for your services, how will you finance your dream until your work translates to income. In planning for success you also need to plan to implement the best practices for operations and management. While a business plan must be flexible to take advantages of new opportunities, a thoughtful plan allows you to focus your energies on the plan for business success.

If done properly at the start of a law practice, thoughtful procedures and policies will stand the test of time and allow you to concentrate on the practice of law when you get busy. LOMAP will help you set the foundation by providing you this start-up kit, consulting services upon request, access to reference materials and referrals to experts in mission critical areas of operation.

Our mission is to assist Massachusetts attorneys in establishing and institutionalizing professional office practices and procedures to increase their ability to deliver high quality legal services, strengthen client relationships, and enhance their quality of life. Please feel free to contact LOMAP at 857-383-3250, or visit our web-site at www.masslomap.org, and follow our blog at <http://www.masslomap.blogspot.com>.

I. Checklist for Starting a Law Practice

This checklist strives to make you think about and discuss with others some basic, but critical issues related to beginning a law firm. The most basic step is to KNOW THYSELF (i.e. do a critical self-assessment) and KNOW YOUR CRITICAL SUPPORT (i.e., your spouse, parents, partner, friends, children, etc.). The process of creating an honest business plan shared with those who will support you and subject to a critical review will lend itself to a greater chance of success. This checklist has been compiled from a number of checklists provided by Practice Management Advisors from around the country including J.R. Phelps, Director of the Florida Bar Associations' LOMAS program, Pete Roberts, Practice Management Advisor of the Washington State Bar, and Jim Calloway, Director of the Oklahoma Bar Association's Management Assistance Program.

I) SELF-ASSESSMENT

- Tolerance for risk for you and partner/spouse
- Managerial Skills
- Marketing Skills
- Confidence Level in Legal Skills
- Willingness to Learn/Improve Skills
- Financial Wherewithal (i.e., how do you pay start up costs?)
- Ability to work solo
- Ability to work/communicate with partner(s)

II) WRITE A BUSINESS PLAN

- Law Firm Description
 - Who you are and what are you selling?
 - Who are you competing with for clients and how will you do so successfully?
- Principals
 - Skills
 - Experience
 - Ownership interest
- Marketing Plan
 - Area of expertise
 - Ideal client or target market
 - Why they need you and not any other attorney
 - How will they learn that you provide unique services
- Operational Plan
 - Location of enterprise
 - Type of facility
 - Equipment
 - Employees/virtual employees
- Capital Investment – Financing the Office (Start up costs plus one year operation expenses and personal living expenses)
 - Credit sources
 - (1) Bank/credit union
 - (2) personal/business loan (with personal guarantee)
 - (3) home equity
 - (4) line of credit
 - (5) lease/equipment loans
 - (6) family loans
 - Personal savings

- Financial Projections
 - Overhead and expenses
 - Gross receipts
 - Net receipts
 - Cash flow projections
 - Fee Structure
 - (1) Hourly
 - (a) Projection of hours worked
 - (b) Projection of average hourly rate
 - (2) Flat Fee
 - (3) Other
 - Estimated Taxes – don't get caught short

III) CHOICE OF ENTITY

- Considerations if selecting entity
 - Taxation
 - Liability
 - Succession/dissolution
 - Massachusetts Rules of Professional Responsibility
- Solo Practice
- Professional Association
- General Partnership
 - Partnership Agreement (see below)
- Limited Liability Partnership
- Limited Liability Corporation (?)
 - Articles of Incorporation
 - members
- Professional Corporation
 - Articles of Incorporations
- Partnership Agreement
 - Capitalization
 - Withdrawal/retirement
 - Compensation and profit distribution
 - Role of partners
- Buying a Practice/into a practice

IV) OFFICE SPACE

- Building
 - Image
 - Square feet needed
 - ADA considerations
 - Parking/public transportation
 - Access to courts
 - Services provided
 - Expansion opportunities
 - Renovation/cost
- Location
- Office Sharing
- Renting/leasing
- Purchasing Building
- Home Office

III) ACCOUNTING NEEDS

- Consult with CPA and bookkeeper
 - Paper/software
 - Establish accounting procedures
 - (1) Chart of accounts
 - (2) Profit and loss statements
 - (3) Balance sheets
 - (4) Cash flow statement
 - (5) Work in progress reports (WIP)
 - Estimated Tax Payments
 - Tax returns
 - Payroll services
 - Bank
 - (1) Approved IOLTA accounts
 - (2) Business operating account
 - (3) Payroll account?
 - (4) Savings account
 - (5) Safe deposit box
 - (6) Firm credit card
 - (7) Checks, deposit slips, debit card
 - (8) Credit card account (to accept cards)
 - (9)

IV) TECHNOLOGY

- Software
 - Word processing
 - Case Management
 - Time and billing/accounting
 - Calendaring and docketing
 - Conflicts checking
- Document assembly
- Office Suite Software
- Word processing
- E-mail
- Spreadsheet
- Presentation Software (such as PowerPoint)
- Others
- Virus/Spam (Trend/AVG)
- Voice Recognition
- Other specialized or practice specific software

V) HARDWARE

- Computers
- Operating system
- Back-up system
- Lease or purchase
- Printers
- Network/Firewall
- Scanners
- CD-ROM
- Laptop Computer
- Personal Digital Assistant (PDA) with or without email

VI) OFFICE EQUIPMENT/SERVICES/SUPPLIES

- Fax Machine – DO YOU STILL NEED?
- Photocopier
- Scanner
- Shredder
- Dictation equipment/Voice Recognition Software
- Internet Service Provider
- Email address
- High speed Internet access or DSL line
- Telephone System
 - Equipment/answering machine
 - Voice mail/manual message system
 - Answering service

- Local and long distance carrier/skype/others
- Conference calling – free services
- Music on hold
- Cell phone/service
 - Pager
- Postage scale/mail equipment
- Establish UPS and Fed Ex accounts
- Office furniture for lawyer(s), staff, reception area, file cabinets, conference, room furniture, carpeting and area rugs, book shelves, art work/office decorating needs
- Office supplies, paper, envelopes, pens, staplers, file folders, etc.
- Business cards, announcements (MUST DO)

VII) LIBRARY/LEGAL RESEARCH

Social law Library

Online legal research provider

- Purchase new or used law books
- Local law library
- Law school library
- Courts library
- Internet research
- CD-ROM

VIII) OFFICE SYSTEMS/PROCEDURES

- Develop office manual/operating procedures manual
 - Standard procedures/policies for practice
 - Personnel issues/benefits
- Docketing, calendaring, tickler system
 - Computer (dual-system is highly recommended)
 - Manual
- File organization
- Alpha/numeric
- Centralized/decentralized
- Opening file procedures
- Closing file procedures/retention/storage/destruction
- Document maintenance
 - Offsite - safety deposit box
 - Computer backup
 - Fireproof files
- Forms used in practice
 - Client interview form
 - Engagement/non-engagement letters
 - Written fee agreements
 - Practice specific checklists
 - Billing Statement Form

- General client correspondence, notices, etc.
- Client survey form after conclusion of representation
- Client billing procedures
 - Regular monthly statements even if no amount due
 - Detailed billing statement
 - Expense billing
 - Costs to be billed
 - (1) legal assistant time/paralegal time
 - (2) telephone expenses
 - (3) duplicating expenses
 - (4) computerized legal research
 - (5) mailing costs
 - (6) others
- Collection policy
- Credit cards for payment
- Client Relations Policy
 - Setting appointments, introducing staff
 - Returning phone calls, e-mail messages
 - Client intake form/survey at conclusion of representation
 - Keeping clients informed
 - Send copies of work, documents
 - Communicating Fees
 - Clear discussion about fees
- Written fee agreements/engagement letters
- Accounting Procedures
 - Bank account reconciliation
 - Cash Flow Statement
 - Accounts Receivables/Payables
- Aging review
- Expense Approval System
- Counter signature requirement on checks
- Others

IX) INSURANCE PROTECTION

- Professional liability
- Workers' Compensation
- Health Plan
- Car Insurance for business use
- Property (liability, wind, fire, earthquake, etc.)
- Loss of valuable documents
- Life
- Disability
- Business Interruption

X) PERSONNEL

- Legal Assistant/Paralegal
 - Full-time
 - Part-time
 - Temporary
 - Hours, flex-time
 - Sharing personnel with other professionals

- Training
- Employee benefits
 - Vacation, holidays
 - Sick leave
 - Overtime policy
 - Medical insurance
 - Retirement Plan
 - Others
- Secure I-9 forms, W-4 forms, confidentiality agreement, employment applications, etc

XI) MISCELLANEOUS

- Call Law Practice Management Assistance Program, 888-545-6627, or email at Rodney@masslomap.org for assistance

- Lending library

- Locate or become notary
- Develop disaster plan for illness, incapacity, death, or natural disaster.
- Keep BBO informed of business and personal contact information
- Call Ethics Hotlines with ethical questions
- FIND A MENTOR
- KEEP A FORM FILE
- _____
- _____
- _____

II. Writing a Business Plan – Strategic Planning is a Must

The legal profession is becoming an increasingly competitive business in Massachusetts with a growing number of attorneys and population that has either a low growth or is in actual decline. In many ways the practice of law in many practice areas being commoditized resulting in increasing low fees. A financially successful law practice requires more than merely hanging out a shingle, but now requires careful strategic planning to position oneself to gain market share without discounting the value of your services. Creating a business plan allows you to evaluate all facets of your proposed business and thereby create a viable blueprint for success. To determine if you are truly prepared for running a law practice as a business, and your livelihood, draft your business plan looking reality squarely in the eyes. A business plan should include the following:

A. Law Firm Description

1. Who you are and what are you selling?
2. Who are you competing with for clients and how will you do so successfully?

B. Principals

1. Skills of Each Attorney
2. Experience
3. Ownership Interest

C. Marketing Plan

1. Area of expertise
2. Ideal client or target market
3. Why they need you and not any other attorney
4. How will they learn that you provide unique services

D. Operational Plan

1. Location of enterprise
2. Type of facility
3. Equipment

E. Employees/virtual employees

F. Financial Projections

1. Overhead and expenses
2. Gross receipts
3. Net receipts
4. Cash flow projections
5. Fee Structure
6. Start-up or emergency funds

G. REFERENCES:

- Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer, 4th ed., K. William Gibson, Editor, Ch. 3, The Business Plan, ABA, 2005.
- How To Start & Build a Law Practice, 5th ed., Jay G. Foonberg, p. 49, The Written Business Plan, ABA 2004.
- Massachusetts Bar Association, How to Start and Run a Successful Solo or Small –Firm Practice, October 2006, ch. 6, p. 68 – 85, Budget, Billing and Time Keeping, Frederick R. Levy.
- WEB-SITES
 - United States Small Business Administration, Small Business Planner, <http://www.sba.gov/smallbusinessplanner/plan/writeabusinessplan>.
 - Commonwealth of Massachusetts, Getting Started in Business, <http://www.mass.gov/?pageID=mg2topic&L=3&sid=massgov2&L0=Home&L1=Business&L2=Getting+Started>
 - City of Boston, Starting a Business: http://www.cityofboston.gov/business/str_bus.asp

III. Budget and Financial Planning for the First Year¹

By Connie Rudnick, Esq., Professor at Law, Massachusetts School of Law and Rob Armano.

A. Overhead and expenses

The first step is to identify all fixed costs and expenses. They include:

- * Lease/mortgage payments
- * Telephone, facsimile, internet, computer, copier, printer, scanner (buy or lease)
- * Advertising and marketing
- * Insurance (professional liability, workers' compensation, renters insurance, health, disability and/or business interruption insurance, etc.)
- * Utilities
- * Payroll and payroll related costs (payroll taxes, unemployment insurance, and self-employment taxes)
- * Bank charges (for IOLTA, other client funds and business accounts)
- * Software (word-processing, case management, time and billing, accounting, docketing and tickler system.

These expenses can be tracked by employing the use of financial software like QuickBooks, or by developing a spreadsheet within Microsoft Excel. If software costs are a concern, Staples carries general ledgers. If you're really conservative, a legal pad will do. Make sure whatever form you use, you include and highlight due dates for installment payments. Check your local Bar Associations for other resources.² It's a good idea to review all overhead and expenses with your CPA with an eye toward end of the year tax planning.

Discretionary costs:

- * Secretary and/or Receptionist (sharing or part time should be considered)
- * Law clerk or associates (many law schools have internship programs where students work in offices for credit, not pay)

¹ This outline should not be confused with a business plan, something which all lawyers opening their own practices should have. A business plan includes specific marketing strategies and practice concentrations which are beyond the scope of this piece. The Small Business Administration has seminars on this topic, and assistance is available from the U.S. Small Business Association Small Business Development Center; 409 Third St. SW, Washington, DC 20416; 800-205- 6400; or its Web site www.sbaonline.sba.gov.

² The MBA, the ABA and some local Bar Associations have sections devoted to small or solo practices or law office management.

- * Library, secondary source materials or computer research tools such as Westlaw or Lexis/nexis. Discount rates are available to small or solo practices
- * Furniture (try a used furniture store)

B. Gross receipts

Gross receipts are your total income generated by your practice. Unless you already have a ready-made clientele, a client base can be built by advertising, word of mouth (friends & family), associations with other or community organizations, (Rotary, Chamber of Commerce, coaching little league, etc.), bar advocacy groups, CPCS, or by simply networking with other attorneys for case referrals in areas they do not generally practice in.

Tracking gross receipts can be accomplished by utilizing any of the methods referred to in paragraph (A) above. It's a good idea to set aside a fixed percentage of your gross receipts, say 20% to 25%, into a "tax reserve savings account." Quarterly taxes can be paid out of this account, rather than your general operating account, and you can avoid the shock/panic of paying taxes when due. Payroll withholdings can be treated in the same fashion.

C. Net receipts

"It's not what you make, it's what you keep." It is vitally important to contain expenses in an effort to maximize net gain. Again, a CPA is vital in helping you keep more of what you earn. Many attorneys like to take a "draw" each week, since it makes no sense to operate a business if you can't pay yourself. However, many law practices are cyclical, that is, you may have long stretches with short cash flows. It is more important to keep the business afloat than to take a draw. Some say that you cannot expect to take anything out of the practice for a year after opening it, and you should have a significant amount of one year's overall expenses in savings before starting out on your own. A draw should be deposited into your personal or business checking account.

D. Cash flow projections

This is probably the most difficult part of starting a new law practice. Accurate projections are managed by constantly reviewing your case load with an eye toward which cases are proving to be fruitful, and which are not. If, for example, you have been retained to represent a plaintiff with substantial personal injury, you can not expect that her matter will bear fruit within the initial 6 months to a year of opening the file, or even longer perhaps.

In fact, prosecuting the matter may well involve advancing costs that can prove to be a drain on your resources. This should be factored into the equation. Prior years, while helpful, are not always good indicators of what you can be expected to earn this year. Many attorneys plan for the ebbs and flow of cash flow by obtaining a line of credit. Cash flow as well as expenses should be reviewed monthly to update, and bring projections into line with reality.

E. Fee Structure

Fees are generally earned on an hourly or on a contingent basis. The types of cases that you handle, and the disciplinary rules will generally dictate whether your fees are earned hourly, or are contingent upon a result. Criminal and/or domestic relations matters cannot be handled on a contingency fee basis. Personal injury matters are generally handled on a contingency fee basis. In some instances, clients may be expected to advance costs associated with litigating a particular matter. In all cases, a fee agreement is vital. Consult with other lawyers in your geographic area with roughly the same experience in the same kind of law to determine a reasonable hourly rate.

F. Projection of hours worked. Typically, attorneys in private

practice can expect to work an average of at least 2600 to 3000 hours a year! However, only a fraction, maybe 50%, will be billable and the rest will go to administrative and marketing efforts. If your practice is devoted to Hourly work, there is an obvious correlation between the hours worked and the fees generated.

G. RESOURCES

There are an infinite number of resources for lawyers starting out a new practice. They include:

Periodicals:

- GPSolo, Law Practice and Law Practice Today, all published by the American bar Association are excellent resources.

Books:

- Solo by Choice, How to Be the Lawyer You Always Wanted to Be, C. Elefant, 2008
- [How to Start & Build a Law Practice, 5th Edition \(Career Series / American Bar Association\)](#)
- Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer, Fourth Edition
- Foonberg's How to Start and Build a Law Practice (American Bar Association, 2004, Fifth Edition)
- The Profitable Law Office Handbook: Attorneys' Guide to Successful Business Planning. Edward Poll. Edward Poll & Associates. 1996

Seminars, etc.:

- Law Office Management Assistance Program, www.masslomap.org.
- MCLE and bar associations frequently have seminars on starting a law practice. Many practice oriented law schools also have courses on the subject that can be audited.
- Institute of Management and Administration Inc. offers resources and information on law office management

IV. Choosing a Legal Structure

How are you going to practice? As a solo, in an association of attorneys, as a professional corporation, or as a professional limited liability partnership? A number of issues impact this question, but enter into a professional relationship with the same care as if you were entering into a long-term romantic relationship. Such relationships are easy to start, but often difficult to end. To make this decision you must consider the following points.

- Trustworthy partner(s)
- Tax consequences
- Liability issues
- Transferability of Interest
- Limitations Imposed by Statute

A. Sole Proprietor

A sole proprietorship has no separate existence from its Individual owner. Hence, the limitations of liability enjoyed by limited liability entities do not apply to sole proprietors. The debts of the entity are the debts of the individual. A sole proprietorship's income is taxed as the personal income taxes of the individual and the income is taxed on the profits made, making accounting much simpler. A sole proprietorship need not worry about double taxation like a corporate entity. You may also use a trade name or "Doing Business As". See Mass.R.Prof.Conduct, 7.5. This allows the proprietor to do business with a name other than his or her legal name and also allows the proprietor to open a business account with banking institutions. However, under G.L. c. 110, §5, any person doing business under a name other than his own must file a business certificate with the town or city hall where he maintains an office. <http://www.sec.state.ma.us/cor/coridx.htm>

B. Professional Associations

A professional association is comprised of a number sole proprietors who wish to share expenses, often including having a shared letterhead. See Mass.R.Prof.Conduct, 7.5, Comment 2, for limitations and necessary disclaimers. This form has additional limitations related to obtaining malpractice insurance. A better practice is to formalize the relationship through either a partnership agreement or other limited liability entity agreement.

C. Partnership

This is a business entity in which partners share with each other the profits or losses of the business undertaking in which all have invested. See G.L. c. 108A. A partnership agreement should be used to define critical issues about how profits and losses will be divided, firm management undertaken, and how the partnership will be dissolved. Partners are jointly and severally liable.

D. The Professional Corporation

A professional corporation is comprised on “[o]ne or more individuals, each of whom is licensed to perform a professional service. . . .” G.L., c. 156A, §7. Corporation formation is governed by G.L. c. 156A. The shareholder's individual liability is limited as set forth in G.L. c. 156A, §6(a) and SJC Rule 3:06, Use of Limited Liability Entities (*infra*). Again, a shareholder agreement shall be used to define the shareholders' investment, duties, obligations, means of departure, and how capital investment and division of corporate assets will be handled.

E. The Limited Liability Company

The formation of this legal entity is governed by G.L. c. 156C and provides certain advantages of limited liability and flow through taxation. But, liability is again also governed by SJC Rule 3:06. The governance, investment, duties, obligations, shareholder rights upon exit are all governed by the shareholder agreement.

F. The Limited Liability Partnership

The formation of an LLP is governed by G.L. c. 109. It requires two or more partners with one being designated the general partner. Unless otherwise agreed the general partner has management control and unlimited liability for third-party obligations. The limited partners have limited control and limited liability. See G.L. c. 109, §§ 17 and 19, SJC Rule 3:06. Best practices again would suggest a comprehensive partnership agreement to govern essential issues of the partnership.

G. SUPREME JUDICIAL COURT RULE 3:06. USE OF LIMITED LIABILITY ENTITIES:

(1) As used in this rule, the term "entity" shall mean a professional corporation, a limited liability company, or a limited liability partnership organized to practice law pursuant to the laws of any state or other jurisdiction of the United States and which practices law in the Commonwealth. The provisions of such laws shall be applicable to attorneys practicing law in the Commonwealth subject to the terms and conditions of this rule. Such terms and conditions are necessary and appropriate for the purpose of making the provisions of those laws applicable to attorneys. As used in this rule, the term "owner" shall mean a shareholder of a professional corporation, a member of a limited liability company, or a partner of a limited liability partnership.

(2) In addition to other provisions required by law, the articles of organization or similar organizational document ("Charter") of each entity shall contain provisions to assure compliance with the following requirements:

(a) All owners shall be persons who are duly licensed by this court to practice law in the Commonwealth, if they are actively engaged in the practice of law in the Commonwealth, or duly licensed by the licensing authority of the jurisdiction in which they are actively engaged in the practice of law. All owners shall be in good standing before this court or before the licensing authority of the jurisdiction in which they are actively engaged in the practice of law, and all owners of the entity shall own their shares or other ownership interests in their own right. All owners shall be individuals who, except for temporary absence due to illness or accident, time spent in the Armed Services of the United States, vacations, and leaves of absence not to exceed two years, are actively engaged in the practice of law as employees or owners of the entity. Notwithstanding the foregoing, an owner may be an entity rather than an individual, provided that the owners of such entity are individuals who satisfy all of the other conditions of this rule.

(b) Any owner who ceases to be eligible to be an owner and the executor, administrator, or other legal representative of a deceased owner shall be required to dispose of his or her shares or other

ownership interests as soon as reasonably possible either to the entity or to an individual or entity duly qualified to be an owner of the entity.

(c) The name of the entity shall contain words or abbreviations that indicate that it is a limited liability entity and shall also conform to the requirements of Mass. R. Prof. C. 7.5

(d) All owners of the entity shall, by becoming owners, agree to the provisions of this rule, including without limitation paragraph (3) of this rule.

(e) All directors of a professional corporation and managers of a limited liability company, as the case may be, shall be owners.

(3) The following provisions are established with respect to the liability of the owners of an entity with respect to damages which arise out of the performance of legal services by the entity, such provisions to be in addition to any statutory or common law rules of general application which deal with the liability of entities and their owners:

(a) **Each owner of the entity shall be personally liable for damages which arise out of the performance of legal services on behalf of the entity and which are caused by his or her own negligent or wrongful act, error, or omission.** *Owners of the entity whose acts, errors, or omissions did not cause the damages shall not be personally liable therefor, whether or not they have agreed with any owners or employees or other persons to contribute to the payment of the liability, except to the extent provided in subparagraphs (b), (c), and (d).* {Italics added for emphasis }

(b) **All the owners of an entity which is a professional corporation** at the time of any negligent or wrongful act, error, or omission of any owner or employee of said entity which occurs in the performance of legal services by said entity and which results in damages to the person or persons for whom the services were being **performed shall be jointly and severally liable for such damages, but only to the extent of the excess, if any, of (1) the sum of \$50,000 plus the product of \$15,000 multiplied by the number of owners and employees of said entity at the time of such act, error, or omission who are duly licensed by this court to practice law in the Commonwealth, or duly licensed to practice law by the licensing authority in the jurisdiction in which they practice, and who are owners of or employed by said entity as lawyers, but not in excess of \$500,000 in the aggregate, over (2) the sum of the assets of said entity and the proceeds of any insurance policy issued to it which are applied to the payment of such damages.**

(c) **Each entity which is not a professional corporation shall maintain at all times either (a) professional liability insurance covering negligence, wrongful acts, errors, and omissions of said entity and its owners and employees in connection with their performance of legal services in an amount per claim and in an annual aggregate limit, exclusive of any deductible or retention, not less than the Designated Amount, or (b) a specifically designated and segregated fund for the satisfaction of judgments against said entity or its owners or employees based on their professional negligence, wrongful acts, errors, or omissions in connection with their performance of legal services in not less than the Designated Amount,**

maintained as (i) a deposit in trust or a bank escrow of cash, bank certificates of deposit, or United States Treasury obligations, or (ii) a bank letter of credit or an insurance company bond. As used herein **the term "Designated Amount" shall mean \$50,000 plus the product of \$15,000 multiplied by the number of owners and employees of said entity who are licensed to practice law in the Commonwealth or another jurisdiction, but not in excess of \$500,000 in the aggregate. If such an entity fails to maintain insurance or a fund in the Designated Amount in compliance with this rule, its owners at the time when a professional liability claim is asserted shall be jointly and severally liable to the claimant for an amount not to exceed the Designated Amount applicable at that time, less the sum of the assets of said entity and the proceeds of any professional liability insurance policy issued to it which are applied to the payment of said liability.**

(d) If an entity is an owner (an "ownership entity") or a partner in a general partnership, the provisions of subparagraphs (a), (b), and (c) shall apply to each of the individual owners of such ownership entity or such partners, and the formulas in subparagraphs (b) and (c) shall be based on all of the individual owners, partners, and employees of the entity or general partnership and of each ownership entity and partner thereof who is licensed to practice law.

(4) The entity shall at all times comply with all applicable standards of professional conduct which may be established by this court or by the licensing authority of any jurisdiction in which the entity practices law. Any violation of such standards shall be grounds for this court, after hearing and if it deems the circumstances appropriate, to terminate or suspend the right of the entity to practice law in the Commonwealth.

(5) Nothing in this rule shall be deemed to diminish or change the obligation of each attorney who is an owner of or who is employed by the entity or an ownership entity to conduct the practice of law in accordance with generally recognized standards of professional conduct and in accordance with any specific standards which may be promulgated by this court or the licensing authority of the jurisdiction in which the attorney practices. Any attorney who by act or omission causes the entity to act or fail to act in a way which violates any applicable standard of professional conduct, including any provision of this rule, shall be personally responsible for such act or omission and shall be subject to discipline therefore.

(6) Nothing in this rule shall be deemed to modify, abrogate, or reduce the attorney-client privilege or any comparable privilege or relationship whether statutory or deriving from the common law.

(7) Nothing in this rule shall prohibit the use of a voting trust to hold stock of a professional corporation. For all purposes under this rule, a person who holds a beneficial interest in such a voting trust shall be treated as a shareholder of the corporation, and, additionally, shall be deemed to own in his or her own right a percentage of shares in the corporation equal to his or her percentage of beneficial interest in the shares held by the voting trust.

(8) An entity which is a limited liability partnership or a limited liability company shall not be deemed to be an "association" pursuant to G. L. c. 221, § 46.

H. Agreements for your entity

Treat your decision to begin a practice with another attorney as seriously as any other relationship that you will enter into. Remember that you will be spending almost as many waking hours with this person as with your family. Also, you will be involved in potentially difficult financial decisions regarding the practice such as appropriate expenses, how expenses will be shared, how profits and losses will be shared, and how clients will be shared. While there are many issues to discuss, the critical four issues are: 1) capitalization; 2) withdrawal/retirement; 3) compensation and profit/loss distribution; and 4) role of partners. See the references below.

I. Buying a Practice

If you are considering this option consult with the Massachusetts Rules of Professional Conduct, Rule 1.17 Sale of Law Practice, Ethics Opinions, and *The Lawyer's Guide to Buying, Selling, Merging, and Closing a Law Practice*, S. Butler and R. Paszkiet, ABA (2007)

J. REFERENCES:

- a) Massachusetts Bar Association, *How to Start and Run a Successful Solo or Small –Firm Practice*, October 2006, ch. 7, p. 68 – 85, Choosing the Right Form for Your Firm, Leo J. Cushing.
- b) *Hillman on Lawyer Mobility*, Robert W. Hillman
- c) *Law Partnership, Its Rights and Responsibilities*, G. Cain, 2nd Ed., 1999
- d) *Compensation Plans for Law Firms*, J. Cotterman (edited), 4th ed.
- e) *Law Firm Partnership Agreements*, L. Corwin and A. Ciampi, (2007)
- f) *The Essential Formbook, Comprehensive Management Tools for Lawyers*, G. Munneke and A. Davis (2000)

V. Choosing Office Space

Most attorneys beginning their solo or small firm will begin practicing either at home or in a share office arrangement. Each of these office arrangements has some benefits and deterrents for the newly formed practice. When making the decision where to practice you must consider the cost, the convenience, the issue of image, do you want your clients in your home, professional contact with other attorneys, potential referral sources, convenience of your clients, access to courts, registry or administrative agency, office operational efficiency, expansion opportunities, etc. You should carefully consider these issues because in an ideal world you want to present an image as an established stable attorney that the client knows where to find and knows will be there in the future.

A. Home Office

An excellent discussion of establishing a home office can be found in Donald Lassman's article "*Technology for the Home Law Office*" Massachusetts Bar Institute, Section Review, Vol. 8, No. 3 (2006) reproduced in Appendix A "Home Office"

B. Shared Office - Ethics and Practicalities

There are significant advantages to going into a shared office with other attorneys, but there are also significant ethical issues of which you must be aware. The advantages for a young attorney include, usually, lower overhead, built in infrastructure, access to potential mentors and referral sources.

An excellent outline, developed by Professor of Law, Connie Rudnick, is set forth below and discusses a number of the critical ethical pitfalls that attorneys must watch for when sharing an office,

Important practical and ethical points in space sharing:

By Connie Rudnick, Esq., Professor of Law, Massachusetts School of Law.

Sharing space with other lawyers or non-lawyers, while an attractive set up for practical and financial reasons, gives rise to liability and disciplinary issues:

FIRM NAME

1. Rule 7.5(d) and Comment [2] prohibit using a firm name that implies a partnership when one does not exist, unless a disclaimer is also included, for example, Smith & Jones, "An association of independently practicing attorneys, not responsible for the liability of any

other attorney in this office.” The goal is to insure that the public is not misled into thinking a partnership exists when it does not.

2. It is deceptive to call your “firm” Smith & Associates, when you are in fact a solo practitioner.

ADVERTISING

1. Use of firm name above requires disclaimer wherever the firm name is used.
2. Sole practitioners should maintain separate signs on the door, separate business cards and stationary.

SHARING TECHNOLOGICAL SERVICES-COMPUTERS, FAXES, PHONES

1. Sharing fax line has been held in some jurisdictions to create an unintended and unwanted relationship between the attorneys. Thus, all telecommunications equipment should be separate whenever possible.
2. Maintain separate phone lines, voice mail should be accessible only by attorney and his/her support staff. Same with e-mail.
3. If one computer is used for multiple lawyers, work product should be stored only in password protected part of computer or on jump drive.

SHARING ASSISTANTS—LAWYER AND NON LAWYER

1. Lawyers must instruct subordinates—lawyers and non-lawyers—concerning their ethical obligations, which include the duty not to share confidential information of one client with anyone not directly associated with the attorney handling the case.
2. Employees should be careful to make sure snail mail is directed to the proper attorney, particularly if the practice is to remove it from an envelope first.

MALPRACTICE INSURANCE AND OTHER FINANCIAL CONSIDERATIONS

1. Whether a “group practice” (group of sole practitioners sharing space on one policy) can purchase one group policy was covered in *Space Sharers, Beware!* By Daniel Crane, former Bar Counsel, and John Marshall, First Assistant Bar Counsel, accessible on the Office of Bar Counsel website (www.mass.gov/obcbbo). The authors questioned whether joint coverage on one policy would eliminate the need for a disclaimer under Rule 7.5(d) and Comment [2]. Further, some policies may exclude coverage for liability resulting from acts of other attorneys who appear to be, but are not intended to be, partners. Check with your malpractice insurer for the latest coverages available.
2. Each attorney must maintain separate operating, IOLTA or other client accounts.

3. Expenses shared by the group should reflect actual costs incurred or to be incurred; over or under allocating costs could be construed as creating a relationship not intended to exist. Put terms in writing.
4. Group should not maintain one joint bank account for payment of expenses. Expenses should be paid separately by each member of the group. Do not volunteer to “front” another lawyer’s financial obligation unless strict record is kept of the transaction in writing.

SHARING FILES, FILE STORAGE AND CONFERENCE ROOMS/LIBRARIES

1. Each lawyer’s files should be kept in separate file drawers, which can be locked. Only the attorney and dedicated (working for one attorney only) subordinates should have the key. Do not keep keys in a place where other lawyers or employees can have ready access.

MISCELLANEOUS

1. Don’t refer to your colleagues with whom you share space as “my partner.”
2. When paying a referral fee to another attorney in the group, include that attorney specifically on the fee agreement as you would if he/she were in another office entirely. See Saggese v Kelley, 445 Mass. 434 (2005), on the requirement of advance client consent in writing to a referral fee arrangement.
3. If possible, each individual lawyer should be on the lease. If that is not possible or practicable, then sub-leases should be executed providing that is permitted by the lease agreement.
4. Configure office so that attorney-client communications cannot be heard by other lawyers or support personnel in the office.

SHARING SPACE WITH NON-LAWYERS

1. Take care not to publicize the relationship in a way that implies you have a legal relationship with the space sharer(s). Just as with sharing space with other lawyers, maintain independent public identity.
2. Protect client confidences; store files in separate room if possible, or in separate locked file if not.
3. Do not take or give referral fees or share fees with the non-lawyer.
4. Allocate expenses according to actual amount incurred or to be incurred; over or under allocating expenses can look like fee sharing.

CONSEQUENCES OF IMPERFECT DIVISION

1. Joint civil liability/partnership by estoppels.
 - Governed by Mass. Gen. Laws ch. 108A, § 16(1)(partnership by estoppel)

- *Atlas Tack Corp. v. DiMasi*, 37 Mass.App.Ct. 66, 637 N.E.2d 230, 232 (1994)(Genuine issue of material fact existed concerning whether attorneys were partnership where, inter alia, they used a “firm name,” called themselves “a professional association”).
- *Brown v. Gerstein*, 17 Mass.App.Ct. 558, 460 N.E.2d 1043, 1052 (1984)(evidence of use of firm name insufficient to prove partnership)
- *Gosselin v. Webb*, 242 F.3d 412 (1st Cir. 2001) (Genuine issue of material fact existed concerning whether attorneys were partnership where evidence in addition to use of a “firm name” existed).

2. Disqualification for conflict of interest

- *In re Custody of a Minor*, 432 N.E.2d 546 (Mass.App.Ct.1982) (foster parents' lawyer not disqualified even though she shared offices with lawyer who had represented natural mother earlier in proceeding, when each lawyer had own offices and files and was not connected with other's cases).
- *Commonwealth v. Allison*, 434 Mass. 670, 751 NE2d 868 (2001)(Fact that attorney representing defendant and co-defendant shared space did not create conflict; no per se disqualification).
- *Commonwealth v. Fogarty*, 419 Mass. 456, 646 N.E.2d 103 (1995) (attorneys' joint ownership of building in which attorneys shared space did not create partnership and therefore conflict).

Note: If lawyers sharing space routinely work jointly on cases, or “cover for each other” in situations that require some knowledge of the case or access to it file(s), court could find disqualifiable conflict. See generally Rule 1.10, Comment [1] (Definition of “Firm”).

3. Discipline Cases

- In the Matter of Godbout, 18 Mass.Att’y.Disc.R. 254 (2002) (Firm name)
- In the Matter of Daniels, 23 Mass.Att’y.Disc.R. __ (2007) (S.J.C. Docket No. BD-2006-111, Order of Term Suspension entered January 8, 2007) (Firm name)
- In the Matter of Zachery, 23 Mass.Att’y.Disc.R. __ (2007) (Public Reprimand No. 2007-3, January 26, 2007) (Firm name)

4. Reference Materials

- Rockas, **LAWYERS FOR HIRE AND ASSOCIATIONS OF LAWYERS: ARRANGEMENTS THAT ARE CHANGING THE WAY LAW IS PRACTICED**, 40-DEC Boston. B.J. 8 (1996)

VI. Technology for the Solo

What I have learned over the years is that there is no one right answer as to the specific technology you should purchase and every time that I think I have the best answer someone shows me how to do a task better, or the technology changes and I am running behind again. However, saying all that I do have some strong ideas as to some basics that you need in a modern law office and best practices to ensure that you protect yourself and your clients.

A. My Minimum Hardware Requirements

- Desktop or Laptop Computer (PC or Mac). This computer should have a big hard-drive and lots of memory (3GB).
- Two monitors (you will never look back).
- Multifunction laser printer/scanner/facsimile/copier (the best that you can afford)
- Desktop scanner.
- Smartphone (Blackberry, iPhone, Palm Treo, other)(looking for wireless sync).
- Backup Hardware – USB FlashDrive (daily backups); USB external hard-drive (weekly backup) and, although it is not your hardware – online/offsite backup system such as Mozy and Carbonite.
- Internet Hardware
 - Router
 - Firewall (maybe built into router)
 - Wired connection to computer (faster than wireless and more easily secured)
- Fire safe – to secure backup hardware and other valuables.

B. My Minimum Software Requirements

- MOST IMPORTANT – SECURITY SOFTWARE
 - Antivirus Protection (AVG, Trend Micro, Norton, McAfee, others)

- Antispyware Protection (Webroot Spy Sweeper, Spyware Doctor, CouterSpy 2.0 – check reviews and current cost).
- Antispam Protection (IHatespam, Katharion.com, Symantec, check reviews and cost).
- E-mail. As discussed below, you will get e-mail programs with Microsoft Office (Outlook) and Corel Suite. You can also use excellent email programs like Thunderbird, or web-based programs like Yahoo mail, gmail, or live.com. I use Outlook for my critical business email and use gmail for all non-critical business email like list serves, newsletters, etc.
- Internet Browser: For Windows machines I like both Internet Explorer and Firefox.
- Desktop Search: Google Desktop, Copernic, X1 Professional Client.
- Productivity Software (word-processing, presentations, spreadsheets). The critical question here is whether you need to collaborate with clients (i.e., will your client expect you to be able to provide them a document in a given format?)
 - Microsoft Office – the #1 productivity software with clients. At a minimum you will want Microsoft Office Basic with Word, Excel and Outlook.
 - Corel Suite – includes WordPerfect which is still required by many Federal Courts. If you practice in Federal Courts that require documents filed with an electronic WordPerfect version or if you like “reveal codes” you want WordPerfect.
 - OpenOffice – a free software office suite that gets good feedback from individuals that are not collaborating in document creation with high maintenance clients, that do not need a lot of support, and don’t mind a steep learning curve.
- PDF Conversion – you must have the ability to convert documents into PDF, especially if you practice in Federal Courts.
 - Industry leader – Adobe Acrobat – provides many powerful tools, and with training you can use it to redact information, remove metadata, and bates stamp discovery for electronic production.
 - Nuance – has various levels of software which can create PDF documents, OCR (optical character recognition), and document management.

- PDFCreator and CutePDF are low cost or free alternatives. They obviously have some significant limitations.
- Integrated Practice Management Software – don't live without it. These products integrate what the vendors now call front office (case management) and back office (billing and accounting). Leading products are PracticeMaster/TABS III, Amicus Attorney, TimeMatters/Billing Matters, PCLaw (has a pared down version of case management or can be paired with TimeMatters, and Abacus with many other alternatives. These programs tend to be sold as software modules so if you do not want the entire integrated product you can buy that portion that you believe is adequate. All of these software products can be purchased to only provide case management, time and billing, or accounting. Key issues for success are:
 - Cost/usability.
 - Integration with your email system.
 - Ability to synchronize with PDA or Smartphone.
 - BUY-IN by everyone in firm.
 - Training is essential.
- Time and Billing and Accounting Software. If you do not purchase an integrated program then you can purchase the modules of the above programs for time and billing and accounting. You can also purchase products such as Quickbooks and Microsoft Accounting that have some functionality for time and billing and also provide robust accounting. Timeslips is a well known time and billing program. TurboLaw, a Massachusetts based company has a product. There are many programs and you can find more by contacting LOMAP for a full list.
- Remote Access to your computer. Log in to your computer from afar. You have to set these tools up before you are on vacation.
 - Microsoft's server operating systems allow remote access. You will probably need help setting it up.
 - Software solutions are offered by GotoMyPC.com, pcAnywhere, LapLink Everywhere and LogMeIn.com, among others.

C. Additional Software and internet products I like

- Dragon NaturallySpeaking and Philips digital recorder with Voice Tracer.

- Microsoft OneNote.
- TimeBridge.com for scheduling meetings
- Darik's Boot and Nuke (hard-drive disk wipe) (be careful because you are not getting it back).
- Jott.com – call jot and email a message.
- Yousendit.com provides a way to send large emails that are otherwise blocked. For long term storage of documents I will share I use drop.io.
- TrueCrypt.com. This is free open-source disk encryption software for your computer and external drives.
- iGoogle with RSS feed
- GrandCentral – a single telephone number that rings on all of your phones. Do you want to be available?

D. REFERENCES AND RESOURCES

- ABA Legal Technology Resource Center, Helping Lawyers Solve the Technology Puzzle: <http://www.abanet.org/tech/ltrc/fyidocs/rm.html>
- *The 2008 Solo and Small Firm Legal Technology Guide, Critical Decisions Made Simple*, S. Nelson, J. Simek, and M. Maschke (ABA 2008).
- **CLIENT TRUST ACCOUNTS INCLUDING AN IOLTA (OR TAKING CARE OF OTHER PEOPLE'S MONEY)**
 - Setting up an IOLTA account.

When you are entrusted with a client's funds you are obligated under Mass. R. Prof. C. 1.15 to hold it in trust. Money which is received from a client that has not been earned must be placed in either an IOLTA account or, depending on the amount held and the time held, a separate trust account. Most funds received by a new firm will probably go into an IOLTA account. Therefore you should set up an account as soon as possible and certainly before you receive any money from a client.

▪

You can find a list of approved banks, most are approved, at Board of Bar Overseers's web-site: <http://www.mass.gov/obcbbo/faq.htm#q9>. An appropriate name for the account must be selected. The naming convention is governed by Mass. R. Prof. C. 1.15(e) which requires words such as "trust account", "escrow account", "client funds account", "conveyance account" or "IOLTA Account". I also make the following two suggests when opening an account: (1) First, order checks which are a different color from your operating account. (2) Two, keep approximately \$150.00 in the account for bank charges. This will keep you from inadvertently using client funds to pay for firm expenses.

The Board of Bar Overseers have put together a number of excellent articles about the use of trust accounts and the operational requirements. A summary article has been included below:

E. Trust Account Basics from the BBO

RECORD TIME: Countdown to the New Rule on Trust Accounting

Mass. Gov

• [mass.gov home](#) • [online services](#) • [state agencies](#)



RECORD TIME: Countdown to the New Rule on Trust Accounting

by

Daniel C. Crane, Bar Counsel

The long-anticipated revisions to the record keeping rule, Mass. R. Prof. C. 1.15, finally take effect on July 1, 2004. With that deadline in mind (and although most of you have no doubt already conformed your records to the new requirements), this article will attempt to review some of the issues and questions likely to arise.

What's New

First, a preliminary matter: as of the date that this article will be published, there is one more scheduled training program upcoming on Rule 1.15, on June 17, 2004 from 4:00 7:00 p.m. at MCLE in Boston. Five other programs were given in April and May, with even more last fall and winter.

Second, the revisions to Rule 1.15 were examined in an earlier article in this space, “Records for Other People’s Money” (Lawyers Weekly, 10/20/03)), available—along with a comprehensive booklet from the IOLTA Committee, “Managing Clients’ Funds and Avoiding Ethical Problems”— on the BBO website, www.mass.gov/obcbbo. The information provided in the article and booklet, including forms and samples, will not be repeated here. In very brief summary, however, here are some of the important changes:

- Records that lawyers are required to make and keep of the receipt and disposition of trust funds— including a check register, individual client ledgers and an additional individual ledger for the small amount of the lawyer’s own funds on deposit to pay bank charges— are described in detail. Rule 1.15(f).
- Lawyers must perform a “three-way” reconciliation (of the sum of the individual ledgers including the bank charges ledger, the check register, and the bank statements) of the account at least every sixty days. Rule 1.15(f)(1)(E).
- Lawyers are required to mail or deliver written itemized bills to clients at or before the time that the lawyer withdraws funds from a trust account to pay herself for services, showing the services provided and the amount of funds the lawyer continues to hold for the client after withdrawal of the fee. Rule 1.15(d).
- Lawyers are prohibited from making withdrawals from trust accounts by ATM or checks payable to “Cash” and are required to use only prenumbered checks. Rule 1.15(e)(3).

The remainder of this article will attempt to address some of the confusion over what has not changed, as well two questions asked most frequently since the revisions to the rule were approved.

What’s Not New

The basic IOLTA account model remains the same. You must deposit all trust funds that are either nominal in amount or to be held for a short period of time to a pooled IOLTA account, with interest payable to the IOLTA Committee. There is one narrow exception for a conveyancing account that is maintained in the lending bank and used exclusively for loan transactions for that bank only; accounts meeting these conditions are permitted, but not required, to be IOLTA accounts. If these types of conveyancing accounts are not IOLTA accounts, however, they must be noninterest-bearing.

All other trust funds must be maintained in separate individual trust accounts, with interest payable as directed by the client or third party for whom the funds are held. Rule 1.15(e)(5). The check register for an individual trust account is in fact the client ledger, so that for individual accounts, only a two-way reconciliation of the check register to the bank statement is required.

The concept of what constitutes trust property also remains essentially the same. It includes both tangible property—for example, securities, jewelry, original documents such as marriage certificates or wills—and funds. The definition of trust funds has always included, and continues to include, funds of clients or third persons in a lawyer's possession in connection with a representation. The obvious examples are items such as settlement funds from a claim or lawsuit, mortgage proceeds, deposits on sales of real estate, and other traditional receipts. Also included are trust funds held in any fiduciary capacity, such as executor, guardian, or escrow agent. As to these latter, and unless for some reason the funds received are a one-time, short-term deposit, funds held for these purposes must be maintained in an individual trust account with interest payable to the estate or beneficiary, rather than in an IOLTA account.

The definition of trust funds also continues to include retainers, that is advance fees paid by clients to be earned in the future on an hourly or other basis. Retainers and other trust funds belonging in part to a lawyer and in part to a client must be deposited to a trust account. Rule 1.15(b)(2)(ii). On the other hand, earned fees—that is fees paid only after services have already been rendered—cannot be deposited to a trust account and must be deposited to a business or personal account.

Subject to the strict new notification and billing requirements in Rule 1.15(d) and to other requirements concerning disputed fees in Rule 1.15(b)(ii), lawyers must withdraw fees from the trust account in full when earned. This rule requiring that fees be withdrawn at the earliest reasonable time after the lawyer's interest becomes fixed is again not new; a lawyer who leaves earned fees in a trust account is commingling. Thus, if the lawyer is due a one-third contingent fee on a settlement of \$10,000, then the entire \$3333 must be withdrawn promptly. You cannot withdraw \$500 this week, \$1000 next week, and so on until the full amount is paid.

You also cannot withdraw fees by paying your bills, or writing checks to your spouse, directly from your trust account. This practice has long been deemed commingling and the new rule now is explicit that funds withdrawn from a trust account to pay fees must be payable to the lawyer or law firm. Combined with the new requirement that no withdrawals can be made in cash or by ATM (again, a course of action that was always improper, but has now been spelled out), the bottom line is that fees must be paid only to the lawyer or law firm and only by check or electronic funds transfer.

Even the requirement of individual client ledgers is not really new. Lawyers have routinely been disciplined for errors, particularly negligent misuse of funds, caused by inadequate record keeping including the absence of an individual ledger. The rule states expressly that the individual ledger can never be negative. It is unstated, but obvious, that the ledger must also zero out at the conclusion of a case. A ledger for a long-settled personal injury case, for example, should not show \$350 undisbursed month after month. Either a bill hasn't been settled or compromised, fees haven't been withdrawn in full, or the client is due a small balance. Whatever the reason, the matter needs to be addressed and the funds paid out in full.

And, of course, the dishonored check provisions of Rule 1.15 remain. Financial institutions offering IOLTA and other trust accounts are still required to notify Bar Counsel when a check drawn on a trust account is returned unpaid. Bear in mind that Bar Counsel's examination of a lawyer's trust account records in conjunction with receipt of a notice of dishonored check will now by necessity trigger an examination of the lawyer's compliance with the new record keeping requirements.

FAQs

In the course of the many CLE programs on the new rule over the last year, a few questions have been raised that deserve repeating in a wider forum. One is the issue of how flat fees should be handled. Flat fees occupy a gray area between retainers and earned fees. Bar Counsel's position is that flat fees can be deposited to a business or personal account (and thus that the notification requirements of Rule 1.15(d) would not apply). That said, flat fees are still subject to the requirements of Rule 1.16(d) that unearned fees must be refunded. If the client pays \$5,000 for an OUI defense today, and tomorrow decides to terminate your services and hire the latest hotshot, you must promptly refund the unearned portion, in this instance probably most of what was paid.

Another FAQ concerns investment accounts, that is, to what extent do the record-keeping requirements of Rule 1.15 apply to trust accounts held at brokerage firms or other similar institutions. Lawyers of course have the same general fiduciary obligations for these accounts that they would have for any trust property. For example, every account statement must be examined when received for obvious errors and to insure that the transactions recorded comport with the lawyer's directions. However, the detailed record keeping requirements of Rule 1.15 need only apply to the so-called cash portion of the account against which the attorney has checkwriting privileges. As to such funds, the attorney must comply with all requirements of Rule 1.15, including maintaining a separate check register, reconciling the check register to the cash portion of the account statement, and complying with the notification requirements when withdrawing fees.

The Transition

Most of you have probably already implemented the necessary changes to your accounts and record keeping. For those few of you who put it off to the last minute, here are a few helpful tips.

First and foremost, you must be able to identify who the clients or third parties are whose funds comprise the current balance in your IOLTA account and exactly what amounts you are holding for each. Your check register should identify an opening balance split among those persons, noting the amounts held for each both in the check register and then in the clients' individual ledgers.

If you cannot identify precisely whose funds you are currently holding and in what amounts, you may need to retain an accountant to assist you. While the problem is being addressed, however, you should not be depositing new funds to this account. Open a new IOLTA account for new trust funds received going forward (and as to which records will

be maintained in compliance with the revised rule). You should transfer to this new account funds held in the old IOLTA account the source of which you can ascertain. For example, if you know that you received a retainer of \$2000 from Joe Jones and that you have paid yourself \$500 from this retainer, you should transfer \$1500 to the new trust account, identifying the deposit as the Joe Jones retainer both in the check register and on an individual Joe Jones ledger.

If you have funds being held for missing clients, you may be obligated to commence an escheat of the property to the Commonwealth, in compliance with the Abandoned Property Act, G.L.c.200A, and the regulations of the state treasurer. See “Lost and Found—What to do with missing client’s funds” at the BBO website.

If these steps are followed, the only funds that will remain in the old IOLTA account are those that cannot be pegged to a particular client in either name or dollar amount. If the old account does not wind down in a few months as outstanding checks clear, you will have to retain an accountant.

Finally, if you have questions about any of these issues, please feel free to call Bar Counsel’s helpline on Monday, Wednesday and Friday afternoons. <http://www.mass.gov/obcbbo/recordtime.htm>>

F. How To Do a Three-Way Reconciliation

Three-Way Reconciliation sounds a lot harder than it actually is. Attorney James Bolan’ has authored an excellent article, reproduced in Appendix B “Reconciliation” with permission, explaining what is entailed and the process of reconciliation. In addition, the Massachusetts IOLTA Committee has authored a booklet: “Managing Clients’ Funds and Avoiding Ethical Problems” which is well worth reading. See, <http://www.mass.gov/obcbbo/rules.htm>.

[Examples of how to use Quicken and QuickBooks to set up and track IOLTA accounts are available. LOMAP has put together a booklet showing how to set up IOLTA client accounts and do the three-way reconciliation with QuickBooks Simple Start Edition 2007. This can be obtained by contacting LOMAP. Also, the Minnesota Office of Lawyers Professional Responsibility has prepared a guide to using Quicken 2002 Basic. This can be found at the Board of Bar Overseer’s web-site. See <http://www.mass.gov/obcbbo/rules.htm>.

VII. FEE AGREEMENTS, NON-ENGAGEMENT LETTERS AND DIS-ENGAGEMENT LETTERS

A. Fee Agreements

You should enter into a written fee agreement with every client for a number of reasons. First, this will allow you to clearly define the scope of your relationship with the client. Generally, you want a limited scope of engagement to limit future claims that you represented a party about an issue of which you are not even aware. Second, it allows you to clearly communicate with your client your fees, what you charge for, and when you expect to be paid. In addition, you can discuss whether interest will be charged for unpaid amounts due and what will happen if the client continues to not pay. Third, you WILL talk about how a RETAINER must be paid before you begin work on a project. You will go over the fee agreement with the client and have an executed copy for both the client and for you. Mass. R. Prof. C. 1.5 sets forth the basic rules governing fees and fee agreements. Although to a large degree fee agreements are subject to negotiation as is any agreement. There are however certain types of cases in which contingent fee cases are not allowed and, for contingent fee cases, contract provisions beyond the model contingent fee agreement set forth in the rules must be pointed out to the client with an explanation of the difference between the model contingent fee agreement and the proposed contingent fee agreement.

PRACTICE POINTER: 1. If the client cannot pay a retainer now, why do you think they will be able to pay later. 2. Set a retainer that is a significant portion of the anticipated total fee. It may be the only portion of the fee you will ever see.

1. Contingent Fee Agreements

You cannot use a contingent fee agreement for domestic relations matter if the contingency is based on (1) securing a divorce or (2) the amount of alimony or support or property settlement in lieu thereof. You also cannot use this fee agreement for a criminal case. The model contingent fee agreement, as set forth in Mass. R. Prof. C. 1.5 is set forth below:

Massachusetts Supreme Judicial Court

CONTINGENT FEE AGREEMENT

To be Executed in Duplicate

Date: _____, 19____

The Client _____

(Name) (Street & Number) (City or Town)

retains the Lawyer _____

(Name) (Street & Number) (City or Town)

forth herein below.³ This Agreement is *not* contingent upon the outcome of the above-referenced litigation.

2. a. The Firm hereby acknowledges receipt of Five Thousand Dollars (\$5,000.00) as an initial retainer deposit in this matter, and, in consideration of the payment thereof, agrees to provide legal services in connection therewith. In the event that the sum of money being held as a retainer falls below the amount of Two Thousand Five Hundred Dollars (\$2,500.00), the Firm will notify the Client and the Client shall, on each occasion, as requested, replenish all amounts necessary to bring the Client's retainer account balance to Five Thousand Dollars (\$5,000.00). The Client shall complete, execute and return to the Firm, along with this Fee Agreement, IRS Form W-9, a copy of which is attached hereto.
- b. In the event that the matter proceeds beyond the initial response or the scope of the initial engagement changes, the retainer shall then be increased to the amount of Ten Thousand Dollars (\$10,000.00). In the event that the new retainer falls below the amount of Five Thousand Dollars (\$5,000.00), the client shall, on each occasion, as requested, replenish all amounts necessary to bring the Client's retainer account balance to Ten Thousand Dollars (\$10,000.00).
- c. In the event that a determination is made by any party, the Client, or the Firm, that the matter is likely to proceed to a trial or hearing, the retainer shall then be increased to the amount of Twenty Thousand Dollars (\$20,000.00). In the event that the new retainer falls below the amount of Ten Thousand Dollars (\$10,000.00), the client shall, on each occasion, as requested, replenish all amounts necessary to bring the Client's retainer account balance to Twenty Thousand Dollars (\$20,000.00).
- d. In the event that the money being held as a retainer is insufficient to satisfy any of the Firm's invoices, the Client shall promptly pay such invoices in full, and replenish the retainer. The Client understands that no precise estimate of legal fees can be given. The total amount of attorneys' fees, costs, and disbursements may be substantially more, or less, than the retainers. The Firm's present estimate to complete this representation is not known.

In addition, in the event that the Firm, in its sole discretion, determines that the money being held as a retainer or the estimate of legal fees to be incurred in the matter is insufficient to satisfy any of the Firm's prior or future anticipated invoices, the Client shall provide a financial statement

³These rates are subject to the Firm's annual increases as of each January 1, beginning with January 1, 2008.

or other evidence of available assets by which to secure the payment of future legal fees and Client shall execute instruments, such as a promissory note, revolving credit agreement and/or a mortgage or other security, to guarantee and secure the payment of legal fees. The Firm will inform the Client of its determination to seek security and present the client with the forms to be signed and that Client will have the opportunity in the ten (10) days after being informed to seek advice from independent counsel prior to the execution of such instrument(s) and the provision of such security. The Client shall have the ten (10) days from the presentation by the Firm of such forms to be signed. The failure of the Client to execute such instruments within the ten (10) day period, will permit the Firm, after notice to the Client, to terminate the representation of the Client.

3. It is agreed by and between the Client and the Firm that the retainer paid herein by the Client shall be applied against legal services actually performed, and disbursements made, by the Firm for the Client, which services shall be charged at the following current hourly rates⁴:

Primary lawyer(s)

Other lawyers

Partners

Associates

Paralegals

4. It is understood and agreed by and between the Client and the Firm that the bills/invoices rendered, including a final bill, shall, in addition to the time expended, take into account the following factors described by the Supreme Judicial Court as to the reasonableness of fees for legal services:

- the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly;
- the likelihood, if apparent to the Client, that the acceptance of the particular employment, will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the Client or by the circumstances;
- the nature and length of the professional relationship with the Client;
- the experience, reputation and ability of the lawyer or lawyers performing the services; and,
- whether the fee is fixed or contingent.

Invoices will be submitted to the Client from time to time (generally monthly) and the outstanding sum of time charges and disbursements of the Firm will be deducted from the retainer.

⁴These rates are subject to the Firm's annual increases as of each January 1, beginning with January 1, 2008.

All interim billings shall be due and payable upon receipt unless otherwise stated. Failure to pay interim billings promptly, to make the payments as set forth herein or to promptly replenish the retainers, will permit the Firm, after notice to the Client, to terminate the representation of the Client. The Client agrees that the final bill submitted by the Firm for legal fees and costs will be due and payable at the conclusion of the matter or at the termination of the Attorney - Client relationship.

5. The Client agrees to assume and pay for all out-of-pocket disbursements incurred in connection with this matter (*e.g.*, filing fees, witness fees, travel and mileage costs, sheriff's and constable's fees, expenses of depositions, including transcript costs, investigative expenses, expert witness fees, outside consultant fees, charges for photocopies, including any outside photocopying, postage, Federal Express, courier, file retrieval, Lexis-Nexis and/or any other computer research, and other incidental expenses); and the Firm agrees to obtain Client's prior approval, excepting costs associated with deposition transcripts, before incurring any specific disbursement expected to be in excess of Five Hundred Dollars (\$500.00). In the event that the Firm determines that it is appropriate to consult with and/or retain an expert witness or consultant, the Firm will notify the Client and obtain the Client's consent to consult with or retain such expert witness and/or consultant for the benefit of the Client. In such an event, the Client agrees to pay for all costs and fees associated with the retention of such expert and/or consultant.

6. In the event that, upon either the completion of the within matter, or, the termination of the Firm's representation of the Client, the total cost of the legal services performed and disbursements made by the Firm shall be less than the amount of any retainers paid by the Client, the balance shall be refunded to the Client by the Firm.

7. It is understood and agreed that the hourly time charge for legal services includes, but is not limited to, the following: Appearances (including travel time to and from Court, the Board of Bar Overseers, Bar Counsel Office, or other administrative, juridical or investigative entity, department or body); conferences, whether with the Client, opposing counsel, lawyers within the Firm or potential witnesses; telephone calls; correspondence; legal research and writing, depositions, drafting and filing legal documents; reading and reviewing of file materials and preparation for any hearings and trial. Telephone calls and correspondence shall be billed at either actual time or a minimum of one-tenth (1/10) of one hour.

8. In some cases the Court awards counsel fees to one party and orders the other party to pay the amount awarded; such awards are solely in the discretion of the Court and cannot be relied on with certainty. Also, in some cases, if there is a settlement agreed to by any of the parties thereby avoiding a contested trial, the settlement contract may provide that one of the parties will contribute an agreed amount towards the other party's legal expenses. In the initial stages of a case it is impossible to predict whether either of the above situations will materialize and therefore no representation is made in this Agreement that any contribution by the other party will be obtained towards the Client's legal expenses. In the event, however, that any such contributions are obtained

for the benefit of the Client, the amount in question will be credited against the Firm's final bill to the Client.

9. If the Client and Firm are unable to resolve their differences on the question of any fee, and/or expenses, they hereby agree to make a good faith effort at resolving their disputes. If the dispute cannot be resolved, the Client and Firm agree to place the matter before the Fee Arbitration Board of the Massachusetts Bar Association and agree to be bound by the decision.

10. If the Firm is discharged by the Client prior to the conclusion of this representation, the Firm is entitled to be then compensated for the value of the services rendered to the Client under this Agreement up to the time of discharge, and for its reasonable expenses and disbursements.

11. The Firm and the Client state that the Firm has made no promise or guarantee as to the successful resolution or eventual outcome of this matter, and that this Agreement is not based upon any such promises or anticipated results.

THIS IS A LEGALLY BINDING CONTRACT. ASK TO HAVE EACH TERM YOU DO NOT UNDERSTAND FULLY EXPLAINED TO YOU SO THAT YOU UNDERSTAND THE AGREEMENT YOU ARE MAKING.

12. The Client has read this Agreement carefully and understands the terms hereof.

SIGNED IN DUPLICATE

Date

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

By: _____

3. Non-Engagement Letters

A non-engagement letter simply tells your potential client that you are not representing them as their attorney. This action is critical for risk management purposes. You want to prevent future claims malpractice and disciplinary complaints based on an individual's baseless belief that you were supposed to be acting as their attorney and that you failed to act on their behalf. The letter should be simple, but also should be done in a manner that will not offend individuals that may have an appropriate case in the future. I have seen at least one excellent

example posted on SoloSez from a Massachusetts based attorney. The following is a simple example of a non-engagement letter:

NON-ENGAGEMENT LETTER

(May be sent by certified mail, with a return receipt requested)

DATE

NAME

ADDRESS

CITY, STATE & ZIP

RE: [SUBJECT]

Dear :

The purpose of this letter is to confirm, based on our conversation of [*date*], that [*insert firm name*] will not represent you in [*describe matter*] because [*insert reason for declination, if possible and appropriate to state it*]. Our decision to decline this case should not be construed as a statement of the merits of your case.

You should be aware that any action in this matter must be filed within the applicable statute of limitations. I strongly recommend that you consult with another lawyer concerning your rights in this matter.

Very truly yours,

4. Disengagement or Termination Letter

A disengagement letter is the final correspondence you send your client when the attorney/client relationship is complete. The circumstances where the letter is necessary are varied and include the completion of all work that was in the scope of the initial engagement, a client's failure to pay for services, a client orally terminating the services, or if you wish to fire a client. Ideally, this letter serves multiple functions, risk management and marketing. First, the letter clearly notifies the client that you are done working on the case. Second, under appropriate circumstances, it is an excellent opportunity to market your firm to a satisfied client. In addition to clearly stating that the attorney/client relationship is complete you will also want to communicate about fees, either what is owed by the client, or returning unearned retainers. You

will also want to discuss the return of property, how documents will be returned, stored or destroyed (as appropriate), and you should specify any further action that the client will need to take in the future to protect their interest. A generic example of a termination letter with options for multiple circumstances can be found at:

http://eric_goldman.tripod.com/ethics/disengagementletter.htm.

B. REFERENCES AND RESOURCES

1. *Letters for Lawyers, Essential Communications for Clients, Prospects, and Others, 2nd Ed., T. Kane, ABA, GP/Solo (2004)*
2. *The Essential Formbook, Comprehensive Management Tools for Lawyers, G. Munneke and A. Davis, ABA Law Practice Management Section.*

VIII. RECORDS RETENTION (Don't let it weight you down).

A. WHAT DOCUMENTS DO I RETAIN

B. HOW LONG DO I "HAVE TO" RETAIN DOCUMENTS

C. HOW SHOULD I RETAIN DOCUMENTS

1. **Going Paperless**

D. REFERENCE MATERIALS

1. *Records Management in the Legal Environment, J. Barr, B. Chiaiese, L. Nemchek, ARMA International (2003).*
2. *The Lawyer's Guide to Record Management and Retention, G. Cunningham and J. Montana, ABA Law Practice Management Section, 2006.*

IX. MARKETING

A. Firm Name/Logo

B. Business Cards/letterhead

C. Web-site

X. AVOID PROCRASTINATION AND GET THINGS DONE (6 TIPS)

What is the value of avoiding procrastination or becoming more efficient? The easiest measure is in dollars. Assume that you lose a ½ every workday due to either inefficiency or procrastination. Also assume that your realization rate is \$100.00 per hour, and that you work 48 weeks a year, 5 days a week. The value of the lost time is: \$12,000. The lost time also increases stress, loss of personal and family time. Set goals, schedule your time, avoid duplication of efforts and avoid interruptions. Below we set forth a discussion put together by Dr. Jeffrey Fortgang, LCL, Inc.

Five Steps for Effectively Dealing with Procrastination

While many of us tend to procrastinate in one area of life or another, when lawyers put off key tasks there can be serious consequences for their clients, their colleagues, and themselves. Naturally, the tendency to avoid tasks is greatest when we anticipate a certain amount of unpleasantness, e.g., when we see the task at hand as beyond our current knowledge, or it is likely that our efforts will elicit negative reactions. Beyond that, patterns of procrastination may also reflect fundamental beliefs that we have about ourselves. In her book *It's About Time*, Dr. Linda Sapadin gives labels to six procrastination patterns that convey the kinds of thinking/motivation involved: *The Perfectionist*, *The Crisis-Maker*, *The Dreamer*, *The Defier*, *The Worrier*, and *The Overdoer*. Along similar lines, Dr. William Knaus' book, *Do It Now! Break the Procrastination Habit* addresses the need to identify thoughts that promote task-avoiding behaviors and replace automatic responses with conscious choice.

Putting off a task is rewarding on an immediate level (i.e., "I'll worry about that tomorrow" means an immediate decrease in pressure even if it makes for more pressure later on), so the behavior can easily be learned – but it can also be unlearned. There are many, many ways to attempt to tackle procrastination, and what works best for one person might not work for another. You might, for example, try approaches like these:

- ◆ **Start with small steps**, e.g., in a writing task, one might initially settle for one poorly-worded paragraph or sentence, just to get some kind of process rolling. If you expect too much of yourself at one sitting, the idea of avoidance becomes very appealing.
- ◆ **Impose a schedule** on yourself, e.g., "I will work on my most difficult cases every day from 11 AM to noon." If an hour produces too much discomfort, try a half-hour; over time, your "tolerance" will probably increase.

- ◆ **Reward yourself** for time spent on tasks that have not yet reached their “last minute.” For example, you might allow yourself some unstructured internet time (or a nap, a walk, etc.) *after* spending time on a target activity.
- ◆ **Limit avoidant behaviors** to a certain schedule as well, e.g., “I will only check my email or surf the web, etc., from 9 to 10 and 3 to 4.”
- ◆ **Involve someone else**, like a colleague, spouse, therapist, or coach. You might meet weekly to review your progress on the work that you tend to avoid, or “break the ice” by telling that person your thoughts about the task and how it might be addressed. You are much more likely to sustain changes in your habitual behaviors if you have someone to “answer to” over an extended time. Certain kinds of professional coaches are particularly accustomed to this role.⁵

Time Management Skills

Effectively managing your time in the law office often raises the same issues as dealing with procrastination. Time management requires that you seize control of your time and not allow others, to the extent possible, dictate your actions. It also requires the willingness to schedule a time to deal with the worst clients/matters/attorneys and sticking to the scheduled commitment. My favorite recommendations to effectively manage time are:

- ◆ **Do not duplicate efforts.** The most effective ways to avoid duplication of efforts is (1) the implementation of an integrated front and back office case management system, and (2) create form banks and use document automation (where appropriate).
- ◆ **Schedule Your Day with Focused Goals.** You must strategically determine your goals by developing a comprehensive to do list. You need to then prioritize the lists based things such as, but not necessarily weighted in the following order, client service, risk management, deadlines, client development, professional development, and office administration. Schedule the most important goals (based on time pressure, risk management issues, difficulty of task, etc.) for the time of day where you work most effectively. However, within your schedule leave time to manage unexpected events. **DON'T WASTE YOUR BEST TIME ADMINSTRATING EMAIL OR TELEPHONE MESSAGES.**
- ◆ **Avoid Distractions.** There are times that interruptions are unavoidable, but you should minimize distractions while working on high priority items. Put your telephone and e-mail on “do not disturb.” Studies show that modern employees stay on task for approximately 3 minutes due to e-mail. Additional studies show that if you act upon an email notification it takes, on average, approximately 16 minutes to get back on task.

⁵ Doctor Jeffrey Fortgang, LCL, Inc., 617-482-9600, 31 Milk Street, Suite 810, Boston, MA 02109. Contact LCL to strategize how you will effectively learn to quit procrastination.

ACHIEVE QUIET TIME.

- ◆ **Delegate Effectively.** Even solos need to delegate. This essentially means outsourcing the work that you are least efficient at and enjoy the least. I find that most attorneys are fairly bad at maintain financial records (operating and trust accounts) because they do not enjoy the task and often do not understand how to do the task. The failure to do this task also often leads to attorneys failing to issue invoices for their work. Therefore, this is an excellent task to outsource to a bookkeeper or accountant.

Another area which can be successfully delegated is filing documents. Again, this is a job that must be done, but few solos enjoy the task. The second area that solos can effectively delegate is filing. With a little training most college students can do this job fairly quickly and efficiently on a part-time basis. For additional information on filing systems see: <http://masslomap.blogspot.com> or contact LOMAP.

A. REFERENCE MATERIALS

1. *Managing Time*, Pocket Mentor, Harvard Business School Press (2006).
2. *Getting Things Done*, David Allen, 2001.