

# **The Fool on the Hill:**

## **Management Considerations for New Law Firms**

# Considerations . . .

- **Why start your own firm?**
- **How do you prepare?**



# **MORE Considerations**

- **Office Space . . .**
- **Financial Issues. . .**
- **Data Storage Decisions . . .**
- **Timekeeping . . .**

**What we did right,  
And what we did  
wrong . . .**



# Groundwork . . .

- **Develop a Business Plan**
- **Find an IT consultant**
- **Use a Practice Coach**
- **Talk to other new firms**

# **Finance and Business Considerations**

- **Seed money – how much do you need?**
- **Should you lease or purchase office equipment?**
- **Should you use a business credit card?**
- **Should you obtain a line of credit?**

# Finance and Business Considerations

**There may be additional challenges for firms that practice multiple types of law**



# Finance and Business Considerations

## Client payment plans:

Could non-traditional payment plans work for your practice?



"Why, yes. We do have an easy payment plan. You just make one easy payment of the total amount billed."



# **Office Space:**

## **Should I own or should I rent?**

- **You may have to personally guarantee the lease or mortgage**
- **Benefits associated with ownership include rental income and equity**
- **But, if you own the space, you will likely have unexpected expenses when things break down or get damaged**
- **And, if you have partners with whom you co-own the space, you will need to develop a plan in case the partnership breaks up**

# **Office Space:**

## **Should I own or should I rent?**

- **If you rent, you have increased flexibility for the office to grow or change locations**
- **If you rent, you don't have to worry about building maintenance or upkeep**
- **But, you are not growing equity**

# Office Space: Virtual Offices



# Office Space: Virtual Offices

- **Save money**
- **Offer a convenient place for you to meet with your clients**
- **BUT BEWARE . . . You cannot be misleading**
- **ANOTHER OPTION: SHARING SPACE . . .**

# Data Storage



**Cloud**

**v.**

**Server**



# Data Storage

**Maybe you don't need a long term storage solution?**

**Depending on the size of your firm and practice area, consider including language in your client agreements that all documents will be destroyed if the client has not picked them up within a certain timeframe after the case is resolved**



# Timekeeping

Stu's Views

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- **Research timekeeping software**
- **Establish clear policies, and**
- **Hold yourself and your employees accountable**

## **OPENING YOUR OWN LAW FIRM**

### **I. OFFICE SPACE**

Choosing office space is a very important part of your business plan in starting your own law practice. Before seeking space, a determination should be made as to how clients and prospective referral sources will perceive you depending on your space and what are your ultimate goals. Do you expect to work full time? Will clients have in-person meetings with you at your office? How will potential referral sources perceive you if you operate out of your home?

For example, if you have: (i) been practicing law for a significant amount of years; (ii) the experience and reputation as an intellectual property attorney; (iii) you have strong referral sources, you have developed over the years; (iv) core clients who will stay with you wherever you go; and (v) the ability to use technology effectively; working from home could be a very viable option for you.

However, for a practice that involves client meetings like family law or estate planning a home office may not be a great option absent perhaps a virtual office where you can use a conference room to meet clients. I have some business clients that I have had for over a decade that I have never met while still regularly using me by phone and email for: leases; independent contractor agreements; employee manuals; severance agreements; employment agreements, and other transactional documents. If my practice primarily revolved around just those clients, which it does not, a home office might be an acceptable and obviously far less expensive option for me. However, I still expect those clients would want an attorney that has a nice office even if they never step put in it. Appearances matter to many clients.

A virtual office costs substantially less, depending on the services you obtain. By way of example, our firm has a virtual office in Portsmouth with a choice to use conference rooms downtown on Fleet Street or at Pease, as do several other attorneys in this State. Depending on how many hours per month you have agreed to max out on for your use of those conference rooms, the cost could be a very small fraction of what it would cost to rent a much smaller office on a full-time basis. Therefore, you could meet clients at a convenient location to them, yet there may be an issue for client disclosure as to explaining that the primary office is your home. The same disclosure issue could apply if the name of your law firm is The Law Officess of Jane Doe or Jane Doe & Associates and that there are no associates. You cannot be misleading. If the home office is clearly identified on your letterhead and other disclosures and you state that "meetings are available at:", then provide the location of the virtual office that may be considered a proper disclosure. If you actually have a real office outside of your home and the virtual office is a satellite office, I have not heard of an ethical concern of disclosure since the issue is whether you are professional enough to have an office outside of your home. Again, appearances matter.



You should also consider whether to rent or buy. Obviously when considering purchasing an office property, your creditworthiness, as well as that of any of your potential law partners<sup>1</sup>, would mean they will likely have to be personally guaranteeing any loan to buy a property and perhaps guarantee a lease. You will want to consider the potential difficulties if you and your law partners decide to break up in that it is generally much easier to make an arrangement for the attorneys in the law practice break up than a break up from a real estate investment. Law partners may have an agreement between them as law partners that upon one of them leaving they get back the capital contributions they put in to the law firm plus their share of profits through the date of their departure. However, as to the real estate, there is equity in the property and an ongoing obligation on the real estate loan. If there is a line of credit for the law firm, that line of credit is often renewed yearly and if a law partner is no longer in the firm he or she does not guaranty the new line of credit. Real estate loans however are term notes for which the guaranty could be for 20 years. Simply put, you may want to only be law partners and not real estate partners.

Another concern as to owning real estate is the distinction, if and when associates become partners; whether they become partners in the real estate as well as the law partnership. Law partners that benefit from the law firm lease payments to the real estate holding company and law partners who do not may have a conflict in negotiating the lease and overall feeling of fairness.

Whether leasing space or purchasing property, you should consider what type of premises will best suit you. A Victorian house on the north end of Manchester could provide a great deal of prestige to the firm particularly if there is adequate parking. However, depending on the lease terms, there may be a lot more additional expenses for its upkeep such as damage to the roof if a tree falls on it, flooding, or regular maintenance that you may not have with a larger commercial office space. Also is it wired with the technology you want and have an adequate HVAC system? Another consideration is potential referral sources. Being in a larger office building if you leave your office to interact with others in the building may provide you access to other professionals such as real estate brokers, accountants, or a variety of other business that may be a referral source. In a single tenant building you may have a sign that will be easily seen from the street yet in a large office building you will not have as much street visibility. That of course may not matter if most of your clients will find you on line between your web site, blogs or other on line presence.

Considering who your potential clientele will be, it is critical in your determination of where your office location will be; not only in what town or city, but where in that town or city. For example, if your firm handles primarily estate planning with elderly clients, having a location with ample parking and easy handicap accessibility matters. An office still can be ADA compliant with a ramp, but the downtown parking garage could be

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<sup>1</sup> When referring to partner, I mean an equity holder whether they are called a director, partner, or otherwise with the understanding that there is a legal distinction between them and I merely refer to partner as a co-owner for the purpose of this presentation.

blocks away from the office. Further elderly estate planning clients may not want to travel through the traffic of downtown to get to your location wherein family law clients and business professionals may not have that same concern.

Review the office lease very carefully and do not be afraid to contact a colleague who is familiar with office leases to help navigate lease terms or inform you what is reasonable to ask for as an office space. I review a fair amount of commercial leases for both landlord and tenant clients and I find sometimes that buried within the lease can be fairly surprising provisions. Taking the time to actually read the lease in its entirety, rather than skimming over the provisions, is well worth.

## **II. FUNDING**

Whether you are going out on your own or with other law partners, considering how you will fund that venture is critically important. Do you to get a line of credit and if so how much do you budget to draw upon during the initial months of your operation and thereafter? Some experts say you should have enough money whether on deposit or available through borrowing, for the operation of your firm and to live on (including income taxes) for six months. Others may say you need more which would depend on your circumstances. You should discuss and agree between the potential law partners for what you will use your line of credit. Some attorneys think that a line of credit should not be used for their own personal salary while other law firms do use the line of credit. I can say that neither of those options are a bad approach even though attorneys feel strongly on either side so it needs to be discussed and agreed to between the law partners.

Discussions need to occur as to how each potential law partner is expected to generate cash flow and the timing of that cash flow. For example, in family law practice, retainers are generally expected before a case commences and when the retainer has been exhausted it is expected to be replenished. There are other arrangements where a retainer is not touched until the end of the attorney/client relationship and others or where invoices are payable upon receipt. If the firm practice includes representing personal injury or employee plaintiffs, it is likely that the firm will collect its fees on a contingency fee basis and those fees are unlikely at first to come in at regular monthly intervals. A discussion should occur as to how much time it will take before the fees start coming in and when they are expected to come in to cover cash flow of the operations as well as whether or not there is an agreement to retain some of those fees in the firm operating account after it has been earned to decrease the tapping of the firm line of credit. Not planning ahead will likely cause, at a minimum, a rift between the law partners and, worse, may cause the downfall of the firm because it becomes insolvent.

## **III. PERSONNEL**

The determination of whether or not you want to be a sole practitioner or a partnership is an important one. I can think of a variety of examples from former attorneys at Wiggin & Nourie who are now successfully in solo practices. Having said

that, if you do not have the reputation, client base, and referral sources, you should consider that going out on your own as a sole practitioner might be perceived by others that you did not have a choice and that circumstances forced you to put up your own shingle without a partner. While that assessment may or may not be fair, that perception may very well be out there and may prevent you from getting the more attractive cases that you are capable of doing in your area of practice and getting the hourly rate that you would like to obtain for your work. Also, there may only be so much you can ask of a colleague who is not in your firm for legal advice. Therefore, you may find that it is beneficial to start your own law practice with one or more partners.

Obviously a discussion should occur between you as to how you would be sharing the income and the losses. One approach would be you merely share overhead costs such as malpractice, rent, and support staff, but otherwise have an "eat what you kill" approach. Your compensation, including any draw, is based upon your revenue generation with some formula for the utilization of paralegals and associates with the firm. Another approach is that you divide everything evenly with your partners, irrespective of the contributions. Of course most approaches are somewhere in between those two, yet it is important to have that important discussion and agreement with your potential law partners before establishing your law firm.

A further discussion should be had as to your anticipation of hiring of associates and support staff? By way of example, will you have a payroll company who will not only handle your payroll, but also handle some basic human resource functions? Do you yourself intend to act as an office manager or will you have someone retained to be that office manager in addition to perhaps performing other work if you are only a two or three lawyer firm? Would you seek professional help in regards to, not only the starting of your law firm, but also as an ongoing practice coach? There are professionals that can provide such expert advice based upon your specific needs.

What are the growing areas of your practice? Are they profitable enough to expand? What do you perceive as your firm culture and how will that fit into your funding and how you would compensate your partners? If your firm is purely "eat what you kill" for partner compensation, irrespective of the good intentions, it will be difficult for a partner to justify spending a great deal of time helping out another partner, associates or getting involved in firm management if the compensation structure effectively disincentivizes such help. Consider the experiences you have had or others have in other law firms under different law practice models to see how they might work for you.

Further, when considering staffing needs, you should consider who you really need for support staff and how technology can be used to reduce that support staff costs. For example, 30 years ago, you could walk into our law firm lobby, see how busy the receptionist was in answering phones as well as perhaps how many people were waiting in the lobby, and that would give you an indication of how busy we were at that time. However, these days many clients wish to deal with their lawyers via email and thereby rarely come into the office. Some firms provide direct telephone numbers on their websites so that they can contact that attorney by bypassing reception completely.

Depending on your practice, you may still need someone at reception for when clients come to the office for a meeting and the receptionist may now have several roles in addition to being merely a receptionist. This could range from secretarial support to bookkeeping functions.

## **V. TECHNOLOGY**

If you establish a firm with two or more attorneys, absent you being an expert yourself in IT, it would be worthwhile hiring an IT consultant to make determinations of what you want to do; both for hardware and software. Depending on the needs of your firm, that may dictate whether or not you want desktop computers. By way of example, Kenneth Merrifield, of the New Hampshire Department of Labor Commission, at the 17th Annual Labor and Employment Seminar last month stated that he is changing over all desktop computers to laptops so that all computers can be moved in case of any type of hazard at the Spaulding Building off Pleasant Street in Concord. That might be worth discussing with an IT consultant. I am not suggesting that it is the right solution for your potential firm, but it should be discussed. Likewise, there should be discussions as to storing information on the cloud, on the computer, or in a warehouse. Considerations of security and cost will largely. Technology is obviously changing at a rapid pace and those discussions should occur. What makes sense now may be "old and cold" in five years.

Further, it should also be considered as to whether or not in a retainer agreement the client signs there is a provision that states after a certain period of time that the client's file will be destroyed thereby saving costs in office and/or warehouse space. Such considerations should consider the potential marketing benefits of keeping certain file documents such as original Wills and Trusts at your office as a service to the client. Some clients may prefer that option and then when their estate plan "matures" (a/k/a they have passed away), their estate representatives may be more likely to use your firm for the probating of the Will or the Trust administration.

## **VI. MANAGEMENT**

In addition to the discussions above about how law partners agree as to the generation and sharing of profits, an agreement also needs to be reached as to break ups, whether due to death, disability, retirement, resigning, or firing. Will there be key person insurance and also life insurance for a buyout upon death?

Potential law partners should also consider how their practices complement each other. By way of example, a family law practitioner and a trust and estate practitioner may have the potential for cross-marketing with each other in that those who are getting a divorce should rethink their estate plans and create a new one. Those who have an estate plan with the firm may have a relative (not one of the ones who did the estate plan with the firm), who is getting a divorce or, more happily, is adopting a child. On the other hand, a trust and estate attorney who gets along well with another lawyer who practices felony criminal defense should think through whether or not there might be

elderly wealthy clients uncomfortable sharing the waiting room with a person who is accused with a violent crime. I am not suggesting that either of those practices are better than the other, yet there should be at least a discussion as to perceptions of clients just as there would be in choosing the office location. Another consideration should, of course, be referral sources. If you are an IP attorney and join a firm that is a multi-practice firm, how will that affect your referral sources? Will some attorneys be concerned that your firm may later handle all the client needs upon a referral to your office for a licensing agreement or trademark dispute? Once again, I am not suggesting that it may still make sense a lot of sense for the IP attorney to join with other partners in a multi-practice firm. It should be thought out with the cost-benefit analysis of the decision.

## **ETHICAL CONSIDERATIONS**

Many solo practitioners who choose to establish a traditional office—as opposed to a laptop and cellphone—often opt to share office space with like-minded attorneys. Sharing space offers attorneys an ability to defray expenses, share resources, and develop collegial relationships.

While sharing space with attorneys offers significant benefits, it also presents real and tangible risks, including issues of confidentiality, conflicts of interest with suitemates, and the unintentional creation of an implied partnership. Careful attention must be paid to the applicable rules of professional conduct.

### **New Hampshire Rules of Professional Conduct**

#### **Rule 1.6 – Confidentiality of Information**

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

#### **Rule 1.7 – Conflicts of Interest**

#### **Rule 1.17. Sale of Law Practice**

This rule permits a lawyer or a law firm to sell or purchase a law practice, or an area of law practice, including good will, as long as certain conditions are satisfied.

#### **Rule 5.4. Professional Independence of a Lawyer**

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

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation ; or

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

### Rule 7.5. Firm Names and Letterheads

(e) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

#### ABA Model Rule Comment

With regard to paragraph [e], lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

### **Office Sharing Agreement**

It is recommended that attorneys who intend to share office space enter into a written office-sharing agreement. Such agreement should address the following:

- the terms of the intended occupation,
- the definition of the space to be occupied and the common areas to be shared,
- a strict prohibition against any attorney representing that the attorneys in the shared space practice as a single law firm,
- a requirement that the attorneys maintain a certain level of professional liability insurance and business office coverage,
- an agreement as to the mandatory use of engagement letters specifying the nature of the shared space arrangement and indicating that the retention is just with the individual attorney or law firm,
- any agreement on the use and cost sharing of office supplies and equipment,
- the extent to which office staff will be shared,
- a delineation of how client confidences will be protected,
- the extent to which any sublets will be permitted, and
- the policy on mutual conflict-checking procedures or representation of adverse parties by law firms within the same suite.

**LAW FIRM**  
**BUSINESS PLAN TEMPLATE**  
**DATE**

DRAFT



- I. EXECUTIVE SUMMARY**
- II. STRUCTURE AND GOVERNANCE**
- III. LEGAL SERVICES OFFERED**
- IV. ADMINISTRATIVE MANAGEMENT PLAN**

**Personnel:**

**Accounting:**

**Hardware and Software Systems:**

**Location and Security:**

**Insurance:**

- V. MARKETING**

**Initial Marketing Strategy:**

**Competition/How Firm Will Differentiate Itself:**

**Website:**

- VI. FINANCIALS**

Attachments -- Firm's projected revenue forecast for the first three years is attached as Exhibit A. Anticipated Start Up Costs are attached as Exhibit B, and Annual Expenses are attached as Exhibit C.



# The Benefits and Challenges of Our Solo and Small Firm Practices

By Julie E. Bates, Esquire

**T**he best thing about my solo practice is that every year I'm Attorney of the Year," my husband has often joked.

After graduating from law school, he hung out a shingle in his hometown and never looked back. However, my path as an attorney took a much different route: I went from a large firm to a small one, and later to solo practice. I worked five years at a downtown high-rise firm until a recession resulted in 15 lawyers, including me, being laid off. At the time, I was four months pregnant. Try finding a new job in that condition!

An interesting thing happened, though. After our son was born, I was surprised to discover my love for being a stay-at-home mom, despite the financial challenges of morphing from a double-income-no-kids couple ("Dinks" for those who remember) into a family with one income.

After a year at home, I began working part-time for a small firm. It was legal heaven. I loved getting back into law and enjoyed great working relationships with the five full-time attorneys who composed the rest of the firm.

With the birth of our second son, I again changed my game plan, and—with the support of my amazing husband—I returned to both 24/7 mommy-ing and a tight one-income budget, this time with a family of four. Challenge accepted.

When our sons were in first and fourth grades, I began a solo, part-time practice from my "home office" (a.k.a. my desk in the kitchen). I intended to work only hours that matched the school calendar. That plan didn't go as smoothly as I'd hoped, but it was a good fit for me. I didn't take on litigation-driven cases where my time wouldn't be my own. I was able to plan and schedule most of my legal work around summer, Christmas, and other school breaks. When that wasn't possible, I made play-date arrangements for the boys until they were old enough to become interested in what I did, and wanted to come with me.

However, what was best for my family isn't for everyone. We made choices that, for the most part, worked well for us, but I don't want to imply that we lived a rosy, carefree existence. Benefits and challenges drive the continuing struggle of work-

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alimagan

life balance for most lawyers, regardless of the size and scope of their practice.

For my husband and me, the benefit of our solo and small-firm practices was the flexibility of our time. Among other things, we could usually control our schedules so that one or both of us were able to attend our children's ball games, plays, other school events, and Scouting activities.

Our constant challenge was money. When I stayed home full-time, and when I worked part-time as our kids were growing up, our income wasn't nearly what it had been as young lawyers. The reduction in finances meant that instead of delegating jobs to a staff, we were our own janitors, I.T. department, accountants, and—well, you get the picture. Living on a greatly reduced income required re-thinking the financial comforts that we, as Dinks, had envisioned. The money pinch felt terribly difficult at the time, yet now we rarely think about it. Really.

Fast forward to 2017. Even though our children have flown the nest, I continue to lawyer only on a part-time basis, and devote other waking hours to matters near and dear to my heart, including the Ruth Bader Ginsburg American Inn of Court.

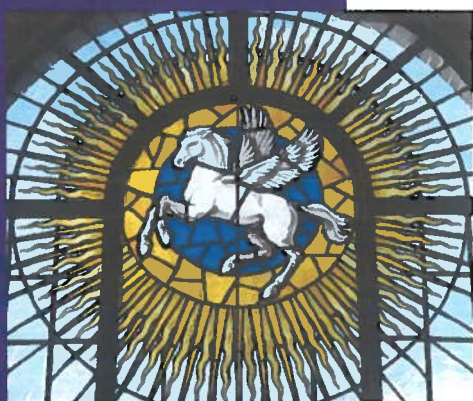
Somewhere along the way of my ever-changing work situation, my mother, Gloria Bates, convinced

me to help her start a new Inn in Oklahoma City. It became more work—and more fun—than we ever anticipated. Mom started law school in her forties; upon graduation, she clerked for a federal judge, then went into practice with her former law school classmate, who happened to be my husband! She later became a judge herself. Now retired, she considers founding the Inn to be her greatest contribution to our legal community.

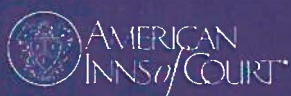
I'm glad I made time in my life for the Inn. My membership has resulted in a benefit that I never imagined years ago. In suburban solo practice, I felt somewhat secluded from interactions with other lawyers and judges. Participating in the Inn kept me in regular contact with the bench and bar, and continued to widen my circle of legal friendships, thereby enriching my professional life experiences.

Nothing has been more fulfilling in my legal career than the comradeship of working side-by-side with fellow Inn members in efforts to better our profession. And by doing just that, each member of an American Inn of Court is truly "Attorney of the Year." ♦

*Julie E. Bates, Esquire, practices law in Oklahoma City, Oklahoma. She is an Emeritus member and co-founder of the Ruth Bader Ginsburg AIC.*



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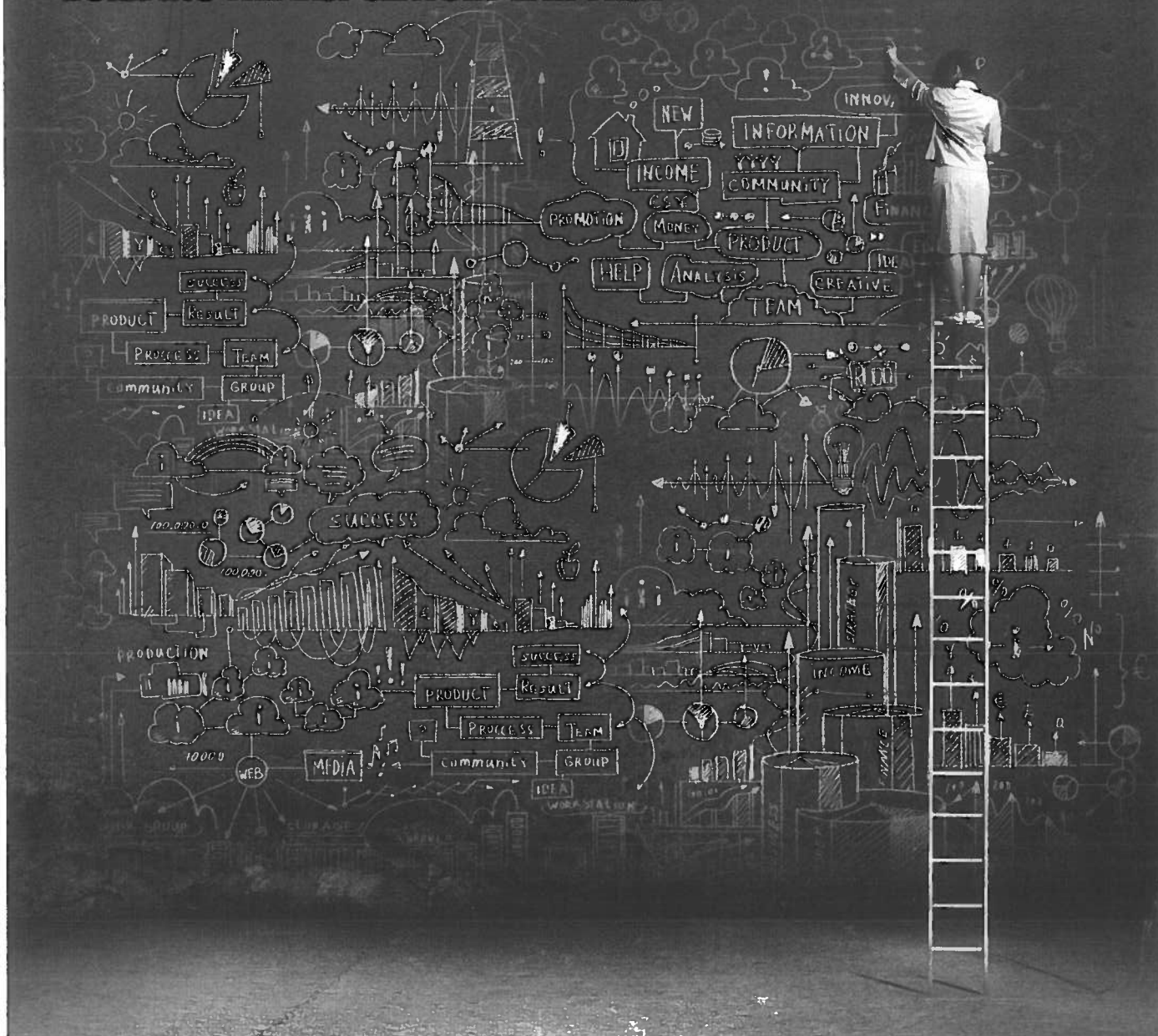
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## BUILDING THE 21<sup>st</sup>-CENTURY LAW FIRM



# PLAYING SAFER

START PROTECTING YOUR FIRM FINANCIALLY BEFORE YOU OPEN IT BY JESSICA YOUNGBLOOD

**One thing is certain in life and in business:** No new journey or pursuit is devoid of risk. Risk, difficulty and unanticipated circumstance are almost a certainty in great personal and professional endeavors.

If you are thinking of starting your own law firm or have begun the process, you likely already have engaged in some form of risk-reward analysis and for unique reasons determined it might be the path for you. Maybe you have discovered you are an entrepreneur at heart; maybe you value being the master of your own calendar and time; or perhaps you



have dreamed up an innovative and inclusive law firm culture and are daring greatly to set out and create it. Whether your purpose is practical, time-centered or more altruistic, it is a worthwhile personal and professional pursuit and one that, by design or not, simultaneously expands the reach of legal services to our communities.

But at the end of the day, a law firm is a business, and young businesses often fail when business owners fail to engage in risk management at the outset. Many businesses and business owners do not adequately consider or plan for unanticipated financial loss (or overspending). Despite doing all the right things otherwise, they quite simply run out of cash or capital to keep the firm or business going.

Risk management involves protection from certain unanticipated expenses while also having a source of funds available in the event of some type of financial loss. The latter might be addressed by a first step in risk management, self-insuring, which essentially means saving three months to one year of personal and business expenses before you start your practice. In reality, this is a difficult-to-impossible task for most.

Insurance, though, is an invaluable risk-management tool and one you should explore as you begin your practice. If you are starting out, it's also a more cost-effective and realistic way to engage in risk management from the beginning.

Here are a handful of insurance tools you should consider heavily when starting your firm. Some are necessary at your firm's inception, while others should simply remain on your mind and be explored further as your firm evolves.

#### **TOOL 1: PROFESSIONAL LIABILITY**

Obtaining professional liability insurance, aka malpractice insurance, is not a thrilling task to think about while you are getting excited about the design of your firm website or the amazing new client software you just tested. It is, however, a basic risk-management tool a law firm should have in place before you begin practicing.

Professional liability insurance covers

legal liability that arises from your delivery of legal services. It might not seem necessary at first, and some practitioners might think they are not at risk of a claim either because of the type of clients they serve or their practice area. But professional liability insurance, like most insurance, is a risk-management tool you might not think you need—until you do. It is the layer of liability protection most intimately tied to the practice you are working hard to build and the clients you are serving. As such, it should be considered an essential.

How do you obtain professional liability insurance? If you are like me, you will ask a colleague or that friend of a friend who went solo. That process can bear fruit, but keep in mind that you will have many tasks in starting your practice. In general, it can be wise to outsource as many of those tasks as is practicable.

Using an insurance brokerage company is invaluable. It can compare rates for you and, perhaps most importantly if you are starting out, the company will be in the know on specialty rates given for new attorneys in their first year or two of practice. Most state bar associations can provide a recommendation on a brokerage company.

A final note on malpractice insurance: Some types of insurance are required by law—automobile insurance, for example. Professional

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liability insurance might or might not be required by your state bar. But in most states, such as California, attorneys are at least required to inform a client in writing at the time of engagement whether the attorney carries a policy.

## **TOOL 2: HEALTH**

You cannot be your best self and the best advocate for your clients if you are not healthy. Healthy means taking care of yourself mentally and physically. But it also means having peace of mind that you have access to quality, affordable health care should you become sick.

Health insurance is a sizable expense for almost anyone, and when you first start your practice, cash flow might be your principal hurdle. Speaking from recent experience, I can tell you it is worth prioritizing.

Having quality health insurance in place can set your mind at ease, and knowing you will be cared for if you become sick will free your professional brain space.

As a risk-management tool, a health insurance policy removes some uncertainty for potential expenses in that you will likely have some idea of the maximum you will pay out of pocket. Whether it's a catastrophic plan or a PPO plan, a health insurance policy turns a potentially unexpected or unknown personal and business cost into an expense you can plan for based on the particulars of your policy.

## **TOOL 3: DISABILITY**

If you're starting a law firm, chances are you are the entire firm. So what happens to your business if you become sick, disabled or otherwise unable to work? Even if you engage in the self-insuring discussed earlier, there is a chance you'll have nothing to come back to if a surgery or illness puts you on the sidelines beyond the time frame for which you've saved. Disability insurance is a cost-effective way to transfer risk when you don't have the capital or time to self-insure via a personal savings plan. It's then a risk-management tool that replaces lost income if you're sidelined.

There are various kinds of disability policies you might consider depending on your situation. One specific type is disability overhead insurance, which pays your business overhead if you are unable to work as a key employee. You should consult an insurance professional to address your individual circumstance and find what is fitting for you.

When choosing a company or provider for a disability policy, keep in mind that not all companies, contracts and rates are created equal. Do your research, and enlist some help.

There's good news for attorneys—even new ones or those finishing law school: Although most companies require proof of income to establish particular amounts of coverage, some will waive this requirement or provide lower rates for specialty-degreed professionals such as lawyers.

## **TOOL 4: LIFE**

Life insurance is a critical personal planning tool. In the familial context, it is often the primary and largest source of funds used to care for our families when we die. Typically, it's also most accessible and efficiently distributed upon the death of the policyholder and provides liquidity to pay expenses and debts and care for our families. When starting your own firm, life insurance might similarly be a critical tool for the continued care of your business, business partners and family should something happen to you.

If you have any form of shared debt heading into starting your firm, you will want to consider life insurance as a tool for paying that debt upon your death. Shared debt might include your law school loans if a parent or spouse co-signed on your agreement. In that case, life insurance can be used so that your co-signer is not left with the loan balance.

Shared debt also might mean a business partnership if you are starting a law firm with others. This is a topic to be explored in-depth elsewhere. But in sum, if you have a partner or partners, you want to consider a buy-sell agreement. There are many ways to structure these agreements. But the important thing to note briefly in



this context is that life insurance can be used to fund buy-sell agreements and can generally be leveraged as your firm develops.

There are various types of life insurance. You might be most familiar with term life insurance, whole or permanent insurance, and universal. Opinions vary about the best type of insurance to buy. You should consult an insurance professional on what is best for you, but it likely comes down to your goals and budget.

Permanent insurance advocates argue it can be used to protect your family while you build equity in your firm, among other benefits. Northwestern Mutual, New York Life and MassMutual have a strong track record relative to the industry as it relates to permanent insurance.

But for most attorneys starting out, a term policy is an inexpensive way to protect yourself, your partners and family. Again, you should consult an insurance professional to discuss these differences and make the best choice.

#### **FLEXIBILITY FOR THE UNEXPECTED**

Additional risk-management tools include business structures that reduce or eliminate personal liability,

umbrella insurance policies to cover office property in the event of damage or theft, and various insurance types for potential future employees.

If you talk to anyone who has recently set out to start a law practice, I suspect you will hear stories of trial and error and receive advice on remaining flexible as times change and your practice evolves. Changes in the delivery of legal services come to mind, such as billing strategies that are easier for clients and the use of technology. But I think flexibility also applies to our thinking about managing the unexpected or unanticipated.

Unanticipated expenses can be crippling to your new practice. Insurance such as the types discussed here are tools you can use to ensure that while you are doing all the right things—pursuing the highest-level competence in your practice, networking, using legal tech tools, marketing on social media—your hard work, dedication to your practice and commitment to your clients remain at the forefront in the presence of the unexpected. ■

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# Planning to Start Your Law Firm

By Dirk Jordan, Esquire

**A**re you looking for a change? You may be in a large firm and tired of dealing with large-firm bureaucracy or losing clients to conflicts. Or you have always had a desire to start your own business. Perhaps you cannot find a good job in an existing law firm. If you are in one of these positions, you may want to consider starting your own firm. Below are some issues to consider and decisions to make before launching your new venture. Remember, this has been done before: 70 percent of all lawyers in the United States practice in firms of five or fewer.

Key take-away point: It is not what you make, it is what you keep. Keep your overhead low.

## Questions to Ask Yourself

- Are you self-sufficient? Can you do tasks without help or direction?
- What is your risk tolerance?
- Are you a self-starter? Are you disciplined? Can you manage your time and get things done without someone watching over you?
- If you have a significant other in your life, are they supportive of your proposed venture?
- Do you have enough money saved so you can make it for several months before cash flow rises to a comfortable level? Do you have debt? Can you get a line of credit from your bank?
- Do you have a business plan? Do you have goals and a road map on how you will get there? How are you going to get clients in the door? What is your position in the market? How much competition do you have in your space?
- Do you need employees? Why?

## Decisions to Make

### Entity choice

You can choose to form a PLLC, an LLP, a PC, or act as a sole practitioner. The choice of entity is driven by whether you are practicing with someone else, tax considerations, and the desire for simplicity.

### Partners and colleagues

I practice on my own. If you choose to practice with others, realize that friendships can be ruined when you start a business together. You may have different work styles, goals, and ability to bring in business. These differences can lead to conflict and disillusionment. I have witnessed several law firm divorces, and they can be ugly. Discuss your expectations and goals with your prospective partners and determine if you are on the same page or can work together in spite of your different strengths. You may choose to remain friends rather than business partners.

Make sure you get your partnership/membership agreement in writing. Plan for the end from the beginning. Get your prenup done now while you still like each other.

### Office location

Where will you practice? Many lawyers (25 percent) practice out of their homes to keep the overhead low. This makes sense for some practices, but if you practice in criminal defense or family law, you may want to think twice about this option.

Office sharing is common with lawyers and other professionals renting space in the same house/building. You may be a sole practitioner, but you have other lawyers available for advice and referrals.

Traditional Class A space in tall buildings is expensive, but your target clientele may expect it.



On a more global scale, do you want to be in a small town or large city? Do you want to be downtown or in a suburb? This depends on who your target clients are and what they expect their lawyer's office to look like.

### Financial

**Get a tax ID for your business.** It takes five minutes on [irs.gov](http://irs.gov) and is needed to open bank accounts.

**You need three bank accounts.** One firm operating account, one firm Interest on Lawyers Trust Account, and at least one personal account. Keep the funds separate from each other. The money in the IOLTA account is not yours until it is earned.

**Consider a line of credit at your bank.** Hopefully you have a relationship and a track record with a bank that knows you and will extend an unsecured line of credit.

**Learn how to use accounting software,** or use one of the many cloud-based practice management options that are available.

**Learn to track your time** on your computer.

**Send your bills out the first of every month.** Be consistent with this practice.

**Consider taking credit cards.** Make it easy for clients to pay for your services.

**Get malpractice insurance.** You need to have insurance to protect your assets. It is worth the peace of mind.

**Other insurance.** Health and business insurance. Think about your options. Take the time to shop your business to various vendors.

### Technology

#### HARDWARE

##### Computer.

- Mac v. PC. I use Macs exclusively.
- Desktop v. laptop. A desktop is your basic workhorse and is cheaper than laptops. Laptops are mobile (of course). I have both.

**Printer.** Even with a paperless office you need a printer. I recommend a laser printer.

**Scanner.** You need one if you are going to go paperless, plus it is necessary for e-filing. I use the Fujitsu ScanSnap ix500, which works on PC or Mac.

**Extra monitor.** They are inexpensive and will give you lots of screen real estate.

**External hard drive.** Back up your computer. Use redundant systems backup systems, including cloud-based back-ups such as Backblaze and Crashplan. I have had a hard drive crash with all of my data, and I did not have it backed up. Imagine the distress.

**Tablet.** Good for reviewing deposition transcripts and marking on documents, but not a necessity.

#### SOFTWARE

**Microsoft Office.** Word is the most commonly used word processor out there, and Outlook, Excel, and PowerPoint are included.

**Adobe Acrobat Professional.** Acrobat is the gold standard. It helps you manage PDFs when you scan documents into your computer.

**Timekeeping software.** You can use cloud-based firm management software or buy a program for \$50 once. I use OfficeTime.

**Office management software.** Options include Clio and Rocket Matter, which are good and getting better. They are overkill for a solo practitioner.

**Calendar.** There are many good calendars available that sync between all of your computers and devices. I recommend Fantastical 2.

**To-do list.** Again, many good ones out there. Get one that syncs between devices and computers so you only have to make one entry.

**Accounting.** I use QuickBooks, but there are others.

**Email.** Whatever you do, do not use Gmail as your primary office email client. Your Gmail is read by Google. They have said so. They have stated that you have no expectation of privacy if you use Gmail. I use Apple Mail and Outlook.

**Cloud storage.** Dropbox, Box, and others. It makes mobile lawyering possible. You may want to use encryption software as well.

#### Practice tips

Keep a regular schedule. Be at your desk by 8:30 am and available during working hours for clients to contact you.

Respond to all calls and emails within 24 hours. Even if you cannot give a response, let the sender know that you received their call/email and will get back to them. No one likes to be ignored.

Be courteous and professional with everyone. It will enhance your reputation.

Keep a healthy balance (whatever that means to you) between work and life. Work can swallow up your life as an entrepreneur. Spend time exercising and maintaining your health.

Be conversant with how to use technology. It is now an ethical duty to do so, and it will make you more efficient. ♦

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# Good Things Come in Small Packages

John A. Elzufon, Esquire and H. Garrett Baker, Esquire

**A** great mentoring program is essential to any good law firm. Today's mentees are tomorrow's attorneys, and constitute the future of the firm. Firms of any size should provide a setting for training and professional growth for junior attorneys—but smaller firms may be better positioned to provide mentoring experiences that are meaningful to both mentor and mentee.

At large firms, mentoring opportunities are essentially built into the hierarchy; summer and junior associates are typically assigned to specific partners on designated assignments. While this provides associates with readily identifiable individuals to whom they can look for guidance, they may have less opportunity to meet their colleagues in other departments of the same firm. Often, the largest of firms are spread across different geographic regions and it may not be feasible to know everyone within the firm and across various specialties. Further, the scope of assignments may be limited in large firms: Junior and senior partners generally assume responsibility for major portions of the case, while associates perform more research-oriented or "behind-the-scenes" tasks.

While smaller firms may not have the same capacity for mentoring, the opportunities for professional growth and experience may be even more meaningful. First, mentees and associates can become familiar with diverse practice areas and with the specialties of firm members other than

their assigned mentors. Due to the smaller base of operations, everyone quite literally gets to know everyone else. Even while working in a given legal specialty, associates have the chance to familiarize themselves with other areas of the law in a more holistic legal experience.

Small firms also may be able to offer an "open-door" policy that makes senior attorneys more approachable. Junior attorneys can workshop a question, an approach to an assignment, a legal theory, or any other matter of concern informally through face-to-face discussion with senior members of the firm even if they are not assigned to each other.

This opportunity to bounce something off of a more experienced attorney informally is not only less intimidating but highly educational. Junior attorneys can ponder the issue and formulate their own sense of what solution might be best before asking more seasoned practitioners for confirmation. As senior attorneys, the authors have found that first asking the junior attorney, "What do you think?" can be very affirming: Mentees can offer their own thoughts about important aspects of the case and then seek guidance, rather than simply implementing strategies that have been handed down. Junior attorneys learn that their perspective is valued and to form their own judgments, rather than just relying upon the judgment of others, which also helps to build confidence.

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Alex Rath

In smaller firms, junior attorneys often can play more active roles in cases earlier in their careers. Depositions, motions, hearings, and even trials are often reserved for junior and senior partners in large-firm settings. In smaller firms, however, newer lawyers by necessity play a more active and central role in litigation.

One of the authors had an experience in his own practice where this proved true. One of Elzufon's most satisfying mentoring experiences occurred about 15 years ago when he decided to let one of his associate attorneys take "first chair" in a medical negligence case. Although her trial experience was limited and none of it in professional liability/medical malpractice, she had performed admirably as an associate and she knew the case file well. Damages were limited because of the nature of the injuries; even in the worst of circumstances the verdict would never exceed policy limits.

"There was no doubt in my mind she was ready for a trial as 'first chair,'" he says. He told the carrier that he wanted her to first chair the case, but that he would be at counsel table and be ready to step in if he thought that matters were not proceeding well. He also agreed not to bill at all for his time. The carrier said that was fine as long as the doctor agreed, which he did.

"I told the associate this was her trial. While I was there to give advice if requested, I would not volunteer any suggestions and all decisions were hers and hers alone. This was truly her trial," Elzufon says.

The junior attorney was a bit shaky at first, but her confidence grew with each passing day. When it came time for closing argument, she presented with all the poise of a seasoned veteran.

"Watching the growth of this attorney before my eyes was one of my more satisfying professional experiences. By the way, she won the case," Elzufon says. He sacrificed a week of his time and the firm took a financial hit, but it was worth it. As a side note, the judge who presided over that trial cited the case staffing as a model of how mentoring should be done.

Elzufon's co-author, Baker, was tasked with arguing an appeal before the Supreme Court of Delaware only 18 months after being admitted to the Delaware bar. While this would be a daunting task for any new attorney, it was even more so given that the appeal was based on an evidentiary issue and to which no objection had been raised by former counsel during trial. As such, a plain error standard applied on appeal. Nevertheless, it was

very meaningful to know that the senior attorneys entrusted that assignment to him.

"Of course, I worked harder on it than anything I ever had, but ultimately was able to prevail and convince the Court that the matter should be remanded for a new trial based on that error," he says.

Junior attorneys in smaller firms may get more exposure to the individuals or entities that the firm is representing. Representation of clients is, of course, any law firm's reason for being. Management of client needs and expectations is an important training ground for junior attorneys. The best way to learn how to counsel and assist a client in terms of legal needs and issues is to actually meet with the client and learn how to be of service.

In the authors' view, there is no better teacher than experience. While it is of course important to have a firm textbook understanding of the fundamental theories of law, it is only through implementation and putting those theories into hands-on practice in a real setting that junior attorneys can gain a holistic understanding of those principles and their application.

The importance for firms of all shapes and sizes to emphasize and implement strong training programs for junior attorneys cannot be overstated. However, there is much to be said about the quality of the on-the-job training provided in smaller firms, where staffing resources demand that junior attorneys play more active and leading roles in the development of cases at all stages. In that setting, attorneys obtain front-row, hands-on, practical training that prepares them to step in and confidently handle any aspect of a case. ♦

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